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V.S. ACHUTHANANDAN

v.

R. BALAKRISHNA PILLAI & ORS.  
(Criminal Appeal No. 350 of 2006)

B

FEBRUARY 10, 2011

[P. SATHASIVAM AND DR. B.S. CHAUHAN, JJ.]

CODE OF CRIMINAL PROCEDURE, 1973 :

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*Appeal against acquittal –Jurisdiction of appellate court –Held: The Code puts no limitation on exercise of powers of appellate court either on questions of fact or of law –However, an appellate court must bear in mind that in case of acquittal, there is double presumption in favour of accused – Constitution of India, 1950 –Article 136.*

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CONSTITUTION OF INDIA, 1950 :

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*Article 136 –Appeal by way of special leave – Filed by non-complainant/non party –Maintainability of –Conviction by trial court of a Minister and higher officials of State Electricity Board –For entering into conspiracy and awarding contract to accused-contractor at exorbitant rates causing huge loss to Board –Acquittal by High Court – Appeal by erstwhile leader of opposition party –Held: In the instant case, certain special features exist –State has not filed appeal –Taking note of the importance of the issue, appellant had earlier approached the Supreme Court when State wanted to close the prosecution against all the accused including the Minister, and accepting appellant’s claim Special Judge was allowed to proceed in the case, which culminated in conviction of the accused by the Special Court –No objection as to locus of the appellant was raised on the earlier occasion –In view of the special circumstances, the instant appeal by the appellant against*

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order of acquittal passed by the High Court is maintainable A  
-Locus standi.

PENAL CODE, 1860 :

ss. 120-B and 409, and ss. 5(1)(C) and 5(2) of Prevention B  
of Corruption Act read with s. 120-B IPC -Contract awarded  
by State Electricity Board to accused-contractor on exorbitant  
rates -Member of the Board, Member of Consultative Council  
of the Board, Minister for Electricity in the State Government,  
the contractor along with others prosecuted -Death of C  
contractor and another accused -Conviction by trial court of  
the Member of the Board, Member of its Consultative Council  
and the Minister -Acquittal by High Court -Held : The Board  
is empowered with the authority to award contracts, but being  
a Public Undertaking it is not expected to accept tenders at  
exorbitant rates causing loss to the Board -Except on policy D  
matters the State Government had no role to play in the affairs  
of the Board -The evidence clearly shows that the Minister  
concerned used to interfere in awarding contracts of the Board  
and the accused-contractor had been chosen in advance by  
him -The evidence indicates that the conspiracy to award the E  
work to the accused-contractor at exorbitant rates originated  
even prior to submission of tenders -Special Court has rightly  
concluded that a criminal conspiracy was hatched out at the  
instance of the Minister concerned and the Member of the  
Consultative Council -Prosecution has established against F  
the three accused-appellants that the contract was awarded  
to the accused-contractor at and exorbitant rates -Besides the  
accused-contractor was favoured with special conditions in the  
contract causing further loss to the Board - There were  
procedural irregularities and omissions in dealing with the G  
tenders and hasty steps were taken in awarding the contract  
in favour of the accused-contractor- Special Court accepting  
the prosecution case, rightly convicted the accused -High  
Court committed grave error in acquitting the accused without  
adverting to reliable and acceptable evidence adduced by H

- A *prosecution –Judgment of High Court set aside and conviction of all the three accused as recorded by Special Court upheld –However, keeping in view the facts and circumstances of the case, and the fact that the accused have undergone agony of the proceedings for nearly two decades,*
- B *accused sentenced to rigorous imprisonment for one year with fine of Rs. 10,000/- each – Kerala State Electricity Board Tender Regulations –Regulation 25 (C).*

### ADMINISTRATION OF CRIMINAL JUSTICE :

- C *Disposal of cases relating to corruption by public servants –Held: When a matter of this nature is entrusted to a Special Court or a regular court, such trials should be given priority and concluded within a reasonable time –High Courts are expected to monitor and even call for quarterly report from*
- D *courts concerned for speedy disposal –Inasmuch as accused is entitled to speedy justice, it is the duty of all in charge of dispensation of justice to see that the issue reaches its end as early as possible –Constitution of India, 1950 –Article 227.*

- E **The respondents (A-1, A-3 and A-6) along with others were prosecuted for various offences punishable under the IPC and the Prevention of Corruption Act, in connection with awarding of a contract relating to the works of power tunnel and surge shaft after completion of the Dam under the Idamalayar Hydro Electric Power**
- F **Project in the State of Kerala (Idamalayar contract). The prosecution case was that as per decision of the Kerala State Electricity Board (the Board), the contract relating to power tunnel was awarded on 19.11.1982 to A-4 at 188% above the Probable Amount of Contract (PAC) and**
- G **the work relating to surge shaft and allied works at 162% above the estimated amount with many special conditions involving heavy financial implications at the expense of the Board; that A-1 was the Minister for Electricity in the State Government at the relevant time**
- H **and at his instance, the Board awarded the contract to**

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A-4. A-3 was the Member in the Consultative Committee of the Board and A-6 was the Member of the Board at the relevant time. The work carried out by the contractor revealed several leaks and cracks and other defects, were revealed in the work carried out by the contractor in the tunnel, which attracted public attraction and the matter was also discussed in the State Legislative Assembly and, ultimately, led to prosecution of several persons including the appellants. During the trial A-4 and A-7 died, A-22 became insane and some accused were discharged. The trial court convicted A-1, A-3 and A-6 of offences punishable u/ss 120-B and 409 IPC and ss. 5(1) (c) and 5(2) of the Prevention of Corruption Act read with s. 120-B IPC and sentenced each of them to 5 years RI and to pay a fine of Rs. 10,000/- each. All other accused were acquitted. All the three convicts filed appeals before the High Court, which acquitted them of all the charges. Aggrieved, the appellant, who was the leader of the Opposition in the State Assembly at the relevant time, filed the appeal.

It was contended for the appellant that (i) there was enough material to show that A-1 was very much interested in favour of A-3 and with the connivance/ assistance of the Board officials, more particularly, through A-6, the Member of the Board, made the Board to accept the tender offered by A-4 at exorbitant rates with various special conditions contrary to the norms and circulars/procedures of the Board, and there was inordinate delay in awarding the contract; and (ii) that the criminal breach of trust was committed by the accused: (a) by awarding both the works of Idamalayar contract at very high and exorbitant rates with special conditions having heavy financial implications; (b) by reducing the retention and security amount; (c) by allowing the contractor to return only fifty per cent of the empty

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A cement bags; and (d) by accepting the special condition for the sale of T & P items (tools & plants) which could not be sold as per the general conditions of the contract.

The respondents' case, on the other hand, was that:  
B (i) inasmuch as the High Court acquitted all the accused in respect of all the charges on appreciation of oral and documentary evidence, interference by Supreme Court was very limited; in the absence of perversity in such conclusion, normally, the Court would not interfere with the order of acquittal; (ii) that the outcome of the contract  
C in favour of A-4 was based on a "collective decision" by the Board and there was no external pressure from anyone including A-1; (iii) that there was no allegation that by awarding contract in favour of A-4, A-1 was monetarily benefited; and (iv) that in any event, inasmuch  
D as the State did not challenge the order of acquittal, the appellant, who was neither a complainant nor a party to any of the proceedings had no locus to pursue the appeal. Accordingly, the appeal was not maintainable and on this ground was liable to be dismissed without  
E going into the merits of the case.

Allowing the appeal, the Court

**HELD:**

F 1. Interference by Supreme Court in an order of acquittal

It is settled principle that an appellate court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.  
G The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court is free to arrive at such conclusion, both on questions of fact and of law. An appellate court, however, must bear in mind that in case of acquittal, there  
H is double presumption in favour of the accused. The

presumption of innocence is available to a person in the criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. It is also settled law that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court. [para 7] [791-E-G]

## 2. Statutory Provisions

2.1. The Electricity (Supply) Act, 1948 was in force at the relevant time and the Board had been constituted in terms of s.5 thereof, for the management and supply of electricity. As per s. 78-A, the Board, in discharge of its functions shall be guided by such directions and questions of policy as may be given to it by the State Government; and except on policy matters, the State Government had no role in the affairs of the Board. [para 8] [792-B-C]

## 3. A-1's interference in the affairs of the Board:

3.1. It is the case of the prosecution that A1 while he was holding office of the Minister for Electricity, Government of Kerala was interfering in the day-to-day affairs of the Board and used to interfere even in awarding of contracts of the Board. One of the main charges levelled against A1 and others is that he, in his capacity, as Minister for Electricity intended to settle contracts of the Board in the name of his favourites or persons of his choice at exorbitant rates with the ulterior object of making illegal profit either to himself or to his favourites. In order to establish its case, the prosecution has produced evidence through PW-64, PW-66, PW-138, and PW-146, who supported the prosecution case. [para 9] [792-E-H]

A 3.2. It is clear from the materials on record that the  
 process of tendering of Idamalayar works was  
 interrupted on several occasions mainly by the Board by  
 cancelling the tenders and ordering re-tender and by  
 extending the period of validity of tenders more than once.  
 B It was on the last date of extension of the validity of the  
 tender i.e. on 30.06.1982, that A-4 appeared and submitted  
 his tender with special conditions which was later  
 accepted in the Board's meeting dated 19.11.1982. The  
 Special Judge, placing reliance on Board's resolution  
 C [Ex. P550(a)], has rightly concluded that there was  
 inordinate delay in awarding the work which reasoning  
 was erroneously not accepted by the High Court. The  
 materials placed clearly show that it was nearly three  
 years to take a decision. It is also clear from the evidence  
 D of PWs 64, 66, 138 and 146 which clinchingly established  
 the circumstances under which A-1 conceived the idea  
 for fixing contract of the Board at exorbitant rates in order  
 to derive monetary benefits. The contrary conclusion  
 arrived by the High Court, is not in terms of the evidence  
 led in by the prosecution. [para 14] [795-E-H]  
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4. Whether Idamalayar contract was awarded at  
 exorbitant rates causing loss to the Board:

F 4.1. The basic stand of the prosecution is that A-1  
 entered into criminal conspiracy to award the disputed  
 contract involving heavy financial gain to A-4 and the  
 conspiracy and abuse of power by certain officials  
 enabled the conspirators to earn a pecuniary advantage  
 of Rs.2,39,64,253/-, in addition to the financial loss caused  
 G to the Board. It is the specific case of the prosecution that  
 the rates awarded in both the contracts are exorbitant. It  
 is not in dispute that the contract was awarded at 188%  
 above PAC in the case of tunnel work and 162% above  
 PAC for the surge shaft work. Verification of Ext. P-52(b)  
 H shows that the sanctioned estimate for the tunnel work

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was Rs.1,17,20,633.90. On the other hand, the accepted tender amount as per the award of contract was Rs.2,45,80,796/- which is clear from Ext P 52. It is further seen as per Ext P-68 agreement, the sanctioned estimate for surge shaft was Rs. 74 lakhs and it was awarded for Rs.1,42,94,901/- . The evidence of PW-7, the Chief Engineer of the Board, and PW-156, the Investigating Officer, and the materials produced would show that the contract was awarded to A-4 at excessive rates. [para 15-16] [796-A-D; 797-A-D]

4.2. The evidence of PWs-46 and 122 and the statement made by A-1 to both of them clearly show that A-4 was the contractor chosen in advance by A-1 and other accused who were also interested in him. The evidence indicates the conspiracy to award the work to A-4 at exorbitant rates originated even prior to the submission of tenders by A-4 and other tenderers. The contrary conclusion arrived at by the High Court justifying the award at higher rate to A-4 cannot be legally sustained. [para-17] [798-D-E]

4.3. The Board is empowered with the authority to award contracts and has discretion to accept tenders, but, being an authority constituted under the Statute and a Public Undertaking, it is not expected to accept tenders at exorbitant rates with financial implications causing loss to the Board. The Board is always expected to protect its financial interests while awarding contracts. The Board mainly relied on the labour problem that was prevailing at the relevant time. In this regard, it is relevant to point out that the tenders for the Idamalayar work were invited in March, 1982 and four contractors submitted tenders as indicated by Exts. P78 series dated 21.03.1982. It is true that the tunnel workers went on strike on 20.04.1981 and the contractors submitted their tenders when there was labour unrest. However, the reason

A attributed for the delay cannot be accepted. There were procedural irregularities and omissions by the Board authorities in the manner of dealing with tenders submitted by A-4 and PW 64, which ultimately eliminated PW 64 from the scene, keeping A-4 as the sole tenderer, B qualified by pre-qualification Committee of the Board; and hasty steps were taken by the Board in awarding contract in favour of A-4 in the meeting held on 19.11.1982. All these facts lead to the conclusion that the award of contract in favour of A-4 was an exorbitant one. C It is relevant to point out that the Special Judge, by adverting to Ext 550(a) expressed that the reasons stated by the Board in awarding contract in favour of A-4 at exorbitant rates are not acceptable. [para 17] [798-F-H; 799-A-C]

D 5. No serious discussion by the Board:

There was no serious discussion in the Board meeting held on 19.11.1982 and the minutes of the Meeting were prepared as dictated by A7, the then E Chairman of the Board. It is the responsibility of the members, more particularly, full time members of the Board, who were responsible for the scrutiny of the deviations and conditions suggested by the contractor, which involved huge financial implications, to see that all F transactions are beneficial to the Board and within the permissible limit. It is relevant to point out that the decision ultimately taken for awarding the contract with special conditions, as suggested by the contractor, involved huge financial implications at the risk and loss G of the Board. Though the High Court has concluded that the part-time members who were signatory to Ex550(a) had, subsequently, approved the minutes, the Special Court made a distinction between the responsibility of full-time members and that of part-time members in the matters of awarding of contract. It is true that all the H

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members present subscribed their signatures in the minutes in awarding contract to A-4. It was highlighted in evidence that A-8, the Financial Adviser to the Board, in his report has stated that the rates awarded to the contractor are very high. The then Law Secretary also conveyed his opinion during the meeting of the Board that the rates were exorbitant. These aspects were taken note of by the Special Court while considering the culpability of the accused. The then Deputy Secretary of the Board (PW-140) also admitted this aspect and stated that there was no serious discussion in the meeting held on 19.11.1982. He explained that Ex.550(a) minutes of the meeting is a reproduction of the dictation given by the Chairman of the Board (A-7). The Special Court has rightly concluded that there was no serious discussion in the Board Meeting dated 19.11.1982 when the question of award of contract was taken up and the minutes of the meeting were prepared as dictated by A-7, the then Chairman of the Board. [para 18] [799-E-H; 800-A-G]

