

[CR]

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 21ST DAY OF JUNE 2023 / 31ST JYAISHTA, 1945

RP NO. 97 OF 2023

CRIME NO.6/2015 OF Agathi Police Station, Lakshadweep
AGAINST THE ORDER/JUDGMENT IN OP(Crl.) 608/2022 OF HIGH COURT OF
KERALA

REVIEW PETITIONER:

K. CHERIYA KOYA
AGED 55 YEARS
SUB JUDGE/CHIEF JUDICIAL MAGISTRATE, AMINI, LAKSHADWEEP
(UNDER SUSPENSION), LAKSHADWEEP-682 553, PIN - 682553

BY ADVS.
P.SANJAY
A.PARVATHI MENON
BIJU MEENATTOOR
PAUL VARGHESE (PALLATH)
KIRAN NARAYANAN
PRASOON SUNNY
RAHUL RAJ P.
AMRUTHA M. NAIR
P.A.MOHAMMED ASLAM

RESPONDENTS:

- 1 U.T.ADMINISTRATION OF LAKSHADWEEP
REPRESENTED BY STANDING COUNSEL, HIGH COURT OF KERALA,
PIN - 682031
- 2 THE STATION HOUSE OFFICER
AGATTI POLICE STATION, AGATTI, UNION TERRITORY OF
LAKSHADWEEP-682 553, PIN - 682553
- 3 MOHAMMED NAZEER M.P, AGED 46 YEARS,
S/O. ATTAKOYA, MULLIPURA HOUSE, AGATTI ISLAND, UNION OF
LAKSHADWEEP, PIN - 682553
- 4 ABOO SALAM KOYA P, AGED 72 YEARS,
S/O. LATE ABOOBACKER KOYA, PETTAMBALAM HOUSE, AGATTI
ISLAND, UNION OF LAKSHADWEEP, PIN - 682553

- 5 KASMIKOYA B, AGED 56 YEARS
S/O ABOOBACKER KOYA, BIYYAMMABIYODA (H), AGATTI ISLAND,
UNION OF LAKSHADWEEP, PIN - 682553
- 6 ABDUL NAZER, AGED 45 YEARS,
S/O KASMIKOYA, POOVINODA (H), AGATTI ISLAND, UNION OF
LAKSHADWEEP, PIN - 682553
- 7 AHMAD KOYA, AGED 55 YEARS,
S/O ABOOBACKER KOYA, CHACHALAKAPADA PATTINIYODA
PUTHIYAILLAM, (H), AGATTI ISLAND, UNION OF LAKSHADWEEP,
PIN - 682553
- 8 ABDUL SHUKOOR, AGED 48 YEARS,
S/O ABOOBAKER, KUTTIYAM MUKRIYODA (H), AGATTI ISLAND,
UNION OF LAKSHADWEEP, PIN - 682553
- 9 ABDUL GAFOOR, AGED 56 YEARS,
S/O ABOOBACKER KOYA, KUTTIYAM MUKRIYODA (H), AGATTI
ISLAND, UNION OF LAKSHADWEEP, PIN - 682553
- 10 ABDUL KHADER KOYA, AGED 55 YEARS,
S/O KUNHIKOYA, BANDER (H), AGATTI ISLAND, UNION OF
LAKSHADWEEP, PIN - 682553
- 11 ANSWER SADIK, AGED 47 YEARS,
S/O POOKOYA, KULI (H), AGATTI ISLAND, UNION OF
LAKSHADWEEP, PIN - 682553
- 12 SAYED MOHAMMED K.I, AGED 61 YEARS,
S/O MOHAMMED KOYA, KEELAILLAM (H), AGATTI ISLAND, UNION
OF LAKSHADWEEP-682553
- 13 CHERIYA KOYA T.P,
S/O KONJAN KOYA, THEKUPUTHIYAILLAM (H), AGATTI ISLAND,
UNION OF LAKSHADWEEP, PIN - 682553
- 14 SEETHI KOYA, AGED 66 YEARS,
S/O ABOOBACKER KOYA, PONTINODA (H), AGATTI ISLAND,
UNION OF LAKSHADWEEP, PIN - 682553
- 15 THANGA KOYA K.I, AGED 64 YEARS,
S/O MOHAMMED KOYA, KEELAILLAM (H), AGATTI ISLAND, UNION
OF LAKSHADWEEP, PIN - 682553
- 16 SAYED MOHAMMED, AGED 45 YEARS,
S/O ALIKOYA, BEEKUTTIYODA (H), AGATTI ISLAND, UNION OF

LAKSHADWEEP, PIN - 682553

- 17 CHERIYAKOYA, AGED 75 YEARS,
S/O SAYED KOYA, CHACHADA PATTINIYODA, (H), AGATTI
ISLAND, UT OF LAKSHADWEEP, PIN - 682553
- 18 HIGH COURT OF KERALA (*IMPLEADED)
REPRESENTED BY THE REGISTRAR GENERAL (*IS IMPLEADED
VIDE ORDER DATED 01/02/2023 IN RP.NOS.94 & 97 OF 2023)

BY ADVS.
Sajith Kumar V.
HARINDRANATH B G

OTHER PRESENT:

SR.ADV.SRI.S.SREEKUMAR

SRI.K.K.DHEERENDRAKRISHNAN, AMICUS CURIAE
SRI.V.SAJITH KUMAR, SC,
ADV.B.G.HARINDRANATH, SC FOR ADDL.R18

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
29.05.2023, ALONG WITH RP.94/2023, THE COURT ON 21.6.2023
DELIVERED THE FOLLOWING:

[CR]

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 21ST DAY OF JUNE 2023 / 31ST JYAISHTA, 1945

RP NO. 94 OF 2023

AGAINST THE ORDER/JUDGMENTOP(Cr1.) 609/2022 OF HIGH COURT OF
KERALA

REVIEW PETITIONER:

K. CHERIYA KOYA
AGED 56 YEARS
SUB JUDGE/CHIEF JUDICIAL MAGISTRATE, AMINI, LAKSHADWEEP
(UNDER SUSPENSION), LAKSHADWEEP, PIN - 682553

BY ADVS.
P.SANJAY
A.PARVATHI MENON
RAHUL RAJ P.
KIRAN NARAYANAN
PAUL VARGHESE (PALLATH)
PRASOON SUNNY
AMRUTHA M. NAIR
BIJU MEENATTOOR(K/620/1992)

RESPONDENTS:

- 1 THE UNION TERRITORY OF LAKSHADWEEP REPRESENTED BY THE
ADMINISTRATOR
REPRESENTED BY STANDING COUNSEL, HIGH COURT OF KERALA,
PIN - 682030
- 2 THE STATION HOUSE OFFICER
AGATTI POLICE STATION, AGATTI, UNION TERRITORY OF
LAKSHADWEEP, PIN - 682553
- 3 MOHAMMED NAZEER M.P,
AGED 46 YEARS
S/O. ATTAKOYA, MULLIPURA HOUSE, AGATTI ISLAND, UNION OF
LAKSHADWEEP, PIN - 682553

