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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 2ND DAY OF MAY 2025 / 12TH VAISAKHA, 1947

WP(C) NO. 19152 OF 2024

PETITIONER:

M.M. VARGHESE,
AGED 74 YEARS
SECRETARY, COMMUNIST PARTY OF INDIA (MARXIST),
THRISSUR DISTRICT COMMITTEE,
AZHIKKODAN SMARAKA MANDIRAM,
MANNATH LANE, THRISSUR, PIN - 680001

BY ADVS.
SMT.G.MINI(1748)
SRI.A.KUMAR (SR.)
SRI.P.J.ANILKUMAR
SRI.P.S.SREE PRASAD
SRI.BALASUBRAMANIAM R.

RESPONDENTS:

- 1 ASSISTANT DIRECTOR OF INCOME TAX (INV.),
OFFICE OF THE DEPUTY DIRECTOR OF INCOME TAX,
INVESTIGATION, ROOM NO. 44, 2ND FLOOR,
AAYAKAR BHAVAN, INCOME TAX OFFICE,
SHAKTHANTHAMPURAN NAGAR,
THRISSUR, PIN - 680001
- 2 JOINT DIRECTOR OF INCOME TAX (INV.),
AAAYKAR BHAVAN, OLD RAILWAY STATION ROAD,
KOCHI, PIN - 682018
- 3 PRINCIPAL DIRECTOR OF INCOME TAX (INV),
AAAYKAR BHAVAN, OLD RAILWAY STATION ROAD,
KOCHI, PIN - 682018
- 4 BANK OF INDIA,
THRISSUR MAIN BRANCH, MG ROAD,



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THRISSUR (BRANCH), PIN - 680001,
REPRESENTED BY ITS CHIEF MANAGER.

BY ADVS.
SRI.NAVANEETH.N.NATH, CGC
SMT.SUSIE B VARGHESE
SRI.JOSE JOSEPH, SR. SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.04.2025, THE COURT ON 02.05.2025 DELIVERED THE FOLLOWING:



BECHU KURIAN THOMAS, J.

W.P.(C) No.19152 of 2024

Dated this the 2nd day of May, 2025

JUDGMENT

Petitioner challenges the search and seizure proceedings initiated by the income tax department, against him in his capacity as an office bearer of a political party.

2. The circumstances as narrated in the writ petition, in brief, are as follows: Petitioner is a member of the political party called Communist Party of India (Marxist) [for short 'the CPI(M)'] and is the Secretary of the District Committee, Thrissur. The said political party has a Central Committee with its office at New Delhi and State Committees in various States, apart from District Committees in the States. The 'CPI(M)', is an assessee to income tax and the Central Committee file the returns every year including the accounts of the State and District Committees.

3. The District Committee of Thrissur CPI(M) has an account at the Bank of India, Thrissur Branch. On 05.04.2024, the bank officials requested an office staff of the party to come to the bank to affix his signature in connection with an amount withdrawn on 02-04-2024. However when the said person reached the bank, he was confronted by the income tax officials and



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an undertaking was obtained not to utilize the amount withdrawn. A prohibitory order was also issued freezing all operations in the particular bank account since it was noticed that the bank account was not linked to the PAN. Thereafter a summons was issued on 09-04-2024 directing production of certain documents and it was then that the petitioner realized that the PAN was not linked to the bank account due to a typographical error. Petitioner even informed the respondents that non-linking of the bank account with the PAN was an error or omission on the part of the bank, which cannot be attributed to the petitioner or the District Committee of the political party.

4. Petitioner was again summoned by the income tax officers on 30-04-2024 and when he appeared before them with the money withdrawn, it was immediately seized by the respondents. Thereafter the petitioner as the Secretary of the District Committee, was questioned by the officials regarding the withdrawal of cash made on 02-04-2024.