6. Award of contract to A-4:

6.1. Pursuant to the decision that Full Board meeting should be held on 19.11.1982 to decide the question of award of Idamalayar contract, PW-7 was directed to issue notice to all the tenderers. The materials relied on by the prosecution show that on 18.11.1982, though notices were issued to the contractors, only A-4 was present on 19.11.1982. Without verifying the fact that whether all the other tenderers were ready, a decision was taken on 19.11.1982 itself by accepting the offer of A-4 with special conditions. The Board being a statutory authority, ought to have waited for a reply from the other tenderers to ascertain whether they actually received notices and reason for their inability to attend. It was demonstrated that it was a pre-planned attempt to award the work to A-4 alone and the notices issued to other tenderers were

A in the form of an ultimatum. It was also pointed out that  
 for the negotiation on 04.11.1982, i.e. prior to 19.11.1982,  
 held by PW-7, with the tenderers, in the office of the  
 Board only A-4 and P.W.4 were present. The pre-  
 qualification Committee, headed by A-7, gave chances to  
 B A-4 to correct the errors and mistakes in the tender form  
 submitted by him for the impugned works, on the other  
 hand, such concession was not afforded to the other  
 tenderers. [para 20] [802-F-H; 803-A-C-E]

C 6.2. It is significant to note the conduct of A-1 with  
 regard to settlement of labour dispute. The evidence  
 shows that there was labour strike in the tunnel area  
 which started in April, 1981 and continued from the time  
 of inviting tenders on 05.06.1981 till the time of award of  
 D contract. It was highlighted that there was no effort on the  
 part of A-1 to settle the labour dispute before tendering  
 process was initiated. The labourers submitted the  
 Memorandum to A-1 on several occasions requesting for  
 settlement of labour problems. It was not settled and the  
 matter was kept alive till the tender was fixed in the name  
 E of A-4 on 19.11.1982. It was only after the award of the  
 contract, that A-1 took initiative to settle the labour  
 dispute, more particularly, when he came to know that A-  
 1 cannot enter the site because of the obstruction of the  
 workers to begin the contract work. It is relevant to point  
 F out that PW-7 informed A-1 and A-6 more than once that  
 in case the labour dispute could be settled in advance,  
 the contract could be awarded at a reasonable rate. The  
 evidence of PW-7 clearly shows that his request was not  
 accepted by A-1 and A-6. [para 21] [804-C-F]

G 6.3. The evidence shows that the rate quoted by PW-  
 4 by his evidence in court, was 135% above PAC, which  
 was less than 188% above PAC, quoted by A-4 and  
 approved by the Board. The High Court failed to take  
 note of the importance of evidence of PW-4 and justified  
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the action of the Board in not pursuing the tender submitted by PW-4 with a lesser rate on the ground that his tender was liable to be rejected since he wanted an arbitration clause in the agreement. Further, though PW-4 has quoted lesser rate than A-1, in his evidence, he has highlighted that he was not given an opportunity to consider the reasonableness of the rate quoted by him i.e. 135% above PAC. The High Court has not only ignored his assertion but found that the rate quoted by him for the surge shaft work is not a lesser rate when compared to one quoted by A-4 i.e., 188% above PAC. Though the Special Court has correctly found that PW-4 quoted less than the rate quoted by A-4, the High Court, on erroneous assumption found fault with the finding of the Special Court which correctly appreciated the prosecution case. [para 22] [804-G; 805-A-B]

#### 7. Acceptance of Special Conditions & Concessions:

With regard to the case of the prosecution that certain Special Conditions were accepted by the Board (Ex. P588) involving huge financial commitments favourable to the accused-contractor causing loss to the Board, it is relevant to mention that one of the special conditions, is condition No. 4 relating to tools and plants sold to the contractor in violation of the General Conditions of the contract, which provide that the Board is bound to make available to the contractors only such tools and plants as are listed in the Schedule attached thereto, that too subject to availability. Such items of tools and plants which are listed in Ext. P52 agreement marked as Ext. P52(d) show 8 items of tools and plants which can only be hired out to the contractors if requested on the specified rates. In Ext. P58, deviations and conditions submitted by the contractor as Item No 4, stated that such tools and plants listed in Ext. P52(d) shall be sold to him on outright sale at book value deducting depreciation and the cost may be recovered on pro rata basis from his

A bills. The full Board, in its decision dated 19.11.1982, accepted the special condition of the contractor to sell those items of tools and plants which includes very costly foreign imported materials. The official examined on the side of the prosecution pointed out that there is  
B no provision in the general conditions of the contract enabling the Board to effect sale of those tools and plants to the contractor. These important aspects have been duly considered by the Special Court but, have been overlooked by the High Court while upsetting the  
C decision of the Special Court. As correctly found by the Special Court, special condition No.4 relating to sale of tools and plants is a favour done by the Board to the contractor for obtaining financial gains at the risk of Board's loss. [para 23 and 26] [805-D-H; 806-A-B; 808-E]

D 8. Return of empty cement bags by the Contractor:

8.1. Another special condition sanctioned by the Board in favour of the contractor A-4 relates to the return of empty cement bags. This special condition provided  
E that the contractor shall return only 50% of empty cement bags in good condition. According to the Auditor, because of the special condition, the Board had sustained a loss of Rs.1,08,879.75. The Special Court has substantiated its finding on the point based on evidence  
F furnished by the auditors. However, the High Court relying on Ext D-28 which provided for recovery of balance 50% of empty cement bags not returned or returned in damaged condition and recovery will be effected as stipulated in the tender condition, erroneously concluded that no loss could be sustained to the Board.  
G The conclusion arrived at by the High Court is contrary to the special condition No.10 regarding the return of empty cement bags, according to which the Board is not entitled to recover the value of balance 50% of unreturned cement bags. [para 25-26] [807-F-G; 808-F-H;  
H 809-A]

9. Fixation of security and retention:

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Yet another special condition involving financial implications sanctioned to the Contractor is with regard to the fixation of security and retention amount. In the case on hand, keeping in view the PAC contract works, the security amount and retention amount due from the contractor would come to Rs.12 lakhs. However, the retention amount and the security both were restricted to Rs. 5 Lakhs and Rs. 1 Lakh for both the works, which is a benefit shown to the Contractor. A perusal of Kerala State Electricity Board Tender Regulations show that the reduction of security deposit is permissible only in the case of established firm/Company and that the security deposit of a new contractor shall not be reduced. The course adopted by the Board is contrary to the condition contained in Regulation No.25(c) of the Board's Regulations. [para 27] [809-C-H; 810-A-B-F]

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10. Criminal Conspiracy

10.1. On this aspect, the Special Court has analyzed the evidence of witnesses and considered the documents produced and marked by the prosecution and has rightly concluded that there is sufficient evidence that a criminal conspiracy was hatched out at the instance of A-1, the then Minister for Electricity and A-3, who was a close associate and political ally of A-1. This was strengthened by the evidence of PW-21, the Assistant Engineer, Quality Control, Idamalayar project and other witnesses. Nobody has challenged the relationship between A-1 and A-3. It is the case of the prosecution that a conspiracy was hatched out at the instance of A1 and others with the illegal object of getting the Idamalayar project fixed on one among themselves at exorbitant rates and make illegal profits. It is also the definite case of the prosecution that though the work was awarded in the name of A-4, it was actually executed by A-3 and

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A another accused A-22(deceased). It has come in evidence that the amount of work was invested and payments were made by A-22 and A-3. As rightly observed by the Special Court, the relationship between A-1 and A-3 is a relevant factor in arriving at the circumstances leading to the formation of the conspiracy. The evidence led in normally show that A-3 was an intimate friend of A-1 and very closely moving with him during the relevant period. This has been established by the evidence of PW-3, who was a watchman of the Inspection Bungalow at Idamalayar, PWs-6, 7 and 8 who were Engineers at the relevant time at Idamalayar worksite and supervising execution of the works, PW-24, the workers ( PWs 25 and 26), and PW-19, the receptionist of a Tourist home, where A-3 was occupying a room on rent on or about the time of finalization of the contract in favour of A-4. The Special Court noted the significance of his stay during the above period at Thiruvananthapuram. Under s. 16 of the Electricity (Supply) Act, 1948, the Constituting Authority is the State Government. The evidence led in by the prosecution shows that A-1 took initiative to include the name of A-3 in the list of nominees for constituting the Consultative Council. The evidence of PWs 18, 27 and 51 and Ext.180(c) established the case of the prosecution. The evidence further shows that the mandatory requirements contemplated u/s 16 of the Act regarding the constitution of Consultative Council was not adhered to by A-1 who wanted to include A-3 in the panel inasmuch as usually the representatives of State Level Organisers representing various interests alone were nominated after consultation by the Government with such bodies, but A-3 was not representing any such State Level Organisation. This is evident from the evidence of PWs 31 and 16. [paras 28, 29 and 34] [811-B-F; 812-D-F-H; 813-A; 815-D-F]

H 10.2. The prosecution has established the

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relationship of A1 and A-4 even before awarding of contract. Even prior to awarding of the contract to A-4, A-1 had chosen A-4 as prospective contractor for execution of the work which fact is spoken to by PW-122 and also by PW-46. Their evidence shows that on 29.06.1981 when they met A-1 requesting for the award of the tunnel driving work to the workers at Idamalayar, A-1 told them that the execution of the Idamalayar work was proposed to be given to A-4. [para 30] [813-C-D]

10.3. The role played by A-3 in fixing the contract to A-4 is also relevant to infer the formation of agreement between himself and A-1. In addition to the same, the prosecution has adduced acceptable evidence that a company by name Hydro Power Construction Company was registered as a partnership firm with A-4 as Managing Partner and A3 and A-22 (deceased) as Working Partners. Further, close relatives of A-4, A3 and A-22 were parties to the partnership deed. The object of the partnership was to execute the Idamalayar tunnel work and also the surge shaft work in the name of the firm which was an assessee under the income tax Act as is evident from Ex. P245, the income-tax assessment of the firm in the year 1984-85 and 1985-86 and the evidence of PW-123, an Income-tax practitioner. In addition to the same, when A-3 was questioned u/s 313 Cr.P.C., he admitted that he invested good amount for the work and visited the site to watch the progress of the work. The fact that A-1, while as a Minister for Electricity, interfered with the award of the contracts of the Board were spoken to by PW-64, PW-66, PW-138 and PW-146. It is also clear that A-1 was awaiting for a probable contractor of his choice to undertake the Idamalayar works at exorbitant rates. [para 31] [813-F-H; 814-A-C]

10.4. Further, there was labour agitation prevailing at Idamalayar work site. It is in evidence that after execution

A of the agreement of the Idamalayar work by A-4, A-1  
interfered and settled the labour dispute by awarding a  
compensation of Rs. 11 lakhs to the striking workers and  
the worksite was made free of any labour unrest. It is the  
prosecution case that this was done to help the  
B contractor, a party to the conspiracy for execution of the  
work and to make illegal profit therefrom. The evidence  
of PW-7, Chief Engineer and other witnesses stated that  
the awarding of Idamalayar work at exorbitant rates could  
have been avoided in case the labour issue was settled  
C earlier. The prosecution has also highlighted labour  
unrest at Idamalayar which was kept pending at the  
instance of A-1 and other interested parties so as to make  
it appear that no contractor will come forward to  
undertake the contract, so much so that there is  
D possibility of choosing a contractor of their choice for the  
execution of the work at exorbitant rates. [para 32] [814-  
D-H; 815-A]

10.5. The prosecution has also highlighted that to  
achieve the illegal object of finding the contract in the  
E name of A-4 at exorbitant rates, the pre-qualification  
system was introduced by the Board by order Ext. P576  
dated 24.09.1981. This was after tendering process had  
started for the Idamalayar work. PW-138, explained  
before the court that pre-qualification bid system was  
F misused by the Board to safeguard vested interest by  
choosing contractors of their choice. [para 33] [815-B]

10.6. The Special Court, after analysing the evidence  
in detail found that A-3 is the man behind the manuring  
for getting the contract awarded to A-4, who, however,  
G was only a benamidar and A-3 and A-22 were the  
beneficiaries though the work was awarded in the name  
of A-4. The role played by A-6 in the matter of hatching  
out the conspiracy and the fulfillment of the unlawful  
object is proved by evidence, particularly, from the  
H evidence of PW-7. [para 34] [816-C-D]

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10.7. From the materials on record, it is clear that a criminal conspiracy among A-1, A-3 and A-6 can be inferred. A-1, as Minister for Electricity is all in all dealing with the efforts of the Board including the awarding or cancellation of the contracts. The officers and the Board members were under his pressure and fear which is clearly seen from the statements of prosecution witnesses, namely, PWs 8, 36, 60, 62, 138, 140, 64, 66 etc. From the materials on record, as rightly concluded by the Special Court, it leads to a conclusion that several out of way methods were adopted by the Board at the instance of A-1 for achieving the object of conspiracy. [para 34] [816-E-F; 817-A]

10.8. The High Court failed to consider various instances and materials placed by the prosecution in respect of charge relating to conspiracy. Before this Court it was demonstrated that several material aspects have not been considered by the High Court. PW-7, former Chief Engineer, a most reliable witness was examined in the presence of A-3 on 04.11.1982 in the Board's office. There is no necessity to corroborate or further material in addition to the oral evidence of PW-7. As rightly analysed and concluded by the Special Court, there is no infirmity in the evidence of PW-7 merely because there is no documentary evidence in respect of the presence of A-3 at the Board's meeting, the evidence of PW-7 cannot be ignored. [para 35] [817-D; 818-B-C]

10.9. The High Court very much accepted the stand of the accused that it was a collective decision of the Board for awarding contract in favour of A-4 at exorbitant rates, though the reasons relied on by the Board expose the omission and negligence on its part in fixing the contract with other contractors, namely, PW-146, P.W. 64 or PW-4, who quoted lower rates than A-4. Even before this Court it was reiterated that it was a collective decision of the members of the Board to award the contract in

A favour of A-4, but it has been established, as has been held by the Special Court, that the contract was awarded at exorbitant rates, with special conditions. In the instant case, all the ingredients of criminal conspiracy are satisfied for convicting A-1, A-3 and A-6 for the offence charged against them. [para 36] [818-D-G]

B 11. Special mention about PW-7, retired Chief Engineer of the Board & PW-46:

