

(2024) 12 KL CK 0131

High Court Of Kerala

Case No: Writ Petition (C) No.31104 Of 2024

XXXXXX

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision: Dec. 24, 2024

Acts Referred:

- Constitution of India, 1950 - Article 226
- Indian Penal Code, 1860 - Section 324
- Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3(1)(r)
- Administrative Tribunals Act, 1985 - Section 19
- Protection of Children from Sexual Offences Act, 2012 - Section 23(1)

Hon'ble Judges: C.S.Dias, J

Bench: Single Bench

Advocate: P.V.Jeevesh, C.K.Radhakrishnan, C.R.Neelakandan Namboodiri, K.Ramakumar, Thomas J Anakkallunkal, Rajit, Arun Chandran, Anupa Anna Jose Kandoth, Jayaraman S., Dhanya Sunny, Ann Milka George, George Poonthottam, Ajith Viswanath, Ramkumar

Final Decision: Dismissed

Judgement

C.S.Dias, J

1. In 2017, the petitioner's two minor daughters died under suspicious circumstances. Though a criminal case was registered, the investigation was flawed. A few persons were arraigned as accused in the crime for committing the offences under the Protection of Children from Sexual Offences Act (POCSO Act) the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act and offences under the Indian Penal Code. However,

the accused were acquitted in the crime. In an appeal filed against the order of acquittal, this Court found serious illegalities in the investigation and trial and consequentially ordered a re-trial. During the re-trial, the Central Bureau of Investigation (CBI) took over the investigation. Without conducting a proper investigation, the CBI filed a perfunctory charge sheet. The Trial Court refused to accept the charge sheet and ordered further investigation. The subsequent events that transpired have led to the conclusion of the murder of the petitioner's daughters. Now, the CBI is conducting the investigation into the homicidal angle. The 5th respondent was the first Investigating Officer. The petitioner challenges the Integrity Certificate issued to the 5th respondent for conferring him with the Indian Police Service (IPS). The 5th respondent is presently holding the post of Superintendent of Police (Non-IPS cadre) in the State Police. Several criminal prosecutions are pending against him. The 5th respondent has made obnoxious remarks against the petitioner and her deceased daughters through the visual medium to insult and humiliate them. The petitioner has initiated criminal prosecution against the 5th respondent for committing the offence under Section 23(1) of the POCSO Act. The 5th respondent's application for conferment of IPS is under consideration by the 1st respondent, for which purpose an integrity certificate is required from the 2nd respondent. Although the 2nd respondent was initially reluctant to grant the integrity certificate, the same was issued under the cover of Ext.P2 judgment passed by this Court. The 2nd respondent has suppressed the material facts regarding the pendency of criminal prosecution against the 5th respondent. By Ext.P3 judgment, this Court had directed the 2nd respondent to consider the petitioner's representations. As the Authorities have flouted the directions in the judgment, the petitioner had filed Contempt Case (C) No. 1778 of 2024 before this Court. Then, the 2nd respondent submitted that an integrity certificate was issued. Nevertheless, as the directions in Ext.P3 judgment were violated, this Court directed the 2nd respondent to comply with the directions. Consequentially, the 4th respondent has superficially considered the matter and rejected the petitioner's grievance by impugned Ext.P4 order. Ext.P4 order is unjustifiable, capricious, arbitrary, and liable to be quashed. Ext.P4 evidences a total non-

application of mind. The petitioner has highlighted the misconduct and unfairness committed by the 5th respondent in several complaints. A Division

Bench of this Court has observed that the investigation conducted in connection with the death of the petitioner's daughters shocked its

conscience. There is no provision in the Indian Police Services Rules or the related rules that permits the Government to favourably consider the

request of an accused police officer. An officer to be recruited to the service has to be a person of high integrity, dignity and honesty, which the 5th

respondent lacks. The Government is bound to consider the petitioner's grievances, and she ought to have been heard before issuing Ext.P4

certificate. Therefore, Ext.P4 is to be declared illegal and is to be set aside.

