

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

WEDNESDAY, THE 25TH DAY OF OCTOBER 2017/3RD KARTHIKA, 1939

WP (C) .No. 30661 of 2015 (R)

PETITIONER:

K.HARINDRAN NAIR,
ADVOCATE, S/O. KUNJAN PILLAI, AGED 62,
VASANTHA BUILDINGS, ATHANI LANE, VANCHIYOOR,
THIRUVANANTHAPURAM.

BY ADVS.SRI.G.S.REGHUNATH
SRI.B.ANANTHU

RESPONDENT (S) :

1. THE STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.
2. PRINCIPAL SECRETARY TO GOVERNMENT (HOME),
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001.
3. JOINT SECRETARY TO GOVERNMENT (HOME),
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695001.
4. THE REGISTRAR GENERAL,
HIGH COURT OF KERALA, ERNAKULAM - 682031.
5. V.K.RAJU,
T.C.27/2353, KAILASOM, THUMBA LANE, GPO,
THIRUVANANTHAPURAM - 695001.
6. NAZEEMA SHUKKOOR,
CRRA 244, PETTA P.O., THIRUVANANTHAPURAM - 695126.

R1 TO R3 BY GOVERNMENT PLEADER SRI SANTHOSH PETER
R4 BY ADV. SRI.V.A.MUHAMMED
R5 BY ADVS. SRI.SANTHOSH MATHEW
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN
R6 BY ADV. SRI.AYYAPPAN SANKAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05-07-2017, THE COURT ON 25.10.2017 DELIVERED THE
FOLLOWING:

K.V.

'CR'

DEVAN RAMACHANDRAN, J.

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Dated this the 25th day of October, 2017

JUDGMENT

Excellence in public office is the *sine qua non* for a dynamic, buoyant and vibrant democracy. This is crucial for the trust of the citizens in the organs of the polity and this trust in turn is crucial for the legitimacy and sustainability of every democratic system. It depends on the positive perception by citizens on what is fair and right. The emphasis for appointment to public office is certainly pivotal on the inviolable requisites of integrity, which essentially is the final arbiter of credibility of any system. Excellence, after all, in its final analysis is the result of constant and habitual integrity.

2. When questions relating to appointment to public offices, specially statutory ones, are placed before the consideration of courts, there always is a duty cast upon it to assess whether the process of selection has been true to the system created for such purpose and whether it has been done implicitly following the manner and the mechanism for it, that have been statutorily put

in place. There can be no doubt that every such endeavor is to find out the best among the available options and that assessments are made in such manner so as to eliminate the less desirous by maintaining those who are found better qualified in terms of credibility, integrity and technical and professional capacity to hold such post.

3. The genesis of the controversy in this case relates to the appointment of a Part-time Official Receiver, under the provisions of the Insolvency Act, 1955 (for short, 'the Act'), for the Thiruvananthapuram District. The Act provides for the appointment of the Official Receivers for each District and under Section 59 of it, the Government has been authorised to appoint such persons as they think fit to be Official Receivers under the Act within such local limits as they may prescribe. The relevant provisions of Section 59 are as under:

"59. Power to appoint Official Receivers

(1) The Government may appoint such persons as they think fit (to be called ' Official Receivers') to be receivers under this Act within such local limits as they may prescribe.

(2) Where any Official Receiver has been so appointed for the local limits of the jurisdiction of any Court having jurisdiction under this Act, he shall

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be the receiver for the purpose of every order appointing a receiver or an interim receiver issued by any such Court, unless the Court for special reasons otherwise directs.

(3) xxxxx

(4) xxxxx"

4. As is perspicuous from the above extracted prescriptions, when a person is appointed as an Official Receiver in such manner, he will be the Receiver for the purpose of every order, issued by a Court under which a Receiver or an interim Receiver is appointed unless the Court for special reasons otherwise directs.

