

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 23RD DAY OF DECEMBER 2021 / 2ND POU SHA, 1943

WP(C) NO. 34989 OF 2019

PETITIONER/S:

ADV.C.G.ARUN, AGED 50 YEARS
S/O.LATE C.C.GANGADHARAN, (PRESIDENT, THALASSERY DISTRICT
COURT BAR ASSOCIATION), C.C.HOUSE, POST OLAVILAM, KANNUR
DISTRICT, KERALA-673 313.

BY ADVS.
T.ASAFALI
SMT.LALIZA.T.Y.

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 STATE OF KERALA,
REPRESENTED BY ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT,
GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM-695
001.
- 3 STATE POLICE CHIEF,
POLICE HEAD QUARTERS, THIRUVANANTHAPURAM-695 010.
- 4 THE SUPERINTENDENT OF POLICE (SPE/CBI), THIRUVANANTHAPURAM,
REPRESENTED BY STANDING COUNCIL FOR CBI, HIGH COURT OF
KERALA, ERNAKULAM-682 031.
- 5 THE DIRECTOR, CENTRAL BUREAU OF INVESTIGATION, NEW DELHI,
REPRESENTED BY STANDING COUNCIL FOR CBI, HIGH COURT OF
KERALA, ERNAKULAM-682 031.
- 6 THE INSPECTOR OF POLICE, VIGILANCE AND ANTI CORRUPTION
BUREAU (VACB),

ERNAKULAM-682 031.

- 7 THE DIRECTOR OF VIGILANCE,
VIGILANCE AND ANTI CORRUPTION BUREAU, THIRUVANANTHAPURAM-
695 033.
- 8 BAR COUNCIL OF INDIA,
REPRESENTED BY ITS SECRETARY, 21 ROUSE AVE INSTITUTIONAL
AREA ROAD, NEAR BAL BHAWAN, ROUSE AVENUE, MATA SUNDARI
RAILWAY COLONY, MANDI HOUSE, NEW DELHI-110 002.
- 9 ADDL.R9. THE BAR COUNCIL OF KERALA,
REPRESENTED BY ITS SECRETARY, BAR COUNCIL BHAVAN, NEAR HIGH
COURT OF KERALA, ERNAKULAM, KOCHI-682031
- 10 ADDL.R10. KERALA STATE ADVOCATE WELFARE FUND TRUSTEE
COMMITTEE,
REPRESENTED BY ITS SECRETARY, BAR COUNCIL BHAVAN, NEAR HIGH
COURT OF KERALA, ERNAKULAM, KOCHI-682031

ADDL.R9 AND ADDL.R10 ARE IMPEADED AS PER ORDER DATED
8.1.2020 IN I.A.1/19 IN WP(C).

BY ADVS.

SRI.K.K.RAVINDRANATH, ADDL.ADVOCATE GENERAL
SRI. SASTHAMANGALAM S. AJITHKUMAR, SPL.P.P. FOR C.B.I.
SRI.GRASHIOUS KURIAKOSE (SR.)
SRI.T.A.SHAJI (SR.)
SRI.ATHUL SHAJI
SRI.PRANOY K.KOTTARAM
GOVERNMENT PLEADER

OTHER PRESENT:

ADV.RAJIT,

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.11.2020, ALONG WITH WP(C).13861/2020, THE COURT ON 23.12.2021
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SUNIL THOMAS

THURSDAY, THE 23RD DAY OF DECEMBER 2021 / 2ND POU SHA, 1943

WP(C) NO. 13861 OF 2020

PETITIONER/S:

- 1 ADV. KHALID N A, AGED 56 YEARS
S/O.MAMMUNNI HAJI, SHARMEELA MANZIL, KANHANGAD
KADAPPURAM.P.O., KANHANGAD, KASARGODE DISTRICT-671315.
- 2 ADV.A.ABDUL RASAK, AGED 55 YEARS
S/O.ABDULLAH KUNJU MUSALIYAR, PARACHERIL, STADIUM WARD,
VELLAKINAR, ALAPPUZHA-688001.
- 3 ADV.ABDURAHMAN KARAT, AGED 55 YEARS
S/O.MOHAMMED HAJI, KARAT HOUSE, POOKKOTTUR.P.O.,
MALAPPURAM-676517.

BY ADVS.
SRI.SOORAJ T.ELENJICKAL
SHRI.ABU SIDDIK P.
SRI.K.M.PEER MOHAMMED KHAN
shri.MUHAMMED JANAISE V.
SHRI.ASWIN KUMAR M J
SHRI.MOHAMED MUSTHAFA A.K.
SMT.HELEN P.A.

RESPONDENT/S:

- 1 UNION OF INDIA,
REPRESENTED BY SECRETARY, DEPARTMENT OF PERSONAL, MINISTRY
OF PERSONAL, PUBLIC GRIEVANCES AND PENSIONS, NORTH BLOCK,
NEW DELHI-110001.
- 2 STATE OF KERALA,
REPRESENTED BY ADDITIONAL CHIEF SECRETARY, HOME DEPARTMENT,
GOVERNMENT OF KERALA, MAIN BLOCK, SECRETARIAT,
THIRUVANANTHAPURAM-695001.