2. The 5th respondent has filed a counter affidavit contending that the writ petition is not maintainable in law because the petitioner has no personal

grievance to be redressed, especially because Ext.P4 concerns the 5th respondent's service as a police personnel. There is no public interest

involved in the matter. The petitioner is not a qualified person or an aspirant for the post of IPS. It is trite; in service matters, only non-appointees can

assail the legality of the appointment/selection. The petitioner is a meddlesome interloper with vested interests. The writ petition is an experimental

exercise to satisfy the petitioner's vendetta. The petitioner has not explained in what manner she is aggrieved by Ext.P4 order. The contention that

the 5th respondent is facing criminal prosecution is incorrect. The 5th respondent is an accused only in C.C.No.1441/2003 on the file of the Judicial

First-Class Magistrate Court, Kunnamkulam, for allegedly committing the offence under Section 324 of the Indian Penal Code. The prosecution

allegation in the said case is that, on 1.9.2001, while the 5th respondent was on law-and-order duty, he caned a person named Narayanan Nair to

death. Actually, the person died due to myocardial infarction. Subsequently, the deceased's brother filed a private complaint against the 5th

respondent. The jurisdictional Magistrate dismissed the complaint. In appeal, the matter was remitted back to the jurisdictional Magistrate.

Nonetheless, this Court has quashed the entire proceedings by Ext.R5(a) order. Notwithstanding the de facto complainant challenging the order before

the Honourable Supreme Court, the special leave petition was dismissed by Ext.R5(b) order. Similarly, the allegation against the 5th respondent in

S.C.No.551/2022 on the file of the Special Court (POCSO), Palakkad, is that he made derogative remarks against the petitioner and her children. It

was two years after the alleged telecast that the petitioner had filed a private complaint. The Special Court took cognizance of the offence as per

Ext.R5(c) order. However, the order was quashed by this Court as per Ext.R5 (d) order. The 5th respondent has 29 years of unblemished service and

has secured more than 70 good service entries. He was honoured with the "Badge of Honour" by the State Police Chief for his exceptional

skills and detective excellence. This Court has appreciated the investigation conducted by the 5th respondent in connection with the death of the

petitioner's daughters. The Integrity Certificate issued by the 2nd respondent has been forwarded to the Union Public Service Commission

(UPSC) as per the directions of this Court in Ext.P2 judgment. It was after thoroughly considering all the relevant aspects that the 2nd respondent has,

in its wisdom, issued and forwarded the integrity certificate to the UPSC. Now, it is within the dominion of the UPSC to act upon the Integrity

Certificate. Even though the petitioner is not entitled to be heard in the matter, it is honouring the directions in Ext.P3 judgment that the 2nd respondent

heard the petitioner. The entire selection process for the conferment of IPS on the 5th respondent was completed on 5.8.2024. In an identical matter,

this Court has passed Ext.R5(f) judgment and dismissed the writ petition. This writ petition is only liable to be dismissed.

3. Heard; Sri. K. Ramkumar, the learned Senior Counsel for the petitioner, Sri. George Poonthottam, the learned Senior Counsel appearing for the 5th respondent, and Sri.Ajith Viswanathan, the learned Government Pleader.

4. The learned Senior Counsel for the petitioner argued that it was the 5th respondent who investigated Crime No.43/2017 of the Walayar Police

Station, registered in connection with the death of the petitioner's daughters. Due to the slipshod investigation, the Trial Court acquitted the

accused persons. In the appeal against the orders of acquittal, the Division Bench of this Court, in the decision reported in State of Kerala v. Madhu

@ Kutti Madhu (2021 (1) KHC 351), has deprecated the faulty investigation and has passed strictures against the Investigating Officer's honesty, integrity and capability. The 5th respondent has played a pivotal role in the shabby investigation. The petitioner is the distraught mother of two murdered children. She has the right to bring to the notice of respondents 1 to 4 regarding the dishonest character and lack of integrity of the 5th respondent and that he is not entitled to the Integrity certificate. It is uncharitable for the 5th respondent to allege in his counter affidavit that the petitioner is a meddlesome interloper. This imputation by itself demonstrates the character of the 5th respondent. The petitioner has the locus standi to challenge Ext.P4 order. Moreover, in Ext.P2 judgment, another Division Bench of this Court has directed the State Government's competent authority to decide on the 5th respondent's application for an Integrity certificate strictly in accordance with the norms issued by the Union Government.

Subsequently, by Ext.P3 judgment, a learned single Judge of this Court has directed the State Government to consider the petitioner's representations and afford her an opportunity to be heard before deciding on the 5th respondent's request for an Integrity certificate.