C 11.1. The prosecution heavily relied on the evidence of PW 7, a retired Chief Engineer of the Board. By his rich experience and having worked as a Chief Engineer at the relevant time, namely, when Idamalayar project was commissioned, he furnished all the details with reference to various documents such as his report, opinion, minutes of the meeting of the Board with reference to Idamalayar project He retired from service on March 1985, and was first examined on the side of the prosecution on 28.03.1996 and at that time he was 66 years old. He was called upon to give evidence only in March 1996 nearly after 15 years of the commissioning of the Idamalayar project. In this view of the matter, there is no reason to reject his entire evidence for alleged inconsistencies as claimed by the respondents/accused. In his evidence, he has mentioned that on the submission of tender by A-4, it was noted that he quoted 189% above PAC. It is also seen from the evidence of PW-7 that after noting that the rate quoted by A-4 is higher rate, he forwarded the said information for remarks of FA and CAO. He also asserted that A-6 told him that A-1, the Minister, was very much particular to award both the works to A-4. He inspected the site on 23.09.1983 and due to slow progress in the works, he castigated A-22, who conducted the works. After few days, A-3 and A-22 came to his house and warned him and then on 13.10.1983, he was transferred and appointed as an Advisor of Electricity Board in respect of Hydroelectric Projects, though such a Post

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was not there. [para 37 and 38] [819-A-C; G-H; 820-A-B; E-F; 822-B-C-E]

11.2. As regards the decision of the Board and the role of PW-7, he has stated that the Chief Engineer has no right to question the Board's decision. However, he clarified that when he was asked to give his opinion or report, he was bound by the said direction. Though, several reports and minutes of the Board meeting were pressed into service by the respondents/accused in order to strengthen their case that all important decisions accepting the contract in favour of A-4 including several special conditions etc., were taken by the Board on the notes/reports of PW-7, it is clear that due to the pressure of A-6, the then Member of the Board, who was close to A-1, as well as the desire of A-1 in awarding the contract in favour of A-4 with higher rates, PW-7 had no other option except to execute the directions of A-6 and A-1. The analysis of the evidence of PW-7 coupled with the other prosecution witnesses and other notes and report prepared for the Board clearly indicate that though he reminded that certain things were not permissible, because of the fact that the beneficiaries of the contract are known to A-1 and A-6, he had no other option except to prepare notes in such a way and, ultimately, the Board accepted the same. [paras 37, 38, 39 and 41] [821-G-H; 822-A-G-H; 823-C-D]

11.3. The evidence of PW-46, a member of RSP, a political party was led by the prosecution to establish that A-1 decided and determined to award the contract to A-4. PW-46 stated that at the relevant time he was the President of the workers Union. A memorandum was submitted to A-1 and he was requested to give work to labourers at least on piece rate basis, but A-1 told them that the contract had been given to A-4. [para-42] [823-E-H]

## A 12. About maintainability of the appeal by the appellant:

In the instant case, certain special features exist. Though the State has not filed any appeal against the impugned order of acquittal by the High Court but supported the ultimate conviction and sentence imposed by the Special Judge and informed this Court that if permitted, it was ready to file an appeal with an application for condonation of delay. Though the Court is not inclined to entertain such a request at this stage, however, the fact remains that taking note of the importance of the issue, allegations against the Minister and higher officials of the Board in respect of award of contract with the ulterior motive, the appellant approached this Court on earlier occasion when the State wanted to close the prosecution against all the accused including the Minister, based on the order of the High Court in respect of A-5. Further when the very same appellant filed special leave petition before this Court and later leave was granted by this Court neither of these respondents raised any objection as to the maintainability of the petition. On the other hand, a Bench of three Judges\* accepted the appellant's claim and set aside the order of the High Court based on which the Special Judge proceeded further and, ultimately, convicted and sentenced A-1, A-3 and A-6. In view of these factual details, the respondents-accused were not serious in projecting the issue relating to maintainability as their first objection. In view of the special circumstances highlighted in the case on hand, the instant appeal by the appellant against the order of acquittal by the High Court is maintainable. [para 45] [825-F; 826-H; 827-A-F]

\**V.S. Achuthanandan vs. R. Balakrishna Pillai & Ors.*, 1994 (1) Suppl. SCR 95 = (1994) 4 SCC 299 – referred to.

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*National Commission for Women vs. State of Delhi and Another* 2010 11 Scale 17; and *K. Anbazhagan vs. Superintendent of Police and Others* 2003 (5) Suppl. SCR 610 = (2004) 3 SCC 767- relied on A

*Lalu Prasad Yadav & Anr. Vs. State of Bihar & Anr.*, 2010 (4) SCR 334 = (2010) 5 SCC 1 held in-applicable B

### 13. Conclusion

13.1. The prosecution has established the following aspects insofar as accused A-1, A-3 and A-6 are concerned: (a) the contract was awarded for both the works of Idamalayar at a very high and exorbitant rate with special conditions having heavy financial implications; (b) the contractor was allowed to return only fifty per cent of the empty cement bags; and (c) the contract was awarded by reducing the retention and security amount. [para 47] [828-D-E] C D

13.2. The High Court failed to appreciate in the proper perspective the materials placed by the prosecution and brushed aside several important items of evidence adduced by the prosecution. Equally, the conclusion of the High Court that the proved circumstances are not sufficient to hold that there was conspiracy, as alleged by the prosecution, cannot be accepted. On the other hand, the Special Court, after framing various points for consideration and after thorough discussion, has rightly accepted the case of the prosecution and rightly convicted the accused. The High Court committed a grave error in acquitting the accused without advertent to the reliable and acceptable evidence adduced by the prosecution. The judgment of the High Court is set aside and the conviction of all the three accused as recorded by the trial court is upheld. [para 47] [828-F-H; 829-A-B] E F G

13.3. Now, coming to the sentence part, it is relevant to note that the contract was awarded to A-4 (since deceased) as early as on 19.11.1982. After various H

A agitations, discussions in the Assembly, appointment of  
 a Commission by the Government and based on the  
 report of the Commission, the State Government initiated  
 the prosecution and the trial prolonged upto November  
 19, 1999. Thereafter, the matter remained pending before  
 B the High Court till October 2003, when the High Court  
 pronounced its order acquitting all the accused. The  
 matter was then taken up to this Court by the appellant.  
 The accused have undergone agony of these  
 proceedings for nearly two decades, therefore, ends of  
 C justice would be met by awarding rigorous imprisonment  
 for one year with fine of Rs. 10,000/- each. Ordered  
 accordingly. [para 48] [829-C-E]

14. It is pertinent to point out that in all the cases in  
 which charges relating to corruption by public servants  
 D are involved, normally, it takes longer time to reach its  
 finality. Although, the Government of India, Department  
 of Law & Justice is making all efforts for expeditious  
 disposal of cases of this nature by constituting Special  
 Courts, however, the fact remains that it takes longer time  
 E to reach its destination. When a matter of this nature is  
 entrusted to a Special Court or a regular court, it is but  
 proper on the part of the court concerned to give priority  
 to the same and conclude the trial within a reasonable  
 time. The High Court, having overall control and  
 F supervisory jurisdiction under Article 227 of the  
 Constitution of India is expected to monitor and even call  
 for a quarterly report from the court concerned for  
 speedy disposal. Inasmuch as the accused is entitled to  
 speedy justice, it is the duty of all in charge of  
 dispensation of justice to see that the issue reaches its  
 G end as early as possible. [para 49] [829-G; 830-C-E]

**Case Law Reference:**

1994 ( 1 ) Suppl. SCR 95referred to para 2

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2010 11 Scale 17 relied on para 43 A

2010 (4 ) SCR 334 held inapplicable para 46

2003 (5 ) Suppl. SCR 610 relied on para 46

CRIMINAL APPELLATE JURSDICTION : Criminal Appeal  
No. 350 of 2006. B

From the Judgment & Order dated 31.10.2003 of the High  
Court of Kerala at Ernakulam in CrI. Appeal-Nos. 823, 824 of  
1999 and 822 of 1999 (B). C

Shanti Bhushan, A. Sharan, U.U. Lalit, S. Gopakumaran  
Nair, R.S. Sodhi, Malini Poduval, Rovin V.S., Deepak Prakash,  
Biju P. Raman, Usha Nandini, Babita Sant, Vishnu B. Saharya,  
Geroge Mathew, Saharya & Co., E.M.S. Anam, Fazlin Anam,  
James Koshy, Vinod Kumar, T.G. Narayan Nair, K.N. D  
Mahusoodhanan, P.V. Dinesh, Jojo Jose, Sindhu T.P., P.V.  
Vinod for the appearing parties.

The Judgment of the Court was delivered by

**P. SATHASIVAM**, J. 1. The challenge in this appeal, by E  
special leave, is to the legality of the order dated 31.10.2003  
passed by the High Court of Kerala at Ernakulam allowing  
Criminal Appeal Nos. 822, 823 & 824 of 1999 filed by the  
accused setting aside the order dated 10.11.1999 passed by  
the Special Judge Idamalayar Investigations, Ernakulam in C.C. F  
No. 1 of 1991 convicting all the accused for the offences  
punishable under Sections 120-B and 409 of the Indian Penal  
Code (in short 'IPC') and Sections 5(1)(c) and 5(2) of the  
Prevention of Corruption Act, 1947 (Act 2 of 1947) (hereinafter  
referred to as 'the P.C. Act') and sentencing them to undergo G  
rigorous imprisonment.

**2. Brief Facts:-**

(a) Idamalayar Hydro Electric Power Project, a multi-  
purpose power project in Kerala was conceived and completed H

A in the year 1985. The project report was approved by the Central Water and Power Commission in 1973.

B (b) After the completion of the Dam, the remaining construction work relating to the power tunnel and surge shaft, which are integral part of the water conductor system of the project, was awarded on contract basis to one K.P. Poullose (A4), as per the decision of the Kerala State Electricity Board (hereinafter referred to as the "Board"), on 19.11.1982. The work relating to power tunnel was awarded at 188% above the Probable Amount of Contract (PAC) and the work relating to surge shaft and allied works at 162% above the estimated amount with many special conditions, as requested by the contractor, involving heavy financial implications/advantages to him at the expense of the Board. Further, there was inordinate delay in completion of the work.

D (c) During the trial run, on 15.07.1985, several leaks and cracks were noticed in the tunnel lining which was a matter of great public concern and caused considerable anxiety and fear among the public and State as well. Discussions and debates were held in this regard in the State Legislative Assembly. There was a public outcry for a judicial probe in this matter. Extensive rectification work to remedy the defects in the tunnel lining and surge shaft was undertaken at a considerable cost which was to the tune of Rs. 1.75 crore.

F (d) On 02.08.1985, the Public Undertaking Committee of the State Legislature inspected the site and submitted its report recommending a judicial probe. The State Government appointed a sitting Judge of the Kerala High Court as Commissioner of Inquiry to conduct the probe. The Commission recorded its enquiry, collected considerable evidence and submitted its report in June, 1988. The Commission came to the conclusion that materials placed before it *prima facie* disclosed commission of offences punishable under I.P.C. and P.C Act against persons responsible for the same and G H recommended for investigation into these offences. The State

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Government accepted the recommendations and constituted a special team, headed by Superintendent of Police for Investigation. The report of the special squad was filed in the Court of Special Judge on 14.12.1990 in Crime No. C.C. No. 1 of 1991.

(e) During pendency of the case, an application for withdrawal of the prosecution against accused No. 5 - G. Gopalakrishna Pillai, who was the Secretary to the Kerala Government, Irrigation and Power Department was made by the then Special Public Prosecutor on 24.08.1992 under Section 321 of the Code of Criminal Procedure (in short 'Cr.P.C.') on the ground of absence of any material to sustain a successful prosecution of offences alleged against him. At this stage, the appellant herein - V.S. Achuthanandan, the then Opposition leader in the Assembly, in public interest, filed statement of objections against the move for withdrawal of the case against G. Gopalakrishna Pillai (A5). After full fledged enquiry, the application filed by the Special Public Prosecutor was dismissed by the Special Judge on 16.10.1992.

(f) On 03.02.1993, Criminal Revision Petition No. 762 of 1992, filed by the State against the order of Special Judge was allowed by the High Court. On the strength of the observations made in the order of the Kerala High Court, the State Government took the decision to withdraw the criminal case against all other accused.

(g) The appellant challenged the above order of the High Court in Criminal Appeal No. 122 of 1994 before this Court which set aside the order of the High Court and restored the order of the Special Judge declining consent for withdrawal [vide *V.S. Achuthanandan vs. R. Balakrishna Pillai & Ors.*, (1994) 4 SCC 299]. Subsequently, the matter was further proceeded in the Court of Special Judge.

(h) During trial, Accused No. 22, Paul Mundakkal became insane and the case against him was allowed to split, Accused

- A No.4 - K.P. Poullose, Contractor, died, Accused nos. 11 and 14 to 21 were discharged by the Court of Special Judge in the final report holding that there was no *prima facie* case made against them.
- B (i) On 14.12.1995, charges were framed against other accused for various offences under Sections 120-B, 409, 430 and 201 IPC and Section 5(2) read with Section 5(1)(c) and (d) of the P.C. Act. This order of the Special Judge was confirmed by the High Court, but found that the charge under the P.C. Act is not sustainable against A5 and A8 for want of proper sanction as per the orders passed in Criminal Revision Petitions filed by the accused in the High Court. Charge was amended accordingly and the accused were rearranged as A1 to A11. In the meantime, A7 died.
- C (j) The Special Court, after analyzing the oral and documentary evidence on record, vide its judgment and order dated 10.11.1999 found R. Balakrishna Pillai (A1), P.K. Sajeew (A3) and Ramabhadran Nair (A6) guilty of the offences punishable under Section 120-B and 409 IPC and Sections 5(1)(c) and 5(2) of the P.C. Act read with Section 120-B of IPC.
- D They were sentenced to undergo rigorous imprisonment for a period of five years for the offence punishable under Section 120-B of IPC and to undergo rigorous imprisonment for a period of four years each under Section 409 IPC and Section 5(2) of the P.C. Act read with Section 120-B IPC and to pay a fine of Rs.10,000/- each, in default, to undergo simple imprisonment for one year each. However, A1, A3 and A6 were acquitted of the charges under Sections 161, 201 and 430 IPC read with Section 5(1)(d) of the P.C. Act. It was also directed that the sentences shall run concurrently. Accused Nos.
- E 2,4,5,8,9,10 and 11 were found not guilty of the offences and they were acquitted of all the offences with which they were charged.
- F (k) Aggrieved by the order of conviction and sentence, all
- G the three accused i.e. (A1), (A3) and (A6) filed separate
- H

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appeals before the High Court of Kerala at Ernakulam. By the common impugned judgment dated 31.10.2003, the High Court set aside the conviction and sentence of all the three accused and acquitted them from all the charges levelled against them.