5. According to the petitioner, the warrant issued under section 132(1) of the of the Income Tax Act, 1961 (for short 'the Act') and the prohibitory order under section 132(3) of the Act are both illegal and vitiated by malafides especially since, as a political party, the CPI(M) is filing its IT returns regularly. The summons issued under section 131(1A) of the Act, calling for further details to be produced by 20.05.2024 is, according to the petitioner, illegal and without sanction of law. Petitioner has pleaded that before any



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hasty action, petitioner ought to have been given an opportunity to explain and without initiating such proceedings, indulging in the search is malafide and arbitrary. Petitioner also contends that there was no information in the possession of the income tax authorities which could have constituted a 'reason to believe' that there would be a default or non-compliance of the provisions of the Act and hence the proceedings initiated is an abuse of the authority. Petitioner thus seeks for a declaration that the search and seizure do not satisfy the contingencies contemplated under section 132(1)(a) to (c) of the Act. Petitioner has also prayed to quash the prohibitory order dated 05.04.2024 apart from a direction to return the money seized from him.

6. A statement has been filed on behalf of respondents 1 to 3 pointing out that in the wake of election expenditure monitoring, information was received that a cash withdrawal in excess of one crore rupees had taken place from a specific bank account and it had to be investigated. Telephonic enquiry with the Chief Manager of Bank of India, Thrissur Branch, confirmed the transaction and the owner of the bank account No.855010100001687 from which the amount was withdrawn, was stated to be CPI(M) operated by the petitioner and Annexure A1 statement of the Manager taken on 05.04.2024, revealed that, KYC documents had not been submitted with respect to the particular bank account from which the huge withdrawal had taken place. Further, on inspection of the returns filed by CPI(M) for the



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assessment year 2022-23, it was noted that the said bank account was not shown in the returns.

7. Respondents have also averred that enquiry with the bank revealed that despite Annexure A2 letter dated 11.08.2010, issued by the bank to the office bearers of CPI(M) Thrissur District Committee to provide the PAN details for linking the account, the request was not adhered to and thereafter, as per a communication dated 14.08.2010, the Bank of India informed the taxation department that the account holder was completely reluctant to provide the PAN number. Yet again, another letter was addressed on 06.10.2010 by the Bank Manager to the District Secretary of the CPI(M) Thrissur warning that if the account holder is still unwilling to provide the PAN number, a 20% reduction has to be made upon the interest paid by the bank on the deposits.

8. According to the respondents, the income tax return filed by CPI(M) for the assessment year 2022-23 had not revealed the particular bank account from which the huge amount was withdrawn, giving rise to a reasonable belief that petitioner is in possession of money representing wholly or partly the income which has not been disclosed or would not be disclosed for the purpose of income tax. Respondents state that the circumstances indicate a concerted effort not to disclose the particular bank account to the income tax authorities and after gathering and receiving



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several solid and documentary evidence, a satisfaction note was drawn, stating the reasons to believe. Respondents have averred that even according to the petitioner, the particular bank account was not reflected in any income tax return and further that the petitioner has not been able to explain with any cogent evidence that the cash of one crore rupees withdrawn as well as the balance amount of Rs.4.81 Crore remaining in the bank account is reflected in the books of account despite several opportunities granted to them. Respondents have further averred that the warrant of authorisation for search was issued based on sufficient reasons to believe to issue search warrant under section 132 of the Act and hence the writ petition is without any merit.

9. Sri. A. Kumar, the learned Senior Counsel, instructed by Smt. Mini G., the learned counsel for the petitioner, vehemently contended that the search carried out and the proceedings initiated thereunder, are vitiated by malafides and are arbitrary. According to the learned Senior Counsel, while filing the returns, at least for the assessment year 2025-26, petitioner had the opportunity to disclose its account and therefore since the period for filing the return had not expired, the proceedings are without any basis. It is also submitted that the prohibitory order dated 05.04.2024 and the seizure on 30.04.2024 are bad in law. The learned Senior Counsel referred to the decisions in **Director General of Income Tax (Investigation) Pune and**



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Others v. Spacewood Furnishers Private Limited and Others [(2015) 12 SCC 179] and contended that there were no reasons for issuing a warrant of authorization to search the petitioner or the CPI(M) District Committee. The learned Senior Counsel further relied upon the decision of the Bombay High Court in **Hedge Industries Private Limited v. Director of Income Tax-II Investigations and Others (2024 5 TMI 709)** to contend for the proposition that what was unearthed subsequent to the search cannot be the 'reason to believe' as contemplated under section 132(1) of the Act and the same must have been prior to such search and seizure. It was also argued that mere unexplained possession of any amount without anything more could hardly be said to be any information which could be treated as sufficient by a reasonable person as held in **Commissioner of Income Tax, Allahabad and Others v. Vindia Metal Corporation and Others (1997) 5 SCC 321**.