- 4 ABOO SALAM KOYA P,
AGED 72 YEARS
S/O. LATE ABOOBACKER KOYA, PETTAMBALAM HOUSE, AGATTI
ISLAND, UNION OF LAKSHADWEEP, PIN - 682558
- 5 KASMIKOYA B
AGED 56 YEARS
S/O ABOOBACKER KOYA, BIYYAMMABIYODA (H), AGATTI ISLAND,
UNION OF LAKSHADWEEP, PIN - 682553
- 6 ABDUL NAZER
AGED 45 YEARS
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PIN - 682553
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ISLAND, UNION OF LAKSHADWEEP, PIN - 682553
- 10 ABDUL KHADER KOYA,
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ISLAND, UNION OF LAKSHADWEEP, PIN - 682553
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LAKSHADWEEP, PIN - 682553
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OF LAKSHADWEEP, PIN - 682553

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 UNION OF LAKSHADWEEP, PIN - 682553
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- 18 HIGH COURT OF KERALA (*IMPLEADED)
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 VIDE ORDER DATED 01/02/2023 IN RP.NOS.94 & 97 OF 2023)
- BY ADVS.
 SR.ADV.SRI.S.SREEKUMAR,
 SR.V.SAJITH KUMAR, SC (LAKSHADWEEP),
 SRI.B.G.HARINDRANATH, SC FOR ADDL.R18.

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON
29.05.2023, ALONG WITH RP.97/2023, THE COURT ON 21.6.2023
DELIVERED THE FOLLOWING:

[CR]

P.V.KUNHIKRISHNAN, J**Review Petition Nos. 94 & 97 of 2023****Dated this the 21st day of June, 2023****O R D E R**

These two review petitions are filed to review the judgment dated 23.12.2022 in O.P.(Crl.) Nos. 608/2022 & 609/2022. The review petitioner is the 3rd respondent in the above original petitions. The above original petitions were disposed of with the following directions :

1) *The Administrator, Union Territory of Lakshadweep is directed to place the additional 3rd respondent under suspension forthwith and conduct a detailed enquiry about his actions mentioned in this order forthwith and take appropriate steps in accordance with law, untrammelled by any observation in this judgement.*

2) *The petitioners in these cases are allowed to raise all their contentions raised in these original petitions before the appellate court by filing appeal against the conviction and sentence imposed in CC No. 24/2016 on the file of the Chief Judicial Magistrate Court, Amini, Lakshadweep. If no appeal is filed so far, no coercive steps shall be taken against the petitioners for a further period of one month from today.*

3) *Issue notice under Sec.340 Cr.P.C. to the additional 3rd respondent, Sri.K.Cheriyakoya, Former Sub Judge/Chief Judicial Magistrate, Amini, LAKSHADWEEP, now working as the secretary, District Legal Service Authority, LAKSHADWEEP,*

Sri.P.P.Muthukoya, Bench Clerk, Chief Judicial Magistrate Court, Amini and Smt. A.C.Puthunni, LD Clerk (Bench Assistant), Chief Judicial Magistrate Court, Amini for conducting a preliminary enquiry because this Court is of the opinion that it is expedient in the interest of justice that such an enquiry should be made into the offences referred in Clause (b) of sub-section (1) of Sec. 195 Cr.P.C. The Registry will enclose a copy of this order also along with the notice issued under Sec.340 Cr.P.C. to the persons mentioned above.

4) The Registry will give a separate number to the Sec.340 Cr.P.C. proceedings in accordance with law and post the case on 23.1.2023 for the appearance of the additional 3rd respondent and other persons mentioned above. Advocate Dheerendrakrishnan K.K is appointed as Amicus curiae to assist the court during the preliminary enquiry under Section 340 Cr.P.C. Registry will show the name of the Amicus curiae in the cause list.

5) Registry is directed to forward a copy of this judgement to the Administrator, Union Territory of Lakshadweep forthwith.

2. The review petitions are filed stating that there are apparent errors on the face of the record; therefore, the judgment is to be reviewed.

3. Heard Sr.Counsel, Sri.S.Sreekumar instructed by Adv.P. Sanjay. I also heard the learned Standing Counsel appearing for Lakshadweep Administration, learned Standing Counsel appearing for the High Court of Kerala and also the petitioners in the original petitions. This Court also heard Advocate Dheerendrakrishnan, the

Amicus curiae appointed by this Court as per the judgment impugned in the review petitions. An argument note is also filed by the review petitioner.

4. The main contention raised by the review petitioner in these review petitions is that, there are errors apparent on the face of the record and hence the judgment is to be reviewed. It is also stated that, in view of Article 235 of the Constitution of India, the Administrator of Lakshadweep has no disciplinary power over a judicial officer and only this Court has control over subordinate courts. The review petitioner also relied on the judgment of the Apex Court in ***State of Haryana v. Inder Prakash Anand*** [AIR 1976 SC 1841] and also the ***Rajendra Singh Verma (Dead) through LRs v. Lt. Governor of NCT Delhi*** [2011 (10) SCC 1]. The review petitioner also submitted that, he is not liable to be proceeded in the light of Sec.3(1) of the Judges (Protection) Act, 1985 and hence, the notice issued by this Court under Sec.340 Cr.P.C. to the review petitioner for conducting a preliminary enquiry is unsustainable. The review petitioner also relied on the judgments of the Apex Court in ***A.R.Antulay v. R.S.Nayak and another*** [AIR 1988 SC 1531], ***Anowar Hussain v. Ajoy Kumar Mukherjee and others*** [AIR 1965 SC 1651].

5. The review petitioner also submitted that an enquiry under Sec.340 Cr.P.C. can be initiated only against a person who has committed an offence referred to in Sec.195(1)(b) of Cr.P.C. It is also submitted that there is no prima facie finding that the review petitioner has committed one or the other of the offences mentioned in Sec.195(1)(b) of Cr.P.C. to proceed under Sec. 340 Cr.P.C. Hence, the submission is that Sec.340 Cr.P.C proceedings initiated against the petitioner is unsustainable. It is further submitted that being a judicial officer, the Administrator of Lakshadweep, being the executive cannot be clothed with the powers to suspend or take action against the petitioner, who is a judicial officer, and if such an action is issued, that will militate against the principles of separation of powers and independence of judiciary. It is also contended by the review petitioner that the allegation against the petitioner has not been correctly appreciated by this Court in the judgment. It is also submitted by the review petitioner that if this Court is inclined to accept any of the above contentions, the judgment as such is to be reviewed because a part of the judgment cannot be reviewed and once it is found that there is an error apparent on the face of the record, the entire judgment becomes non-existent. The review petitioner relied on the judgments in ***Bhargavi Amma v. Sankara Panicker*** [1961 KHC

386] and ***Kizhakkekara Thomas v. State of Kerala and another*** [2011 (3) KHC 819] to support that contention.

