

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ALEXANDER THOMAS

MONDAY, THE 15TH DAY OF JUNE 2015/25TH JYAISHTA, 1937

OP (Crl.).No.208 of 2014 (Q)

**CMP NO.942/2013 of ENQUIRY COMMISSIONER AND SPECIAL JUDGE,
(VIGILANCE AND ANTICORRUPTION),KOZHIKODE.**

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PETITIONER:

**YOOSAF THEKEDATH,AGED 50 YEARS,
S/O.MUHAMMAD,THEKKEDATH HOUSE,
KUMARANELLOOR POST,MUKKAM,
KOZHIKKODE DISTRICT.**

**BY ADVS.SRI.M.R.ARUNKUMAR
SRI.P.SHAMMI NAVAS**

RESPONDENT'S:

- 1. N.K.ABDU RAHIMAN,S/O.KUNHALI,
NEDUMKUNNATH HOUSE,KARASSERY POST OFFICE,
MUKKOM,KOZHIKODE -673602 (PRESIDENT,
KARASSERY SERVICE CO-OPERATIVE BANK).**
- 2. C.ABDUL MUJEEB,S/O.KUTTIAMU,KUNNATH HOUSE,
KARASSERY,MUKKOM,KOZHIKODE-673602,
(GENERAL MANAGER,KOZHIKODE DISTRICT CO-OPERATIVE BANK).**
- 3. N.DHANEESH @ SABU,S/O.CHANDRAN,KETIL HOUSE,
MUKKAM,THAZHEKKOD KOZHIKODE- 673 602,
(SECRETARY,KARASSERY SERVICE CO-OPERATIVE BANK).**
- 4. THE DIRECTOR,VIGILANCE AND ANTI CORRUPTION BUREAU,
P.M.G.,VIKAS BHAVAN P.O,OPPOSITE K.S.R.T.C DEPOT,
THIRUVANANTHAPURAM-695 033.**
- 5. THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION BUREAU,
KOTTAPPADY,MALAPPURAM - 686 692.**

R4 & R5 BY SRI.P.VIJAYARAGHAVAN (STATE ATTORNEY).

**THIS OP (CRIMINAL) HAVING BEEN FINALLY HEARD ON 15-06-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

pk

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APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 - COPY OF THE COMPLAINT CMP NO.942 OF 2013 FILED BEFORE THE HONOURABLE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), KOZHIKODE DATED 5-6-2013.
- EXT.P2 - COPY OF THE PROCEEDINGS IN CMP NO.942 OF 2013 OF THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), KOZHIKODE.
- EXT.P3 - COPY OF THE QUICK VERIFICATION REPORT FILED BY THE 5TH RESPONDENT BEFORE THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), KOZHIKODE DATED NOVEMBER 2013.
- EXT.P4 - COPY OF THE OBJECTION FILED BY THE PETITIONER IN CMP NO.942 OF 2013 ON THE FILE OF THE COURT OF ENQUIRY COMMISSIONER AND SPECIAL JUDGE (VIGILANCE), KOZHIKODE DATED 26-4-2014

RESPONDENT'S EXHIBITS:

NIL

//TRUE COPY//

P.S. TO JUDGE

pk

ALEXANDER THOMAS, J.

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Dated this the 15th day of June, 2015.

J U D G M E N T

The main prayer in this original Petition is as follows:

“To issue a Order or direction directing the Honourable Enquiry Commissioner and Special Judge (Vigilance and Anti Corruption), Kozhikode to dispose of C.M.P.No.942 of 2013 within a time frame fixed by this Honourable Court after hearing the objection already filed by the petitioner.”

