IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 22ND DAY OF MAY 2024 / 1ST JYAISHTA, 1946

WP(CRL.) NO. 281 OF 2024

PETITIONERS:

1 BINDULAL V.S.,
AGED 51 YEARS,
S/O VENUDHARAN, KOLLAMVILAKATHU HOUSE,
AYIROOR, ARUVIPPURAM POST,
THIRUVANANTHAPURAM, PIN – 695126

2 SIDHAN K.N.,
S/O NARAYANAN, KAIPPON(H),
NAYARAMBALAM POST, ERNAKULAM, PIN – 682509

3 AJIKUMAR G.,
AGED 47 YEARS,
D/O GOPINATHAN CHETTIYAR, THADATHARIKATH VEEDU,
KOLLA, KULAPPALLY, PANAVOOR, NEDUMANGAD,
THIRUVANANTHAPURAM, PIN – 695568

4 JOSEPH M. T.,
AGED 42 YEARS,
S/O THOMAS, MALIYEKKAL (H), NAYARAMBALAM,
ERNAKULAM, PIN – 682509

5 BINNY V.,
S/O VIJAYAN E.A, SURYA, KUMBALANPILLY,
CHALIKKAVATTOM, VENNALA POST, ERNAKULAM,
PIN – 682028

6 VINOJ M. G
S/O GOPI M. A., MANNOPPILLY MUGAL, HOUSE, CUSAT
POST, SOUTH KALAMASSERY, ERNAKULAM, PIN – 682022

7 SURESH T. K.,
AGED 44 YEARS,
S/O SUKUMARAN NAIR, THAZHAKUZHIYIL HOUSE,
PULLAVOOR NIT CAMPUS POST, KOZHIKODE, PIN – 673601

8 SUNISH P. K.,
AGED 44 YEARS,
S/O BALAN, CHITHRAPPATTAGIL HOUSE, PILLAVOOR NIT
CAMPUS POST, KOZHIKODE, PIN – 673612

9 SELMATH V.U.,
AGED 49 YEARS,
D/O UMMAR, VELUTHEDATH HOUSE, VADAKODE POST,
B.M.C, KAIPPADAMUGHAL, ERNAKULAM, PIN – 682021

10 ABHILASH P.K.,
AGED 43 YEARS,
S/O IMBI CHATHAN, POOLAKKUNAN (H), (H NO. 39),
CHANDAKUNNU POST, NILAMBUR, PIN – 679342

11 MANOJ K. R.,
AGED 46 YEARS,
S/O RAJAN K.K , KALLUKUNNEL HOUSE, KARINILAM
POST, MURUKKUMVAYAL, KOTTAYAM, PIN – 686513

12 MADHU M.J.,
AGED 42 YEARS,
S/O JAYADAS, MUKKADAMANNIL HOUSE,
MUKKOTTUTHARA POST, PALAKKAD, PIN – 678508

13 MUKESH K. V.,
AGED 40 YEARS,
S/O VIKRAMAN K.P., KANICHATTUKUDY HOUSE,
THOTTEKADU, MATTOOR, KALADY POST,
ERNAKULAM, PIN – 683574

14 SANDHYA T.,
AGED 46 YEARS,
D/O DHANANJAYAN V. M., NIVARTHIL HOUSE,
VETTAKKAL POST, CHERATHALA, PIN – 688529

15 RASHEEDA P. M.,
AGED 44 YEARS,
D/O MUHAMMED, PEREPPARAMBIL (HOUSE),
KUNNUSHERRY, ATHANY POST, NEDUMBASSERRY,
ERNAKULAM, PIN – 683585

16 SHANAVAS V.A.,
AGED 34 YEARS, S/O ABDUL KADAR,
VENATTU HOUSE, MADAVANA POST, KODUNGALLUR,
THRISSUR, PIN – 680666

17 SUDHA P.R.,
AGED 46 YEARS,

D/O RAMU, KILIKOTT HOUSE, KAIPAMANGALAM,
CHALINGAD POST, THRISSUR, PIN – 680681

18 NISSAR P. M.,
AGED 49 YEARS,
D/O AHMED, PALAKKAL HOUSE, PALLILAMKARA,
H.M.T COLONY POST, KALAMASSERY ,
KOCHI, PIN – 683503