6. When these review petitions came up for consideration on 23.01.2023, this Court passed the following order:

When this review petition came up for consideration, the learned senior counsel submitted that, he is pressing on ground 'H' of the review petition. Registrar (District Judiciary) will give a note about the contentions raised on ground 'H' of the review petition. Post along with note on 01.02.2023"

7. Accordingly, a note is submitted by the Registrar (District Judiciary). After going through the same, on 01.02.2023, this Court impleaded the High Court of Kerala, represented by the Registrar General as additional respondent and allowed the Administrator of Lakshadweep and Registrar General, High Court of Kerala to file counter affidavit. Thereafter, the additional 18th respondent filed a counter affidavit. After perusing the affidavit filed by the addl. 18th respondent, this Court passed an order on 27.03.2023. The same is extracted hereunder :

"The respondents 1 and 2 will file an affidavit about the averments in the counter affidavit filed by the additional 18th respondent.

The affidavit shall be placed on record before 12.04.2023.

Post on 12.04.2023."

8. Accordingly, respondent Nos. 1 and 2 in these review petitions also filed a counter affidavit. After hearing both sides, the following points are framed for consideration in these review petitions.

- 1) Whether the judgment dated 23.12.2022 in O.P.(Crl.) Nos. 608/2022 and 609/2022 is to be reviewed for the reason that the prima facie findings of this court about the commission of misconduct by the Review petitioner is without appreciating the evidence available in a proper manner.
- 2) Whether Sec.340 Cr.P.C. proceeding initiated against the petitioner is maintainable in the light of the contention raised by the review petitioner in these review petitions.
- 3) In the light of Article 235 of the Constitution of India, whether the 1st respondent, the Administrator, Union territory of Lakshadweep has any disciplinary power over a judicial officer and if it is found that the 1st respondent- Administrator has no power, whether the judgment directing the 1st respondent-Administrator to take disciplinary proceedings is to be reviewed or not.

4) Once a review is allowed on any point/part of a judgment delivered in a writ petition filed under Article 226 or 227 of Constitution of India, whether the judgment in respect of which the review is granted becomes non existent and the case is to be heard again?

Point No.1 - The jurisdiction of this Court to review a judgment invoking the powers under Article 226 and 227 are of course wide. But, it is a settled position that, while considering a review petition, this Court cannot re-appreciate the entire findings in the judgment. The power of review is to be exercised with great caution. The review petition is not an appeal in disguise. The power of review can be exercised for the correction of a mistake but not to substitute a view. The mere possibility of two views on the subject is not a ground for review. [see the judgment in ***Lily Thomas v. Union of India*** [2000 (6) SCC 224]. Therefore, I am of the considered opinion that there is nothing to review the judgment dated 23.12.2022 in OP(Crl) Nos. 608/2022 and 609/2022 on the ground that the prima facie findings of this court about the commission of misconduct by the Review petitioner are without appreciating the evidence available in a proper manner.

Therefore, the 1st point is to be decided against the review petitioner. But I once again make it clear that, when disciplinary proceedings are initiated against the Review Petitioner based on the directions issued in this judgment, the disciplinary authority shall proceed in accordance with law, untrammelled by any observation in this judgment.

Point No.2 - The 2nd point raised by the review petitioner is that Sec.340 Cr.P.C proceedings cannot be initiated against the review petitioner, who is a judicial officer, in the light of the provisions in Judges (Protection) Act, 1985. It is also contended that a preliminary inquiry under Sec.340 Cr.P.C can be initiated by the court, only against a person who appears to have committed an offence referred to in Sec.195(1)(b) Cr.P.C. There is no such finding in the judgment to be reviewed is the submission. After hearing both sides, I am of the considered opinion that, these are contentions which can be raised by the Review Petitioner at the time of preliminary inquiry under Section 340 Cr.P.C. This Court has already issued notice under Sec.340 Cr.P.C. to the review petitioner. He appeared in that proceedings. The petitioner is free to agitate all his contentions in this regard in the preliminary inquiry to be conducted. Therefore, all the contentions raised by the review petitioner regarding the sustainability of Sec.340

Cr.P.C. is left open and the petitioner is free to raise the same in the preliminary inquiry to be conducted as per the impugned judgment. Therefore there is nothing to review the judgment on this ground also.

Point No.3 : - The 3rd point raised by the review petitioner is that, in the light of Article 235 of the Constitution of India, the Administrator, Union Territory of Lakshadweep (Hereinafter mentioned as Administrator) has no authority to initiate disciplinary proceedings against the review petitioner, who is a Judicial officer. I think, there is some force in the above argument. This Court has not considered this point because, hitherto Administrator was acting as the disciplinary authority of the Judicial officers working in Lakshadweep. Since such a point is raised by the review petitioner, the same is to be considered in detail. Article 235 of the Constitution of India is extracted hereunder :

235. **"Control over subordinate courts** *The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may under the law regulating the conditions of his service or as authorising the High Court to deal with him*

otherwise than in accordance with the conditions of his service prescribed under such law "

9. As per Article 235, the control over District Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to persons belonging to judicial service of a State and holding any post inferior to the District Judges shall be vested in the High Court. It is also mentioned in Article 235 that, nothing in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

10. The powers of the High Court under Article 235 of the Constitution of India were considered by the Apex Court in several decisions. The term 'control' mentioned in Article 235 of the Constitution of India was considered in detail by a constitutional bench of the Apex Court in the ***State of West Bengal and another v. Nripendra Nath Bagchi [AIR 1966 SC 447]***. The Apex Court considered this point in detail in paragraphs 11 to 19 of the above judgment. It will be better to extract paragraphs 11 to 19 of the above judgment.

"11. When the Constitution was being drafted the advance made by the 1935 Act was unfortunately lost sight of. The draft Constitution made no mention of the special provisions, not even similar to those made by the Government of India Act, 1935, in respect of the subordinate judiciary. If that had remained, the judicial services would have come under Part XIV dealing with the services in India. An amendment, fortunately, was accepted and led to the inclusion of Arts. 233 to 237. These articles were not placed in the Chapter on services but immediately after the provisions in regard to the High Courts. The articles went a little further than the corresponding sections of the Government of India Act. They vested the "control" of the district courts and the courts subordinate thereto in the High Courts and the main question is what is meant by the word "control". The High Court has held that the word "control" means not only a general superintendence of the working of the courts but includes disciplinary control of the presiding judges, that is to say, the District Judge and judges subordinate to him. It is this conclusion which is challenged before us on various grounds.

12. Mr. B. Sen appearing for the West Bengal Government, contends that the word "control" must be given a restricted meaning. He deduces this (a) on a suggested reading of Art.235 itself and (b) on a comparison of the provisions of Chapter VI with those of Part XIV of the Constitution. We shall examine these two arguments separately as they admit of separate treatment. The first contention is that "control" means only control of the day to day working of the courts and emphasis is laid on the words of Art.235 "district courts" and "courts subordinate thereto". It is pointed out that the expressions "district judge" and "judges subordinate to him" are not used. It is submitted that if the incumbents were mentioned control might have meant disciplinary control but not when the word "court" is used. Lastly, it is

contended that conditions of service are outside "control" envisaged by Art.235 because the conditions of service are to be determined by the Governor in the case of the District Judge and in the case of judges subordinate to the District Judge by the Rules made by the Governor in that behalf after consultation with the State Public Service Commission and with the High Court.