(l) Questioning the order of acquittal, the appellant - V.S. Achuthanandan, filed special leave petition against the common impugned judgment and, this Court, by order dated 27.03.2006, granted leave to appeal.

3. Heard Mr. Shanti Bhushan, learned senior counsel for the appellant, Mr. U.U. Lalit, learned senior counsel for R.Balakrishna Pillai (A1), Mr. Amarendra Sharan, learned senior counsel for P.K. Sajeev (A3), Mr. S. Gopakumaran Nair, learned senior counsel for Ramabhadran Nair (A6) and Mr. R.S. Sodhi, learned senior counsel for the State of Kerala.

**Submissions:**

4. Mr. Shanti Bhushan, learned senior counsel for the appellant after taking us through the entire materials relied on by the prosecution, stand taken by the defence, elaborate reasonings of the trial Court in convicting the accused and the reasonings of the High Court in acquitting them, raised the following submissions:-

(i) There was enough material to show that (A1) was very much interested in favour of (A3) and with the connivance/ assistance of the Board officials, more particularly through (A6) Member of the Board, made the Board to accept the tender offered by K.P. Poulouse (A4) at an exorbitant rate with various special conditions.

(ii) The criminal breach of trust has been committed by the accused in the following ways:-

(a) By awarding both the works of Idamalayar at a very high and exorbitant rate with special conditions having heavy financial implications.

- A (b) By reducing the retention and security amount.
- (c) By allowing the contractor to return only fifty per cent of the empty cement bags.
- B (d) By accepting the special condition for the sale of T & P items (tools & plants) which could not be sold as per the general conditions of the contract

(iii) Contrary to the norms and circulars/procedures of the Board, in order to favour K.P. Poulose (A4), who was a friend of (A1), the Board has accepted all the conditions just to favour (A1) and (A3).

5. Mr. U. U. Lalit, Mr. Amarendra Sharan and Mr. S. Gopakumaran Nair, learned senior counsel appearing for (A1), (A3) and (A6) respectively supporting the ultimate decision of the High Court submitted that:

(i) The outcome of the contract in favour of K.P. Poulose (A4) was based on a "collective decision" by the Board and there was no external pressure from anyone including (A1).

(ii) All the decisions taken were in terms of rules/norms applicable to the contract including accepting special conditions.

(iii) Mere acceptance of higher rate would not amount to criminality.

(iv) There is no allegation that by awarding contract in favour of K.P. Poulose (A4), (A1) was monetarily benefited.

(v) No material to show that there is any wrongful loss to the Board.

(vi) Inasmuch as the High Court acquitted all the accused in respect of all the charges on appreciation of oral and documentary evidence, interference by this Court is very limited.

In the absence of perversity in such conclusion, normally, this

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Court would not interfere with the order of acquittal.

A

(vii) In any event, inasmuch as the State has not challenged the order of acquittal, the present appellant being neither a complainant or heir nor a party to any of the proceedings is not entitled to pursue the present appeal. Accordingly, the appeal is not maintainable and on this ground liable to be dismissed without going into the merits of the claim.

B

6. We have carefully analysed the materials placed by the prosecution, the defence, the decision and reasonings of the trial Court and High Court and considered the rival contentions.

C

**Interference by this Court in an order of acquittal**

7. Learned senior counsel for the respondents by drawing our attention to the reasoning of the High Court and in respect of all the charges leveled against acquitting them submitted that in the absence of perversity in the said decision, interference by this Court exercising extraordinary jurisdiction is not warranted. It is settled principle that an Appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded. The Code of Criminal Procedure (in short 'Cr.P.C') puts no limitation, restriction or condition on exercise of such power and an Appellate Court is free to arrive at such conclusion, both on questions of fact and of law. An Appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. The presumption of innocence is available to a person and in the criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. It is also settled law that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial Court. Keeping the above principles in mind, let us discuss the charges leveled, materials placed by the prosecution in support of those charges, reasoning of the Special Court

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- A convicting the accused and impugned order of the High Court acquitting all the three accused in respect of the said charges.

### Statutory Provisions

- B 8. The Electricity (Supply) Act, 1948 (in short 'the Act') was in force at the relevant time. Section 5 of the Act mandates each State to constitute State Electricity Board for the management and supply of electricity. As per Section 78A, which was inserted by Act 101 of 1956 and came into force w.e.f. 30.12.1956, in discharge of its functions, the Board shall be
- C guided by such directions and questions of policy as may be given to it by the State Government. As rightly pointed out by Mr. Shanti Bhushan, learned senior counsel for the appellant that except on policy matters, the State Government has no role in the affairs of the Board. In view of the charges levelled against
- D A1 who was the Minister for Electricity, Government of Kerala, we adverted to these statutory provisions.

### A1's interference in the affairs of the Board:

- E 9. It is the case of the prosecution that A1 while he was holding office of the Minister for Electricity, Government of Kerala was interfering in the day-to-day affairs of the Board including transfers, promotions, appointment of employees, granting electric connection to consumers by giving directions to the Board officers. It is also alleged that A1 used to interfere
- F even in awarding of contracts of the Board during his period as Minister for Electricity. One of the main charges leveled against A1 and others is that he, in his capacity, as Minister for Electricity intended to settle contracts of the Board in the name of his favourites or persons of his choice at exorbitant
- G rates with the ulterior object of making illegal profit either to himself or to his favourites. With regard to the above claim, the prosecution has produced evidence through Kuriakose Chennakkadan (PW-64), Jagannad Prasad (PW-66), Managing Partner, C.S. Company, Kottayam, Alexander
- H Vellappally (PW-138), Managing Director, Asian Tech and

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Kamalasanan (PW-146), Managing Director of M/s We-Build. According to Kamalasanan (PW-146), though he was one of the tenderers for surge shaft work, quoted acceptable rates, could not get the contract work because of the interference of A1. He deposed that, the then Chief Engineer, late Bharathan recommended his work for acceptance by the Board, but he was further told by Shri Bharathan that he should meet A6 and also to give 5% of PAC as procuring expenses and if the said amount is not given, the work could not be awarded, hence he met A6 who told him that the rate quoted by him is very low and advised him to settle whether it is workable or not. He further deposed that at the time when A1 was the Minister, A6 was a Member of the Board who was very powerful having influence over the Minister. According to him, the voice of A1 is reflected through A6 with regard to the affairs of the Board.

10. Shri Alexander Vellappally (PW-138), Managing Director of Asian Tech, in his evidence deposed that he was asked by A1 to quote for the Lower Periyar Project Headrace Power Terminal in 1980-81 when the pre-qualification system was introduced in the Board. The tender of Shri Alexander Vellappally was qualified and the lowest when it was evaluated. However, he was informed that further steps for negotiation and discussion regarding the acceptance of the tender would take place only with the concurrence of the Minister. He further deposed that he met A1 several times and also sent letters to him and one letter sent by him to A1 is marked as Ext. P-544. According to him, though he was the lowest tenderer, the work was not awarded to him, but given to HCC. He also explained that pre-qualification bid system was misused by the Board officers, more particularly, in the case of Lower Periyar Works.

11. The next witness who highlighted the above issue is Kuriakose Chennakkadan (PW-64). According to him, the Minister used to interfere in the award of contracts and when he met A6, he was asked to meet A1. He also deposed that A1 was interested for one K.P.Poulose (A4). His work was

A terminated and it was re-tendered and awarded to K.P.Poulose (A4).

B 12. Jagannad Prasad (PW-66), Managing Partner of M/s C.S. Company deposed before the Court that while he was doing the contract work of a tunnel for Kakkad Hydro Electric Project, he approached the Chief Engineer Bharathan, who told him that the work could be awarded only as per the directions of the Minister (A1). He further deposed that he had executed a promissory note for Rs.5,30,000/- in favour of one Yackochan, who acted as a middle man for the commission payment. He C informed the Court that this contract was terminated by the Board.

D 13. It was highlighted on the side of the appellant that it was during that period, when A1 was Minister for Electricity, the tender process of Idamalayar Tunnel and its concrete lining and surge shaft work was started. It is relevant to note that R. Balakrishna Pillai (A1) was the Minister for Electricity from 27.01.1980 to 21.10.1981, 26.05.1982 to 05.06.1985 and 25.05.1986 to 25.03.1987. The tender for surge shaft was E invited and awarded to one E.M. Varkey at 21% below estimated rate. The estimated rate was Rs 74 lakhs for surge shaft. However, the work was abandoned on 28.03.1981 due to labour strike. Thereafter, tenders were invited again for the surge shaft and four persons submitted their offers for tenders. F The lowest rate was quoted by M/s We-Build Pvt. Ltd. and the next lowest rate was by E.M. Varkey at 57% above PAC. It is pointed out that though the work was recommended to be awarded, the Board decided to re-tender the work. Accordingly, the tenders were invited again and E. M. Varkey alone quoted G for the work. His tender was not accepted since he quoted exorbitant rate. In the meanwhile, pre-qualification bid system was introduced in the Board which is evident from Ext. P-576 dated 24.09.1981, which was made applicable to Idamalayar contract works. Thereafter, tender for both the works were H invited by Shri Bharathan, the then Chief Engineer which is

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evident from Ext. P-46 dated 05.06.1981. However, the tender was cancelled by him which is also clear from Ext P-47 dated 22.10.1981. The Chief Engineer extended the validity of the tender upto 29.04.1982 and after his demise, the then Chief Engineer (PW-7) extended the validity upto 30.06.1982. During that time, two tenders were received, one by K.P.Poulose and other by Kuriakose Chennakkadan (PW-64), quoting special conditions. The cover containing the conditions and deviations was opened on 30.06.1982, when K.P.Poulose was present in the Board's Office. However, Kuriakose, the other tenderer was not informed and later on 09.09.1982, K.P.Poulose was pre-qualified and Kuriakose was disqualified which, according to him, was without notice. The contract for the balance power tunnel and concrete lining work of Idamalayar works was ultimately awarded to K.P.Poulose at 188% of the above estimated rate and the surge shaft work was also awarded to him at 162% above the estimated rate.

14. It is clear from the above materials that the process of tendering of Idamalayar works was interrupted on several occasions mainly by the Board by cancelling the tenders and ordering re-tender and by extending the period of validity of tenders more than once. It was on the last date of extension of the validity of the tender i.e. on 30.06.1982, K.P.Poulose appeared and submitted his tender with special conditions which was later accepted in the Board's meeting dated 19.11.1982. The Special Judge, basing reliance on Board's resolution (Ex. P550(a)), has rightly concluded that there was inordinate delay in awarding the work which reasoning was not accepted by the High Court. The materials placed clearly show that it was nearly three years to take a decision. It is also clear from the evidence of PWs 64, 66, 138 and 146 which clingingly established the circumstances under which A1 conceived the idea for fixing contract of the Board at exorbitant rate in order to derive monetary benefits. From the above, the contrary conclusion arrived by the High Court, according to us, is not in terms of the evidence led in by the prosecution.

**A Whether Idamalayar contract was awarded at exorbitant rate causing loss to the Board**

**B** 15. The basic stand of the prosecution is that A1 entered into criminal conspiracy to award the disputed contract involving heavy financial gain to K.P.Poulose (A4) and the conspiracy and abuse of power by certain officials enabled the conspirators to earn a pecuniary advantage of Rs.2,39,64,253/-, in addition to the financial loss caused to the Board. It is the specific case of the prosecution that rate awarded in both the contracts is exorbitant. It is not in dispute that the contract was **C** awarded at 188% above PAC in the case of tunnel work and 162% above PAC for the surge shaft work. Verification of Ext. P-52(b) shows that the sanctioned estimate for the tunnel work was Rs.1,17,20,633.90. On the other hand, the accepted tender amount as per the award of contract was Rs.2,45,80,796/- **D** which is clear from Ext P 52. It is further seen as per Ext P-68 agreement, the sanctioned estimate for surge shaft was Rs. 74 lakhs and it was awarded for Rs.1,42,94,901/- The estimate for floor concreting was Rs.479.5 per M3 and the estimated rate for sides and arches was Rs.476.20 per M3. All the above **E** details were highlighted in the evidence by PW-151 a competent Engineer. Likewise, the rate for floor concreting awarded to K.P.Poulose was Rs.825.47 per M3. In fact, the calculations made by PW-151 were not seriously disputed by the defence.

**F** 16. In order to appreciate the stand that the estimated rate and the tender quoted by K.P.Poulose was exorbitant was demonstrated by Mr. Shanti Bhushan by taking us through the estimated cost of the work awarded to skilled workers brought from Kulamavu and Moolamattom, who were awarded the **G** tunnel driving work on piece rate basis. It is seen that the tunnel driving work was awarded to them at the rate of Rs. 1,250/- per M3 which was enhanced later, and finally, at the time, when the workers stopped the work, the rate was Rs. 1,900/- per M3. This is clear from the settlement memorandum Ext. P-212

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signed between the labourers and the Board. This fact was highlighted in the oral evidence of PW-7, Chief Engineer of the Board. In his evidence, he explained that the rate awarded to workers will be Rs. 2,500/- per M3 including cost of materials. PW-156, the Investigating Officer, also gave evidence on the basis of records collected during his investigation. Ext.P-52 agreement shows that the estimated rate for driving one meter tunnel was Rs. 4,090/-. Ext. P-19/Contract Certificate of the Power tunnel shows that the amount paid to the contractor for 24 meters tunnel driving was Rs. 2,39,961/-. It was highlighted that when the total work was done by the labourers at piece rate basis, they were given Rs. 2,500/- only per M3. The remuneration for 24 meters driving tunnel would come to only Rs.60,000/- the difference i.e. Rs.1,79,961 (2,39,961-60,000) would show that the tunnel driving work was given to K.P.Poulose (A4) at an excessive rate.