- 3 STATE POLICE CHIEF,
POLICE HEADQUARTERS, VAZHUTHACAUD, THIRUVANANTHAPURAM,
KERALA-695010.
- 4 DIRECTOR,
CENTRAL BUREAU INVESTIGATION, CBI HEAD OFFICE, PLOT NO.5B,
CGO COMPLEX, LODHI ROAD, NEW DELHI-110003.
- 5 SUPERINTENDENT OF POLICE,
CENTRAL BUREAU OF INVESTIGATION, ANTI CORRUPTION BUREAU
(ACB), KATHRIKADAVU, KALOOR.P.O., KOCHI, KERALA-682017.
- 6 DIRECTOR,
VIGILANCE AND ANTI CORRUPTION BUREAU, VIKAS BHAVAN,
THIRUVANANTHAPURAM-695033.
- 7 DEPUTY SUPERINTENDENT OF POLICE,
OFFICE OF THE SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI
CORRUPTION BUREAU, CENTRAL RANGE, ERNAKULAM, 38/2871, NEAR
CBI OFFICE, KATHRIKADAVU, KALOOR, KOCHI, KERALA-682017.
- 8 BAR COUNCIL OF INDIA,
21, ROUSE AVENUE INSTITUTIONAL AREA, NEAR BAL BHAWAN, NEW
DELHI-110002, REPRESENTED BY ITS SECRETARY.
- 9 KERALA BAR COUNCIL,
BAR COUNCIL BHAVAN, HIGH COURT CAMPUS, ERNAKULAM, KOCHI,
KERALA-682031, REPRESENTED BY ITS SECRETARY.
- 10 KERALA ADVOCATE WELFARE FUND TRUST COMMITTEE,
BAR COUNCIL BHAVAN, HIGH COURT CAMPUS, ERNAKULAM, KOCHI,
KERALA-682031, REPRESENTED BY ITS SECRETARY.
- 11 ADDL.R11.P.L.VENUKUMAR
AGED 48 YEARS
AGED 48 YEARS, (S/O. K.P.LEKSHMANAN PILLAI, 1ST FLOOR,
ORIENTAL COMPLEX, MARKET ROAD (JUN) BANERJEE ROAD, KOCHI-
682 018, RESIDING AT GOKULAM THACHEDATHU LANE, OPPOSITE
LOURDES HOSPITAL, PACHALAM, ERNAKULAM.
- ADDL.R11 IMPEADED AS PER ORDER DATED 18-08-2020 IN IA
1/2020.

BY ADVS.

SHRI.P.VIJAYAKUMAR, ASG OF INDIA

SRI.K.K.RAVINDRANATH, ADDL.ADVOCATE GENERAL
SRI.PRANOY K.KOTTARAM
SRI.ATHUL SHAJI
C.RAJENDRAN
SMT.R.S.SREEVIDYA
MANU S., ASG OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30.11.2020, ALONG WITH WP(C).34989/2019, THE COURT ON 23.12.2021
DELIVERED THE FOLLOWING:

COMMON JUDGMENT

The writ petitioner in W.P.(C) No.34989/2019 claims that he is an Advocate enrolled in the year 1994 and practicing in Thalassery District Court and various other courts in the State for the past 25 years. He is also a member of Kerala Advocates Welfare Fund.

2. The writ petitioners in W.P.(C) No.13861/2020 are three different lawyers, claimed to be practicing in various courts and enrolled as members under Bar Council of India. They also claim that they have membership in the Advocates Welfare Fund, constituted under section 15 of the Kerala Advocate's Welfare Fund Act,1980.

3. Essential facts, as is discernible from both the writ petitions, can be summarized as follows;

4. The Kerala Advocates Welfare Fund was constituted under the Kerala Advocate's Welfare Fund Act, 1980, with the aim of providing retirement benefits to advocates in the State of Kerala. It also provides Social security for the members of legal profession. The source of the fund consists of amounts paid by the Bar Council, contributions made by the Bar Council, Voluntary donations or contributions made by the Bar Council of India or by any other Bar Associations and includes all sums by way of sale of stamps under section 22 of the Kerala Court Fees and Suit Valuation Act. Under Section 15 of the Act, every advocate practising in the State and being a

member of a Bar Association recognized by the Bar Council of Kerala can apply to the Trustee Committee for admission as a member of the Fund. Under Section 23 of the Act, every vakalath filed by an advocate, shall in addition to the court fee stamp affixed thereon, be affixed with a welfare fund stamp to the value fixed, depending on whether it is filed in the High Court or before the subordinate courts, tribunals and other authorities. The funds so accumulated in the Bar Council of Kerala from the above sources are the main revenue of the State Bar Council, to be utilized for the welfare of the members of the fund, strictly adhering to the procedure prescribed under the Act and Rules.

5. The Kerala Advocate Welfare Fund Trustee Committee, which manages the fund, consists of Advocate General of Kerala as its ex-officio chairman, the Law Secretary, a member nominated by the Government, three members of the Bar Council, Treasurer of the Bar Council, and the Secretary of the Bar Council, who shall also be the Secretary of the Trustee Committee, ex-officio. Under section 9 of the Act, the Trustee committee shall administer the fund and shall hold the assets belonging to the funds and the trust. Under Section 10 (4) of the Act, it is mandatory to audit all accounts of the Trustee Committee annually by a Chartered Accountant appointed by the Bar Council. The account of the Trustee Committee, as certified by the auditor along with audit report, shall be forwarded to the Bar

Council by the Trustee Committee, and the Bar Council may issue directions from time to time to the Trustee Committee. The Secretary of the Bar Council, who is also the Secretary of the Trustee Committee, is the Chief Executive authority of the Trustee Committee.

6. Some time in 2017, it was disclosed that serious financial irregularities in the utilization of funds and embezzlement of funds of the Trustee Committee was committed. This was deliberated by the Trustee Committee in its meeting held on 2/9/2019. Thereupon, it was decided to take action and to request for a vigilance enquiry regarding the irregularities and defalcation in the printing and distributing of welfare fund stamps entrusted to the Bar Council of Kerala. Accordingly, the Vigilance Department registered FIR VC No.2/18/CRE of VACB, Ernakulam against one Chandran, who was the then accountant of the trustee fund, alleging offences under section 13 (2) read with 13(1)(c)(d) of Prevention of Corruption Act.