Mysteriously, the 2nd respondent has not considered the petitioner's representations in its proper perspective. Instead, the 2nd respondent passed Ext.P4 arbitrary and illegal order without considering the petitioner's contentions and flouted the directions of this Court. The 2nd respondent has failed to consider the parameters in Regulation 5 of the Indian Police Service (Appointment by Promotion) Regulations, 1955. In addition to the strictures passed by the Division Bench in Madhu @ Kutti Madhu's case, the 5th respondent, while working as a Sub-Inspector of Police, had brutally caned an innocent man to death. The de facto complainant is still pursuing the case. The 5th respondent has also made derogatory remarks in the visual media against the petitioner and her deceased daughters. A crime was registered in connection with the incident, and the matter is now pending before this Court. The learned Senior Counsel relied on the decisions of this Court in Govindakutty v. State of Kerala (2000 KHC 29) and Tessy Jimmy v. State of Kerala (2024 (4) KHC 160), and the decisions of the House of Lords in Nottinghamshire County Council v. Secretary of State for

Environment and another (1986 (1) All.E.R 199) and Council of Civil Service Unions and others v. Minister for Civil Service (1984 (3) ALL.E.R 935)

to canvass the position that administrative action is subject to control by judicial review if it is (i) illegal (ii) irrational and (iii) there is procedural

impropriety. He also placed reliance on the decision of the Honourable Supreme Court in the State of Maharashtra and others v. Prabhu (1994 KHC

1141) and a decision of this Court in Devassy v. State of Kerala (1994 KHC 403) to reinforce his contention that the equity jurisdiction of this Court is

to be exercised in the interest of justice and to maintain the rule of law. The bar under Section 19 of the Administrative Tribunals Act, 1985, that only

a person seeking or holding a post has the locus standi to approach the Tribunal is not applicable to a writ petition filed under Article 226 of the

Constitution of India. He urged that the writ petition be allowed by setting aside Ext.P4 order.

5. The learned Senior Counsel for the 5th respondent countered the above submissions. He argued that the petitioner has no locus standi to seek a writ

of mandamus to withhold the conferment of IPS to the 5th respondent, which is the prerogative of the State and is well-defined by the Indian Police

Service (Appointment by Promotion) Regulations, 1955. He drew the attention of this Court to Ext.R5 (e) notification to substantiate that the UPSC

has approved the 5th respondent's name in the select lists of 2021 and 2022 for promotion to the IPS cadre. He contended that the 5th respondent

was not the Investigating Officer in the crime registered in connection with the death of the petitioner's daughters. The 5th respondent was the

Deputy Superintendent of Police, whom the Division Bench has complemented in paragraph 103 of the decision in Madhu @ Kutti Madhu's case

(supra). Similarly, by Ext.R5 (d) order, the proceedings in S.C.No.551/2022 before the Special Court were quashed by this Court. The only criminal

prosecution that the 5th respondent faced was C.C.No.1441/2003 for committing an offence under Section 324 of the IPC, on the allegation that the

5th respondent had caned a person named Narayanan Nair, and he died on the following day. The person died due to a myocardial infarction. It was

two years after the incident that the deceased's brother filed a private complaint alleging that the 5th respondent had caused his death. But, by

Ext.R5 (a) order, this Court has quashed the proceedings, which order has been confirmed by the Honourable Supreme Court by Ext.R5 (b) order. So, as of today, there is no criminal prosecution against the 5th respondent. The 2nd respondent has issued an Integrity Certificate in its wisdom, pursuant to Ext.P2 judgment passed by the Division Bench of this Court, that too after thoroughly considering all aspects. It is within the domain of the 1st respondent and the UPSC to act upon the Integrity Certificate. Though the petitioner has no entitlement to raise her voice in the matter, it was honouring the directions in Ext.P3 judgment of this Court; the 2nd respondent heard the petitioner and has passed Ext.P4 order. The entire selection process is completed, and the 5th respondent's name is included in the Ext.R5 (e) select list. By Ext.R5(f) judgment, this Court has dismissed a writ petition of an identical nature. Therefore, the writ petition may be dismissed.

6. The learned Government Pleader submitted that the 2nd respondent considered the 5th respondent's request as per the directions passed in Ext.P2 judgment, Indian Police Service (Appointment by Promotion) Regulations, 1955 and the Norms laid down by the Ministry of Home Affairs letter No.17/2/70-AIS (III) dated 26.05.1970. Along with the 5th respondent's request, the petitioner's representations were also considered as directed by this Court in Ext.P3 judgment. Ext.P4 order is well-considered and is passed strictly in conformity with the Regulations and Norms that are in vogue. There is no illegality or arbitrariness in the Ext.P4 order. Hence, the writ petition may be dismissed.

