

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

Thursday, the 21st day of August 2025 / 30th Sravana, 1947
CONTEMPT CASE(C) NO. 908 OF 2025(S) IN WP(C) 25863/2020

PETITIONER/PETITIONER IN WPC:

KADAKAMPALLY MANOJ, AGED 50 YEARS, S/O.KUTTAPPAN,
KADAKAMPALLY HOUSE, VADAKKEVILA POST, KOLLAM, PIN - 691 010.

BY ADVOCATE SRI. D.ANIL KUMAR

RESPONDENT/2ND RESPONDENT IN WP(C):

MOHAMMED HANISH, PRINCIPAL SECRETARY,
INDUSTRIES DEPARTMENT (CASHEW), GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695 033.

BY PUBLIC PROSECUTOR

This Contempt of court case (civil) having come up for orders on
21.08.2025, the court on the same day passed the following:



P.T.O.

A.BADHARUDEEN, J.

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Dated, this the 21st day of August, 2025

INTERIM ORDER

This matter was heard at length on 21.07.2025. Today also, the learned counsel for the contempt petitioner and the learned Public Prosecutor are heard in detail.

2. The learned counsel for the contempt petitioner vehemently canvassed the necessity of initiating the contempt proceedings against the respondent herein who alleged to have passed Annexure A6 Government Order in negation to the directions issued by this Court in Annexure A1 judgment, viz., judgment in WP(C) No.25863/2020 dated 24.07.2024.

3. The learned Public Prosecutor vehemently opposed initiation of contempt proceedings on the submission that the order impugned has been passed in

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consideration of Annexure A1 judgment. He also would submit that if this Court is convinced of initiating proceeding by way of contempt, negating his contention that there is no contempt in this matter, alternative options, if any, may also be considered.

4. On perusal of Annexure A6 Government Order in comparison with Annexure A1 judgment, it is discernible that in paragraph No.19 of Annexure A1 judgment, enlisted reasons (i) to (iv) whereby the Sanctioning Authority declined Sanction *prima facie*. They are,

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- (i) The allegation raised by the investigating agency is that the guidelines of the Central Vigilance Commission and the Store Purchase Manual were not followed for procurement of the raw cashew nuts. A perusal of the report and the available materials show that apart from such allegations, there is no prosecutable evidence to confirm that the Central Vigilance Commission Guidelines and Store Purchase Manual are applicable to KSCDC.
 - (ii) All the contracts mentioned are sanctioned by the Board of Directors. The Board of Directors of KSCDC includes 11 members from various Government departments, including Senior Civil Service Officers. Thus, the alleged action of the accused is based on the decisions of the Board of Directors based on the said Government Order.

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- (iii) No supporting materials or prosecutable evidence are produced for the allegation with regard to the diversion of funds. Even though some allegations are made, no supporting materials are made out to establish that the accused have committed criminal misconduct as public servants and by corrupt or illegal means obtained for themselves or to any other person any valuable thing or pecuniary advantage.
- (iv) The majority of the allegations in the report submitted by the CBI related to the fourteen tenders issued in favour of accused No.4 of the period ranging from 2006-2015. It is alleged that all the contracts were made resorting to the Government Order of the year 2007 and that the said Government Order was not issued with due application of mind. It is beyond the scope of the investigating agency to comment upon the Order issued by the Government.

5. On addressing reasons (i) to (iv), this Court did not accept the reasons as observed in paragraph Nos.20 to 23 as under:

“20. The materials collected by the investigating agency during the investigation and the findings in the final report show that the Government

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of Kerala had issued orders from time to time for the proper functioning of KSCDC which includes the order dated 26/3/1996 allowing the Board of Directors of KSCDC and CAPEX, "Freedom with Responsibility" in the matter of purchase and import of raw nuts, keeping in mind the general interest of the organization and the industry in modification of existing guidelines. KSCDC entered into a long-term agreement with State Trading Corporation (STC) during 2005-06, 2009 and 2015 for the purchase of cashew nuts through STC and the State Government had made an agreement with the Government of Tanzania for the import of nuts. The findings in the final report suggest that the accused Nos.1 to 3 did not make any earnest efforts to materialise the object of the said agreement to favour accused No.4. Further, they discarded the State Government policy to locally purchase Kerala origin raw nuts and resorted to procure imported nuts to favour accused No.4. The investigation revealed that during the period between 2006 and 2015, several contracts were awarded to the accused No.4 by flouting all the norms and procedures issued by the Government of Kerala from time to time. The specific finding is that