10. Sri. Jose Joseph, the learned Senior Standing Counsel for the Income Tax Department, on the other hand, contended that there was sufficient information with the Department enabling it to have a 'reason to believe' to conduct the search as contemplated under section 132(1) of the Act. During the course of arguments, the learned Standing Counsel handed over a file containing the 'reason to believe' as noted by the officer and the approval obtained for conducting the search and according to the learned Standing Counsel, the writ petition is devoid of any merit and this Court ought



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not to interfere with the proceedings initiated under the Act, especially since the particular bank account had never been revealed by the petitioner or the CPI(M) District Committee from 2010 onwards, despite repeated requests by the bank to link the account with the PAN card.

11. Though the contentions urged on behalf of the petitioner are manifold, the issues that require consideration lies in a narrow compass. They are : (i). Whether the search under Section 132 of the Act conducted on 05.04.2024 and the seizure on 30.04.2024 are bad in law requiring any interference at this stage? and (ii). Whether the prohibitory order issued on 05.04.2024 requires any interference? These issues are dealt with separately.

Issue No.(i). Whether the search under Section 132 of the Act conducted on 05.04.2024 and the seizure on 30.04.2024 are bad in law requiring any interference at this stage?

12. While considering the above question, it is necessary to bear in mind the scope of Section 132 of the Act. As per the relevant part of the said provision, where the officers specified in the provision has reason to believe, in consequence of information in their possession, that, any person is in possession of any money or other valuable article or thing which represents either wholly or partly undisclosed income or property, then the specified authorities can enter and search any building, place, person or break open the lock or require the person in possession or control of any books of



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account to afford facility to inspect such books or account or other documents, seize any books of account or other documents, money or valuable article, place marks of identification on any books of account or other documents or even make a note of or an inventory of such money, jewellery or bullion or other valuable article. The provision is further subject to certain provisos which includes the authority to serve an order not to remove or part with or otherwise deal with the valuable article or thing.

13. The scope and purport of Section 132 of the Act had come up for consideration before the Supreme Court on several occasions. In **Income Tax Officer v. M/s. Seth Brothers** [(1969) 2 SCC 324] as well as in **Pooran Mal v. Director of Inspection (Investigation), New Delhi and Others** [(1974) 93 ITR 505], it has been held that, in the interest of community, the fiscal authority should have sufficient powers to prevent tax evasion and also that since by the exercise of the power of search, a serious invasion is made upon the rights, privacy and freedom of the taxpayer, the power must be exercised strictly in accordance with law. It has further been observed that, if the action of the officer issuing the authorisation or of the designated officer is challenged, the officer concerned must satisfy the court about the regularity of his action and if it is maliciously taken or the power is exercised for a collateral purpose, it is liable to be struck down by the court. It was also observed that where power is exercised bonafide and in furtherance of the



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statutory duties of the tax officers, any error of judgment on the part of the officers will not vitiate the exercise of the power and when the Commissioner entertains the requisite belief and for reasons recorded by him, authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the court, in a petition by an aggrieved person, cannot be asked to substitute its own opinion. It was also clarified that, any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the officer has, in executing the authorisation, acted in a bonafide manner.