7. The 5th respondent had entered the State Police service as a Sub-Inspector of Police. He was eventually promoted to Superintendent of Police (Non-IPS) and was found eligible for promotion to the IPS cadre by the State Government as per the Indian Police Service (Appointment by Promotion) Regulations, 1955 (hereinafter "Regulations", for brevity). However, the 2nd respondent withheld his Integrity Certificate on the ground that a criminal case is pending against him.

8. The 5th respondent filed O.A.No.80/2023 (hereinafter "O.A.", for brevity) before the Central Administrative Tribunal, Ernakulam Bench (hereinafter "Tribunal"), to direct the second respondent to issue the Integrity Certificate in his favour. He also sought a similar interim relief in the O.A. But the Tribunal ordered that

the interim relief would be considered with the O.A.

9. Aggrieved by the order, the 5th respondent filed O.P. (CAT) No.113 of 2023 before this Court. By Ext.P2 judgment, the Division Bench of this

Court allowed the O.A, and made the following observations:

“10. On a prima facie assessment of the pleadings and materials on record, that is discernible from Ext.P-6 reply statement, more particularly para

No.6 thereof, it indicates that a stand has been taken therein that the respondent State Government cannot issue any integrity certificate in fa-vour of

the original applicant, in view of the pendency of the aforesaid criminal case. The said stand taken by the State Government, in para No.6 of Ext.P-6

reply statement, does not appear to be in consonance with the norms in para No.2 of the norms issued by the Government of India on 26.5.1970. The

norms in that regard are very clear, that, if such adverse proceedings are pending, then the integrity certificate should not ipso facto be withheld and it

is the obligation of the State Government to exercise its discretion to examine each case with refer-ence to the nature and gravity of the charges, the

evidence available on the basis of the investigation made upto that time, the known argu-ments of the defence, if any, the views of the Head of the

Department, general reputation of the officer, etc. and decide whether they would like to include him in the list of officers, whose integrity is certified

or in the list of those in respect of whom the integrity certificate is with-held. Such exercise does not appear to have been done by the respond-ent

State Government.

11. The interim relief sought for by the applicant is for a direction to the respondent State Government to issue the integrity certificate. Such an interim

order cannot be granted at this stage of the case now. However, in view of the abovesaid prima facie finding, we are of the view that the re-spondent

State Government is bound to reconsider their stand, referred to in para No.6 of the reply statement. The approach therein, that the respond-ent State

Government cannot issue the integrity certificate at all in view of the mere pendency of the above criminal case, does not appear to be in consonance

with the abovesaid Government of India norms. Further, we are of the view that in the facts and circumstances of this case, the Tribunal should have

considered the interim plea of the petitioner. As, according to the petitioner, the selection committee for 2021 could be convened at any time and if the integrity certificate is withheld for the reasons stated by the respondent State Government, then the fundamental right of the petitioner to be considered for promotion, in consonance with the norms and guidelines governing the field, will be detrimentally affected, etc. Accordingly, it is ordered that the respondent State Government will reconsider the stand and should abide by the parameters and criteria laid down in para No.2 of the abovesaid norms issued by the Union Government on 26.5.1970 and should exercise its discretion and examine the involvement of the petitioner in the above criminal case, with reference to the nature and gravity of the factual charges alleged therein, the evidence available from the materials on record, the known arguments of the defence, if any, the views of the Head of the Department, the general reputation of the officer, etc. and then decide whether they would include him in the list of officers whose integrity is certified or in the list of those in respect of whom the integrity certificate is withheld. Such decision shall be taken by the State Government, as early as possible, without any further delay. It is also made clear that the 2nd respondent UPSC will also be at liberty to seek for any clarifications and orders of the Tribunal, if the selection committee is to be convened before orders are passed by the Tribunal, if they find it necessary. Further, in the light of the abovesaid submission made by the respondent UPSC, the case of the petitioner for promotion to IPS may be considered in the light of the provisions contained in the IPS Promotion Regulations, more particularly Regulation 5(5) thereof. 12. In that regard, the plea of the petitioner that even the offence as per Sec. 324 of the I.P.C. is not made out, and at best only the offence as per Sec. 323 may be made out and that the impugned criminal proceedings are illegal and ultra vires, on the ground that the sanction for prosecution under Sec. 197 of the Cr.P.C. has been granted by the District Collector, who is an incompetent authority and not by the competent appointing authority, etc. should be considered. Further, the case of the petitioner that he has consistently been promoted to all the higher posts upto the post of Superintendent of Police (non-IPS), and he has an extremely good service record and that no other criminal proceedings are

pending against him, except the above incidents, which occurred 22 years ago, should all be taken into account. The report of the 4th respondent