2. This Court on 20.5.2015 had directed the Registry to get a report from the Court of Enquiry Commissioner and Special Judge, Kozhikode. The said learned Judge has furnished report dated 4.6.2015 to the Registry of this Court stating that Ext.p4 objection was filed before that Court on 26.4.2014 by the petitioner herein and the case was posted to 27.5.2014. Thereafter the regular incumbent holding the post of Special Court was relieved on 13.5.2014 and the case was being adjourned for notification on various dates till the present incumbent took charge on 1.4.2015. Since the Gazette Notification conferring powers and jurisdiction on the said learned Judge was not published, the case was adjourned to 27.5.2015. On 27.5.2015, the case was

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adjourned to 6.7.2015. Thereupon notice has been issued to the complainant (petitioner herein) on 27.5.2015 as the complainant and his Advocate were absent on 22.4.2015 and 27.5.2015. now, the case stands posted to 6.7.2015 for appearance of the complainant and hearing and that objection can be disposed of within one month from the date of appearance of the complainant. In the light of this report, it is for the petitioner to proceed with the matter by entering appearance before the court below and it is for the court below to deal with the objection of the petitioner and pass appropriate orders thereon in accordance with law.

3. It is now brought to notice that SRO No.276/2015 has been issued by the Government notifying the appointment of the incumbent concerned as the Court of Enquiry Commissioner and Special Judge, Kozhikode. Since that is the position, the court below would endeavour to pass orders on the objections after hearing both sides without much delay, preferably within a period of one month from the date on which the objections are heard by the learned Judge.

4. Before parting with this case, it is to be observed that this Court has seen in some cases that even after the Government accepts the nomination of the incumbent to be posted as the Court of Enquiry

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Commissioner and Special Judge under the Prevention of Corruption Act and issues necessary Government orders in that behalf, steps are being delayed for the formal issuance of the gazette notification in that behalf. It is to be noted that unless the statutory notification appointing the incumbent concerned as the Court of Enquiry Commissioner and Special Judge is published by the Government of Kerala in the Vigilance Department, it may not be possible for the judicial officer to exercise his jurisdiction as such Special Court constituted under the Prevention of Corruption Act. In this case, GO(Ms.) 6/2015/Vig. was seen issued on 21.2.2015, whereby the Government appointed the incumbent concerned as the Enquiry Commissioner and Special Judge, Kozhikode. Whereas the formal gazette notification issued has been as SRO No.276/2015 and got published in the Gazette of Kerala only as late as on 2.5.2015. The reason for taking such long time is not immediately discernible to this Court. In another case also this Court had requested the D.G. of Prosecution and State Prosecutor to ensure that the necessary instructions are given to the officials of the Government of Kerala in the Vigilance Department to ensure that the gazette notification in that case is published without any further delay, as the formal Government Order in that case was also issued much earlier. Accordingly, it is

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ordered that the Government of Kerala in the Vigilance Department will take up the matter with all seriousness immediately and find out the reasons for such long delay in the formal issuance of the statutory gazette notification in spite of the issuance of the Government order in that regard appointing the incumbent concerned as the Court of Enquiry Commissioner and Special Judge. The Government as well as the Directorate are very much aware about the pendency of large number of charge sheeted cases in the Special Courts concerned constituted under the Prevention of Corruption Act, due to reasons more than one. That the number of such special judges is not many, then it is for the Government to act in all seriousness and to ensure that the gazette notification is issued in such cases within a shortest time immediately after the issuance of the formal Government Order in that regard. The Additional Chief Secretary/Principal Secretary to Government of Kerala in the Vigilance Department will take up the matter for consideration immediately and find out the reasons for such delay and if there are no other legal impediments for issuing such formal gazette notification immediately after the issuance of the formal Government order, then the Government shall ensure that henceforth such formal gazette notification is issued without any further delay

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within two to three days after the issuance of the Government order and such gazette notification should be immediately be despatched to this Court on its administrative side as well as to the court below concerned. The Government of Kerala in the Vigilance Department through one of its competent officer will file a report in this matter for consideration for further orders in this regard within two weeks. Registry will list this matter on 6.7.2015 for further orders in that regard. The Office of the Advocate General will forthwith forward copy of this judgment to the Additional Chief Secretary to Government of Kerala in the Vigilance Department for immediate further steps.

With these observations and directions, the O.P(Crl) stands finally disposed of. Notwithstanding the final disposal of this Original Petition, the State Government shall file appropriate report in that regard through the D.G. of Prosecution/State Prosecutor for such consideration.

ALEXANDER THOMAS,
Judge.

bkn/-