13. We do not accept this construction. The word "control" is not defined in the Constitution at all. In Part XIV which deals with Services under the Union and the States the words "disciplinary control" or "disciplinary jurisdiction" have not at all been used. It is not to be thought that disciplinary jurisdiction of services is not contemplated. In the context the word "control" must, in our judgment, include disciplinary jurisdiction. Indeed, the word may be said to be used as a term of art because the Civil Services (Classification, Control and Appeal) Rules used the word "control" and the only rules which can legitimately come under the word "control" are the Disciplinary Rules. Further, as we have already shown, the history which lies behind the enactment of these articles indicate that "control" was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well the very object would be frustrated. This aid to construction is admissible because to find out the meaning of a law, recourse may legitimately be had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved. The word "control", as we have seen, was used for the first time in the Constitution and it is accompanied by the word "vest" which is a strong word. It shows that the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge.

14. Articles 233 and 235 make a mention of two distinct powers. The first is power of appointments of persons, their postings and promotion and the other is power of control. In the case of the District Judges, appointments of persons to be and posting and promotion are to be made by the Governor but the control over the District Judge is of the High Court. We are not impressed by the argument that the word used is "district court" because the rest of the article clearly indicates that the word "court" is used compendiously to denote not only the court proper but also the presiding Judge. The latter part of Art.235 talks of the man who holds the office. In the case of the judicial service subordinate to the District Judge the appointment has to be made by the Governor in accordance with the rules to be framed after consultation with the State Public Service Commission and the High Court but the power of posting, promotion and grant of leave and the control of the courts are vested in the High Court. What is vested includes disciplinary jurisdiction. Control is useless if it is not accompanied by disciplinary powers. It is not to be expected that the High Court would run to the Government or the Governor in every case of indiscipline however small and which may not even require the punishment of dismissal or removal. These articles go to show that by vesting "control" in the High Court the independence of the subordinate judiciary was in view. This was partly achieved in the Government of India Act, 1935 but it was given effect to fully by the drafters of the present Constitution. This construction is also in accord with the Directive Principles in Art.50 of the Constitution which reads: "50. The State shall take steps to separate the judiciary from the executive in the public services of the State."

15. Mr. Sen next argues that Art.309 to 311 (particularly Art.311) gave a clue to the meaning of the word "control". The argument is that the legislation regarding services of the State falls

within the jurisdiction of the State Legislature and Art.309 gives the power to the State Legislature to regulate the recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the State. This is perhaps true. But Mr. Sen seems to make no distinction, between legislative and executive powers. Under Art.162 the power of the Executive of the State is coextensive with that of the Legislature of the State but all that is subject to the other provisions of the Constitution. That the Legislature has the power to make laws relating to the services does not show that the Executive enjoys corresponding executive power if the Constitution indicates otherwise. Art.310 does no more than state the tenure of the office of the persons serving the Union or the State. That has no bearing upon the present dispute. Art.311 is, therefore, the only article which has relevance. That article reads as follows:

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.

(1) No person who is a member of a civil service of the Union or an all India service or a civil service of the State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. Provided that this clause shall not apply-

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge;

(b) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause:

or

(c) where the President or Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to give to that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final."

16. Mr. Sen argues somewhat syllogistically as follows: Under clause (1) of the Article no person in the service of the Union or the State can be dismissed or removed by an authority subordinate to that by which he is appointed. Under cl. (2) no such person can be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause. Reading the above with Arts.233 and 234 he contends, and rightly, that a District Judge or a Judge subordinate to the District Judge cannot be dismissed or removed by any authority other than the Governor. Mr. Sen argues that this power of the Governor determines that the enquiry must be made by or under the directions of the Governor or the Government. To lend support to this contention Mr. Sen draws pointed attention to provisos (b) and (c) to cl. (2). He says that by reason of proviso (b) cl. (2) does not apply if the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that it is not reasonably practicable to give to that person an opportunity of showing cause and under cl. (3) the decision of that authority is made final. Again, by the proviso, (c), says he, the Governor may dispense with the enquiry altogether if he is satisfied that in the interest of the security of the State it is not expedient to give to any person an opportunity of showing cause. Mr. Sen contends that as the Governor alone can appoint or dismiss or remove District Judges and as he alone can decide

whether, for any of the two reasons mentioned in provisos (b) and (c) an opportunity to a District Judge of showing cause against the charges levelled against him shall be denied, the Governor alone can initiate enquiries and cause them to be held and the High Court cannot claim to hold them. In this way, he contends, the extent of control exercisable by the High Courts under Art.235 must be so cut down as to keep disciplinary jurisdiction out.

17. This argument was not presented in the High Court and does credit to the ingenuity of Mr. Sen but it is fallacious. That the Governor appoints District Judges and the Governor alone can dismiss or remove them goes without saying. That does not impinge upon the control of the High Court. It only means that the High Court cannot appoint or dismiss or remove District Judges. In the same way the High Court cannot use the special jurisdiction conferred by the two provisos. The High Court cannot decide that it is not reasonably practicable to give a District Judge an opportunity of showing cause or that in the interest of the security of the State it is not expedient to give such an opportunity. This the Governor alone can decide. That certain powers are to be exercised by the Governor and not by the High Court does not necessarily take away other powers from the High Courts. The provisos can be given their full effect without giving rise to other implications. It is obvious that if a case arose for the exercise of the special powers under the two provisos, the High Court must leave the matter to the Governor. In this connection we may incidentally add that we have no doubt that in exercising these special powers in relation to inquiries against District Judges, the Governor will always have regard to the opinion of the High Court in the matter. This will be so whoever be the inquiring authority in the State. But this does not lead to the further conclusion that the High Court must not hold the enquiry any more than that the Governor should personally hold the enquiry.

18. There is, therefore, nothing in Art.311 which compels the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry if Art.235 vested such a power in it. In our judgment, the control which is vested in the High Court is a complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges. Within the exercise of the control vested in the High Court, the High Court can hold enquiries, impose punishments other than dismissal or removal, subject however to the conditions of service, to a right of appeal if granted by the conditions of service, to and to the giving of an opportunity of showing cause as required by cl. (2) of Art.311 unless such opportunity is dispensed with by the Governor acting under the provisos (b) and (c) to that clause. The High Court alone could have held the enquiry in this case. To hold otherwise will be to reverse the policy which has moved determinedly in this direction.

19. The High Court was thus right in its conclusions. The appeal fails and is dismissed. It is clear that the conduct of Bagchi may not now be inquired into but that is a result which we can only regret. In the circumstances we make no order about costs."
(Underline supplied)

11. In **State of Assam v. Ranga Muhammad and others (AIR 1967 SC 903)** another Constitutional Bench of the Apex Court considered the powers of the High Court in the light of Article 235 of the Constitution of India after referring to Nripendra Nath Bagchi's case (Supra). It will be better to extract paragraph 8 and 10 of the above judgment.