17. It is pointed out that there is enough material to show that the labourers, who did the tunnel work, were prepared to carryout the balance work of the tunnel at the estimated rate of Rs. 4,090/-. At the relevant time, the representatives of the workers made a representation to the then Minister for Electricity, namely, R Balakrishna Pillai (A1) informing him that they are prepared to do the tunnel work and allied works at the estimated rate. Divakaran Kutty (PW-24), Vadayattupara Radhakrishnan (PW-33), Sasidharan Nair (PW-34) and Muraleedharan Pillai (PW-46) have given evidence that they represented before the Minister as well as the officials of the Board and informed their preparedness to do the work at the estimated rate and also requested for absorption in the Board's service. In this regard, Mr. Shanti Bhushan, learned senior counsel appearing for the appellant heavily relied on the evidence of PW-46 who had gone to meet A1 along with (late) N Sreekantan Nair and submitted a Memorandum Ext.P-287 dated 01.06.1982. It is relevant to note the response of the Minister (A1) for the above said request. PW-46 stated that A1 told them that there is no question of giving the works to the

A workers and he wants to give the work to K.P.Poulose. This instance pointed out that A1 had personal interest in K.P.Poulose and had decided to entrust the contract to him, though at that time, the said K.P.Poulose did not submit the tender for the work. We have already noted that K.P. Poulose

B submitted his tender only on 30.06.1982 i.e. a month after the memorandum dated 01.06.1982 submitted by PW-46. In support of the same, the evidence of PW-122, T.M. Prabha, the then President of the Kerala Construction Labour Union that he met A1 and gave representations and requested for award

C of work to the workers at estimated rate and also absorption of the workers in the Board's service on permanent basis is also relevant. Here again, it is relevant to note that PW-122 was also informed that there is no question of awarding work to workers, but the work had to be given to K.P.Poulose. The

D evidence of PWs-46 and 122 and the statement made by A1 to both of them clearly show that K.P. Poulose was the contractor chosen in advance by A1 and other accused who were also interested in him. As rightly pointed out by Mr. Shanti Bhushan, this evidence should be connected with the

E conspiracy to award the work to K.P.Poulose at exorbitant rate originated even prior to the submission of tenders to the work by K.P.Poulose and other tenderers. The contrary conclusion arrived at by the High Court justifying the award at higher rate to K.P.Poulose cannot be legally sustained. The Board is

F empowered with the authority to award contracts and has discretion to accept and being an authority constituted under the Statute and a Public Undertaking is not expected to accept tenders at exorbitant rates with financial implications causing loss to the Board. The Board is always expected to protect its financial interest while awarding contracts. The Board mainly

G relied on the labour problem that was prevailing at the relevant time. In this regard, it is relevant to point out that the tender for the Idamalayar work was invited in March, 1982 and four persons, namely, Kamalasanan (PW-146), Managing Director, We-Build, C.K. Verghese, E.M.Varkey and V.A. Thankachan

H submitted tenders vide Exts. P78 series dated 21.03.1982. It

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is true that the tunnel workers went on strike on 20.04.1981 and the contractors submitted their tenders when there was labour unrest. However, the reason attributed for the delay cannot be accepted. As rightly pointed out, there were procedural irregularities and omissions by the Board authorities in the manner of dealing with tenders submitted by K.P.Poulose and Kuriakose, which ultimately eliminated Kuriakose from the scene, keeping K.P.Poulose as the sole tenderer, qualified by pre-qualification Committee of the Board and hasty steps were taken by the Board in awarding contract in favour of K.P.Poulose in the meeting held on 19.11.1982 lead to the conclusion that the award of contract in favour of K.P.Poulose was an exorbitant one. It is relevant to point out that the Special Judge, by adverting to Ext 550(a) expressed that the reasons stated by the Board in awarding contract in favour of K.P. Poulose at exorbitant rates are not acceptable.

**No serious discussion by the Board**

18. It is pointed out and in fact taken us through evidence that there was no serious discussion in the Board meeting held on 19.11.1982 and the minutes of the Meeting were prepared as dictated by A7, the then Chairman of the Board. It is the responsibility of the members, more particularly, full time members of the Board, who were responsible for the scrutiny of the deviations and conditions suggested by the contractor which involved huge financial implications to see that all transactions are beneficial to the Board and within the permissible limit. Mr. Lalit and Mr. Sharan, learned senior counsel appearing for A1 and A3 respectively heavily contended that it was a collective decision of the Board and there was no external pressure from anyone including A1. It is relevant to point out that the decision ultimately taken for awarding the contract with special conditions, which we will discuss in the later paras, as suggested by the contractor, involved huge financial implications at the risk and loss of the Board. Though the High Court has concluded that the part-time

A members who were signatory to Ex550(a) had approved the minutes, subsequently, the Special Court made a distinction between the responsibility of full-time members and that of part-time members in the matters of awarding of contract. It is true that all the members present subscribed their signature in the

B minutes in awarding contract to K.P.Poulose. It was highlighted that in evidence, A8, the Financial Adviser to the Board, in his report has stated that the rates awarded to the contractor are very high. The letters sent by A8 were marked as Exs. P-415 and 416. It is also relevant to point out that the then Law

C Secretary, Shri Viswanathan Nair also conveyed his opinion during the meeting of the Board that the rates are exorbitant. These aspects were taken note of by the Special Court while considering the culpability of the accused and the High Court was not serious about their views. In other words, the High

D Court has concluded that the award of contract to K.P.Poulose was a collective decision of the Members of the Board. The High Court also pointed out which was again highlighted by the learned senior counsel appearing for the accused that majority of the Members of the Board were highly qualified and responsible officers and it cannot be said that they were only

E mute witnesses to the decision of the Board. In this regard, it is relevant to point out that the Special Court has rightly concluded that there was no serious discussion in the Board Meeting dated 19.11.1982 when the question of award of contract was taken up and the minutes of the meeting were

F prepared as dictated by A7, the then Chairman of the Board. The then Deputy Secretary of the Board, R. Sankaran was examined as PW-140, also admitted this aspect and stated that there was no serious discussion in the meeting held on 19.11.1982. He explained that Ex.550(a) minutes of the

G meeting is a reproduction of the dictation given by the Chairman of the Board (A7).

19. The High Court has pointed out that the prosecution has not produced any contemporaneous agreement for proving

H the rates prevalent during the relevant period of award of the

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contract. The High Court found that the contract was awarded at 188% above PAC for the tunnel work and 162% above PAC for the surge shaft work. It was pointed out from the side of the Board that the estimate rate was prepared taking into account the prevalent PWD rates for similar items of work like tunnel driving, concrete lining, earth work, cost of materials, labour charges, transportation charges of materials to worksite etc. It is not in dispute that the contractor was also given opportunity to conduct site inspection and decide other aspects connected with the execution of the works for submitting his tender rate. Though contractor can also quote special conditions involving financial implications and other conditions in the contract, which is usually settled by negotiations, but the general conditions of contract shall not be superseded while accepting special conditions to the detriment of the Board. The Special Judge had noted that the rate quoted by N.K.Kuriakose (PW-30) for tunnel driving and surge shaft work was below 21.75% of the estimated rate and there was much difference in the rate quoted by K.P.Poulose and Kuriakose. It is further seen that the work was awarded to Kuriakose at the rate of Rs. 1,092.3 per M3 for sides and arches. The work awarded to Kuriakose was abandoned by him since the Board did not provide him with necessary materials for proceeding with the work as per the agreement. He adduced evidence for the said abandonment and also suffered loss in that regard for which Board was subsequently held liable and he was paid compensation as per the Court orders. The work was awarded to N.K. Kuriakose in 1979. The Special Court has pointed out that even though there was an increase of 25% of the actual rate awarded to Kuriakose, still there was wide difference between the rates at which the two works were awarded and on this ground also, the Special Court held that the works for floor concreting and for sides and arches were awarded to K.P.Poulose at a higher rate. However, the High Court disagreed with the conclusion of the Special Court. In this regard, it is useful to refer Ext.P174(2), which is a report with regard to the rate of award of Idamalayar contract. It was stated in the report that the

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- A estimate was prepared with the scheduled rate of 1980 which had been enhanced by 25% on labour to obtain 1982 schedule and the work was awarded after the enhancement of the scheduled rates. It is further seen that the estimate was prepared with the scheduled rate of 1980 for the purpose of
- B obtaining the rate of 1982 i.e. increase of 25% in the rate was given in 1980. The High Court has justified the increase of 25% by pointing out the increase mentioned in Ext.P299 which relates to contractor's profit of 10%, overhead charges of 10% and 5% for labour benefits. Though the High Court has agreed
- C with the 25% increase in the rate of 1980-82, no acceptable evidence was adduced over-riding the documentary evidence furnished by Ext.P-299 and P174(2).

#### **Award of contract to K.P. Poulose (A4)**

- D 20. It is the argument of Mr. Shanti Bhushan, learned senior counsel for the appellant that the tendering process adopted by the Board was with a view to eliminate other tenderers and to choose the tenderer of their choice, namely, K.P.Poulose. This was elaborated by pointing out that Kuriakose was
- E disqualified without giving him adequate opportunity to present before the pre-qualification Committee and ultimately K.P.Poulose was declared as qualified. In the said meeting, only A6 and A7 were present and A8, and another member of
- F the pre-qualification Committee was not present. Pursuant to the decision that Full Board meeting should be held on 19.11.1982 to decide the question of award of Idamalayar contract, PW-7 was directed to issue notice to all the tenderers. The materials
- G relied on by the prosecution shows that on 18.11.1982, notices were issued to HCC, E.M.Varkey, Sunny K. Peter and K.P.Poulose. It is seen that only K.P.Poulose was present on 19.11.1982. Sunny K. Peter PW-4 sent a telegram on 19.11.1982 stating that he is not physically well. HCC conveyed their inability to the Board by their letter which was received in the office of the Chief Engineer on 22.11.1982 stating that there was no sufficient time given to attend the Board Meeting on
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19.11.1982. Without verifying the fact that whether all the other tenderers were ready, a decision was taken on 19.11.1982 itself by accepting the offer of K.P.Poulose with special conditions. As rightly pointed out, the Board being a statutory authority, ought to have waited for a reply from the other tenderers to ascertain whether they actually received notices and reason for their inability to attend. It was demonstrated that it was a pre-planned attempt to award the work to K.P.Poulose alone and the notices issued to other tenderers were in the form of an ultimatum. It was also pointed out that for the negotiation on 04.11.1982, i.e. prior to 19.11.1982, held by PW-7, with the tenderers, in the office of the Board only K.P.Poulose and Sunny K. Peter were present. It is further seen that E.M. Varkey and HCC were not invited. The fact remains that PW-7 did not invite E.M.Varkey who quoted less rate and HCC, a reputed construction company for the second negotiation. Though a telegram was sent on behalf of E.M.Varkey, one of the tenderers that since he was away and request was made to fix another date, it was recorded that the tenderer had already lost his opportunity offered. This has been demonstrated by the appellant that the Board was not prepared to allow the request of E.M. Varkey for a discussion. It is useful to refer here that the pre-qualification Committee, headed by A7, gave chances to K.P.Poulose to correct the errors and mistakes in the tender form submitted by him for the impugned works, on the other hand, such concession was not afforded to the other tenderers, more particularly, E.M. Varkey. Both Sunny K. Peter and Kuriakose were examined as PWs-4 and 22 respectively. The evidence of Kuriakose shows that he was an experienced contractor, quoted 124% above PAC for the work and submitted his tender on 30.06.1982. According to him, he was not invited for any discussion. He was disqualified on 09.09.1982 and was not invited for being present for opening his deviations and conditions in the tender. In the same way, the evidence of Sunny K. Peter PW-4 also highlighted how he was discriminated, though he has quoted only 135% above PAC, he was not given opportunity to consider the

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A reasonableness of the rates quoted by him. According to him, he received notice only at 2.40 p.m. on 18.11.1982 and because of his illness, he could not attend the meeting on 19.11.1982. The fact remains, the Board has not considered his request and finalised the contract on 19.11.1982 in favour of K.P.Poulose.

21. Another aspect highlighted by the learned counsel for the appellant relates to the conduct of A1 with regard to settlement of labour dispute. The evidence shows that there was labour strike in the tunnel area which started in April, 1981 and continued from the time of inviting tenders on 05.06.1981 till the time of award of contract. It was highlighted that there was no effort on the part of A1 to settle the labour dispute before tendering process was initiated. We have highlighted the Memorandum submitted by the labourers to A1 on several occasions requesting for settlement of labour problems. It was not settled and the matter was kept alive till the tender was fixed in the name of K.P.Poulose on 19.11.1982. It was only after the award of the contract, A1 took initiative to settle the labour dispute, more particularly, when he came to know that K.P.Poulose cannot enter the site because of the obstruction of the workers to begin the contract work. It is relevant to point out that PW-7 informed A1 and A6 more than once that in case the labour dispute could be settled in advance, the contract could be awarded at a reasonable rate. The evidence of PW-7 clearly shows that his request was not accepted by A1 and A6.

22. The evidence discussed above show that the rate quoted by Sunny K. Peter (PW-4) vide his evidence in Court, was 135% above PAC, which was less than 188% above PAC, quoted by K.P. Poulose and approved by the Board. The High Court failed to take note of the importance of evidence of PW-4 and justified the action of the Board in not pursuing the tender submitted by Sunny K Peter (PW-4) with a lesser rate on the ground that his tender is liable to be rejected since he wanted an arbitration clause in the agreement. Further, though PW-4

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has quoted lesser rate than K.P. Poulouse, in his evidence, he has highlighted that he was not given an opportunity to consider the reasonableness of the rate quoted by him i.e. 135% above PAC. The High Court has not only ignored his assertion but found that the rate quoted by him for the surge shaft work is not a lesser rate when compared to one quoted by K.P. Poulouse i.e., 188% above PAC. Though the Special Court has correctly found that Sunny K. Peter quoted less than the rate quoted by K.P. Poulouse, the High Court, on erroneous assumption found fault with the finding of the Special Court which correctly appreciated prosecution case.