5. Thus empowered by the powers granted under the Act, the Government issued an executive order dated 17.05.1958, a copy of which has been appended in this writ petition as Ext.P3, mandating that the appointment of Part-time Official Receivers shall be done by the Government by selection from a panel of names recommended by the Judges of the High Court in consultation with the District Judge of the Revenue District concerned. In effect, the procedure established is that a panel will have to be recommended by the Judges of the High Court in consultation with the District Judge of the District concerned and

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the Government will, thereafter, make a choice only from among the persons included in such panel.

6. Pursuant to the procedure noticed as above, the Government issued Ext.P2, which is a notice dated 23.03.2012, calling for applications from qualified advocates practicing in the Courts in the Thiruvananthapuram District for the purpose of appointment as Part-time Official Receiver at Thiruvananthapuram. It appears that 13 applications were received from advocates in response to this notification but that the District Judge, Thiruvananthapuram, after an assessment of each of their capabilities, forwarded a panel of only five persons to the High Court for its recommendations. This led to two writ petitions being filed by certain advocates claiming that the procedure so adopted is contrary to law. This Court considered the issues, impelled in the said two writ petitions, namely, W.P. (C) Nos.12957 and 24233 of 2012 in great detail, which finally culminated in Ext.P4 judgment. A learned single Judge of this Court found in particular that the procedure adopted by the District Judge in not forwarding the entire 13 names received by him to the High Court but shortlisting only five among them was irregular and illegal. Among the contentions in the writ petitions

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were also an allegation against the fifth respondent herein that he was involved in a criminal case and, therefore, that he should not have been included in the panel at all. The learned Single Judge considered these contentions meticulously and in Ext.P4 judgment recorded his view as under:

"17. Ext. P5 produced by the petitioner is the FIR registered pursuant to the complaint as mentioned above. This by itself speaks volume as to the sorry state of affairs resulted, for not causing to conduct proper enquiry before finalizing the panel of candidates to be recommended for selection and appointment. The fact that no enquiry was conducted with respect to the criminal antecedents stands conceded by the second respondent, as pointed out in the counter affidavit filed by the 3rd respondent (paragraphs 7 and 8). It may be true that the second respondent, who assumed the charge as the District Judge in May 2011, i.e. shortly after issuing Ext. P2 notification, was not in a position to know these things and in turn; it could not be brought to the notice of the 3rd respondent as well. It only points out the necessity to prescribe the guide lines; as to the points to be clarified by the candidates in their application; such as the involvement in any criminal cases pending or finalized already; as to the disciplinary proceedings pending or finalized by the Bar Council, involvement

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in any civil disputes relating to money matters or the occasion to have faced any Revenue Recovery proceedings and such other relevant aspects. Specific guidelines have to be issued by the 3rd respondent, also specifying manner in which the enquiry has to be conducted, to ascertain the factual particulars in this regard by the second respondent before he forwards the names of the persons to be considered by the 3rd respondent for preparation of the panel.

19. With regard to the contentions raised by the petitioner that all the applications ought to have been forwarded by the second respondent and that the High Court could not have directed the second respondent to conduct selection by restricting the number of candidates to '5' virtually delegating the process of selection to District Judge, it has to be noted that the position has been explained by the 3rd respondent in the counter affidavit filed in W.P.(C) No. 12957 of 2012, also producing O.M. dated 08.03.2012 as Ext. R3(a) which required the second respondent to submit a panel of 'five' candidates in the order of merit, whom he considered most suitable, having regard to the duties of the post and the relevant rules. Ext. R3(a) O.M is not under challenge, by causing the writ petition to be amended in any manner; nor has it been challenged in the subsequent writ petition filed by the same petitioner.