"8. The history of the Arts. 233-237 in Chapter VI (Subordinate Courts) of Part VI of the Constitution, was considered elaborately in the State of West Bengal v. Nripendranath Bagchi, (1966) 1 SCR 771: (AIR 1966 SC 447), and it was pointed out that the articles were intended to make the High Court the sole custodian of control over the judiciary except in so far as exclusive jurisdiction was conferred upon the Governor in regard to the appointment and posting and promotion of District Judges. Therefore, unless the transfer of a District Judge can be said to be a "posting" of a District Judge the High Court must obviously enjoy the exclusive power.

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10. This is, of course, as it should be. The High Court is in the day to day control of Courts and knows the capacity for work of individuals and the requirements of a particular station or Court. The High Court is better suited to make transfers than a Minister. For, however, well-meaning a Minister may be he can never possess the same intimate knowledge of the working of the judiciary as a whole and of individual Judges, as the High Court. He must depend on his department for information. The Chief Justice and his colleagues know these matters and deal with them personally. There is less chance of being influenced by secretaries who may withhold some vital information if they are interested themselves. It is also well known that all stations are not similar in climate and education, medical and other facilities. Some are good stations and some are not so good. There is less chance of success for a person seeking advantage for himself if the Chief Justice and his colleagues, with personal information, deal with the matter, than when a Minister deals with it on notes and information supplied by a secretary. The reason of the rule and the sense of the matter combine to suggest the narrow meaning accepted by us. The policy displayed by the Constitution has been in this direction as has been explained in earlier cases of this Court. The High Court was thus right in its conclusion that the powers of the Governor cease after he has appointed or promoted a person to be a District Judge and assigned him to a post in cadre. Thereafter, transfer of incumbents is a matter within the control of District Courts including the control of persons presiding there as explained in the cited case.

12. In Thakur Jugal Kishore Sinha v. The Sitamarhi Central Co-

operative Bank Ltd. (AIR 1967 SC 1494) also, the apex court considered article 235 of the Constitution of India. It will be better to extract paragraph 25 of the above judgment.

25. It may not be out of place to note that "subordinate Courts" have been dealt with in Chap. VI of the Constitution and Art. 235 of the Constitution gives the High Court "the control over District Courts and Courts subordinate thereto" by providing for powers like the posting and promotion, and the grant of leave to persons belonging to the judicial service of a State. Such control is not judicial control and a Court may be subordinate to a High Court for purposes other than judicial control. Even before the framing of the Constitution S. 2 of the Contempt of Courts Act, 1926 made express provision giving the High Courts in India the same jurisdiction, power and authority in accordance with the same practice and procedure in respect of contempt of Courts subordinate to them as they had in respect of contempts of themselves. The preamble to the Act shows that it was enacted for the purpose of resolving doubts as to the powers of High Courts to punish contempts of Courts and to define and limit the powers exercisable by the High Courts and Chief Courts in punishing contempts of Court. The contempt of Courts Act, 1952 repealed the Act of 1926 and re-enacted the provisions thereof in substantially the same language. In England "the Queen's Bench Division has a general superintendence over the proceedings of inferior Courts, not only to prevent them from exceeding their jurisdiction or otherwise acting contrary to law, but also to prevent persons from interfering with the course of justice in such courts": (See Halsbury's Laws of England - Third Edition), Vol. 8, p. 19.

13. In **State of Orissa v. Sudhansu Sekhar Misra and Others (AIR 1968 SC 647)**, the apex Court once again observed that the "Control" mentioned in the Article 235 of the Constitution includes disciplinary proceedings. It will be better to extract paragraph 12 of the above judgment here:

12. Now let us consider the ratio of the decisions in *Nripendra Nath Bagchi's case*, 1966-1 SCR 771 (AIR 1966 SC 447) and *Ranga Mahammad's case*, 1967-1 SCR 454 (AIR 1967 SC 903). In *Bagchi's case*, 1966-1 SCR 771 (AIR 1866 SC 447) this Court laid down that the word "control" found in Article 235 includes disciplinary jurisdiction as well. The only question that fell for decision in that case WAS whether the government of West Bengal was competent to institute disciplinary proceedings against an additional district and sessions judge. This court upheld the decision of the High Court of Calcutta holding that it had no such jurisdiction. That was the single question decided in that case. It is true that in the course of the judgment, this Court observed that the High Court is made the sole custodian of the control of the judiciary, but that observation was made only in the context of the question that arose for decision. In *Ranga Mahammad's case*, 1967-1 SCR 454 (AIR 1967 = SC 903) the point that arose for decision was as to who was the authority to transfer a district Judge, the State Government or the High Court. In that case, the State Government ordered the transfer of certain district judges without even consulting the High Court. The rule laid down in that decision is of no assistance in determining the question as to whether the High Court has power to fill up some of the posts in the Secretariat. In the course of that judgment, this Court observed (at p 459 of the report of SCR) = (at p. 906 of AIR):

"The question we have posed resolves itself into a question of a very different but somewhat limited form, namely, whether the power to transfer District Judges is included in the 'control' exercisable by the High Court over District Courts under Article 235, or in the power of 'appointment of persons to be and the posting and promotion of district judges' which is to be exercised by the Governor under Article 233 albeit in consultation with the High Court. If the sense of the matter be the former, then the High Court and if the latter, the Governor, would possess that power. The right approach is, therefore, to enquire what is meant by 'posting' and whether the term does not mean the initial posting of a District Judge on appointment or promotion to a vacancy in the cadre, permanent or temporary. If this be the meaning, as the High Court holds, then the transfer of District Judges already appointed or promoted and posted in the cadre must necessarily be outside the power of the Governor and fall to be made by the High Court as part of the control vested in it-by Article 235."

After analysing Articles 233 and 235 and noticing the development of the law on the subject this Court held that under Art. 233, the Governor is only concerned with the appointment, promotion and posting to the cadre of district judges but not with the transfer of district judges already appointed or promoted and posted to the cadre which power is vested in the High Court under Article 235 as the control given to the High Court over the district courts under that Article includes control over the officers who preside over those courts.

14. In **G.S.Nagmoti v. State of Mysore** [(1969) 3 SCC 325], the apex court again considered and explained the meaning of "Control" in Article 235 of the Constitution of India. The relevant paragraph of the above judgment is extracted hereunder:

"4. In State of West Bengal v. Nripendra Nath Bagchi it was held by this Court that the word "control" as used in Article 235 includes disciplinary control or jurisdiction over District Judges. By that Article the High Court is made the sole custodian of the control over the judiciary. Control, therefore, is not merely the power to arrange the day to day working of the court but contemplates disciplinary jurisdiction over the presiding Judge. The question that fell for consideration in that case was whether the enquiry ordered by the Government and conducted by an Executive Officer of the Government against a District and Sessions Judge contravened the provisions of Article 235 of the Constitution which vested in the High Court the control over the District Court and the Courts subordinate thereto. In our opinion the principle of this decision applies to the present case. It was, however, contended on behalf of the respondent that by its letter, dated October 23, 1963 the High Court had itself requested the Government to appoint Mr Justice K.S. Hegde as Specially Empowered Authority to hold departmental enquiry into the conduct of the appellant. It was said that the provisions of Article 235 of the Constitution have been substantially complied with. A copy of the letter of the High Court is Enclosure 1 to the affidavit filed by the respondent in this Court. It is not possible for us to examine the validity of this argument because the writ petition of the appellant was dismissed in limine

by the High Court and we have not the advantage of the judgment of the High Court on the disputed facts of this case.”