**Acceptance of Special Conditions & Concessions**

23. With regard to allegation of the prosecution that certain Special Conditions were accepted by the Board (Ex. P588) involving huge financial commitments favourable to the contractor causing loss to the Board, it is relevant to mention that one of the special conditions, is condition No. 4 which relates to tools and plants sold to the contractor in violation of the General Conditions of the contract. These special conditions along with other conditions were accepted by the Board superseding corresponding agreement provisions. Ex P52 (c) is the general conditions of contract and instructions to the contractors issued by the Board. Among various clauses, Clause E1-091 in Ex. P52(c) deals with tools and plants issued to the contractors. This clause provides that the Board is bound to make available to the contractors only such tools and plants listed in the Schedule attached thereto, that too subject to availability. Such items of tools and plants which are listed in Ex. P52 agreement marked as Ex. P52(d) shows 8 items of tools and plants which can be hired out to the contractors if requested on the specified rates. In Ex. P58, deviations and conditions submitted by the contractor as Item No 4, stated that such tools and plants listed in Ex. P52(d) shall be sold to him on outright sale at book value deducting depreciation and the cost may be recovered on prorata basis from his bills. The full Board, in its decision dated 19.11.1982, had accepted the

A above special condition of the contractor. It is relevant to point out that these items includes tipper wagons loco, loader, existing truck lines and pipes, items which can only be hired to the contractor as per clause E1-091 of the General Conditions of the contract. It is the case of the prosecution that it was the decision of the Board to sell those items of tools and plants which includes very costly foreign imported materials. The official examined on the side of the prosecution pointed out that there is no provision in the general conditions of the contract enabling the Board to effect sale of those tools and plants to the contractor. However, certain materials belonging to the Board mentioned in Clause E1-093 and not covered by the list mentioned in Clause E1-091 could be sold to the contractors if available to the Board. The evidence led in clearly shows that the sale of materials listed in Clause E1-093 supersedes the general conditions of contract. In other words, it is clear from the evidence that those materials which were not mentioned in the Special Conditions were sold to the contractor on outright sale. In this regard, it is useful to refer the evidence of Udayabhanu Kandeth PW-136, Auditor attached to the Accountant General Office which shows that 126 items of tools and plants were sold to the contractor of which the cost of 117 items was Rs. 16.5 lakhs. The Auditor of the Board, who was examined as PW-130, also explained about the sale of tools and plants to the contractor, which was not provided in the agreement. It is clear from the evidence that the sale of tools and plants which could only be hired to the contractor as per the list in E1-091 was against the objections raised by A8, the Financial Advisor and Chief Accounts Officer of the Board during the relevant period. In his report, A8 had noted that the financial implications involved in the sale of items of tools and plants were not considered either by the Board or by the officers of the Board at the time when the full Board decided to sanction the above special condition No. 4 of the contract. These aspects have been duly considered by the Special Court, namely, that the tools and plants which are only to be hired as per Clause E1-091 to the contractor, however, the Board

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permitted outright sale which is detrimental to the financial interest of the Board. These important aspects have been overlooked by the High Court while upsetting the decision of the Special Court.

24. In addition to the same, the prosecution has led in further evidence to show that the contractor was favored in several aspects. PW-128, V. Ramanarayanan, Superintending Engineer, in his evidence has stated that pental placer, an imported item not included in the list for issue on hire, was sold to the contractor, the sale value of which was Rs. 4 lakhs and according to him only lump sum recoveries were made from the CC bills of the contractor, instead of prorata recovery as provided in the agreement. This also caused loss of interest on the sale price of materials. He further deposed that 30 items of spares were issued to the contractor costing Rs. 6 lakhs and when he calculated the total value of spares and materials issued to the contractor it came around Rs. 36 lakhs, out of which, only a portion was recovered by the Board from the contractor vide Ex P517-P519. This witness has also pointed out that there were several items sold to the contractor without obtaining sanction of the Board.

**Return of empty cement bags by the Contractor**

25. Another special condition sanctioned by the Board in favour of the Contractor relates to the return of empty cement bags. This special condition provided that the Contractor shall return only 50% of empty cement bags in good condition. Ext. P-33, Audit Enquiry Report of Idamalayar Project Circle states that the Contractor had to return 65,100 empty cement bags, the value of which was calculated at more than Rs.1 lakh. According to the Auditor, because of the special condition, the Board had sustained a loss of Rs.1,08,879.75. The Financial Advisor and Chief Accounts Officer, who arrayed as A8, had stated in Ext. P-416 that without evaluating the exact financial implications, sanction was accorded by the Board to the special condition regarding return of empty cement bags to the

A advantage of the Contractor for getting financial gain. Though  
 it is stated that the condition only provides for return of 50%  
 empty cement bags in good condition and for the remaining,  
 the rate provided by the general conditions of contract could  
 be realised from the Contractor, the fact remains, the special  
 B condition which we are concerned does not provide for the  
 realisation of value of the remaining unreturned cement bags.

26. With regard to special conditions, the High Court has  
 held that inasmuch as there is a provision in tender to enable  
 the Contractor to get special conditions, it cannot be said that  
 C the special conditions and deviations of the Contractor should  
 not be accepted. Here, the High Court has missed the real  
 issue as to whether all special conditions as requested by the  
 Contractor can be sanctioned by the Board in violation of  
 general conditions of contract, which is the standing order of  
 D the Board applicable to all contracts and the policy adopted by  
 the Board. Simply because there is a provision to enable the  
 contractor to suggest special conditions advantageous to him,  
 it does not mean that the Contractor can suggest any special  
 condition which involved financial implication to the detriment  
 E of the Board. As correctly found by the Special Court, the  
 special condition No.4 relating to sale of tools and plants is a  
 favour done by the Board to the Contractor for obtaining  
 financial gains at the risk of Board's loss. The Special Court  
 has substantiated its finding on the point based on evidence  
 F furnished by the auditors. However, the High Court relying on  
 Ext D-28 provided for recovery of balance 50% of empty cement  
 bags not returned or returned in damaged condition and  
 recovery will be effected as stipulated in the tender condition,  
 erroneously concluded no loss could be sustained to the Board.  
 G It is relevant to point out that the special condition No.10 clearly  
 states that the contractor is bound to return only 50% empty  
 cement bags in good condition. To make it clear, this condition  
 supersedes the corresponding general condition of the contract.  
 Therefore, the Contractor is bound to return 50% of empty  
 H cement bags in good condition and there is no need to pay the

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price of balance 50%. Accordingly, the Board can act only on the basis of the special condition No.10 regarding the return of empty cement bags and is not entitled to recover the value of balance 50% of unreturned cement bags. The contrary conclusion arrived at by the High Court relating to return of empty cement bags cannot be accepted.

**Fixation of security and retention:**

27. Yet another special condition involving financial implications sanctioned to the Contractor is with regard to the fixation of security and retention amount. Special Condition No.1 of Ext.P-588 deals with this subject. It is the prosecution case that restriction of security and retention amount is in violation of the provisions contained in the general conditions of the contract and it is a favour shown to the Contractor to make illegal gains at the expense of the Board. Clause E1-008 of Ext. P52(c) is the provision relating to security deposit of the Contractor which states that for major works where the cost of construction exceeds Rs.25 lakhs, the security deposit should be 2% of the PAC. In the case on hand, the PAC of Idamalayar contract works exceeds Rs.25 lakhs. There is no dispute for the same. The security for both works should be fixed at 2% of the PAC. Clause E1-011 of ExtP-52 is the general conditions of contract and instruction to the tenderers dealing with retention of the money from the bills payable to the Contractor. As per this clause, from each bill of the Contractor 10% should be deducted towards additional security. However, the retention was not to exceed 5% of the PAC where cost of work exceeds Rs.25 lakhs. Therefore, 5% of PAC is to be retained as retention amount for both these works. In this regard, it is relevant to refer the special condition. In the case of tunnel work, the retention and security is limited to Rs.5 lakhs which is clear from Ext.P-71. Likewise, in the case of surge shaft, security is limited to Rs.1 lakh as evidenced by Ext.P-69. This is also strengthened from the evidence of PW-8 who was the Executive Engineer in the Idamalayar project. He explained that the security amount and retention amount due from the

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A contractor would come to Rs.12 lakhs. Inasmuch as the PAC for both works would come to Rs.2,45,80,796/-, the retention amount in the case of surge shaft work would come to Rs.7.2 lakhs, which is 5% of the PAC. PW-8 has explained that the restriction of retention amount is a benefit shown to the Contractor. In Ext.P-65, report of PW-7, also calculated financial loss that will be sustained by the Board in limiting security and retention amount of the Contractor. In the same report, PW-7 also mentioned the loss of interest for the same. It is also pointed out that due to restricting the security and retention amount as per the special condition No.1, sanctioned to the Contractor, the liquidated damages payable by the contractor shall not exceed the whole amount of retention plus security deposit. The result of restriction of security and retention is that the liquidated damages payable by the Contractor is also automatically restricted accordingly. In that event, the Board is not entitled to recover any amount by way of liquidated damages even if the Contractor is guilty of negligence or default. All these aspects have been properly scrutinized by the Special Court. No doubt, the High Court relied on the evidence of Madhavan Potti (PW-5) that acceptance of special conditions in a contract is a normal procedure. In the same way, the High Court has also placed reliance on the evidence of Ramanarayanan (PW-21) that reduction of security and retention amount is also a normal procedure. A perusal of Kerala State Electricity Board Tender Regulations show that the reduction of security deposit is permissible only in the case of established firm/Company and that the security deposit of a new contractor shall not be reduced. The course adopted by the Board is contrary to the condition contained in Regulation No.25(c) of the Board's Regulations. Though the High Court has observed that in all major contracts, it is an accepted practice to put a ceiling on the security and retention amount and there is no acceptable evidence to support such a finding, we are unable to accept the observation of the High Court that "*for the success of execution of major contract works, small favours are inevitable*". We conclude that the above observation of the

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High Court is based on a general opinion not supported by any material or evidence on record. A

**Criminal Conspiracy**

28. On this aspect, the Special Court has analysed the evidence of witnesses and considered the documents produced and marked by the prosecution and concluded that there is sufficient evidence for finding that a criminal conspiracy was hatched out at the instance of A1 (R.Balakrishna Pillai, the then Minister for Electricity) and P.K. Sajeev (A3) who was a close associate and political ally of A1. This was strengthened by the evidence of I.K. Prabhakaran, Assistant Engineer, Quality Control, Idamalayar project who was examined as PW-21 and other witnesses. Nobody has challenged the relationship between A1 and A3. It is the case of the prosecution that a conspiracy was hatched out at the instance of A1 and others with the illegal object of getting the Idamalayar project fixed on one among themselves at exorbitant rates and make illegal profits. It is also the definite case of the prosecution that though the work was awarded in the name of K.P.Poulouse, one of the accused, it was actually executed by A3 and another accused Paul Mundakkal (deceased). It has come in evidence that the amount of work was invested and payments were made by Paul Mundakkal and A3. As rightly observed by the Special Court, the relationship between A1 and A3 is a relevant factor in arriving at the circumstances leading to the formation of the conspiracy. The evidence led in normally show that A3 was an intimate friend of A1 and very closely moving with him who was the Minister for Electricity during the relevant period. PW-21, in his evidence, has stated that A3 was an active member and leader of Kerala Congress Party led by A1 at the time when works were allotted. PW-3, who was a watchman of the Inspection Bungalow at Idamalayar was examined on the side of the prosecution has stated that A1 and A3 used to come and stayed in the Inspection Bungalow. He further asserted that it was A3 and the deceased Paul Mundakkal, who were supervising the work at site. In addition to the evidence of PW-

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A 3, the evidence of PWs 6, 7 and 8 who were Engineers at the relevant time at Idamalayar worksite and supervising execution of works corroborated the evidence of PW-3. PWs 24, 25 and 26 also supported the above claim of the prosecution. PW-25, one of the workers at Idamalayar also deposed that he was working with A6, who was managing Idamalayar works. PW-26, another worker also stated that when he went to the house of A3, he saw A1 in his house.

29. The prosecution has established the relationship and friendship between A1 and A3 by placing acceptable evidence. The nomination of A3 to Board's Consultative Council was made at the instance of A1. Under Section 16 of the Electricity (Supply) Act, 1948, the Constituting Authority is the State Government. The evidence led in by the prosecution shows that A1 took initiative to include the name of A3 in the list of nominees for constituting the Consultative Council. The evidence of PWs 18, 27 and 51 and Ext.180(c) establish the case of the prosecution. The evidence further shows that the mandatory requirements contemplated under Section 16 of the Act regarding the constitution of Consultative Council was not adhered to by A1 who wanted to include A3 in the panel which states that the State Government may constitute the Consultative Council considering all representatives of power generating companies and other persons in consultation with the representative bodies of various interests, namely, industry, commerce, agriculture, transport etc. It makes it clear that consultation with the representative bodies of various interests is a mandatory condition precedent for appointment of a Member by the Government in the Board's Consultative Committee. But in the case on hand, from the evidence, it is clear that there was no such consultation by the Government before making nomination of A3 who was the Secretary of Kothamangalam Bus Owners Association. It was pointed out that usually the representatives of State Level Organisers representing various interests alone were nominated after consultation by the Government with such bodies. Admittedly,

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A3 was not representing any State Level Bus Owners Association. This is evident from the evidence of PWs 31 and 16. It has also come in evidence that on 30.07.1983, in a Conference held on Idamalayar Inspection Bungalow, attended by various officers of the Board and others connected with the execution of Idamalayar work, A1 declared in public that A3 was his bosom friend and requested everybody to cooperate with him for the successful completion of the project work.

30. The prosecution has established the relationship of A1 and K.P. Poulouse even before awarding of contract. In November 1982 itself, A1 had chosen K.P. Poulouse as prospective contractor for execution of the work which fact is spoken to by T.M. Prabha (PW-122) and also by Muraleedharan Pillai (PW-46). We have already adverted to the evidence of PW-46 in detail in the earlier paragraphs. Their evidence shows that when they met A1 requesting for the award of the tunnel driving work to the workers at Idamalayar, who were brought from Idukki, Kulamavu etc, A1 told them that the execution of the Idamalayar work is proposed to be given to K.P. Poulouse. This was on 29.06.1981 i.e. well prior to the execution of the contract, and indicate that there was prior contract between A1 and K.P. Poulouse regarding the award of contract work at Idamalayar.

31. The role played by A3 in fixing the contract to K.P. Poulouse is also relevant to infer the formation of agreement between himself and A1, the Minister for Electricity. In addition to the same, the prosecution has adduced acceptable evidence that a company by name Hydro Power Construction Company was registered as a partnership firm with K.P. Poulouse as Managing Partner and A3 and Paul Mundakkal as Working Partners. Further, close relatives of K.P. Poulouse, A3 and Paul Mundakkal were parties to the partnership deed. The object of the partnership was to execute the Idamalayar tunnel work and also the surge shaft work in the name of the Company. The said firm was an assessee under the income tax Act which

A is evident from Ex. P245, the income-tax assessment of the firm in the year 1984-85 and 1985-86. K.P. Poullose, A3 and Paul Mundakkal were submitting income tax returns and this is evident from the evidence of PW-123, an Income-tax practitioner. In addition to the same, when A3 was questioned under Section 313 Cr.P.C., he admitted that he invested good amount for the work and visited the site to watch the progress of the work. The fact that A1, while as a Minister for Electricity, interfered with the award of the contracts of the Board were spoken to by PW-64, PW-66, PW-138 and PW-146 which we have already discussed in the earlier paragraphs. It is also clear that A1 was awaiting for a probable contractor of his choice to undertake the Idamalayar works at exorbitant rates.