Director General of Police/State Police Chief, who is the Head of the Police Department and the general reputation of the officer should all be taken

into account. The fact that the petitioner is now aged 54 years and the integrity certificate has been withheld in the previous selection years, 2019 and

2020, etc. without stating reasons, which has prejudiced the petitioner, the fact that the alleged incident took place more than 22 years after which the

respondent state authorities have consistently found him fit and meritorious for various higher promotions, the plea of the petitioner that the trial has

been deferred due to the orders in the pending W.P.(C)., etc. and all other aspects based on the respondent Union Government's afore norms should

be considered and taken into account. Both sides have not brought to the notice of this Court, any norms on the above issue other than the norms

referred to above. It has to be borne in mind that mechanical withholding of the issuance of integrity certificate, in the facts and circumstances of this

case, would be unjust and illegal.

10. During this period, the petitioner had filed W.P(C) No 29196//2023 before this Court to direct the 2nd respondent to consider her representations.

By Ext.P3 judgment, this Court disposed of the writ petition by directing the respondents 1 to 3 in the writ petition to dispose of the petitioner's representations.

11. Pursuant to the directions in Exts.P2 and P3 judgments, the 4th respondent passed Ext.P4 order, which reads as follows:

13. In view of the judgment of Hon'ble High Court of Kerala vide reference cited 2nd above, Government reconsidered the entire issue and certified the integrity certificate to Sri. M J Sojan.

14. Based on the order of Hon'ble High Court of Kerala vide reference cited 1st above, the hearing has been conducted on 26.07.2024. Smt. Bhagyavathy has turned

up for hearing and submitted argument note vide reference cited 4th above. Sri. M.J. Sojan has also submitted argument note vide reference cited 5th above. State

Police Chief has furnished a report vide reference cited 6th above in connection with the hearing on 26.07.2024. Based on the judgment of Hon'ble High Court of

Kerala, Government has reexamined the entire issue in detail considering the report of State Police Chief and the argument note filed by Smt. V. Bhagyavathy and Sri.

M.J. Sojan. On detailed examination it is seen that:

a) When Government granted the integrity certificate to Sri.M.J. Sojan based on the order of Hon.High Court, vide reference cited 2nd above. Government had taken into account the Walayar case also.

b) The Integrity Certificate was issued after assessing the work and conduct of the officer in the Police Department as insisted under Indian Police Service

(Appointment by promotion) Regulations 1955 and the private complaints has no role in granting the integrity certificate.

c) Smt. V. Bhagyavathy filed SC.551/2022 of Addl. District and Sessions Court, Palakkad requesting action against Sri. M.J. Sojan and demanding compensation from

him for making obnoxious remarks against the victim minor children before media. Sri. M.J Sojan had obtained interim orders from Hon'ble High Court of Kerala in his favour in CrI Appl No. 1/2022 in CrI MC 4268/2022 staying further proceedings in this case ie. this issue is already under the consideration of Hon.Court.

d) State Police Chief has reported that the general reputation of the officer is found good and he is known to be honest, hardworking, and work knowing.

e) Earlier the Integrity certificate of Sri. M.J. Sojan was withheld. It was reviewed based only on the order of Division bench of Hon.High Court vide reference cited 2nd above.

f) The reliability of voice clip submitted Smt. Bhagyavathy is yet to be proved.

15. When this case examined it is seen that the integrity certificate of Sri. M.J. Sojan is granted based on his work and conduct in Police Department. In view of the

order of Hon. High court in (OP(KAT) filed by Sri. M.J. Sojan) Government obtained revised report from State Police Chief, advice from Advocate General and

reexamined the matter as per the norms in para 2 of regulations issued by Ministry of Home Affairs as per Letter No. 17/03/70-AIS (III) dated 26-05-1970 and granted

Integrity Certificate to Sri MJ Sojan. It is seen that Sri M J Sojan was not charge sheeted in the case SC.551/2022 of Addl. District and Sessions Court, Palakkad filed

by Smt. V Bhagyavathy and Hon'ble High court has stayed the case in favour of Sri. M.J Sojan. Moreover Smt. V Bhagyavathy has not produced any substantial

evidence at the time of hearing to revoke the integrity certificate issued to Sri M J Sojan. Hence based on the request of Smt. V.Bhagyavathy the integrity Certificate already granted to Sri. M.J. Sojan. for IPS promotion for the vacancies in the year 2021 and 2022 need not be revisited.