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fourteen contracts were awarded to accused No.4 by misusing the “Freedom with Responsibility” granted by the Government and also by violating the Store Purchase Manual of KSCDC and CVC Guidelines for procurement of raw cashew nuts, resulting in huge loss to KSCDC. The findings in Ext.P3 that there is no evidence to confirm that Central Vigilance Commission Guidelines and Store Purchase Manual are applicable to KSCDC are factually incorrect. The Store Purchase Manual forms the basis for the procurement system of Government Departments, Public Sector Undertaking, Local Self Government Institutions, Universities and Autonomous Bodies. Annexure 1 of the Store Purchase Manual is the list of Local Bodies, Autonomous Bodies and Public Sector Undertakings. In the said list, KSCDC is shown as item No.77 in Public Sector Undertakings. That apart, KSCDC uses public money for procurement of raw cashew nuts. Therefore, it is a public procurement. Chapter 1 of the Store Purchase Manual merely stipulates that in public procurement, CVC guidelines shall be applicable to all PSUs. KSCDC does not have their own independent purchase manual. These materials and facts were

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not considered by the sanctioning authority while entering into finding No (i) in Ext. P3 that there is no prosecutable evidence to confirm that the Central Vigilance Commission Guidelines and Store Purchase Manual are applicable to KSCDC.

21. The Director Board of KSCDC consists of 11 members, 2 members as Additional Secretaries, one from the Industries Department and the other from the Finance Department; others are representatives of trade unions from ruling and opposition parties. The Managing Director is the Chief Executive of the company who is responsible for the regular conduct of the business and operations. The day-to-day functioning of the company is controlled and managed by him. The Chairman shall preside over all the meetings of the Board of Directors and shall exercise all such powers delegated to him from time to time by the Board of Directors. The findings in the final report show that the Chairman and Managing Director had to attend the entire Board Meetings for the finalization of tenders, whereas the attendance of other Board members may vary on each occasion and that the finalization of the tender and award of the contract for the procurement of raw cashew nut

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has been done on behalf of the Board of Directors, which was presided over by the Chairman. The findings further show that the accused, Nos 1 to 3, were taking all the decisions regarding the procurement of cashew nuts during their respective tenures. The investigation revealed that during the period from 2006 to 2015, accused Nos.1 and 3, abusing their official capacity as Managing Director and Chairman, respectively of KSCDC, entered into conspiracy with accused No.4 and awarded several contracts to his proprietorship concern for import and supply of raw cashew nuts violating the Rules. It was further found that grants aggregating to the tune of `80 crores were released by the Government of Kerala during the period 2008-2013 for procurement of raw cashew nuts from local sources in Kerala. But instead of procuring raw cashew nuts of Kerala origin, the accused Nos. 1 to 3 with dishonest intention utilized the major portion of the fund for procuring imported nuts through private contractors like accused No.4. It was also found that the grants given by the Government of Kerala from 2007-2008 to 2012-13 for procurement of raw cashew nuts were diverted and false certificate of utilization in Form K.F.R. 44 was submitted by

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accused No.1 to the Government. These materials and facts collected by the investigating agency and placed before the sanctioning authority were not all considered by the sanctioning authority before arriving at the finding Nos. (ii) and (iii).

22. So far as finding No (iv) in Ext. P3 is concerned, it is not the case of the prosecution that the Government Order of 2007, based on which contracts were made by KSCDC in favour of accused No. 4, was not issued with due application of mind. On the other hand, the finding in the final report is that pursuant to the conspiracy hatched by accused Nos. 1 to 3 with accused No. 4, accused No.1 succeeded in getting the said Order from the Government allowing KSCDC to continue prevailing of using "Freedom with Responsibility" in the matter of purchase and import of raw cashew nuts and contrary to the spirit of the said Order and the earlier guidelines, accused Nos. 1 to 3 did not protect the legitimate interest of KSCDC and misutilised the freedom granted by the Government of Kerala in conspiracy with accused No.4.