7. Investigation revealed very serious irregularities and that there were large scale misappropriation of funds of the trustee committee. It was found that there was no auditing since 2007 onwards. According to the petitioners, failure to audit the account for such a long period facilitated the culprits to misappropriate funds by playing fraud and manipulation. It was alleged that one Ajayan, the Secretary of the Bar Council, who was the ex-officio

secretary of the Kerala Advocates Welfare Fund Trustee Committee, had informed the Bar council that records and registers were submitted for audit. In fact, several records were not even allegedly maintained. It was initially found that, huge amount of Rs.6,72,51,250/- had been fraudulently misappropriated from the Fund without being remitted in the bank account of trust. Several other illegalities were also noticed.

8. It was alleged by the petitioners that, though the investigation started, it did not progress as expected. It was alleged that, investigation was being conducted in a lackadaisical manner and the vigilance was not taking keen interest in the investigation. Every attempt was made to place the entire burden on the accountant, as the sole person who was only responsible for the illicit act. It was further alleged that, pursuant to a complaint made to the Bar Council of India alleging serious financial irregularities against Bar Council of Kerala, the Bar Council of India had appointed a committee of retired judges to enquire about the allegation. They conducted a detailed enquiry and submitted interim report containing several allegations revealing the depth of the scam. In the above circumstances, the writ petitioner in W.P.(C) No.34989/2019 submitted a representation dated 15/9/2019 to the Government and also to the State Police Chief seeking handing over of the investigation to CBI.

9. All the writ petitioners sought the relief of entrusting the investigation

of the case No. VC No.2/18/CRE of VACB, to the Central Bureau of Investigation.

10. VACB filed a detailed statement denying various allegations in the writ petitions. It was stated that the allegation that the investigation was not progressing was untrue. The investigation was progressing in a steady manner and substantial evidence have been collected. A special investigation team was constituted with the Deputy Superintendent of Police, VACB, Special Cell, as the Chief Investigator and it included the former investigating officer and inspector of police. The former investigating officer had seized 158 documents, questioned 18 witnesses and arrested both the accused. 92 documents were forwarded to the Director, Forensic Science Lab along with specimen handwriting and signatures of the suspects for comparison. In the course of investigation, two audits were conducted, one by the Kerala Local Fund Audit, which revealed a pecuniary loss of Rs.6,72,51,250/- and another one by the Statutory Auditor appointed by the Kerala Advocates Welfare Fund Trust Committee, which revealed a misappropriation of Rs.7,61,24,725/-. The reason for the difference in the amounts pointed out by two auditors being verified. Investigation revealed that Accountant M.K.Chandran had misappropriated the trust fund. He was aided by one Babu Scaria, who was arrayed as the second accused. Chandran was arrested on 16/1/2019 and Babu Scaria on 7/3/2019. They

were remanded. In the course of investigation, offences under section 109, 120B, 477A, 409 and 420 of IPC were added and report was filed before the Vigilance Court. Investigation revealed that the second accused had received more than three Crores of Rupees and that, his bank records revealed substantial monetary transactions. It was also revealed by the accused that, huge portion of the amount was entrusted to one Mr.Muthu, who was stated to be the Chief Promoter of an Ayurvedha Sidha Hospital, to be set up in Madurai. The said Muthu could not be identified inspite of earnest attempts. In the course of investigation, it was revealed that, both the accused were also arrested in connection with another crime relating to counterfeit notes, registered at the Trichy police station. According to the investigating agency, investigation further revealed that, Rs.35,668,480/- was misappropriated by accused Nos. 1 and 2 and that, there was a shortage of unsold welfare stamps worth Rs.31,582,800/-. Investigation also revealed that the first and the second accused had entered into criminal conspiracy and the second accused abetted the first accused in committing the offence of misappropriation. According to the investigating agency, the investigation did not disclose that counterfeit of welfare fund stamps were used and the allegation that, counterfeit stamps were brought from Tamil Nadu was incorrect. Ultimately, it was asserted that, there was no necessity for a CBI investigation..

11. The investigating agency filed a subsequent statement, wherein, it was mentioned that, in the course of further investigation by the Special Team, few more witnesses were examined and the bank account statements of several persons were verified. The bank locker of the second accused was at Madurai, but it could not be searched. The bank account of the wife of the first accused showed that, her account had a sum of Rs.98,76,251.43/-. The transactions of about 15 persons who were closely associated to the accused were identified and the entire bank transactions of the accused persons and six friends of second accused showed a huge transaction of Rs.65,746,013.88/-. According to the investigation, the total misappropriation as per the FIR was Rs.7,61,24,725.41 which meant that, 86% of the misappropriated amount had been traced. The details of money transacted by all the persons including both the accused were shown in the form of a table in the statement.

12. The 9th Addl. respondent in W.P.(C) No.34989/2019, the Welfare Trust Committee filed counter affidavit denying the various allegations. It was the above committee which had decided to report the matter for investigation when the defalcation of the funds of the Advocates' Welfare Fund by the then Accountant was revealed. The Trustee Committee in its meeting dated 2/9/2017 resolved to complain to the Vigilance Department. Pursuant to it, crime was registered. It was stated that Vigilance

Investigation was progressing in the right direction. The investigation conducted by the Vigilance did not reveal any evidence of criminal conspiracy by the office bearers of the Kerala Bar Council or by any of its members/Secretary of the Kerala Advocates' Welfare Fund Trustee Committee. The Trustee Committee initiated disciplinary proceedings against Chandran. He was placed under suspensin. A retired District Judge was appointed as enquiry officer and pursuant to the enquiry report, Chandran was dismissed from service. Regarding the conduct of the then Secretary, Mr.K. Ajayan, it was felt that there was supervisory laches on the part of the Secretary and the matter was discussed by the Executive Committee held on 9/3/2019. As a result, he was placed under suspension pending enquiry. A retired District Judge was appointed as enquiry officer. He had submitted a report. The trustee committee, in its meeting dated 12/8/2017, decided to take necessary steps to recover the loss caused. Steps were also taken to proceed against the properties of Chandran for recovery of the amounts misappropriated. VACB has conducted detailed investigation and crucial witnesses have been examined.