16. In the above circumstances the request of Smt. V. Bhagyavathy vide reference cited 3rd above to withheld the Integrity Certificate granted to Sri. M.J. Sojan for IPS promotion for the vacancies in the year 2021 and 2022 is hereby declinedâ€.

12. Aggrieved by Ext.P4 order, this writ petition is filed.

13. The three incidents alleged by the petitioner, which disentitle the 5th respondent to an Integrity Certificate, are: (i) the Division Bench has

deprecated the lackadaisical investigation conducted by the 5th respondent in the crime registered in connection with the death of the petitionerâ€™s

daughters (ii) the 5th respondent had brutally tortured one Narayanan Nair and murdered him and (iii) the 5th respondent has made derogative

statements in the visual media against the petitioner and her two daughters and humiliated them.

14. As observed, the 5th respondent was not the Investigating Officer in Crime No. 43/2017 of the Walayar Police Station. Instead, he was the

Deputy Superintendent of Police. No strictures were passed against the 5th respondent. In paragraph 103 of the decision in Madhu @Kutti

Madhuâ€™s case (supra), the Division Bench has observed as follows:

â€œDespite a reasonably good job done by the Dy.S.P., the Investigating Officer, who was deputed to investigate these cases almost a week after the younger

girlâ€™s death, he could not gather any proper scientific evidenceâ€.

15. It is undisputed that by Ext.R5(a) order, this Court has quashed the proceedings filed by the brother of late Narayanan for want of sanction. Even

though permission was sought to prosecute the 5th respondent, the same was declined and was confirmed by this Court in W.P.(C)No. 6502/2019. As

matters stand now, the judgment has attained finality.

16. Lastly, by Ext.R5(d) order, this Court has quashed the order of the Special Court, taking cognizance of the offence under the POSCO Act against

the petitioner for allegedly making derogative statements against the petitioner and her daughters. Nonetheless, the order passed by the Special Court

declining to take cognizance of the offence under Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,

is challenged before this Court in Criminal Appeal No.1166/2023 and is pending consideration.

17. It is the 5th respondent's case that he has not made any derogative statements. He also disputed his voice and contended that there were no visuals, time, stamps, or descriptions of the location from where the statements were made.

18. The 4th respondent, after considering the rival pleading and submissions, by Ext.P4 order, has held that the reliability of the voice clip submitted by the petitioner is not proved, and there is no substantial evidence to revoke the Integrity Certificate.

19. In the above background, it is germane to refer to the Indian Police Service (Appointment by Promotion) Regulations, 1955, which reads thus:

“Regulation 5. Preparation of a list of Suitable officers;-

(1).....

“1. 1. 1.

(5) The list shall be prepared by including the required number of names, first from amongst the officers finally classified as “Outstanding” then from amongst those similarly classified as “Very Good” and thereafter from amongst those similarly classified as 'Good' and the order of names inter-se within each category shall be in the order of their seniority in the State Police Service.

Provided that the name of an officer so included in the list, shall be treated as provisional, if the State Government, withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal, are pending against him or anything adverse against him which renders him unsuitable for appointment to the service has come to the notice of the State Government.

Provided further that while preparing year-wise select lists for more than one year pursuant to the second proviso to sub-regulation (1), the officer included provisionally in any of the select list so prepared, shall be considered for inclusion in the select list of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis, such inclusion shall be in addition to the normal size of the

select list determined by the Central Government for such year.

Explanation I: The proceedings shall be treated as pending only if a charge-sheet has actually been issued to the officer or filed in a Court, as the case may be.