14. Relying upon the above mentioned two judgments, the Supreme Court had, in **Director General of Income Tax (Investigation), Pune and Others v. Spacewood Furnishers Private Limited and Others** [(2015) 12 SCC 179], held that *“what is significant’ and therefore, must be noticed is that in both the aforesaid two decisions, while this Court has emphasised the necessity of recording of reasons in support of the ‘reasonable belief’ contemplated by Section 132, nowhere in either of the decisions, any view had been expressed that the reasons recorded prior to authorising the search needs to be disclosed or communicated to the person against whom the warrant of authorisation is issued.”* The following principles were also laid down in the above decision, which should guide this Court while considering



the instant case. Those principles are extracted as below :

“1. The authority must have information in its possession on the basis of which a reasonable belief can be founded that -

a. The concerned person has omitted or failed to produce books of account or other documents for production of which summons or notice had been issued or such person will not produce such books of account or other documents even if summons or notice is issued to him or

b. Such person is in possession of any money, bullion, jewellery or other valuable article which represents either wholly or partly income or property which has not been or would not be disclosed.

2. Such information must be in possession of the authorised official before the opinion is found.

3. There must be application of mind to the material and the formation of opinion must be honest and bonafide. Consideration of any extraneous or irrelevant material will vitiate belief/satisfaction.

4. Though Rule 112(2) of the Income Tax Rules which specifically prescribes the necessity of recording of reasons before issuing a warrant of authorisation had been repealed on and from 1st October, 1975, the reasons for the belief found should be recorded.

5. The reasons, however, need not be communicated to the person against whom the warrant is issued at that stage.

6. Such reasons, however may have to be placed before the court



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in the event of a challenge to formation of the belief of the authorised official in which event the court exercising jurisdiction under Article 226 of the Constitution would be entitled to examine the relevance of the reasons for the formation of the belief though not the sufficiency or the adequacy thereof.”

15. Invocation of the power under section 132 of the Act is a drastic step and is resorted to when money, income or assets are hidden or are not disclosed to the income tax department. In the instant case, the specific stand of the department is that the account in question i.e No.855010100001687 maintained by the CPI(M) at the Bank of India, Thrissur, had not been linked with the PAN. The said account is also not reflected in the returns filed by the political party. Though petitioner has contended that the failure to link the PAN with the bank account was due to the default of the bank as a result of a typographical error, materials obtained by the Department prima facie indicate that despite the request by the bank from 2010 onwards to submit the documents for providing KYC and also to link the bank account with the PAN, there has been a total refusal on the part of the persons operating the bank account to furnish such records. The department had later obtained information that on 02.02.2024, an amount of one crore rupees was even withdrawn from the said account which has a current balance of Rs.4.81 Crores, all of which indicate existence of undisclosed money and require an investigation. Based on the above information, the Director General of Income Tax, Investigation has, by order dated 05.04.2024, directed a search



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and seizure under section 132 of the Act.

16. The satisfaction notes leading to the issue of warrant of authorisation were placed for consideration before this Court and its contents have been perused. On a perusal of the satisfaction notes and the order of approval, it is evident that an elaborate note containing several reasons, pointing out the need to conduct a search was prepared and submitted for approval and the Designated Officer had granted his approval after recording reasons. The detailed reasons mentioned in the satisfaction note as well as the order of approval for search and seizure is in tune with the principles laid down by the Supreme Court in the decision in **Director General of Income Tax Investigation, Pune and Others v. M/s. Spacewood Furnishers Private Limited and Others** [(2015) 12 SCC 179].

17. Apart from the above, the pleadings and the materials placed for consideration do not indicate any malafides and on the other hand Annexure A2 and Annexure A3 letters issued by the bank to the Income Tax Department prima facie indicate that the particular account which was operated by the petitioner, had not been revealed in the returns filed till that date. Further, the bank account has not even been linked to the PAN. There were thus materials available with the respondents to prima facie assume that petitioner is in possession of money, which has not been disclosed to the income tax department. Hence, the satisfaction arrived at by the respondents to initiate a



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search and seizure under section 132 of the Act cannot be held to be perverse or legally untenable. Considering the scope of interference under Article 226 of the Constitution of India with a proceeding under section 132 of the Act, this Court is of the view that the search and seizure proceedings initiated by the respondents do not warrant any interference at this juncture.

Issue No. (ii). Whether the prohibitory orders issued on 05.04.2024 requires any interference?