13. The Kerala Advocates' Welfare Fund Trustee Committee, who is the 10th respondent, filed a separate counter affidavit wherein earlier facts mentioned by the Bar Council of Kerala were also reiterated. The Trustee Committee also asserted that the Vigilance investigation was progressing

fairly. It was alleged that writ petition was filed with oblique motive and several baseless allegations were raised. It was also stated that, the allegations mentioned in the writ petitions were politically motivated. The above respondent also filed identical counter affidavit in W.P.(C) No.13861/2020

14. Heard the learned counsel for the writ petitioners, learned Additional Advocate General, the learned senior counsel appearing for the Bar Council of Kerala, the learned senior counsel for the Kerala Advocates' Welfare Fund Trustee Committee and the counsel for the Bar Council of India. The Bar Council of India virtually supported the allegations made by the writ petitioners.

15. The case diary in relation to the above cases were made available. It shows that the auditor of the Bar Council of Kerala, Advocate Welfare Trustee Committee had reported in September 2019 that the audit of the trust committee covering the period 2007-2008 to 2009-2010, revealed several serious irregularities. Books of accounts were not properly maintained. Stock register for sale of welfare stamps was not maintained, records of its sale were not maintained and there were manipulations in the value of stamp to the tune of Rs.70 lakhs during the period 2009-2010. Pursuant to that report, Bar Council of Kerala had requested for a vigilance enquiry by communication dated 04.10.2017. The Secretary of Vigilance

addressed the Director of Vigilance to enquire into the irregularities and defalcations of printing and distribution of welfare stamps entrusted to the Bar Council of Kerala. A report was filed by the Vigilance on 08.02.2018, recommending registration of vigilance case against one Chandran, who was the Accountant of the Trustee Committee since 15.11.1982. VC No.2/18/CRE of VACB was registered at Ernakulam under section 13(2) r/w 13(1)(c)(d) of the Prevention of Corruption Act on 11.05.2018. Investigation was entrusted to one M.Surendran, Inspector of Police-II VACB. It is seen that, several witnesses were questioned and several records were seized. Investigation is still continuing. In the meanwhile, said Chandran got involved in a counterfeit case in Cr.1/2017 of Trichy Police Station for offence under Section 489(B), 489(C) of IPC and was remanded along with one Shiju V. Paulose, Babu Scaria, and Anandaraj.

16. In the meanwhile, investigating agency got entire accounts audited by the local fund auditor, on the basis of the available records. The auditor, by his report dated 10.09.2018, reported that, there was misappropriation of Rs.3,56,68,450/- and missing of stamps was worth Rs.3,15,82,800/-. Thus, the criminal liability totalled to Rs.6.72 Crores. The statutory audit appointed by the Trustee Committee found a loss of Rs.7,61,24,725/-. The loss mainly arose out of the following:

a) unaccounted sale of stamps

- b) interest received from fixed deposits as seen from accounts was less than the actual interest to be received from Bank.
- c) Excess payment of Rs.35 ,303/- from welfare fund account.
- d) Misappropriation to the tune of Rs.35,668,450/- with respect to sale of stamps.
- e) shortage of unsold welfare stamp worth Rs.31,582,800/-
- f) An amount of Rs.33,74,756/- related to unaccounted welfare stamp fund subscription.
- g) Inflated accounts of sales of stamps by making fictitious entries even on holidays.

Those were some of the allegations brought out in the course of investigation as well as domestic enquiry by the retired District Judge. It was also noted by the auditor that, main receipts which were used were not produced. Cash book was not produced. The records which were maintained are; (1) the register of income from sale of stamps which contained the deposit in banks and payment of salary also (2) journal register showing subscription paid (3) ledger of the bank account. It was noted that, even though Bar Council of Kerala in their meetings had recommended at regular intervals for the audit of accounts, it seems that the accounts during the period 2007-2008 to 2011-2012 was audited only in 2017.

17. Investigation also revealed that, accounts from the trustee

committee were diverted to 10 accounts of seven persons who were totally unconnected with the Bar Council of Kerala and Trustee Committee. All the amounts were transferred by the said Chandran. The above persons are Babu Scaria, Ananda Raj, Martin, Jayaprabha, Dhanabalan, Fatima Sherin and Rajagopal. Account details of the above persons were collected. Audit account report was produced in Court on 26.09.2018. The details of accounts of Chandran and his wife from 26.10.2018 were sought from the Dhanalaxmi Branch. It is seen from the available records and also the statement produced by the investigating agency that, Chandran's account had shown a total credit of Rs.1,30,27,730/- during the relevant period. Wife had two accounts of which the transaction in the first account was Rs.1,49,2803.32/- and the second account Rs.83,83,449.11/-. All the above accounts were frozen. It is also seen that, in the course of investigation, 73 documents were seized and produced before the Vigilance Court on 20.10.2018. Bank account details of the above persons were also collected. 13 other documents were seized from the Secretary, Welfare Trust Committee on 21.01.2019. Babu Scaria whose name was referred as one of the person at Madurai to whom huge amounts were seen transferred was added as an accused and arrested on 07.03.2019. It seems that, his stand was that, he had entered into an agreement with the first accused to start a specialty hospital at Madurai and towards it, first accused has transferred his share

Rs.2.5 to 3 Crores of rupees during the relevant time by various installments. It was stated that, he had instructed the first accused to remit the money through the account of various other persons. It was also claimed by him that the entire money that he had collected was handed over to one Muthu from Chennai. However, his stand was that, entire amounts were paid in cash and receipts were obtained, However, the receipts were missing. Absolutely no material could be unearthed to confirm the identity of the above Muthu, in spite of detailed investigation conducted by the investigating agency. The second accused had not disclosed identification details of the said Muthu. The stand taken by Babu Scaria was that, he had given huge amount to Muthu was not substantiated.