Explanation II: The adverse thing which came to the notice of the State Government rendering him unsuitable for appointment to the Service shall be treated as

having come to the notice of the State only if the details of the same have been communicated to the Central Government and the Central Government is satisfied that

the details furnished by the State Government have a bearing on the suitability of the officer and investigation thereof is essential.â€

20. The norms promulgated by the Ministry of Home Affairs No.17/02/70- AIS reads as follows:

â€œ2. As regards the officers against whom inquiries are pending, the integrity certificate should not ipso facto be withheld. The State Government should examine each case with reference to the nature/gravity of the charges, the evidence available on the basis of the investigation made upto that time, the known arguments of defence, if any, the views of the Head of Department, the general reputation of the officer etc, and then decide whether they would like to include him in the list of officers whose integrity is certified or in the list of those in respect of whom the integrity certificate is withheld.â€

21. As per the above Regulation and the norms, the name of an officer to be included in the list shall be treated as provisional, if the State Government

withholds the Integrity Certificate, if any proceedings (departmental or criminal) are pending against the officer or if there is anything adverse to him

which renders him unsuitable for the appointment to service. Explanation I of the above Regulation states that the proceedings shall be treated as

pending only if a charge sheet is issued to the officer or is filed in a court. Likewise, the Norms stipulate that the Integrity Certificate shall not be

withheld merely because an inquiry is pending. Instead, the State Government has to examine each case with reference to the nature and gravity of

the charges and the evidence available on the basis of the investigation.

22. In the present case, in addition to the findings and the directions of the Division Bench in Ext.P2 judgment, which has attained finality, as of today,

there is no charge sheet pending against the 5th respondent. Moreover, the 4th respondent has doubted the reliability of the voice clip submitted by the petitioner and held that the petitioner had not submitted any substantial evidence to revoke the Integrity Certificate. It is based on the above findings that the 4th respondent, in its wisdom, has concluded that the 5th respondent is entitled to an Integrity Certificate.

23. In *M.V. Thimmaiah v. UPSC* [(2008) 2 SCC 119], the Honourable Supreme Court, while considering the scope of judicial review in a matter

relating to the conferment of IAS, has held as under:

“21. Now, comes the question with regard to the selection of the candidates. Normally, the recommendations of the Selection Committee cannot be challenged except on the ground of mala fides or serious violation of the statutory rules. The courts cannot sit as an appellate authority to examine the recommendations of the Selection Committee like the court of appeal. This discretion has been given to the Selection Committee only and courts rarely sit as a court of appeal to examine the selection of the candidates nor is the business of the court to examine each candidate and record its opinion.”

24. The above same view has been reiterated by the Honourable Supreme Court in *UPSC v. M. Sathya Priya* [(2018) 15 SCC 796] by observing

thus:

“17. The Selection Committee consists of experts in the field. It is presided over by the Chairman or a Member of UPSC and is duly represented by the officers of the Central Government and the State Government who have expertise in the matter. In our considered opinion, when a High-Level Committee or an expert body has

considered the merit of each of the candidates, assessed the grading and considered their cases for promotion, it is not open to CAT and the High Court to sit over

the assessment made by the Selection Committee as an appellate authority. The question as to how the categories are assessed in light of the relevant records and as

to what norms apply in making the assessment, is exclusively to be determined by the Selection Committee. Since the jurisdiction to make selection as per law is

vested in the Selection Committee and as the Selection Committee members have got expertise in the matter, it is not open for the courts generally to interfere in such

matters except in cases where the process of assessment is vitiated either on the ground of bias, mala fides or arbitrariness. It is not the function of the court to hear the matters before it treating them as appeals over the decisions of the Selection Committee and to scrutinise the relative merit of the candidates. The question as to whether a candidate is fit for a particular post or not has to be decided by the duly constituted expert body i.e. the Selection Committee. The courts have very limited scope of judicial review in such matters.

(emphasis given)

25. The core of the argument of the learned Senior Counsel for the petitioner in attacking Ext.P4 order is that the order is arbitrary, hit by the Wednesbury principles of reasonableness, the order is an abuse of process of power, and the decision is rendered without following the due procedure of law.

26. On a careful consideration of the facts, the materials on record, the observations of this Court in Ext.P2 judgment and the reasoning in Ext.P4

order, this Court does not find any ground or material to hold that Ext.P4 order or the decision-making process is actuated with malice or malafides.

The 4th respondent in its wisdom, after considering the matter in detail, has decided to issue the Integrity Certificate to the 5th respondent. This Court

finds no illegality or arbitrariness in Ext.P4 order warranting interference under Article 226 of the Constitution of India. The writ petition is devoid of

any merits and is only to be dismissed. Consequentially, the writ petition is dismissed.