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20. Coming to the sustainability of the action pursued by the 3rd respondent in sending Ext. R3(a) O.M. to forward a panel of '5' candidates in the order of their merit and suitability, this Court finds it difficult to accept the proposition mooted by the petitioner, that all the applications received are to be forwarded to the High Court. There may be '100s' of applicants in a given situation, in view of the minimum qualification prescribed as borne by Exts. P2 ad P3. If there are 500 applicants in response to a notification, it is not at all necessary to have all the applications forwarded by the District Judge, to be considered by the 3rd respondent. The third respondent, who is the competent authority to recommend the panel, in consultation with the concerned District Judge, can very well take appropriate measures to short list the candidates on the basis of some prescribed norms like seniority, field of practice or such other norms also stipulating the particulars to be included in the 'application form'; which shall necessarily reveal the involvement in any criminal case, disciplinary proceedings, financial stability, instances of revenue recovery proceedings etc. These are some of the aspects which are very much related to the nature of duty to be performed as 'Part-time Official Receiver', appointed under Section 59 of the Insolvency Act. Once such norms are prescribed and let known to the District Judge

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concerned, it is open for the District Judge to invite applications, shortlist the candidates based on such credentials and to have it forwarded to the 3rd respondent with specific remarks against the names of each candidate included in the 'short list'. This in turn has to be considered by the third respondent and a panel has to be finalized in consultation with the District Judge, to be recommended to the Government, restricting the number of candidates to the requisite extent, as the vacancy may only be 'one'."

7. As is evident from the above referred portions of the judgment, the learned Single Judge took umbrage to the fact that no enquiry was conducted on any of the candidates and that their names were forwarded rather mechanically without any assessment, even into their alleged criminal antecedents. The learned Single Judge also found that the action of the District Judge in having forwarded only five from the available 13 names was also irregular. Based on the findings and conclusions as above, the learned Single Judge issued certain directions which are discernible from paragraph 21 of the judgment which is extracted for immediate reference as under:

"21. To sum up, this Court finds that the

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course and proceedings finalized by the 2nd and 3rd respondents leading to the selection and appointment of the 4th respondent in W.P.(C) 24233 of 2012 as Part-time Official Receiver in Thiruvananthapuram District is not correct or sustainable. In the said circumstances, inclusion of the 4th respondent in the panel forwarded by the second respondent, the recommendation made by the 3rd respondent and the appointment effected by the first respondent are set aside. In view of the fact that altogether only 13 candidates were there, pursuant to Ext. P1 notification, the second respondent is directed to forward all the applications and their testimonials, after conducting an enquiry about involvement of the applicants in any criminal case, disciplinary proceedings, occasion to have faced revenue recovery proceedings etc. and a detailed report shall be submitted to the 3rd respondent with specific remarks as to the credentials of each candidate. Necessary particulars can be called for from the candidates by issuing notice to them. Particulars as above shall be forwarded to the 3rd respondent within two months. On receipt of the proceedings as above, the third respondent shall prepare necessary 'note' arranging the order of priority, based on some reasonable norms and the panel shall be caused to be placed for consideration before the 'Full Court' to enlist the eligible candidates in the panel and to

recommend for selection and appointment."

8. Certain collateral directions were also given to the fifth respondent herein to vacate the office, if he had already been appointed, because pending the lis, it appears that the Government had appointed the fifth respondent from among the panel of five, that were approved by this Court as aforementioned.

9. This judgment was appealed against by the fifth respondent by filing W.A.No.2248 of 2012 and it was disposed of by a common judgment along with another appeal, namely, W.A.No.2245 of 2012, as is evident from Ext.P5 judgment. In the judgment of the Division Bench, the only modification made was that the Full Court or a Committee of Judge nominated by it or by the Hon'ble Chief Justice can prescribe suitable qualifications or provide adequate restrictions, if large number of applicants are available, so as to scale down the zone of consideration by making a short-list. Pertinently, the conclusions of the learned Single Judge that the District Judge cannot make such a short-list was maintained, reserving such liberty only to the Full Court or to the Committee of Judges. The Division Bench also directed that if, for any reason, it is not practicable for the Full Court to

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consider these matters, it can authorise the Committee of Judges to look into these issues and therefore, place it before the Full Court for its final recommendations.