23. It is evident from the above discussion that the sanctioning authority passed Ext.P3 without considering the materials furnished and report

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submitted by the CBI in the correct legal perspective. It does not reflect the application of mind to the existence or otherwise of a prima facie case regarding the commission of an offence under Section 13(1)(d) of the PC Act by the accused Nos. 1 and 3. The sanctioning authority must exercise the discretion to refuse or grant sanction judiciously. The sanctioning authority is required to assign valid reasons why it did not consider it necessary to grant sanction for prosecution. Ext. P3 is bereft of reasons. Hence, it cannot be sustained.”

6. Then this Court held in paragraph No.35 *that the upshot of the above discussion is that the challenge against the prosecution on the ground that no prosecution sanction was obtained under Section 197 of Cr.P.C and that the final report does not disclose any offence against accused No.3, must fail and the challenge against Ext.P3 order in WP(C) No.25863/2020 must succeed. Since Ext.P3 order is found to be vitiated by non-application of mind, it is set aside. The 2nd respondent in WP(C) No.25863/2020 is directed to examine*

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CBI's request for sanction afresh and take a decision on it in the light of the observations made in this judgment within a period of three months from the date of receipt of a copy of this judgment. The 2nd respondent shall communicate the decision to the CBI. Till such a decision is taken, further proceedings in CC No.45/2021 on the file of CJM Court, Thiruvananthapuram shall be kept in abeyance.

7. In fact, in Annexure A6 Government Order, the respondent failed to consider the specific directions issued by this Court. The main reason for rejecting the sanction is stated in paragraph No.12 of Annexure A6 Government Order, which reads as under:

“12. Hon’ble Supreme Court of India in STATE of HIMACHAL PRADESH VS. NISHANT SAREEN (Criminal Appeal No.2353/2010), in 2010 held that sanction to prosecute public servant on review may be granted only where fresh materials have been collected by investigating agency subsequent to earlier order and matter is reconsidered by sanctioning

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authority in light of fresh materials. The Power of sanctioning authority, being not of continuing character, could have been exercised only once on same materials”.

Thus the sanctioning authority passed Annexure A6 Government Order on the premise of review of the earlier order, though the same was set aside by this Court, ignoring the directions in Annexure A1 judgment. The said procedure is wrong. Therefore, the contempt proceedings opted by the petitioner is having merit to be moved further. However, in the interest of justice, before moving further, I am inclined to provide an opportunity to the respondent to consider the grant of sanction, in accordance with the directions issued by this Court in Annexure A1 judgment in its letter and spirit, and to pass fresh orders as per law. For the said purpose, Annexure A6 Government order is set aside holding that the same was passed without addressing the specific directions issued by this Court.

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8. Accordingly, it is ordered that the respondent herein shall consider the question of grant of sanction afresh and pass fresh orders in tune with directions in Annexure A1 judgment, in its letter and spirit, within a period of forty five days from today.

9. It is also specifically made clear that for the purpose of granting sanction, hearing of the accused is not mandated in the facts of this case and this process shall be exercised without prejudice and not on the premise of review of the earlier orders (which were already set aside).

Post for compliance of the order and further steps on 15.10.2025. This matter will be considered on 15.10.2025 as part heard for further orders.

Sd/-
A. BADHARUDEEN,
JUDGE

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APPENDIX OF CON.CASE(C) 908/2025

Annexure A1	CERTIFIED COPY OF THE JUDGMENT DATED 24.7.2024 IN W.P.(C) NO.25863/2020 OF THE HON'BLE HIGH COURT OF KERALA.
Annexure A6	TRUE COPY OF THE G.O. (RT) NO.324/2025/ID DATED 21.3.2025.
Exhibit P3 in WP(C) 25863/2020	TRUE COPY OF ORDER OF THE 2ND RESPONDENT DATED 15/10/2020 DECLINING SANCTION ALONG WITH THE LETTER FROM THE CBI ISSUED TO THE PETITIONER.