18. Sub-section (3) of Section 132 of the Act empowers the authorised officer to serve an order on the owner or a person who is in immediate control of a valuable article or thing or money, jewellery etc. if it is not practicable to seize it and direct not to remove or part with or otherwise deal with the said article or thing or money, or jewellery etc, without the previous permission of the officer. However, sub-section (8A) of Section 132 of the Act states that such an order shall not be in force for a period exceeding 60 days from the date of the order.

19. By Ext.P1 prohibitory order issued on 05.04.2024 under section 132(3) of the Act , the Chief Manager of The Bank of India, Thrissur Main Branch was directed not to deal with four specified accounts and all other bank accounts of CPI(M), Thrissur District Committee held in that Branch. However, by virtue of sub-section (8A) of section 132 of the Act, such an order cannot remain valid beyond 60 days. Since the said period of 60 days has already expired, the prohibitory order cannot remain valid beyond that



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period. As the statute itself operates in favour of the petitioner as far as the prohibitory order is concerned, no further declaration is required by this Court, except to observe that the prohibitory order has already expired by operation of law.

With the above observations, this writ petition is dismissed.

**Sd/-
BECHU KURIAN THOMAS
JUDGE**

vps



APPENDIX OF WP(C) 19152/2024

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE PROHIBITORY ORDER UNDER SECTION 132(3) OF THE INCOME TAX ACT DATED 5.4.2024.
- Exhibit P2 TRUE COPY OF THE SUMMONS DATED 9.4.2024 ISSUED TO SHRI PRATEESH.
- Exhibit P3 TRUE COPY OF THE LETTER DATED 18.4.2024.
- Exhibit P4 TRUE COPY OF THE SUMMONS DATED 30.4.2024 ISSUED TO THE PETITIONER.
- Exhibit P5 TRUE COPY OF THE PANCHNAMA DATED 30.4.2024 .
- Exhibit P6 TRUE COPY OF THE SUMMONS DATED 9.5.2024 ISSUED TO THE PETITIONER.
- Exhibit P7 TRUE COPY OF THE SUMMONS DATED 20.5.2024 ISSUED TO THE PETITIONER.
- Exhibit P8 TRUE COPY OF THE EMAIL COMMUNICATION DATED 26/05/02024 ENCLOSING THE REPRESENTATION.
- Exhibit P9 TRUE COPY OF THE PROHIBITORY ORDER DATED 30.04.2024 ISSUED BY THE 2ND RESPONDENT

RESPONDENT ANNEXURES

- Annexure A1 A COPY OF THE SWORN STATEMENT RECORDED FROM THE CHIEF MANAGER, BANK OF INDIA UNDER S. 131 (1A) DATED 05.04.2024
- Annexure A2 A COPY OF LETTER DATED 11/08/2010 SENT BY SENIOR BRANCH MANAGER OF THRISSUR BRANCH TO THE ZONAL OFFICE OF BANK OF INDIA
- Annexure A3 A COPY OF INTERNAL COMMUNICATION DATED 14/08/2010 SENT TO TAXATION DEPARTMENT OF BANK OF INDIA FROM KERALA ZONAL OFFICE OF BANK OF INDIA



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- Annexure A4** **A COPY OF COMMUNICATION FROM THE BRANCH
MANAGER TO THE THE SECRETARY, DISTRICT
COMMITTEE DATED 06.10.2010**
- Annexure A5** **TRUE COPY OF THE SUMMONS ISSUED UNDER S.131
(1A) OF THE ACT DATED 5/4/2024**
- Annexure A5 (a)** **TRUE COPY OF THE SUMMONS ISSUED UNDER S.131
(1A) OF THE ACT DATED 9/4/2024**
- Annexure A5 (b)** **TRUE COPY OF THE SUMMONS ISSUED UNDER S.131
(1A) OF THE ACT DATED 30/4/2024**
- Annexure A6** **A COPY OF PAYMENTS AND RECEIPTS FOR THE YEAR
ENDED 31.03.2023**
- Annexure A6 (a)** **A COPY OF BALANCE SHEET FOR THE YEAR ENDED
31.03.2023**
- Annexure A7** **A COPY OF STATEMENT RECORDED FROM PETITIONER
UNDER S.131 OF THE ACT ON 12/04/2024**