10. Based on these directions, it appears that the proceedings for fresh appointment again began, but not immediately after the judgment of this Court.

11. The delay in initiating fresh proceedings led the petitioner herein to approach this Court by filing W.P.(C) No.28370 of 2014, which was disposed of by Ext.P9 judgment directing the Government to expedite the process and to make appointments within a time frame. It transpires that thereafter, Ext.P10 order was issued by the Government, again appointing the fifth respondent as the Part-time Official Receiver for the District Court, Thiruvananthapuram, which has been assailed by the petitioner more or less on the same lines as he had done in the earlier round of litigation which had culminated in Exts.P4 and P5 judgments as noticed supra.

12. I have heard Sri.G.S.Raghunath, the learned counsel for the petitioner, Sri.V.A.Muhammed, learned counsel appearing for the fourth respondent-Registrar General of this Court, Sri.Santhosh Mathew, learned counsel for the fifth respondent,

Sri.Ayyappan Sankar, learned counsel appearing for the sixth respondent and the learned Government Pleader appearing for respondents 1 to 3.

13. The learned Government Pleader started his submissions by saying that Ext.P2 has been issued by the Government solely based on the recommendations made by the Full Court of this Court, as is warranted under the relevant Circulars and Rules. He says that the Government has done no more than to choose one among from the panel of names forwarded by the High Court with its recommendations. Sri.Santhosh Mathew, learned counsel appearing for the fifth respondent submits that his client was chosen and appointed by the Government singularly because he was one among the persons recommended by the High Court and because the High Court had not found anything against any of the persons included in the panel forwarded by it to the Government.

14. In refutation of the above submissions, Sri.G.S.Reghunath, the learned counsel for the petitioner asserts that the reasons recorded by the learned Single Judge while issuing Ext.P4 judgment is still relevant because, according to him, the fifth respondent is even now involved as an accused in a

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criminal case. He points out that an F.I.R. has been registered against the fifth respondent before the Mangalapuram Police Station, Thiruvananthapuram, as Crime No.239 of 2008, in which he has been arrayed as the tenth accused. He avouches that the specific and pertinent observations of the learned Single Judge in Ext.P4, relating to integrity and the imperative requirements for choosing persons who are not involved in criminal proceedings, has been disregarded by both the High Court and the Government.

15. To gauge the submissions of Sri.Raghunath, I had initially asked the Government of Kerala to place before me the records relating to the appointment of the fifth respondent. The files were thus placed before me in a sealed cover which, however, did not contain any material other than the list recommended by the High Court. This list did not contain the specific recommendations of the High Court and I, therefore, asked the fourth respondent – Registrar General of this Court to place the files relating to the meetings of the Committee of Judges, authorised by the Full Court to make the recommendations, in a sealed cover. This has also been placed before me and I see from it, which was examined by me

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confidentially, that the recommendations contained therein are clear and specific and in favour of all the 13 names that were forwarded to it by the learned District Judge, Thiruvananthapuram.

16. Even though the minutes of the meeting of the Committee of the Judges or that of the Full Court cannot, on account of consideration of confidentiality, be made available in public domain, the views of the Committee of the Judges, which led to the Full Court recommending these 13 names, have, however, been placed on record by the fourth respondent in an additional counter affidavit dated 10th August, 2017. This additional counter affidavit was filed pursuant to an order of this Court dated 26th of July, 2017 where I had requisitioned that all necessary information be placed on record. In the additional counter affidavit, the fourth respondent has categorically stated as under:

"3. Subsequently, the District Judge, Thiruvananthapuram submitted a verification report of the thirteen applicants, including the reports received from the authorities concerned and the information collected from the applicants. In the report with regard to the fifth respondent, it is

mentioned as follows:

"As per the report submitted by the applicant dated 12.02.2015, he is included in the panel of standing counsel of the District Co-operative Bank, Thiruvananthapuram and the Kerala State Backward Classes Development Corporation. He was the President of Murukkumpuzha Service Co-operative Bank for a period from 08.10.2002 to 27.05.2007. As per the report received from the District Police Chief, Thiruvananthapuram (Rural), he was the 10th accused in Mangalapuram Police Station Crime No.239 of 2008. The report of the investigation officers in connection with the FIR No.239/2008 has not been filed before the Court. The copy of the FIR No.239/2008, report of the Joint Registrar, Order of the Secretary, Co-operative Department also attached. He has not held the post for two consecutive spells before the present application (Emphasis supplied)"

4. The above report was placed before the Committee and in the meeting of the Committee held on 08.06.2015, it was resolved to recommend the names of all candidates except those who have been convicted or are facing trial for any criminal offence, those against whom disciplinary proceedings are pending and those who have not responded to the communication sent by the District Judge concerned."

17. The files placed before me by the fourth respondent in a sealed cover would also speak in the same voice as above and I see that what has been stated in paragraphs 3 and 4 extracted above are exactly what is recorded by the Full Court and by the Committee in its proceedings. I, therefore, do not require any further assistance in this matter from the files that have been placed before me in the sealed cover and I think it will be justified for this Court to continue to assess the submissions of the petitioner based on the affidavits on record filed by the fourth respondent.

18. The consistent view taken by this Court in these matters, as is also recorded in Ext.P4 judgment, is that the power to make recommendations of candidates to the post of Official Receiver is vested with the High Court and no one else. The duty of the District Judge of the concerned District is only to collect the applications made by the advocates and then to forward it to this Court along with his notes. The Registrar General of this Court is, thereafter, enjoined by the relevant Rules to make a list of the candidates, along with all the information gathered with regard to each of them and then to place it before the Full Court. The Full Court may, thereafter,

consider it on its own or leave it to the Committee of Judges constituted by it to consider it for appropriate decisions. This is the process that has been adopted in this case also and it has not been violated in any manner at all.

19. I see that the District Judge had forwarded the names of all the 13 applicants, along with his notes to this Court and that the Registrar General of this Court, namely, the fourth respondent herein had included them seriatim in a list with all the available information relating to each of them. The Full Court, thereafter, made over this list to a Committee of Judges constituted by it, comprising of three eminent Judges of this Court, to consider the capabilities and qualifications of the candidates. It is evident from the files that the Full Court had considered the remarks against each of the candidates and had found all of them to be qualified. The fifth respondent was also found qualified by the Full Court, as is recorded in paragraphs 3 and 4 of the additional counter affidavit extracted above. Its opinion recorded is that, because of the mere fact that an F.I.R has been found pending against a person, it would not constitute an automatic disqualification and that only a person against whom a criminal trial is pending or against whom a disciplinary

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action at the hands of the Bar Council is proceeding would invite such disqualification. This is the view taken by the Committee of Judges and approved by the Full Court.

20. I do not think that it would be necessary or proper for this Court to sit in judgment over the view taken by the Full Court because this view is certainly guided by pragmatism and by forensic prudence. In our country, as is contended by Sri.Santhosh Mathew, it is possible that one can be besieged with litigations of criminal nature by making frivolous complaints. In the case at hand, he refers to the fact that the complaint against the fifth respondent was made as early as in the year 2008 but that nothing more has been done and nothing further has been proceeded on the basis of such complaint even as of now. It is over 9 years now and it will be unfair to say that for all these 9 years or for the next several years that the FIR would be kept pending, the fifth respondent cannot be considered for any appointment to public offices. The mere fact of the pendency of an F.I.R against a person, in my view, would not be sufficient reason to assert that he is disqualified for being considered for public appointments. It is true that the crime registered against the fifth respondent involves allegations of