18 In the course of investigation, on 03.03.2020, six registers including the minutes of the Bar Council of Kerala and specimen handwriting of the first accused were taken and sent for forensic examination. It is seen that the account details of wife of the first accused was collected only in June 2020. According to the statement filed by the investigating agency, the total amount transacted through the account of wife of the first accused was about 72 lakhs through one account. It means that the investigation has been continuing for a long period.

19. An evaluation of the records show that investigation has not progressed much and it seems that it got struck after the arrest of the

second accused. At the time of hearing, learned Additional Advocate General submitted that, investigation has now been entrusted to a new team and it was expected to continue with all earnestness. Had this been done at the initial stage investigation could have progressed substantially. It seems that, substantial portion of the investigation was conducted by an Inspector from May 2018 till 2020, covering almost every aspect singlehandedly within his limits. Considering the huge amounts involved, the complexity of crime, lack of various records and that materials were spread over two states, it should have been investigated effectively with a larger team of investigation, even from the beginning. Hence, there were limitations in the Inspector conducting the investigation.

20. A closer look at the materials made available by the prosecution as well as by the writ petitioners, clearly indicates the enormity of crime committed by the accused. The crime is spread over a long period of ten years. On the basis of the available materials, it has been ascertained that around Seven and Half Crores of Rupees were swindled. This is the fund constituted by collecting small amounts from the hard earned money of the individual lawyers through out the State. The lawyers are statutorily bound to remit the contribution by way of affixing stamps while filing each vakalath. The fund so collected is utilized for releasing to the lawyers, either in the event of their retirement or unfortunate death. The major portion of the

amounts so swindled, are amounts meant for distributing among the lawyers for their security during the last days of practice or meant for their legal heirs, in case of the untimely death of a member. The major source of the Welfare Fund Trust is constituted by the individual money collected from all the lawyers through out the state.

21. What shocks the conscience of anybody is that, during the above long period of ten years, no records were maintained and the records whatever meant were shabbily retained. It is also surprising that during the above period, nobody cared to verify how the money was being collected, maintained and utilised. Shockingly, nobody verified the records and that during this long period, the records were not even audited, even though Trustee Committee was under an obligation to get the records audited. Though ritually, every Board meeting resolved to conduct the auditing, in the next board meeting nobody tried to verify whether records were audited and placed before the Board for verification. The Trustee Committee also never insisted that, it should be got audited. During the relevant period, nobody cared to verify the accounts, how the funds were being kept and utilised. This indifference from the Trust Committee has led to this enormous squandering of the money by the persons concerned. Had Trustee Committee been careful at least to ensure their minimum responsibility of ensuring that, records were maintained and audited

properly. This situation would definitely have not arisen. The investigation did not cover this aspect.

22. Though the prosecution alleged that, as per the report of the auditor an amount of Rupees seven and half Crores has been swindled, there is every possibility of this being a rough estimate and substantially huge amounts might have been swindled,. It is a fact that, this amount of about seven and half crores of rupees has been arrived at by co-relating with the available records alone. 23. Definitely, there are indications that records were also manipulated, and that, most of the records were not properly maintained. Even this amount seems to have been arrived at on the basis of available records alone. In the above situation, a clear picture about the amount that has been actually swindled can be arrived at only by counter checking with the records maintained in all the Bar Associations since in the usual course, all the Bar Associations through out the State purchase stamps from the Welfare Fund office at Ernakulam and it can only be expected that the corresponding records should be available there. Hence, a proper checking of the records available with the various Bar associations is absolutely essential to identify the actual number of stamps sold in Kerala and the corresponding amounts collected. It seems that in the statement, the Investigating Agency has indicated that though attempts were made to call for the records from certain Bar Associations, they did not produce it and it

appear that they were also not correspondingly maintaining records. An extensive investigation covering the records of all the Bar Associations in Kerala may give reasonable picture as to the quantity of the stamps purchased by each association during the relevant period and the amounts paid by them. Even from the available materials so collected, a rough estimate of the amount can be arrived at, also whether excess stamps have been sold than what was actually got printed. Definitely, this is a very complex and extensive investigation, which has not been adopted by the investigating agency till now due to obvious reasons, as earlier indicated. Evidently, only a forensic audit in an extensive manner can reveal the actual amount collected. This exercise is essential to ascertain whether fake stamps were sold and also to ascertain whether higher amount is involved.

23. The petitioners have a definite allegation that fake stamps were also sold. Evidently, if materials establish that fakes stamps were also sold, definitely, the amount swindled will be much higher than now quantified. However, the investigating agency seems to have arrived at a conclusion that no forged welfare stamps were issued during the period from 2007 to 2017. There is absolutely no basis for this premature conclusion. It seems that, the only basis on which the Investigating Agency arrived at this conclusion was that the records in the Welfare Fund Committee regarding the stamps received from the Government press, tallied with the records

maintained in the Government Press at Kakanad, evidencing that the welfare stamps which were printed as per the order, have been delivered at the Welfare Fund office and they have acknowledged the receipt of it. However, the question whether fake stamps were in circulation and sold by the persons concerned can be revealed only by an extensive investigation, that too by ascertaining the quantity of amounts collected from various Bar association. If the amounts spent by the various Bar Associations for purchasing the stamps exceeds the value of the stamps printed, one can arrive at a reasonable conclusion that excess welfare stamps were sold and such stamps were in circulation. This can also definitely lead to an escalation of the amount swindled. This has not been adopted. Hence, I find no basis in the conclusion arrived at by the investigating agency that no fake welfare stamps were issued during the relevant time. Only after a thorough investigation, such conclusion can be arrived at.