32. There was labour agitation prevailing at Idamalayar work site. The workers brought from Moolamattom, Kulamavu etc. went on strike demanding execution of the work on piece rate basis and also for absorption in permanent service of the Board. At the time, when the tendering process of the work was started by the Chief Engineer, Bharathan, strike situation was pending at Idamalayar which continued till the work was awarded in 1982. It is in evidence that after execution of the agreement of the Idamalayar work by K.P. Poullose, there was obstruction from the striking workers preventing him from entering the worksite and consequently A1 interfered and settled the labour dispute by awarding a compensation of Rs. 11 lakhs to the striking workers and the worksite was made clear free of any labour unrest. It is the prosecution's case that this was done to help the contractor, a party to the conspiracy for execution of the work and make illegal profit therefrom. The evidence of PW-7, Chief Engineer and other witnesses stated that the awarding of Idamalayar work at exorbitant rate could have been avoided in case the labour issue was settled earlier. The prosecution has also highlighted labour unrest at Idamalayar which was kept pending at the instance of A1 and other interested parties so as to make it appear that no contractor will come forward to undertake the contract, so much so that

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there is possibility of choosing a contractor of their choice for the execution of the work at exorbitant rate. A

33. The prosecution has also highlighted that to achieve the illegal object of finding the contract in the name of K.P. Poulouse at exorbitant rate, the pre-qualification system was introduced by the Board vide order Ex. P576 dated 24.09.1981. This was after tendering process has started for the Idamalayar work. One Alexander Vellappally, who was examined as PW-138, explained before the Court that pre-qualification bid system was misused by the Board to safeguard vested interest by choosing contractors of their choice. From the proceedings initiated by the Board on 19.11.1982, passing a resolution to award the work to K.P. Poulouse, a scheme of pre-qualification bid was successfully operated by the Board authorities at the instance of A1 for paving the way clear to K.P. Poulouse to get the work at a very high rate. B  
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34. With regard to the relationship between A1 and A3, the prosecution has relied on the evidence of PW-19, receptionist of the Paramount Tourist Home who has stated that A3 was occupying a room on 17.11.1982 and 19.11.1982 on rent at Paramount Tourist Home. Exs. P185, 186 and 187 are registers maintained in the Tourist Home and relevant entries therein were marked and proved by PW-19. According to him, A3, took a room in the Tourist Home at 11:50 a.m. on 17.11.1982 and vacated the room on 5:00 p.m. on 19.11.1982. The Special Court noted the significance of his stay during the above period at Thiruvananthapuram. A3, in all probability, was at Thiruvananthapuram to meet A1 and also to meet PW-7, Chief Engineer, A6 and A7, to work out the scheme for getting the contract in favour of K.P. Poulouse at a higher rate after avoiding other tenderers. It is further evident that A3 took the room on 17.11.1982 when the Full Board meeting was considering the tender of K.P. Poulouse and left the room on 5:00 p.m. on 19.11.1982 after the tender was awarded to K.P. Poulouse. The close intimacy of A3 with A1 is well known and his influence over A1 might have persuaded A6 and A7 to fix E  
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A the contract on K.P. Poulouse. PW-7, Chief Engineer has  
deposed before the Court that A3 met him on 04.11.1982 and  
requested him to make a recommendation for awarding the  
contract to K.P. Poulouse. A3 also told PW-7 that when A1 was  
talking over phone to PW-7, while in the office of the Chairman  
B of the Board, the witness was present in the chamber of A1  
and asked PW-7 what was the difficulty in recommending the  
contract even after A1 directed him to do so. The Special Court,  
after analysing the evidence in detail found that A3 is the man  
behind the manuring for getting the contract awarded to K.P.  
C Poulouse. K.P. Poulouse, however, was only a benamidar and  
A3 and Paul Mundakkal were the beneficiaries though the work  
was awarded in the name of K.P. Poulouse. The prosecution has  
also highlighted and proved that A1 was awaiting for a better  
contractor, who would quote higher rate, when PW-146  
D Kamalasanan, Managing Partner, We-Build was not willing to  
quote a higher rate as desired by A1. The role played by A6 in  
the matter of hatching out the conspiracy and the fulfillment of  
the unlawful object is proved by evidence, particularly, from the  
evidence of PW-7. From the above materials, it is clear that a  
criminal conspiracy among A1, A3 and A6 can be inferred. A1,  
E as Minister for Electricity is all in all dealing with the efforts of  
the Board including the awarding or cancellation of the  
contracts. The officers and the Board members were under his  
pressure and fear which clearly seen from the statements of  
prosecution witnesses, namely, PWs 8, 36, 60, 62, 138, 140,  
F 64, 66 etc. It is also relevant to point out that A6 and A7  
avoided considering the request of PW-4 in his telegram sent  
to the Board. We have already adverted to the fact that it was  
Sunny K. Peter, PW-4, who quoted a lesser rate than K.P.  
Poulouse. He quoted only 135% above PAC. By arranging the  
G Board meeting on 19.11.1982, with short notice of less than  
24 hours, the intention was to avoid other tenderers and to  
achieve the object of conspiracy to award the contract to K.P.  
Poulouse who alone was present on 17.11.1982 and  
19.11.1982. The request of E.M. Varkey for fixing another date  
H for participating in the discussion for award of the contract was

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also rejected. From these materials, as rightly concluded by the Special Court, it leads to a conclusion that several out of way methods were adopted by the Board at the instance of A1 for achieving the object of conspiracy. A.

35. As rightly pointed out by the Special Court, the confirmation of Hydro Power Construction Company consisting of A3, A4 and Paul Mundakkal and their close associates and relations for execution of Idamalayar contract work, A3 supervising the execution of the contract work and the visit of A4 at the worksite only on rare occasions, the payment of wages to the labourers by A3 and Paul Mundakkal are all proved various circumstances that the conspiracy among the accused continued to operate even after the award of the contract. The High Court failed to consider various instances and materials placed by the prosecution in respect of charge relating to conspiracy. According to the High Court, *"the proved circumstances are not sufficient to hold that there was conspiracy as alleged by the prosecution or as found by the Special Court."* Before us, it was demonstrated that several material aspects have not been considered by the High Court, for example, the stay of A3 at Paramount Tourist Home, Thiruvananthapuram on the crucial dates i.e., on 17.11.1982 to 19.11.1982 has not been considered by the High Court in the correct perspective. As pointed out by the appellant, the High Court ought to have found that the evidence relating to A3 at Paramount Tourist Home is only to bring out one of the circumstances leading to the formation of criminal conspiracy hatched out by the accused. In fact, A3 has admitted his stay in his Section 313 Cr.P.C. statement at Thiruvananthapuram on those dates, hence, finding by the High Court on this aspect, faulting with the Special Court cannot be sustained. Even though, the High Court has admitted that A1 and A3 belonged to the same political party and close relationship exists between the two, the nomination of A3 in the Consultative Council of the Board as evidenced by Ex.P-180 was unfortunately not recognised by the High Court as a material B  
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A evidence proved by the prosecution. Insofar as claim of PW-3  
**that it was he who settled the bill in the inspection bungalow,**  
**the perusal of his entire oral evidence clearly supports the case**  
**pleaded by the prosecution insofar as the close association**  
**between A1 and A3 during their visit to the worksite. PW-7,**  
 B former Chief Engineer, a most reliable witness was examined  
 in the presence of A3 on 04.11.1982 in the Board's office.  
 There is no necessity to corroborate or further material in  
 addition to the oral evidence of PW-7. As rightly analysed and  
 concluded by the Special Court, there is no infirmity in the  
 C evidence of PW-7 merely because there is no documentary  
 evidence in respect of the presence of A3 at the Board's  
 meeting. The evidence of PW-7 cannot be ignored.

36. The High Court very much accepted the stand of the  
 accused that it was a collective decision of the Board, we have  
 D already discussed the reasons stated in Ex P-550(a) for  
 awarding contract in favour of K.P. Poulose at exorbitant rate.  
 The reasons relied on by the Board exposes the omission and  
 negligence on its part in fixing the contract with PW-146  
 Kamalasanan or E.M. Varkey or with Kuriakose PW-22 or PW-  
 E 4 Sunny K. Peter, who quoted lower rates than K.P. Poulose.  
 Even before us, learned senior counsel appearing for the  
 accused reiterated that it was a collective decision of the  
 members of the Board to award the contract in favour of K.P.  
 Poulose. We have already highlighted the reasoning of the  
 F Special Court relating to the important fact that contract was  
 awarded at exorbitant rate, reduction in retention and security  
 amount, return of 50% empty cement bags and also  
 acceptance of special conditions for the sale of tools and plants.  
 In the instant case, all the ingredients of criminal conspiracy are  
 G satisfied for convicting A1, A3 and A6 for the offence charged  
 against them.

**Special mention about PW-7, retired Chief Engineer of the  
 Board & PW-46**

H 37. The High Court as well as learned senior counsel

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appearing for the accused commented the evidence of PW-7 by saying that there are inherent improbabilities and inconsistencies and his evidence is not cogent and convincing whereas among several witnesses examined, prosecution heavily relied on the statement of PW-7, a retired Chief Engineer. He retired from service on March 1985. He joined the service of the Board on July 1954 as Junior Engineer and prior to that he was in the Electricity Department. It has come in evidence that he gained vast experience since he worked in various projects such as Chakulam project, Neriyanamangalam, Idukki, Kakakd and Idamalayar project. It is also seen from his evidence that he participated in four major projects. He first examined on the side of the prosecution on 28.03.1996 and at that time he was 66 years old. In this background, let us test his evidence as discussed in the earlier part of our order. The prosecution heavily relied on his evidence and, in fact, Mr Shanti Bhushan in support of his argument mainly relied on the evidence of PW-7. By his rich experience and worked as a Chief Engineer at the relevant time, namely, when Idamalayar project was commissioned, PW-7 furnished all the details with reference to various documents such as his report, opinion, minutes of the meeting of the Board with reference to Idamalayar project. No doubt, all the three senior counsel appearing for the accused A1, A3 and A6 severely criticized his conduct in not answering many of the questions in his cross examination. It is true that in chief-examination, PW-7 highlighted various aspects with reference to documents such as opinion, report and Board's proceedings and minutes thereon. From the perusal of his cross-examination, it cannot be concluded that he didn't answer or elaborate any of the question put by the counsel for accused. It is true that for certain questions he answered that he has to verify from the records and for certain questions he didn't answer or answered stating that "*he do not remember*". It is relevant to point out that he retired from service in March 1985 and he was called upon to give evidence only in March 1996 nearly after 15 years of the commissioning of the Idamalayar project. If we consider all

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A these aspects, there is no reason to reject his entire evidence as claimed by the respondents/accused. In his evidence, he has mentioned that on the submission of tender by K.P. Poulouse, it was noted that he quoted 189% above PAC. Agreement submitted by K.P. Poulouse has been marked as Ex. P-52 and

B in that Paul Mundakkal was signed as witness. It is further seen that as Chief Engineer, he sent letters to K.P. Poulouse and Kuriakose who was another persons submitting tenders on 28.07.1982. He made a note that the tender is not in proper form and it contains many mistakes and requested them to

C rectify the mistakes within a time schedule. In this regard, it is useful to refer his categorical statement which, he deposed before the Court that *"I considered it as a special case because the engineer member Mr. Ramabhadran Nair (A6) informed me that Mr. Balakrishna Pillai (A1) has a special interest to award this work to Mr. K.P. Poulouse (A4), hence the*

D *mistakes happened in the tender should be rectified with K.P.Poulouse himself and make a circumstance to award the work to K.P. Poulouse..."* About the disqualification of tender offered by Kuriakose, PW-7 deposed the decision was taken by a committee because he could not rectify the mistakes as

E directed by him. In respect of a question put to PW-7 about the response of A6 and A7, he answered *"they stated that they are happy in disqualifying Mr. Kuriakose"*. It is also seen from his evidence that after noting that the rate quoted by K.P. Poulouse is higher rate, he forwarded the said information for

F remarks of FA and CAO. He also asserted that A6 told him that A1-Minister Balakrishna Pillai is very much particular to award both the works to K.P. Poulouse. It is further seen that he highlighted that without solving the problem of tunnel workers no contractor can do the work. According to him, because of

G this reason he informed A6 to take steps to solve the problem of workers and in fact PW-7 met A6 at his office on 04.11.1982 at 11:00 a.m. When the issue relating to labour problem was under discussion, according to PW-7, the P.A. of Board Chairman Sankaran Nair approached him and informed that

H Minister Balakrishna Pillai is willing to talk to me through

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telephone of the Board's Chairman. In view of the same, according to PW-7, he suddenly entered into the cabin of Board's Chairman which is the next room and took the telephone. He introduced himself through the phone and according to PW-7 "A1 asked him why you were not recommended the tenders of Idamalayar tunnel and surge shaft to the Board. I replied to A1 I am going to talk about it with the contractor today and I am having same problem in this matter. There is only one tender submitted by K.P. Poulouse, the rate is very exorbitant, if the work is awarded without solving the problem of tunnel workers, K.P. Poulouse cannot start the work. A1 replied that you don't look upon it, K.P. Poulouse will purchase all these workers, we granted this higher rate for that also, hence you recommend the Board to award both the works to K.P. Poulouse without any delay. Then the conversation was concluded. I immediately visited the room of A6. I told to A6 about the call of Minister and my reply and difficulties. At that time A6 told him that the Minister directly asked you, so you do it as he say." The following statement is also relevant about the conduct of A1 and how much he was interested in awarding contract in favour of K.P. Paulouse. PW-7 deposed "the face of A1 shows much anger. He explained A1 that if tenders are invited after solving the problem of tunnel workers, rate will be reduced, that is profitable to the Board. A1 replied with higher anger that I know how to look after the Board, I do not want any advice from your people, are you approaching me with intimate talks, after this, I had no talk anything about it." It is further seen that thereafter a note was sent by Sreedharan Pillai and Unnikrishnan to recommend for awarding both the works to K.P. Poulouse. According to him, he received all the documents as per the direction of A1. Though, several reports and minutes of the Board meeting were pressed into service by the respondents/accused in order to strengthen their case that all important decisions accepting the contract in favour of K.P. Poulouse including several special conditions etc., it is clear that due to the pressure of A6, the then member of the Board, who was

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A close to A1, as well as the desire of A1 in awarding the contract in favour of K.P. Poulouse with higher rate, PW-7 had no other option except to execute the directions of A6 and A1.