19 SHEEJA M. C.,
AGED 47 YEARS,
W/O PRIYA KUMAR, MANALODY HOUSE, KAPPRASSERY,
NEDUMBASSERY POST, PIN – 683585

20 LOVELY V.T.,
AGED 41 YEARS,
D/O THOMAS V.P., PLAPPALLY HOUSE, VADACKAL POST,
ALAPPUZHA, PIN – 688003

21 BEENAKUMARI S.,
AGED 40 YEARS,
D/O SASIDHARAN, ERATTAKKALAYIL, PADUKKOTTUKAL,
THATTAYIL POST, PATHANAMTHITTA, PIN – 691525

BY ADVS.
SRI.V.A.NAVAS
SRI.U.NIDHIN

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN – 695001

2 SECRETARY TO GOVERNMENT,
DEPARTMENT OF VIGILANCE AND ANTI-CORRUPTION,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM,
PIN – 695001

3 SECRETARY TO GOVERNMENT,
DEPARTMENT OF HIGHER EDUCATION, GOVERNMENT
SECRETARIAT, THIRUVANANTHAPURAM, PIN – 695001

4 PRINCIPAL SECRETARY,

DEPARTMENT OF HIGHER EDUCATION, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN – 695001

5 COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY – CUSAT,
REPRESENTED BY ITS REGISTRAR, COCHIN UNIVERSITY POST, COCHIN, PIN – 682022

6 THE CHANCELLOR,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
COCHIN UNIVERSITY POST, COCHIN, PIN – 682022

7 THE VICE CHANCELLOR,
COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY,
COCHIN UNIVERSITY POST, COCHIN, PIN – 682022

8 THE DIRECTOR,
DEPARTMENT OF VIGILANCE AND ANTI-CORRUPTION,
P.M.G, VIKAS BHAVAN POST, OPPOSITE KSRTC DIPPO,
THIRUVANANTHAPUARAM, PIN – 695033

BY ADV.
SRI.S.P ARAVINDAKSHAN PILLAI, SC,CUSAT
SRI.RAJESH A.,SPL GP VIG,
SMT.REKHA S.,SR PP

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 22.05.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BABU, J.

W.P.(Crl) No.281 of 2024

Dated this the 22nd day of May, 2024

JUDGMENT

The prayers in this Writ Petition filed under Article 226 of the Constitution of India are as follows:-

> "1. Issue a writ of mandamus or appropriate writ order or direction, directing the 1st, 2nd and 8th respondent to constitute a special investigation team and to conduct investigation in the matter stated in Exhibit P9, in a time bound manner and in supervision of this Hon'ble Court.
>
> 2. Issue a writ of Mandamus or any appropriate writ order or direction, directing the 8th respondent to take appropriate legal actions based on the matters raised in Exhibit P9.
>
> 3. This Hon'ble Court may grant leave to the petitioners from filing the translation of the vernacular documents produced with the writ petition.
>
> 4. Issue appropriate order or directing that this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The petitioners were the applicants for the post of sweeper-cum-cleaner in the Cochin University of Science and Technology. The notification for the said post was published in 2008 and written examination was conducted in 2010. A short list of 750 candidates was published based on the result of the examination. The selection process was delayed indefinitely due to the pendency of certain litigations before this Court.

3. A new syndicate took charge of the University on November 2016. The syndicate proceeded with the selection process. Final ranked list was published on 28.12.2018. Based on the final ranked list 97 persons were appointed for the post.

4. The petitioners alleged that there was corruption and malpractice in this selection process. It is alleged that even one month prior to the publication of the ranked list, the names of candidates who would be selected came to be leaked based on certain communication between some office bearers of an employees association and one of the candidates who appeared in the selection process.