24. The trend of investigation, the materials gathered by the investigation and also the present stand taken by the investigation indicates that, according to the investigating agency, the entire manipulation and misappropriation of money was committed by the first accused also, who was the accountant of the Welfare Trust. The allegation of the investigation agency seems to be is that, during the long period of ten years, without maintaining any records, single handedly the said accountant, swindled the

money without the knowledge of any other staff or the Trust. This is prima facie absolutely unbelievable.

25. In the above context, the duties and functions of the Welfare Fund needs a closer look in the light of the statutory provisions. Section 3 of the Advocates Act 1961 contemplates the constitution of State Bar Council. Section 6 refers to the functions of the Bar Council. Inter alia, the functions of the Bar Council, as provided under section 6(d), is to safeguard the rights, privileges and the interest of the advocates on its roll. By virtue of the provisions of the power conferred under the Advocates Act, Kerala Bar Council Rules 1976, has been formulated. Rule 7 of the Kerala Bar Council Rules refer to the duties of the State Bar Council. Rule 6 relates to the duties and powers of the Secretary. The statute provided that, the Secretary of the Bar Council of Kerala shall be a Secretary of the Welfare Trust Committee. It provides that, the Secretary shall be the Chief Executive Officer of the Bar Council and shall be under the direct control and supervision of the Council. He shall be the custodian of all records, libraries and other properties of the Bar Council. The same Secretary is the Ex officio Secretary of the Kerala Advocates' Welfare Fund by virtue of Section 4. Section 4 of the Welfare Fund Act 1980, deals with establishment of Trustee Committee. Section 4(f) provides that, the Secretary of the Bar Council shall be the Secretary of the Trustee Committee ex officio. Functions of the

Trustee Committee are provided under Rule 9. By virtue of Rule 9(1), Trustee Committee shall administer the fund. Rule 11 deals with the powers and duties of the Secretary. It provides that, the Secretary of the Trustee Committee shall be the Chief Executive of the Trustee Committee and has the responsibility for carrying out its decisions. He shall also represent the Trustee Committee in all suits and proceedings for and against the committee. He is bound to operate the bank accounts of the Trustee committee and to prepare its minutes. He is also under an obligation to attend the minutes of the trustee committee with all the necessary records and information. He is also bound to maintain such Forms, Registers and other records, as may be prescribed from time to time, and do all correspondence relating to the Trust committee. He shall inspect and verify periodically the accounts and registers of the Bar Associations regarding the stamps and to prepare an annual statement of the business transacted by the trustee committee during the financial year.

26. Section 11 of the Kerala Advocate's Welfare Funds Act 1980, clearly show that, the entire responsibility of maintaining the registers to get it accounted, get it audited and production of it before the Committee vest with the Secretary and to get it accounted. The version of the investigating agency as revealed through few witnesses clearly show that during the relevant period of ten years, the maintenance of records, keeping of the

stamps, custody of the stamps, sale of the stamps, collection of money and keeping the fund so received were single handedly done by the Accountant. If that version is accepted, prima facie, it shows absolute and gross negligence on the part of the Secretary and full abdication of his powers and duties. He never cared to verify the records and the handling of money. In other words, according to the version, accountant was exercising more powers than the Secretary even, and secretary seems to be a mute spectator. If this is also accepted, necessarily it leads to the fact that the culpable negligence shown by the Secretary must have contributed to this situation.

27. However, it is extremely difficult to accept this version not only from the face of it, but from other facts also. The version not only indicates the total abdication of duties by the Secretary. But there are reasons to doubt that his conduct has resulted in causing of misappropriation knowingly or unknowingly. This version of the secretarty seems to be doubtful in the back ground that, on 22/5/2016 he is stated to have given a false statement to the Trust Committee that the accounts of the years 2014-15 and 2015-16 were entrusted with the audit. He had also stated that, he had sent a letter to the auditor in this regard. However, the auditor has rejected this claim and stated that he has not received any such communication. On the other hand, according to the auditor, the accounts of 2007 - 2008 to 2014-2015 were

entrusted to him only on 08/11/2016. Evidently, Secretary has to explain as to why he misled the committee by giving false statement, fully knowing that the accounts of the past several years remained unaudited.

28. It is seen that the Bar Council of India had also conducted an enquiry, in which, by its interim report dated 29/11/2018, it was suggested that the Secretary should be kept away from duty. It is evident from the record that Bar Council of Kerala suspended the Secretary, pending enquiry. However, after conducting an enquiry, holding that there was only supervisory latches on the part of the Secretary, he was reinstated. This conduct of the Welfare Committee in reinstating person against whom very serious allegations were made and who ought not have been accommodated for his callous negligence, is surprising. Evidently, the role of the Secretary needs a closer and detailed investigation, which the present investigating agency has not done. The present investigation agency in its report to court has stated that they have not completely exonerated or given clean chit to the Secretary of Welfare Fund Trustee Committee. It was also stated that investigation is not at all centered around the first accused alone. The roles played by the present and former secretaries of the Bar Council/KAWF were also being probed seriously, it was stated. In the above circumstances, reinstatement of the Secretary to the same post or in any other post of committee cannot be appreciated.

29. Yet another aspect, which needs investigation is that, the investigation revealed that huge sums were parked in the account of the wife of the first accused. It seems that a sum of Rs.1,492,803.32 was found in deposit in one account alone and another sum of Rs.8,383,448.11 in the account of Dhanalakshi Bank. It is not clear whether this was deposited with the knowledge of the wife of the accountant. She can be exonerated of her liability only if, investigation reveals that the accounts were managed by the first accused and that she was absolutely unaware of the deposit of huge amounts. Investigation has to address itself in that angle.