B 38. Another incident which is relevant about the performance of PW-7 and response from A1 and A6, in his evidence, he explained that since the progress of both the works were very slow, he inspected the site on 23.09.1983. Due to slow progress in the works, he castigated Paul Mundakkal who conducted the works. After few days, A3 and Paul Mundakkal came to his house and A3 told him that he is disturbing them without any reason by way of sending letters and reports, A3 further warned that if it continues, it will be harmful to them. He also informed him that the Minister agreed to avoid concrete lining works of surge shaft but only PW-7 opposed it. He also assured that if PW-7 gives his consent, they are ready to give anything. He further explained that he informed them that it is impossible for him because the technical design is his duty, being a Chief Engineer. After few days from this incident, on 13.10.1983, he was transferred and appointed as an Advisor of Electricity Board in respect of Hydroelectric Projects. He further explained that such a Post was not there and his transfer order was signed and taken on 13.10.1983 at 8.00 p.m. in a lodge where he was residing at Thiruvananthapuram. He highlighted that for the post of Advisor, except chair, table, no other facilities including telephone facility, official vehicle steno and typist were provided. After him, A2 was appointed as Idamalayar Chief Engineer. He also informed the Court that he believed that he was transferred due to the difference of opinion with P.K. Poulouse, A3 and Paul Mundakkal

G 39. As regards the decision of the Board and his role, he has stated that the Chief Engineer has no right to question the Board's decision. However, he clarified that when he was asked to give his opinion or report, he is bound by the said direction. ExP-65 is the note submitted by him in connection

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with the work. P-64 is the note submitted by him in connection with the surge shaft work which is also dated 06.11.1982. Thereafter, in 1982, he was transferred

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40. With regard to his financial and family position, he answered that he built two-storied building having built-up area of 2700 sq. ft. in 1965 after taking loan from the Board and he sold this building and property after his retirement. He is having six daughters. He constructed a shop room having 15 ft. length and 12 ft width.

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41. The analysis of the evidence of PW-7 coupled with the other prosecution witnesses and other notes and report prepared for the Board clearly indicate that though he reminded that certain things are not permissible, because of the fact that the beneficiaries of the contract are known to A1 and A6, he has no other option except to prepare notes in such a way and ultimately the Board accepted the same.

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42. We have already pointed out the statements of PW-46 who was a member of RSP, a political party. According to him, the workers of Idamalayar have a Union. The name of the said Union is Kerala Construction Labour Union and he was the General Secretary of that Union. In his evidence, he has informed the Court that the labourers who were doing tunnel work in Idamalayar became jobless from 10.04.1981. They were skilled labourers and had good experience from projects like Idukki, Kulanam etc. He, as the President and others decided to file a memorandum before the Minister Balakrishna Pillai. The memorandum was prepared in the letter pad of Kerala Construction Labour Union. PW-46 and Srikantan Nair signed the said memorandum. It has also come in his evidence that at the time of submission of his memorandum PW-46 and others requested the Minister to give work to the poor labourers at least on piece rate basis for which A1 replied "*no question of giving work to the labourers. It was given as contract to K.P. Poulouse....*" The prosecution has highlighted the above statement of PW-46 to the effect that A1 decided and

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A determined to award Idamalayar contract to group of persons headed by K.P.Poulouse and not to the workers who prepared to work on piece-rate basis.

B **About maintainability of the appeal by the present appellant:**

43. Mr. Lalit and Mr. Saran at the end of their arguments submitted that the appellant being a third party unconnected with the Board or the State is not entitled to challenge the decision of the High Court acquitting the accused from all the charges levelled against them. In support of the above claim, they very much relied on the decision of this Court dated 23.07.2010 rendered in SLP Criminal No 2506 of 2009 – *National Commission for Women vs. State of Delhi and Another* 2010 11 Scale 17. In this case, one Sunita then aged 21 years, committed suicide by consuming Aluminium Phosphide tablets on 14.04.2003. She left behind a suicide note wherein it was stated that she had taken tuitions from the accused, Amit, at her residence in Rajgarh Colony and during that period she had developed a deep friendship with him leading to physical relations as well. The accused also held out a promise of marriage but later backed off. She also stated in her suicide note that not only the accused continued to have sexual relation with her but also compelled her to have sexual relation with others as well, which was the reason for committing the suicide. The trial Judge relied on the dying declaration, which was the suicide note, convicted the accused under Section 306 IPC and sentenced him to undergo rigorous imprisonment for 10 years with a fine of Rs.5000/- and also imprisonment for life under Section 376 IPC and a fine of Rs.5000/-. Questioning the above order of conviction and sentence, the accused preferred an appeal before the High Court. The High Court ultimately found that as the case under Section 306 was not made out confirmed the conviction under Section 376 IPC. Taking note that the accused had already undergone imprisonment for 5 years and 6 months and his entitlement for remission on

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account of his conduct in jail, his term of imprisonment for life has been modified to one that of period already undergone. Neither the State nor the complainant or her relatives has chosen to file an appeal to this Court. However, National Commission for Women (in short 'NCW') filed a special leave petition against the order of the High Court reducing the term of life imprisonment to that of period already undergone in respect of the conviction and sentence awarded by the High court under Section 376. The question in that case was whether the NCW is competent or entitled to file an appeal in this Court against the conviction and sentence imposed by the High Court. This Court, after adverting to the relevant provisions namely, Section 377 Cr.PC and other decisions and finding that neither the State, which is the complainant, nor the heirs of the deceased have chosen to file a petition in the High Court or in this Court dismissed the SLP filed by NCW as not maintainable and revoked the permission to file SLP vide this Court's order dated 02.04.2009.

44. In the above referred NCW's case, admittedly the complainant was the State and neither the State nor the heirs of the deceased filed any appeal/petition before the High Court for enhancement of punishment or challenged the same by way of SLP before this Court.

45. In our case, certain special features exist. Though we discussed earlier, it is apt to quote once again. During the pendency of the trial before the special Judge, an application for withdrawal of the prosecution only against G. Gopalakrishna Pillai - accused No.5 was made by the Special Public Prosecutor on 24.08.1992 under Section 321 Cr.P.C. which was registered as Criminal Appeal No. 79 of 1992 in CC No. 1 of 1991. The main ground for such withdrawal was that with the available material successful prosecution against G. Gopalakrishna Pillai - accused No. 5 cannot be launched, hence, the trial against him will be unnecessary and the State also is of that opinion that the prosecution of A-5 may not be sustainable. With this information, the Special Public

- A Prosecutor requested that by virtue of provisions contained in Section 321 of the CrP.C, necessary consent may be granted to withdraw the prosecution against the 5th accused – G. Gopalkrishna Pillai and the said accused may be discharged. The Special Judge considered the issue at length and after
- B analyzing the entire material and finding that there are enough materials to proceed against A-5 refused to give consent for withdrawal. This was taken up by way of revision before the High Court. The High Court set aside the aforesaid order passed by the Special Judge in the revision filed by the State
- C of Kerala represented by the Superintendent of Police. The said order of the High Court was challenged by the present appellant namely, V.S. Achuthanandan, to this Court by way of special leave petition. After granting leave, the said special leave petition was converted into Criminal Appeal No. 122 of 1994.
- D After advertng to the elaborate reasonings of the special Judge and the conclusion of the High Court, this Court concluded that “there was no ground available to the High Court to set aside the well reasoned and justified order of the learned Special Judge rejecting the application of the Special Public Prosecutor and declining to give consent for withdrawal of prosecution. We
- E may also add that there is nothing in the impugned order of the High Court which provides any legal basis for interfering with the aforesaid order made by the Special Judge. The High Court’s order must obviously be set aside.” By setting aside the order of the High Court, this Court restored the order of the
- F Special Judge and declined to give consent for withdrawal of the prosecution and permitted the Special Judge to proceed further. It is not in dispute that when the very same appellant, namely, V.S. Achuthanandan filed special leave petition and later leave was granted, the very same respondent-accused
- G parties in the said appeal did not raise any objection as to the maintainability of the appeal at the instance of V.S. Achuthanandan. Further though the State has not filed any appeal against the impugned order of acquittal by the High Court being arrayed as one of the respondents reported by a
- H senior counsel to highlight its stand, in fact, Mr. R.S. Sodhi,

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learned senior counsel for the State highlighted and supported the ultimate conviction and sentence imposed by the Special Judge and informed this Court that if this Court permits, they are ready to file an appeal with an application for condonation of delay. While appreciating the prayer made by Mr. R.S. Sodhi, we are not inclined to entertain such request at this stage. However, the fact remains that taking note of the importance of the issue, allegations against the Minister and higher officials of the Board in respect of award of contract with the ulterior motive, the appellant approached this Court on earlier occasion when the State wanted to close the prosecution against all the accused including the Minister based on the order of the High Court in respect of G. Gopalakrishna Pillai, A-5. Further when the very same appellant filed special leave petition before this Court and later leave was granted by this Court neither of these respondents raised any objection as to the maintainability of the petition. On the other hand, a Bench of three Judges accepted the appellant's claim and set aside the order of the High Court based on which the Special Judge proceeded further and ultimately convicted and sentenced A-1, A-3 and A-6. In view of these factual details, learned senior counsel for the respondents-accused were not serious in projecting the issue relating to maintainability as their first objection. We hold that the decision in *NCW's case (supra)* which was disposed of at the special leave petition stage is not applicable to the case on hand.

46. For the same reasons, the decision of this Court in *Lalu Prasad Yadav & Anr. Vs. State of Bihar & Anr.*, (2010) 5 SCC 1 is also not applicable to the case on hand since in the said decision, the question was whether the State Government (of Bihar) has competence to file an appeal from the judgment dated 18.12.2006 passed by the Special Judge, CBI (AHD), Patna, acquitting the accused persons when the case has been investigated by the Delhi Special Police Establishment (CBI) and this Court held that the appeal at the instance of the State Government is not maintainable. In view of the special

- A circumstances highlighted in the case on hand, we reiterate that the present appeal by the appellant – V.S. Achuthanandan against the order of acquittal by the High Court is maintainable. Our view has been strengthened by a decision of this Court in *K. Anbazhagan vs. Superintendent of Police and Others* (2004) 3 SCC 767. Accordingly we reject the contention raised by the learned senior counsel for the respondents.

### Conclusion

- C 47. The analysis of the materials placed by the prosecution, the plea of defence by the accused, the decision of the Special Court and the reasoning of the High Court, we are satisfied that the prosecution has established the following aspects insofar as the accused (A1), (A3) and (A6) are concerned:-
- D (a) By awarding both the works of Idamalayar at a very high and exorbitant rate with special conditions having heavy financial implications.
- (b) By reducing the retention and security amount.
- E (c) By allowing the contractor to return only fifty per cent of the empty cement bags.

F Having arrived at such conclusion, we are of the view that the High Court failed to appreciate in its proper sense the materials placed by the prosecution and brushed aside several important items of evidence adduced by the prosecution. Equally, we are unable to accept the conclusion of the High Court, namely, "*the proved circumstances are not sufficient to hold that there was conspiracy as alleged by the prosecutor.*" On the other hand, we are satisfied that the Special Court after framing various points for consideration and after thorough discussion has accepted the case of the prosecution insofar as the work of driving the surge shaft, lining the surge shaft, balance driving the power tunnel and other allied works of Idamalayar Hydro Electric Power Project at a higher or exorbitant rates to the

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contractor K.P. Poulouse and the accused persons have abused their official positions. The Special Court has also accepted the prosecution case founding that A1 along with K.P. Poulouse, Paul Mundakkal and other accused persons entered into criminal conspiracy and rightly convicted them. In our considered view, the High Court committed a grave error in acquitting the accused without adverting to the reliable and acceptable evidence adduced by the prosecution.

48. Now, coming to the sentence part, it is relevant to note that the contract was awarded to K.P. Poulouse, (since deceased) the fourth accused, as early as on 19.11.1982. After various agitations, discussions in the Assembly, appointment of a Commission by the Government and based on the report of the Commission, the State Government initiated a prosecution which resulted in C.C. No. 01 of 1991 and trial prolonged upto November 19, 1999. Thereafter, the matter was kept pending at the High Court from 1999 to October 2003, when the High Court pronounced its order acquitting all the accused and the matter was taken up to this Court by the present appellant initially by way of special leave petition in 2005, leave was granted in 2006 and it was kept pending till this date, we feel that all the three accused have undergone agony of these proceedings for nearly two decades, we are of the opinion that ends of justice would be met by awarding rigorous imprisonment for one year with fine of Rs. 10,000/- each, and the same shall be paid within eight weeks, in default, to undergo simple imprisonment for one month each.

49. Before winding up, it is our duty to point out in all the cases in which charges relating to corruption by public servants are involved, normally, take longer time to reach its finality. The facts and figures, in the case on hand, which we have already mentioned clearly show that the contract relates to the year 1982 and the State Government initiated prosecution in 1991, however, the trial prolonged for nearly nine years and the Special Court passed an order convicting the accused only on 19.11.1999. When the matter was taken up by way of appeal

A by the accused to the High Court even in 1999 itself, the decision was rendered by the High Court acquitting all the accused only in 2003. In the same manner, though the appellant challenged the order of the High Court acquitting all the accused before this Court even in 2005, it has reached its finality only  
 B in 2011 by the present order. Though the issue was handled by a Special Court constituted for the sole purpose of finding out the truth or otherwise of the prosecution case, the fact remains it had taken nearly two decades to reach its finality. We are conscious of the fact that the Government of India,  
 C Department of Law & Justice is making all efforts for expeditious disposal of cases of this nature by constituting Special courts, however, the fact remains that it takes longer time to reach its destination. We are of the view that when a matter of this nature is entrusted to a Special Court or a regular  
 D Court, it is but proper on the part of the court concerned to give priority to the same and conclude the trial within a reasonable time. The High Court, having overall control and supervisory jurisdiction under Article 227 of the Constitution of India is expected to monitor and even call for a quarterly report from the court concerned for speedy disposal. Inasmuch as the  
 E accused is entitled to speedy justice, it is the duty of all in charge of dispensation of justice to see that the issue reaches its end as early as possible.

50. Considering all the materials and in the light of the  
 F above discussion, we agree with the conclusion arrived at by the Special Court and hold that the High Court has committed an error in acquitting the accused persons. Accordingly, R. Balakrishna Pillai (A1), P.K. Sajeev (A3) and Ramabhadran Nair (A6) are awarded rigorous imprisonment for one year with  
 G fine of Rs. 10,000/- each, and the same shall be paid within eight weeks, in default, to undergo simple imprisonment for one month each. All the three accused are entitled remission for the period already undergone, if any, by them. The criminal appeal is allowed to the extent indicated above.