misappropriation of money allegedly made by the Managing Committee of a particular Co-operative Society, of which he was a member. However, there is nothing to show that these allegations are yet proven by a procedure or investigation sanctioned in law, so as to discredit or impeach his integrity in any manner whatsoever. This is exactly what the Committee of Judges and the Full Court found and it is recorded in the proceedings very specifically that unless and until a person is served with a charge sheet subsequent to a valid investigation, leading to a trial, he cannot be declared disentitled for being considered or for being appointed to public offices. This opinion of the Full Court, in my view, is inculpable and supported by legally sustainable justification.

21. In any event of the matter, it would not certainly be justified for a Judge of this Court, even while considering a matter of this nature in writ jurisdiction, to take another view merely because a different view is possible. The factual evaluation of these factors are not within the province of this Court and it is certainly the accepted position in law that it should be best left to the competent Authorities, who are vested with the jurisdiction, in making such recommendations. In this

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case, it is ineluctable and indubitable that the applicable statutory powers are solely vested with the High Court to make recommendation for appointment under Section 59 of the Act and since I am unable to find anything wrong in the view taken by the Full Court in making the recommendation of all the 13 persons, from whom the fifth respondent was chosen by the Government under Ext.P10 order, I am constrained to find against the petitioner in this writ petition.

In such circumstances, I have no other option but to find Ext.P10 to be irreproachable and to dismiss this writ petition.

In the peculiar facts and circumstances of this case, I however, make no order as to costs and direct the parties to suffer their respective costs.

**Sd/- DEVAN RAMACHANDRAN
JUDGE**

stu

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PETITIONER(S) ' EXHIBITS

APPENDIX

EXHIBIT-P1- TRUE COPY OF THE CERTIFICATE ISSUED TO THE PETITIONER BY THE BAR COUNCIL OF KERALA DATED 28.06.1981.

EXHIBIT-P2- TRUE COPY OF THE NOTIFICATION NO. C1-3559/2012 DATED 23.3.2012.

EXHIBIT-P3- TRUE COPY OF THE G.O.(MS) NO. 1135 DATED 17.5.1958. .

EXHIBIT-P4- TRUE COPY OF THE JUDGMENT DATED 28/11/2012 IN W.P. (C) NO.12957/2012(R) OF THIS HON'BLE COURT.

EXHIBIT-P5- TRUE COPY OF THE JUDGMENT DATED 24.6.2013 IN W.A.2248/2012 OF THIS HON'BLE COURT.

EXHIBIT-P6- TRUE COPY OF THE REPRESENTATION SUBMITTED TO THE HON'BLE CHIEF SECRETARY, GOVERNMENT OF KERALA BY THE PETITIONER DATED 25.9.2014.

EXHIBIT-P7- TRUE COPY OF THE ACKNOWLEDGEMENT FOR EXHIBIT- P6.

EXHIBIT-P8- TRUE COPY OF THE POSTAL RECEIPT FOR EXHIBIT- P6.

EXHIBIT-P9- TRUE COPY OF THE JUDGMENT DATED 26.3.2015 IN W.P. (C) NO. 28370/2014.

EXHIBIT-P10-TRUE COPY OF THE G.O.(RT) NO.1805/2015 HOME DATED 20.7.2015.

EXHIBIT P11 TRUE COPY OF THE JUDGMENT IN WPC NO 15278/2006 DATED 23.3.2007.

EXHIBIT P12 TRUE COPY OF THE REPORT OF HON'BLE DISTRICT JUDGE, THIRUVANANTHAPURAM DATED 27.12.2008 OBTAINED UNDER RIGHT TO INFORMATION ACT.

RESPONDENT(S) ' EXHIBITS

R5 (1)

TRUE COPY OF THE OFFICE MEMORANDUM NO C2-10911/2015 DATED 4.9.2015.

/TRUE COPY/

P.S.TO JUDGE