5. The Crux of the allegation in the Writ Petition is narrated in Paragraphs 3 to 6 of the Writ Petition which are extracted below:-

> "3.The final ranked list of the candidates has to be prepared based on the marks obtained by them in the written test as well in the interview. Maximum marks that can be granted by the interview board to a candidate were 20. Accordingly the interview was conducted by the selection committee in the month of April to July of 2018. Prior to the interview, the ruling political party leaders have provided to the selection committee a list of candidates who must be appointed by giving maximum marks in the interview and bringing them in the top of the final ranked list. Keeping it in mind, the new selection committee has committed fraud and grave malpractice in the interview process. They have granted maximum marks out of 20 to the persons whom they have pre-decided to give employment, though they have less marks in written examination. On the other hand, lesser marks were given to the eligible candidates who got higher marks in the written examination. So the selection committee has misused their position and has committed fraud and

malpractice in the interview process and made appointments of undeserved candidates supporting their political line by granting more marks in the interview than what they actually deserved. A true copy of the consolidated mark sheet prepared by the selection committee based on the interview conducted from the period from 16/4/2018 to 9/7/2018 is produced herewith and marked as Exhibit P1. A true copy of the ranked list dated 28/12/2018 published by the 5 th respondent is produced herewith and marked as Exhibit P2. From Exhibit P1 it is evident that ineligible candidates having lesser marks in the written examination were given higher marks to give employment and the candidate having higher marks in the written examination were given lesser marks based on the basis of predetermined policy.

4.The list of the selected candidates after the interview has to be published on 28/12/2018 and the decision to publish the ranked list on that date was taken by the syndicate meeting held on 27/12/2018. But days before the publication, the details in the ranked list was leaked through the office bearers of the employees association affiliated to the ruling political front. Moreover there were incidents when the office bearers of the Employees organization contacting the selected candidates and ensuring membership to their association much before the publication of the ranked list by the selection committee. This incident indicates the malpractice and nepotism held in the selection process.

5. Based on leakage of the ranked list, one month prior to the publication of the ranked list, the candidates and the public made agitations and strikes against the syndicate and selection committee. The allegation regarding the corruption and malpractice conducted by the syndicate was breaking news in leading dailies and news channels of Kerala. The copy of the news published in Malayala Manorama daily dated 27/12/2018, 25/12/2018, 29/12,2018, 01/01/2019 & 02/01/2019 are produced together herewith and marked as Exhibit P3.

6. One of the candidates named Bhanu, who is expected to get employment as she is included in the list given by the political party, came to know that the office bearers of the employees association has contacted the selected persons much prior to the publication of the ranked list. She had made telephone calls from her mobile phone on 25/12/2018 to the said office bearers and enquired about the malpractice happened in the interview process, which was recorded by her. Upon the enquiry, it was replied that maximum marks were given to persons included in the list supplied from the party office to the Selection committee and Bhanu was given 17 marks and as her marks was lesser in written test, she fell short of selection. From these telephone calls recorded by Bhanu and from other records it is evident that the selection committee has conducted illegalities and misused their position and excluded the deserved in the

> ranked list and thereby made illegal enrichment to the undeserved candidates. In this regard Bhanu had filed a complaint to the Police Cyber Cell as well as to the vice Chancellor, which was not considered. A true copy of the Complaint dated 26/12/2018 submitted by Bhanu M.A to the 7 th respondent is produced herewith and marked as Exhibit P4."

6. I have heard the learned counsel appearing for the petitioners, the learned Standing Counsel appearing for the University and the learned Senior Government Pleader appearing for the Vigilance and Anti-Corruption Bureau.

7. The learned counsel for the petitioners submitted that petitioner No.1 had filed Ext.P9 complaint before the Director of Vigilance seeking investigation into the allegations of corruption and malpractices. But no action was taken.

8. The learned Standing Counsel for the University submitted that the process of selection was transparent and lawful.

9. It is submitted by the learned Senior Government Pleader that the vigilance could not proceed further on Ext.P9 complaint, as they did not get prior approval under Section 17A of the Prevention of Corruption Act, 1988, from the competent authority.

10. The approval as provided under Section 17A comes into play only when the alleged offence is relatable to any

recommendation made or decision take by a public servant in discharge of his official functions or duties. This Court in **Shankara Bhat and Others v. State of Kerala and Others [2021(5) KHC 248]** held that, it is not that every offence alleged to have been committed by a public servant under the Act needed prior approval and that approval under S.17A is required only when the alleged offences were relatable to any recommendation made or decision taken by a public servant. In **Shankara Bhat**, this Court held that any commission of any offence or allegation of acts of public servant which is *ex facie* criminal or constitute an offence or even demanding illegal consideration may not be treated as an offence related to any recommendation made or decision taken by a public servant. This view was followed by this Court in **Jayaprakash J. and Others v. State of Kerala and Another [2022(1) KHC 206], Venugopal V. and others v. State of Kerala and Another [2021 KHC 565] and in Abdul Sathar T.A. v. State of Kerala [2023 (1) KHC 167].** As far as the allegations related to corruption and malpractice in the selection process in the given case are concerned this Court finds nothing to show that the said allegations are anyway relatable to any recommendation made or decision taken by a public servant. Therefore, I hold that a

prior approval under S.17A is not required.