15. From the authoritative decisions of the apex court extracted above, it is clear that the "Control" mentioned in Article 235 of the Constitution of India includes taking disciplinary proceeding also against the presiding officers of District courts and courts subordinate thereto. A counter affidavit is filed by respondents 1 and 2 in RP No.97 of 2023. In the counter affidavit, the Administrator submitted that the review petitioner, the former Sub Judge/Chief Judicial Magistrate, Amini and the Secretary (District Legal Services Authority) was placed under suspension in compliance to the judgment dated 23.12.2022 of this Court. It is submitted that Rule 8 of the CCS (CCA) Rules, 1965 provides that all appointment to all Central Civil Services Group A and Central Civil Posts Group A shall be made by the President. Ext.R1(b) is the CCS (CCA) Rules 1965. It is submitted that as per the memorandum issued on behalf of the Ministry of Personal, Public Grievances and Pension on 14.07.2005, as evident by Ext.R1(c), stipulates that all the appointments made to the Central Civil Services and Posts, Group A under the Lakshadweep Administration shall be made by the Hon'ble Administrator of the Lakshadweep, except for those Group A posts borne in common Organised cadre. It is also

submitted that as per Clause 5(ii) of the Constitution of Civil Codes in the Laccadive, Minicoy and Amindivi Islands (Civil Codes) Regulations 1965 the Administrator may, after consultation with the High Court, make rules as to the qualification of Offices in the Islands and other Persons, who may be appointed as Subordinate Judges and Munsiffs. Ext.R1(d) and R1(e) are the relevant pages of Laccadive, Minicoy and Amindivi Islands (Civil Codes) Regulations 1965 along with extraordinary Gazette published by notification F No.17/5/85. It is submitted that the review petitioner was promoted to the post of Sub Judge – cum – Chief Judicial Magistrate, Union Territory of Lakshadweep and was posted at Amini by order dated 03.03.2014. Ext.R1(f) is the order. It is submitted that the 1st respondents in the review petition issued orders strictly in accordance with law.

16. A counter affidavit is filed by the 18th respondent through the Registrar General, High Court of Kerala. The High Court relying on the judgment of the Madras High Court in **P. Manogarane Secretary, Pondicherry Bar Association, Pondicherry and another v. Union of India and others** [1993 (2) MLJ 50], submitted that the High Court had got control over the judicial officers of Lakshadweep. It will be better to extract paragraphs 20 to 23 of the counter affidavit

dated 17.03.2023 of the additional 18th respondent.

20. *It is also submitted that in the absence of any specific Rules framed by the Lakshadweep Administration with regard to disciplinary proceedings of Judicial Officers, it is evident from the order of suspension of review petitioner issued by the Administrator, that the Central Civil Services (Classification, Control and Appeal) Rules, 1965 has been adopted by the Administration in this case. As per Part IV, Rule 10 of the said Rules, the appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension. The Administrator is the Appointing Authority as well as the Authority competent to impose all penalties as per the Rules. The review petitioner is classified as a General Central Service Group 'A' (Gazetted Non-Ministerial) Officer as per the Lakshadweep Rules as aforementioned.*

21. *In regard to District Judiciary in the State of Kerala, the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960 governs the provisions related with disciplinary action against Judicial Officers. As per the Rule 10 under Part IV, this respondent is the competent Authority to place a member in the Kerala Judicial Service under suspension and as per Rule 13 in the said Rules, the Disciplinary Authority to impose the penalties specified in items (i), (iii), (iv), (v), (VA) (vii) and (viii) of sub-rule (1) under Rule 11 in respect of Judicial Officers except Munsiff-Magistrates in the District Judiciary shall be this respondent and in cases dealing with item nos. (vi), (vii), and (viii) of sub-rule (1) of Rule 11 on District and Sessions Judges or Munsiff-Magistrates in the District Judiciary, shall be the Governor. It is also provided that the Governor shall exercise the power conferred by the said provision only after obtaining a report from this respondent.*

22. *Unlike the Kerala Civil Services (Classification, Control and Appeal) Rules as aforementioned, there is no express exclusion of the service of the Judicial Officers from the purview of the Central Rules, with regard to disciplinary proceedings against Judicial Officers.*

23. *In view of Article 235, it is obvious that the administrative*

control with regard to Judicial Officers also includes disciplinary control over the Judicial Officers, which embraces the power to suspend. Hence, the power to suspend Judicial Officers vests with the High Court. As the RP 94/2023 in OP (Crl) 609/2022 is pending before the Hon'ble High Court, it may please be considered as to whether necessary directions may be issued on the Judicial side, for framing/amendment of Rules by the Lakshadweep Administration, in line with the Constitutional provisions, so as to bring in exclusive and comprehensive administrative control by this respondent over Judicial Officers in the Union Territory of Lakshadweep, as adopted by the Madras High Court in the case of the Union Territory of Pondicherry.

17. In **Manogarane's** case (supra), the Madras High Court observed like this:

"152. It was brought to my notice at the time of hearing that judicial separation is yet to take place in the Union Territory of Pondicherry. Even today, I am told, the control of Subordinate Judicial Officers, which should be exercised by the High Court under Article 234 of the Constitution, is still left with the Government of Pondicherry (Law Department). This is evident from the various orders such as posting, transfers, deputation orders, orders granting leave etc. are being issued by the Law Department, Government of Pondicherry, to the Judicial Officers in the Pondicherry Judicial Service by simply marking copies to the High Court. Therefore, it is high time that the High Court should assume its constitutional duty in respect of the Pondicherry Judicial Service under Article 235 of the Constitution, without any further loss of time. The Government of Pondicherry shall discontinue the said practice hitherto followed and shall await instructions from the High Court, Madras, in matters relating to transfers, postings, grant of leave, disciplinary proceedings etc."

18. In the affidavit, it is submitted that the Division Bench of the Madras High Court in WA Nos.327 and 328 of 1993, which was filed against the above judgment, held as follows:

"8. The control over the subordinate judiciary of the Union Territory of Pondicherry is vested in the High Court of Madras and the powers that are available to it under Chapters V and VI of Part VI of the Constitution are exercisable by it over the subordinate judiciary of the Union Territory of Pondicherry. It is also submitted by learned senior counsel appearing for the appellants that in the event this Court were to hold that the powers under Chapter V and VI of Part VI of the Constitution are exercisable by the High Court of Madras over the subordinate judiciary of the Union Territory of Pondicherry, the Government of Pondicherry will suitably amend the Pondicherry Judicial Service Rules, 1980 and also other connected Acts and the Rules pertaining to the jurisdiction of the High Court over the subordinate judiciary and also the establishment of the Courts. In view of the above undertaking given on behalf of the Government of Pondicherry, which we place on record, we do not consider it necessary to issue any mandamus to amend the Pondicherry Judicial Service Rules and the provisions of the other enactments and the Rules, except stating that the undertaking shall be complied with, within a period of six months from today. We also further direct that the High Court of Madras shall also take such steps as are necessary for the purpose of exercising its control over the subordinate judiciary in the Union Territory of Pondicherry, as per the provisions contained in Chapters V and VI of Part VI of the Constitution of India."