30. The records reveal that the investigation led to the identification of accounts of several persons in whose account money was deposited by the first and the second accused. According to the investigating agency, the transfer of about 86% of the total funds misappropriated have been accounted. Since it is brought out that the first and the second accused have siphoned of the huge amount from the Advocates' Welfare Fund and that they have transferred it to the accounts of others, definitely, the above account holders are liable to answer how the amounts were utilised and their role in the transaction. Merely, by concluding that the amounts has not been properly accounted, they can be held responsible for various criminal acts. However, investigation cannot end there. The investigation should reach the stage of accounting of entire amounts swindled, which pre

supposes a clear finding regarding the actual amount due. In the above circumstances, it cannot be safely be said that about 86% of the money misappropriated have been identified.

31. It is also seen that huge amounts were transferred to the accounts of one Babu Scaria. He has a case that there was an agreement between the first and the second accused to start a hospital in Madurai. The second accused had stated that he had handed over the amount to one Muthu, whose identity could not be established in the course of investigation. Though Muthu did not reveal any other details of that person except that, he is known by name Muthu, he has also not revealed as to how he got acquainted with Muthu, the person through whom he transacted and the other detailed facts. In the nature of the stand taken by the accused that he does not know anything about Muthu, the possibility of Muthu being a fictitious person and that the amount so misappropriated has been parked elsewhere cannot be completely ruled out.

32. It is also to be found out how Babu Scaria was utilizing the amount swindled. His version that he had given the money to the Muthu appears to be unbelievable in the absence of any material to substantiate it. The second accused did not reveal the complete identity of the Muthu. According to him he does not have the details of said Muthu, his address or place of residence. It cannot be believed even for a moment that, such huge amounts would be

given to a person whose details are unknown to the second accused. It is to be ascertained whether the amount has been diverted by Babu Scaria or he was only a conduit for transferring money to an unknown person. It is also to be identified whether any other person has aided the first accused in continuing this misappropriation for a long period, without being unnoticed. The third parties in whose account substantial amounts were found by the investigating agency have taken a stand that, their accounts were utilized by Babu Scaria for transactions and their ATM cards were handed by Babu Scaria. Some of the persons seems to be persons without any substantial means. Whether they were also be utilized by any other person as commuters other than Babu Scaria and whether the version that such person had withdrawn the money from the amounts using ATM cards could be revealed only in a thorough investigation, including the place from where the accounts were operated. It seems that, investigation has to progress forward. In the above circumstances, I feel that, further thorough investigation is required.

33. As indicated above, the investigation team till now, has not reached its logical conclusion. Several matters need to be further investigated. The materials are spread over two different States. Involvement of other persons in facilitating the crime cannot be completely ruled out even now. Considering the experience and the availability of the investigative skills, the

investigation calls for a better equipped agency, which can conduct a thorough investigation in two different States.

34. Justifying the need for conducting a detailed investigation by the CBI, the learned counsel for the writ petitioners relied on some reported decisions. The learned counsel for the writ petitioners as well as the learned counsel for additionally impleaded respondents in W.P.(C) No.13861/2020, relied on the decision reported in R.S.Sodhi and Others v. State of U.P. & Others(1994 KHC 557), P.V.Narsimha Rao v. State (CBI/SPE) (199 KHC 944), Statet of W.B. And Others v. Committee for Protection of Democratic Rights West Bengal and Others (2010 (1) KHC 841), Subrata Chatteraj v. Union of India and Others (2014 KHC 4364) and Muthilesh Kumar Singh v. Statte of Rajasthan and Others (2015 KHC 5259). State of Jharkhand through SP CBI v. Lalu Prasad @ Lalu Prasad Yadav and Others (2017 KHC 6409). In all the above cases, the Supreme Court dealt with the special circumstances under which the CBI investigation can be ordered. I feel that the circumstances mentioned therein can be extended to apply in this case also.

35. After considering the complexity of the nature involved and the fact that the matter is of a general importance, applicable to interest of all the lawyers as a community who have a right to know, how their contribution was misused, to sustain the faith of the public in the Bar Council as well as the Advocate's Welfare Fund Trust, the deep and perversive nature of the

crime involved, the matter needs investigation by a specialized agency. the fact that the investigation has to progress forward and to be conducted in two States, and the fact that detailed investigation further required to be conducted, I feel that the matter needs to be investigated by a specialized agency in the nature of CBI.

36. Having considered the above, I am inclined to allow both the writ petitions directing the Director, Central Bureau of Investigation, New Delhi, the Superintendent of Police (SPE CBI) , Thiruvananthapuram , to take over investigation of Crime No. 2/2017, now pending before the Muvattupuzha Special Court, as expeditiously as possible, and to complete the investigation. The Union of India, State of Kerala and State Police Chief shall issue appropriate orders accordingly and shall handover records to the CBI immediately for its enquiry. Appropriate orders shall be passed within one month from the date of receipt of a copy of this judgment.

The writ petitions are allowed as above.