11. In **Venugopal V. and others v. State of Kerala and Another [2021 KHC 565]**, this Court held that when a constitutional Court passes an order to conduct enquiry or investigation in an offence under the Prevention of Corruption Act, the bar under Section 17A of the Act does not operate against the police officer.

12. Having regard to the nature of allegations levelled by the petitioners, this Court holds that a preliminary enquiry as mandated in **Lalita Kumari v. Government of Uttar Pradesh [2013 (4) KHC 552]** is required. Therefore, the Director VACB (Respondent No.8) is directed to conduct a preliminary enquiry in the matter and proceed in accordance with law. The Director shall complete the preliminary enquiry as expeditiously as possible, at any rate, within a period of three months from the date of production of a copy of this judgment.

The Writ Petition is disposed of as above.

Sd/-
K.BABU
JUDGE

VPK

APPENDIX OF WP(CRL.) 281/2024

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE CONSOLIDATED MARK SHEET PREPARED BY THE SELECTION COMMITTEE BASED ON THE INTERVIEW CONDUCTED FROM THE PERIOD FROM 16/4/2018 TO 9/7/2018**
Exhibit P2	**TRUE COPY OF THE RANKED LIST DATED 28/12/2018 PUBLISHED BY THE 5TH RESPONDENT**
Exhibit P3	**THE COPY OF THE NEWS PUBLISHED IN MALAYALA MANORAMA DAILY DATED 27/12/2018, 25/12/2018, 29/12,2018, 01/01/2019 & 02/01/2019**
Exhibit P4	**A TRUE COPY OF THE COMPLAINT DATED 26/12/2018 SUBMITTED BY BHANU M.A. TO THE 7TH RESPONDENT**
Exhibit P5	**TRUE COPY OF THE COMPLAINT SUBMITTED BY SRI. RAMESH CHENNITHALA TO THE CHANCELLOR OF UNIVERSITY (6TH RESPONDENT) DATED 29/12/2018**
Exhibit P6	**TRUE COPY OF THE LETTER DATED 29/12/2018 OF THE CHANCELLOR CALLING FOR THE REPORT FROM THE 7TH RESPONDENT**
Exhibit P7	**TRUE COPY OF THE JUDGMENT DATED 18/10/2022 IN W.P (C) NO. 9986/2019 OF THE HON'BLE HIGH COURT OF KERALA**
Exhibit P8	**TRUE COPY OF THE REPLY DATED 3/1/2023 ISSUED BY THE DEPUTY POLICE COMMISSIONER, KOCHI CITY TO THE 2ND PETITIONER**
Exhibit P9	**THE COMPLAINT FILED BY THE 1ST PETITIONER DATED 1/6/2023 TO THE 8TH RESPONDENT REQUESTING TO CONDUCT A VIGILANCE ENQUIRY**

Exhibit P10	TRUE COPY OF LETTER DATED 17/8/2023 ISSUED BY ADDL. CHIEF SECRETARY TO THE 4TH RESPONDENT
Exhibit P11	TRUE COPY OF THE LETTER DATED 11/12/2023 ISSUED BY THE DEPUTY POLICE SUPERINTENDENT, VIGILANCE AND ANTI CORRUPTION BUREAU DIRECTORATE, THIRUVANANTHAPURAM TO THE 1ST PETITIONER
Exhibit P12	TRUE COPY OF THE APPLICATION DATED 15/11/2023 FILED BY THE IST PETITIONER BEFORE THE OFFICE OF THE 4TH RESPONDENT UNDER RTI ACT, 2005, ENQUIRING ABOUT THE CURRENT STATUS OF EXHIBIT P9 COMPLAINT.
Exhibit P13	TRUE COPY OF THE REPLY DATED 18/11/2023 ISSUED BY THE UNDER SECRETARY