

**(2001) 01 KL CK 0045**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 28166 of 2000**

Sadasivan

APPELLANT

Vs

State of Kerala

RESPONDENT

**Date of Decision :** 08-01-2001

**Acts Referred:**

Kerala Civil Courts Act, 1957 — Section 5, 7

**Citation :** (2002) 1 RCR(Civil) 733

**Hon'ble Judges :** G. Sivarajan, J

**Bench :** Single Bench

**Advocate :** George Abraham, for the Appellant; P.K. Santahamma, Government Pleader, for the Respondent

## **Judgement**

G. Sivarajan, J.—The issue raised in this Original Petition relates to the establishment of a Munsiff-Magistrate Court at Kothamangalam in Ernakulam District.

2. Petitioner is presently the Secretary of the Advocate's Association, Kothamangalam. According to the petitioner this Association was formed in 1996 for vigorously taking up the issue of establishment of civil and criminal courts at Kothamangalam. Petitioner states that having regard to the geographical features, extent of areas, number of villages, backwardness, population, number of police stations, absence of courts at Kothamangalam, present jurisdiction in criminal cases at Thodupuzha and civil cases in Muvattupuzha and Thodupuzha and the civil jurisdiction at Devikulam both far away from Kothamangalam representations are made by the Association and other organisations for establishing civil and criminal courts at Kothamangalam.

3. Under S. 5 of the Civil Courts Act, 1957 the Government after prior approval of the High Court can establish any additional number of courts in the State. The practice is that the High Court after considering the need for establishing courts in various areas on consideration of the need for establishing courts for a particular area will send the recommendation to the Government and the

Government will approve the same.

4. In the instant case considering the need for establishing a Munsiff-Magistrate court at Kothamangalam recommendation was sent from the High Court and the Government approved the same by order dated 19.5.1997. Munsiff-Magistrate Court, Kothamangalam is included as item No. 28 in the priority list Ext. P2. The grievance of the petitioner is that though the Government had approved the recommendation of the High Court as early as 19.5.1997 the Court was not established till date and the people of Kothamangalam are put to great difficulties.

5. The 3rd respondent has filed a statement, wherein it is stated as follows:

"2. It is submitted that the matter was referred to the administrative wing of the High Court to get the considered views of High Court. New courts in the State are established from the priority list for establishment of Courts as recommended by the High Court and approved by the Government. In the existing priority list the position of Munsiff-Magistrate Court at Kothamangalam is 27. As per G.O(MS) 185/2000/Home dated 4.8.2000 sanction was accorded for the establishment of the first two courts in the priority list. Hence establishment of Munsiff-Magistrate Court can be done strictly according to the priority contained in the priority list.

3. In view of the very difficult ways and means position of the State and the economy orders in force the establishment of all the courts from the priority list is not feasible. As regards the shifting and redesignation of the Judicial First Class Magistrate Court as Munsiff-Magistrate Court, Registrar of the High Court has reported that such a proposal has not yet come up before the High Court for consideration. Such a proposal has to be considered after ascertaining the statistics of cases from the area in consultation with the District Judge/Chief Judicial Magistrate and other officers concerned and also with the Bar Association etc. The convenience of the litigant public of Muvattupuzha has also to be given due importance, Hence a Munsiff-Magistrate Court at Kothamangalam can be sanctioned strictly in accordance with the priority list. Hence there is no merit in this D.P."

6. I have heard the learned counsel for the petitioner and the learned Government Pleader. As already stated the establishment of Munsiff-Magistrate Court at Kothamangalam in Ernakulam District was approved by the Government in 1997 and it was included as item No. 28 which is the last item in Ext. P2 list. The courts are being established by the Government in the order of priority. The power to alter the priority in Ext. P2 list is also a matter for the Government or recommendation by the High Court on the administrative side. Judicial Magistrate Court, Mananthavady and Munsiff-Magistrate Court, Sultan Bathery were items 1 and 2 in Ext. P2 list. Since no orders were passed by the Government for establishment of the said two courts even after 3 years the Bar Association of Sultan Bathery filed Writ Petition O.P. No.7541 of 2000 before this Court. The

Government filed a statement in the case stating that in view of the economy orders in force the Government have decided to defer the proposal. The court then directed the Chief Secretary to the Government to file affidavit giving the details of the posts created by the Government till date. In the affidavit filed by the Chief Secretary, it is stated that 1328 posts were created between 1.1.2000 to 27.6.2000. On that basis the Court observed that the initial statement was untrue. It is in those circumstances the court taking note of the fact that the said courts were sanctioned 3 years before the Government was directed to open the said two courts on 3.10.2000 and 1.11.2000 respectively. The court also hoped that the Government will bestow more consideration and serious attention to establish the other courts mentioned in Ext. P2 list as expeditiously as possible.

7. It must be noted that at the time of issuing the said directions there were only 25 courts in Ext. P2 list. As already stated that Munsiff-Magistrate Court, Kothamangalam is only item No. 28 which shows that the court was included in the list only subsequently.

8. As already stated the court can be established only in the order of priority. As such the proposed court being only item No. 26 now can be established only after establishment of the earlier 25 courts in Ext. P2 unless the priority is changed for which the recommendation of the High Court on the administrative side is required. As the matter now stands the Government cannot be directed to establish Munsiff-Magistrate Court at Kothamangalam ignoring the priority list Ext, P2. The alternate relief sought for viz., to transfer and re-designate one of the two Judicial First Class Magistrate Courts at Muvattupuzha as a Munsiff-Magistrate Court at Kothamangalam is a matter, as mentioned in the statement, for consideration by the High Court with reference to the statistics of cases from the area in consultation with the District Judge/Chief Judicial Magistrate and other officers concerned and also with the Bar Association, etc. and the convenience of the litigating public at Muvattupuzha. Petitioner has produced a copy of the representation dated 27.11.2000 filed before the Registrar of this Court under S. 7 of the Civil Courts Act, seeking for permission for transferring the Munsiff Court at Kothamangalam. Since such a representation is sent to the Registrar of this Court, the same will be dealt with by the High Court on the administrative side in accordance with law.

9. Having regard to the policy of the State for dispensation of justice at the door steps of the common litigant public, though there are financial constraints for the Government, as hoped in the judgment dated 29.8.2000 (Ext. P6) I direct the Government to bestow more consideration and serious efforts to establish the other courts from Ext. P2 list as expeditiously as possible.

The Original Petition is disposed of as above.

The office will place a copy of this judgment before the Registrar of this Court for his attention and follow up action.