Sd/-

SUNIL THOMAS

JUDGE

dpk

APPENDIX OF WP (C) 13861/2020

PETITIONER EXHIBITS

- EXHIBIT P1 THE TRUE COPY OF THE ANNUAL REPORT DATED 18.5.2016 SUBMITTED BY THE SECRETARY OF 9TH RESPONDENT IN HIS CAPACITY AS THE SECRETARY OF THE TRUSTEE COMMITTEE.
- EXHIBIT P2 THE TRUE COPY OF THE MINUTES OF BAR COUNCIL OF KERALA MEETING DATED 22.5.2016.
- EXHIBIT P3 THE TRUE COPY OF THE LETTER DATED 17.11.2016 SUBMITTED BY THE SECRETARY OF 9TH RESPONDENT IN HIS CAPACITY AS THE SECRETARY OF THE TRUSTEE COMMITTEE.
- EXHIBIT P4 THE TRUE COPY OF THE LETTER DATED 25.11.2016 SEND BY THE AUDITOR.
- EXHIBIT P5 THE TRUE COPY OF THE PETITION FILED BY THE SECRETARY TIRUR BAR ASSOCIATION.
- EXHIBIT P6 TRUE COPY OF THE LETTER DATED 22.1.2018 ISSUED BY THE STATE BAR COUNCIL.
- EXHIBIT P7 THE TRUE COPY OF THE FIRST INFORMATION REPORT IN VC.02/18/CRE OF VACB CENTRAL RANGE ERNAKULAM.
- EXHIBIT P8 THE TRUE COPY OF THE ORDER ISSUED BY THE BAR COUNCIL OF INDIA DATED 12.10.2018.
- EXHIBIT P9 THE TRUE COPY OF THE ORDER ISSUED BY THE 8TH RESPONDENT DATED 16.10.2018.

RESPONDENT EXHIBITS

- EXHIBIT R9(a) : TRUE COPY OF THE RELEVANT EXTRACT OF THE MINUTES OF THE MEETING DATED 02/09/2017.

- EXHIBIT R9 (b) : TRUE COPY OF THE LETTER DATED 04/10/2017 FROM THE SECRETARY TO GOVERNMENT TO THE VIGILANCE DEPARTMENT.
- EXHIBIT R9 (c) : TRUE COPY OF THE REPORT DATED 23/05/2019 SUBMITTED BY SHRI.K.M.BALACHANDRAN.
- EXHIBIT R9 (d) : TRUE COPY OF THE RELEVANT EXTRACT OF THE MINUTES OF THE EXECUTIVE COMMITTEE MEETING DATED 09/03/2019.
- EXHIBIT R9 (e) : TRUE COPY OF THE EXTRACTS OF THE MINUTES OF THE MEETING DATED 12/08/2017.
- EXHIBIT R9 (f) : TRUE COPY OF THE LETTER DATED 22/06/2019.
- EXHIBIT R9 (g) : TRUE COPY OF THE ORDER ISSUED BY THE SUB-COURT ERNAKULAM IN O.S.NO.90/2020.
- EXHIBIT R9 (h) : TRUE COPY OF LETTER NO.KAWF/ASSN/832/17 DATED 25/10/2017.
- EXHIBIT R11 (a) : A TRUE PHOTOCOPY OF THE REPLY DATED 03.08.2018 ISSUED BY THE PUBLIC INFORMATION OFFICER

APPENDIX OF WP (C) 34989/2019

PETITIONER EXHIBITS

- EXHIBIT P1 TRUE COPY OF THE FIR NO.VC 2/18/CRE OF VACB ERNAKULAM DATED 11.05.2018.
- EXHIBIT P2 TRUE COPY OF THE INTERIM REPORT DATED 29.11.2018.
- EXHIBIT P3 TRUE COPY OF THE RESOLUTION NO.456/2018 OF BAR COUNCIL OF INDIA.
- EXHIBIT P4 TRUE COPY OF THE ORDER DATED 16.10.2018 ISSUED BY THE 8TH RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE COMMUNICATION DATED 12TH OCTOBER 2018 SENT TO THE SECRETARY, BAR COUNCIL OF KERALA CONTAINING THE TEXT OF THE RESOLUTION.
- EXHIBIT P6 COPY OF THE PROGRESS REPORT DTED 13TH FEBRUARY, 2019.
- EXHIBIT P7 A TRUE COPY OF THE REPRESENTATION DATED 15.09.2019.

RESPONDENT EXHIBITS

- EXHIBIT R6(A) COPY OF THE PROPERTY LIST
- EXHIBIT R6(B) COPY OF THE TEMPORARY RECEIPTS
- EXHIBIT R10(a) TRUE COPY OF THE SUMMARY OF FINDINGS OF TEH ENTIRE AUDIT REPORT DATED 04.11.2019
- EXHIBIT R10(b) TRUE COPY OF THE DOMESTIC ENQUIRY REPORT
- EXHIBIT R10(c) TRUE COPY OF TEH LETTER DATED 16.11.2019

EXHIBIT R10 (d) TRUE COPY OF THE ENQUIRY REPORT DATED
11.01.2020

EXHIBIT R10 (e) TRUE COPY OF THE ORDER OF THE EXECUTIVE
COMMITTEE DATED 02.02.2020

EXHIBIT R10 (F) TRUE COPY OF THE LETTER DATED 17.10.2018
SENT BY THE LEARNED ATTORNEY GENERAL OF
INDIA

EXHIBIT R9 (a) TRUE COPY OF THE RELEVANT EXTRACT OF THE
MINUTES OF THE MEETING DATED 02.09.2017

EXHIBIT R9 (b) TRUE COPY OF THE LETTER DATED 04.10.2017
FROM THE SECRETARY TO GOVERNMENT TO THE
VIGILANCE DEPARTMENT

EXHIBIT R9 (c) TRUE COPY OF THE REPORT DATED 23.05.2019
SUBMITTED BY SHRI K M BALACHANDRAN

EXHIBIT R9 (d) TRUE COPY OF THE RELEVANT EXTRACT OF THE
MINUTES OF THE EXECUTIVE COMMITTEE MEETING
DATED 09.03.2019

EXHIBIT R9 (e) TRUE COPY OF THE EXTRACTS OF THE MINUTES OF
THE MEETING DATED 12.08.2017

EXHIBIT R9 (f) TRUE COPY OF THE EXTRACTS OF THE MINUTES OF
THE MEETING DATED 21.02.2020

EXHIBIT R9 (g) TRUE COPY OF THE LETTER DATED 22.06.2019

EXHIBIT R9 (h) TRUE COPY OF THE NOTICE ISSUED BY THE SUB
COURT, ERNAKULAM IN O.S.NO.92/2020