19. In the light of the above dictum laid down by the apex Court and also the Madras High Court, I am of the considered opinion that the "Control" of the District Courts and the Courts subordinate thereto including the Courts situated in Lakshadweep are with the High Court of Kerala. The "Control" mentioned in Article 235 of the Constitution of India includes taking disciplinary proceedings against the Presiding Officers of District Courts and the Courts subordinates thereto. If there is any rule framed in violation

of Article 235 of the Constitution, the same need not be looked into, because Article 235 of the Constitution prevails over all other rules. The Union territory of Lakshadweep is free to make appropriate rules, if necessary, in tune with Article 235 of the Constitution of India. The Standing Counsel for respondents 1 and 2 in the review petition conceded that there is no rule framed except Ext.R1(b) and R1(d). There is nothing in these rules to show that the Administrator has got disciplinary power over the Presiding Offices of District Courts and the Courts subordinate thereto. Therefore, I am of the considered opinion that the directions in the judgment dated 23.12.2022 in O.P.(Crl.) Nos.608 and 609 of 2022 directing the Administrator, Union Territory of Lakshadweep, to suspend the review petitioner and to conduct a detailed enquiry to be reviewed and that direction is to be issued to the High Court of Kerala. Therefore, the direction No.(1) in the judgment dated 23.12.2022 in O.P.(Crl.)Nos.608 and 609 of 2022 is to be reviewed and modified by directing the High Court of Kerala to take appropriate action against the review petitioner and conduct a detailed enquiry about his action mentioned in the judgment, in accordance with law. The review petitioner is deemed to be in suspension by virtue of this order from 23.12.2022 and the High Court of Kerala will pass appropriate consequential orders as directed in the judgment in

O.P.(Crl) Nos. 608 & 609 of 2022.

Point No.4 :

20. The Review petitioner raised a legal question. It is submitted by the review petitioner that, once a review is ordered in a judgment/order, that judgment/order becomes non-existent, and then it is the function of the court to pass fresh judgment/order. The counsel for the petitioner relied on the judgment of this court in **Kizhakkekkara Thomas v. State of Kerala and another [2011 (3) KHC 819]** and **Bhargavi Amma v. Sankara Panicker [1961 KHC 386]**. The senior counsel argued that, if this Court decided that a portion of the judgment is to be reviewed, then the entire judgment is to be recalled and there cannot be any review of a portion of the judgment in the light of the above decision. I am of the considered opinion that, the above argument cannot be accepted in a review petition filed in a judgment delivered in a writ petition filed under Article 226 and 227 of the Constitution of India. The power to review its judgments, orders or directions issued under Article 226 and 227 of the Constitution is part and parcel of the constitutional powers of the High Court, referable to those Articles and available under those constitutional provisions themselves and would not be regulated by the provisions of Civil Procedure Code. This Court held

so in **Secretary, Ministry of Health and Family Welfare Department and others V. Aswathy Elsa Mathew [2008 (2) KHC 414]**. It will be better to extract the relevant portion of the above judgment:

2. I shall first deal with the question of maintainability. The object of Art.226 is to provide a quick and inexpensive remedy to aggrieved parties. In Puran Singh v. State of Punjab, 1996 KHC 173 : 1996 (1) KLT SN 14 : 1996 (2) SCC 205 : AIR 1996 SC 1092 rendered after the insertion of the Explanation to S.141 CPC, by the amendment of 1976, it has been held that when the Constitution has vested extraordinary power in the High Court under Art.226 and Art.227, the procedures for exercising such power and jurisdiction have to be traced and found in those provisions themselves. After noticing that no useful purpose will be served by limiting the power of the High Court by the procedural provisions prescribed in CPC, it was held that the provisions and procedures prescribed under CPC can be taken as guide on many questions, while exercising power in writ jurisdiction. Therefore, it has to be understood that while the principles underlining the CPC can be taken as guiding beacons in the exercise of authority under Art.226 and Art.227 as part of the justice delivery system, the exercise of writ jurisdiction is not confined or controlled by the provisions of the CPC. The power to review its judgments, orders or directions issued under Art.226 and Art.227 of the Constitution is part and parcel of the constitutional powers of the High Court referable to those articles and is available under those constitutional provisions themselves and would not be regulated by the provisions of the CPC. Therefore, an application for review of a judgment, writ, direction or order issued in writ jurisdiction would not stand regulated by the provisions relating to review in the CPC.

3. In Divisional Forest Officer v. Cherian, 1982 KHC 165 : 1982 KLJ 507 : AIR 1982 Ker. 363 : 1982 KLN 646 : 1982 KLT 682 this Court laid down that the High Court can review an order and correct an error committed by it to meet the ends of justice. This is available within the wide sweep of the High Court's powers under Art.226 of the Constitution. In Kokers 70 MM Movie House v. Kerala State Electricity Board, 1984 KHC 266 : 1984 KLJ 392 : 1984 KLT 529, it has been clearly noticed that in exercise of powers under Art.226 of the Constitution, the writ Court has the power to correct errors and omissions rendered in proceedings in exercise of powers under Art.226 of the Constitution.

21. It is true that the above judgment was reconsidered in **Pookunju A. V. State of Kerala and others [2012 (4) KLT 509]**. In **Pookunju's** case this Court observed that, Article 124 of the Limitation Act is applicable if a review petition is filed in the writ petition. But this court has not overruled the dictum laid down in **Aswathy Elsa Mathew's case (*supra*)** to the effect that, the power of review in the writ petition under Article 226 and 227 of the Constitution of India could be traced independent of the provisions of the Code of Civil Procedure. I am in respectful agreement with the above observation in **Aswathy Elsa Mathew's case (*supra*)**. Therefore, the power of this court to review a judgment, writ, direction or order issued in the jurisdiction under Article 226 and 227 of the Constitution of India would not stand regulated by the provisions relating to review in the Civil Procedure Code. A perusal of the judgment relied by the review petitioner to support his contentions would show that, those decisions are rendered by this court in a review petition filed under Order 47 Rule 1 of the Civil Procedure Code. The impugned orders in those cases are all orders passed by the Civil Court invoking the powers under the Civil Procedure Code. A perusal of the facts in **Kizhakkekara Thomas case (*supra*)**, it is clear that the impugned order in that case was an

order passed by the subordinate judge. Therefore the dictum laid down by this court in **Kizhakkekara Thomas** case is not applicable while considering a review petition filed in a judgment delivered in a writ petition filed under Article 226 and 227 of the Constitution of India. The powers of this court under Article 226 and 227 of the Constitution are wide. The same is not regulated by the provisions of the Civil Procedure Code, but of course, the principle of review can be adopted. Moreover, an application for review of judgment or order issued by the High Court in writ petition would be governed by Limitation Act as held in **Pookunju's case** (*supra*)

22. Similarly the dictum laid down in **Bhargavi Amma's** case (*supra*) is also not applicable to the facts and circumstances of this case. The orders impugned in that case were also orders passed by the civil court invoking the powers under the Civil Procedure Code. As I observed earlier, the provisions of the Civil Procedure Code is not as such applicable while deciding a review petition filed in a writ petition under Article 226 and 227 of the Constitution of India. That can only be a guiding principle. The jurisdiction of this court under Article 226 and 227 of the Constitution of India, to review a judgment is wide and not controlled by the provisions of the Civil Procedure Code. Therefore, the contention of the review petitioner that a portion of the judgment/order cannot be reviewed is

unsustainable. A portion of the judgment/order can be reviewed invoking the powers under Article 226 and 227 of the Constitution in a judgment/order rendered in a writ petition or Original Petition, if it will not go against the other findings in the judgment/order.

23. Therefore, these review petitions are allowed in part with the following directions:

- 1) The contention of the review petitioner that the judgment dated 23.12.2022 in O.P.(Crl.)Nos.608/2022 and 609/2022 are to be reviewed for the reason that, the prima facie findings of this court about the commission of misconduct by the Review petitioner is without appreciating the evidence available in a proper manner is rejected. But I make it clear that, when disciplinary proceedings are initiated against the review petitioner, the disciplinary authority will decide the matter untrammelled by any observation in the judgment dated 23.12.2022 in O.P. (Crl.)Nos.608/2022 and 609/2022.
- 2) The contentions raised by the review petitioner in these review petitions regarding the maintainability of Sec.340 Cr.P.C proceedings are left open and he is free to agitate the same separately in the preliminary inquiry under Sec.340 Cr.P.C.

3) In the light of Article 235 of the Constitution of India, it is declared that the control over the district court and courts subordinate thereto mentioned in Article 235 of the Constitution of India includes the power of disciplinary proceedings against the presiding officers of district court and courts subordinate thereto. Since the district court and subordinate courts in Lakshadweep are under the supervision of the High Court of Kerala, it is declared that the High Court of Kerala has got the power to initiate disciplinary proceedings against the presiding officers of the district court and courts subordinate thereto in the Lakshadweep Islands. I also clarify that the 1st respondent is free to frame Rules in tune with Article 235 of the Constitution of India, if necessary. Therefore, observation in paragraph No.24 of the judgment dated 23.12.2022 in O.P.(Crl.) Nos.608/2022 and 609/2022 to the effect that "the disciplinary authority of the 3rd respondent is the Administrator, Union Territory of Lakshadweep", is reviewed and deleted to the effect that "the disciplinary authority of the additional 3rd respondent is the High Court of Kerala". Consequential corrections are also ordered in Paragraph 24 of the judgment. Similarly, the first direction issued in paragraph 24 of the judgment dated 23.12.2022 in

O.P.(Crl.)Nos.608/2022 and 609/2022 to the Administrator of Union Territory of Lakshadweep is also reviewed, and those directions are issued to the High Court of Kerala. Till High Court of Kerala Kerala pass consequential order as directed above, the review petitioner is deemed to be in suspension. All other findings and directions in the judgment dated 23.12.2022 in O.P.(Crl.)Nos.608/2022 and 609/2022 will stand, except the portion reviewed as stated above.

Sd/-

**P.V.KUNHIKRISHNAN
JUDGE**

APPENDIX OF RP 94/2023

PETITIONER ANNEXURES

Annexure A	TRUE COPY OF THE PROCEEDINGS DATED 14-12-2022 OF THIS HON'BLE COURT
Annexure B	THE TRUE COPY OF THE ORDER DATED 22-11-2022 ISSUED BY SPECIAL SECRETARY (LEGAL), ADMINISTRATION OF THE UNION TERRITORY OF LAKSHADWEEP
AnnexureC	TRUE COPY OF THE ORDER NO. F.NO.12/87/2022- SERVICES/2744 DATED 26-12-2022 ISSUED BY ADVISOR TO THE ADMINISTRATOR, LAKSHADWEEP ADMINISTRATION, KAVARATTI
Annexure D	. TRUE COPY ORDER F.NO.12/87/2022- SERVICES/166 DATED 18-1-2022
Annexure E	TRUE COPY OF THE SCAN REPORT DATED 2ND FEBRUARY 2023
Annexure F	TRUE COPY OF THE MEDICAL CERTIFICATE DATED 08/02/2023
Annexure G	TRUE COPY REQUEST TO THE HON'BLE DISTRICT JUDGE LAKSHADWEEP FOR PERMISSION TO LEAVE KAVARATTI FOR DATED 29/12/2022
Annexure H	TRUE COPY OF THE REPRESENTATION DATED 21/02/2023

APPENDIX OF RP 97/2023

PETITIONER ANNEXURES

Annexure A	TRUE COPY OF THE PROCEEDINGS DATED 14-12-2022 OF THIS HON'BLE COURT
Annexure B	THE TRUE COPY OF THE ORDER DATED 22-11-2022 ISSUED BY SPECIAL SECRETARY (LEGAL), ADMINISTRATION OF THE UNION TERRITORY OF LAKSHADWEEP
Annexure C	TRUE COPY OF THE ORDER NO. F.NO.12/87/2022- SERVICES/2744 DATED 26-12-2022 ISSUED BY ADVISOR TO THE ADMINISTRATOR, LAKSHADWEEP ADMINISTRATION, KAVARATTI
Annexure D	TRUE COPY OF THE ORDER F.NO.12/87/2022 SERVICES DATED 10.02.2023
Annexure E	TRUE COPY OF THE SCAN REPORT DATED 2ND FEBRUARY 2023
Annexure F	TRUE COPY OF THE MEDICAL CERTIFICATE DATED 08/02/2023
Annexure G	TRUE COPY OF THE REPRESENTATION DATED 29/12/2022

RESPONDENT EXHIBITS

Exhibit R1(a)	A true copy of the Order F. No. 12/87/2022- Services/2744 dated 26.12.2022 issued on behalf of the 1st Respondent
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PETITIONER ANNEXURES

Annexure H	TRUE COPY OF THE REPRESENTATION DATED 21/02/2023
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RESPONDENT EXHIBITS

Exhibit R1(b)	A true copy of the relevant pages of the CCS(CCA) Rules, 1965
Exhibit R1(c)	A true copy of the Order F.No.11012/12/2004-

Estt.(A) dated 14.07.2005 issued on behalf of the Ministry of Personnel, Public Grievances and Pensions

Exhibit R1(d)

A true copy of the relevant pages of the Laccadive, Minicoy and Amindivi Islands (Civil Courts) Regulations, 1965

Exhibit R1(e)

A true copy of the notification F.No. 17/5/85-Services dated 15.10.1991

Exhibit R1(f)

A true copy of the Order F.No. 17/01/2013-Services dated 03.03.2014 issued on behalf of the 1st Respondent