CHAPTER-2

THE HIGH COURT OF TRAVANCORE-COCHIN

The first step towards the amalgamation of Travancore and Cochin was the formation of an 'Integration Committee', headed by N.M. Buch ICS, then joint-secretary to the Government of India. Its members, V.O. Markose and Panampilly Govinda Menon, were from Travancore and Cochin, respectively. The Buch Committee played a decisive role in deciding the fate of the new High Court. The pages of the Buch Committee's report reveal that Ernakulam was selected to be the seat of the new High Court, despite the members themselves being convinced of the unsuitability of that place, in this respect. The report, did appreciate the facilities which were available at Trivandrum. By all means, the capital of Travancore was acknowledged to be amply spacious to house all the heads of Government, Legislature, Executive and Judiciary. In spite of having clear knowledge of the advantages present in Trivandrum, the Buch Committee showed marked partiality towards Cochin. This indeed influenced the Report, which even expressed itself against the constitution of a Bench of the High Court at Trivandrum. Ernakulam lacked the facilities for the proper accommodation of the High Court staff, lawyers, clerks, peons etc. It posed a difficulty for the law officers of the Government, who had to travel, constantly, between the seat of the High Court and the State capital.[1] On the eve of integration, the High Court of Travancore had six

permanent judges, including the Chief Justice, namely, Puthupally S. Krishna Pillai, P. Habeeb Mohammad, K. Sankaran, K.S. Govinda Pillai, P.I. Simon and Mathew Muricken. The Cochin High Court had only three judges including the Chief Justice. They were, K.T. Koshi, S. Govinda Menon and Paul. P. Mampili.[2]

The rulers of Travancore and Cochin entered into a Covenant to unite their States into one, with a common Executive, Legislature and Judiciary. The new entity was named 'The United State of Travancore and Cochin', better known as 'Thiru-Kochi'. The Maharaja of Travancore became the Rajpramukh of the United State. A Council of Ministers was to aid and advice him in the exercise of his functions. They were to comply with the directions of the Government of India. Questions of disputed succession in regard to a covenanted State were to be decided by the Rajpramukh after referring it to the High Court of the United State and in accordance with the opinion of the latter.[3]

The United State of Travancore-Cochin was inaugurated on 1 July, 1949. In exercise of the powers conferred by Article XI of the Covenant, the Rajpramukh promulgated an Ordinance which declared that the laws existing in the two states should *mutatis mutandis* continue to be in force in their respective territories and the courts, both civil and criminal, would uninterruptedly enjoy their jurisdiction and powers conferred on them. The courts were to eliminate conflicts arising from the application of laws by interpretation. Another Ordinance led to the creation of the High Court of the United State of Travancore-Cochin.[4] The Rajpramukh was empowered to appoint the Chief

Justice and other judges of the High Court whose number was fixed at not less than five. The Ordinance prescribed the powers and jurisdiction of the High Court including the superintendence over all subordinate courts. All appeals pending before the High Courts of Travancore and Cochin were to be heard by the High Court of the United State. The seat of the new High Court was decided to be at Ernakulam. The Rajpramukh had already executed an 'Instrument of Accession' under section 6 of the Government of India Act, 1935, thereby accepting the supremacy of Dominion Legislature.

The difficulties caused by shifting of the High Court and the Law College from Trivandrum to Ernakulam were echoed in the new State Legislative Assembly. An adjournment motion was moved by Kalathil Velayudhan Nair, on 6 August, 1949, in order to highlight this problem. The plight of employees especially of the low paid clerks and peons was compared to that of the refugees in Punjab. Boarding and lodging facilities were thoroughly inadequate at Ernakulam. The people who were forced to shift to Ernakulam, found it very difficult to make both ends meet. The price of food stuffs in that place was higher than that was prevalent in Trivandrum. Students of the Law College were also at the receiving end, as that institution, too, was shifted along with the High Court. Spaces assigned to clerks were mostly open corridors of Government buildings, instead of separate rooms or houses. From the very beginning itself, the Government claimed to have solved the grievances of people who were victims of the regime's tughlag-model decision. However, the ground situation was to

the contrary. The Government was persuaded to provide free quarters for the aggrieved staff and lawyers it within the premises of the new High Court.[5]

Speaking for the motion, Pattom Thanu Pillai criticized the policy of appeasing the Cochin lobby as being against the spirit of integration. He said 'I am definitely of the opinion that it was wrong to have shifted the High Court to Ernakulam'. The necessity of shifting of the High Court was questioned. The number of lawyers in Ernakulam was hardly a quarter of the number, present in Trivandrum. Similar was the case with the clerks and the staff. The urgency seen in the shifting of the High Court was absent in the matter of providing proper accommodation for the displaced victims. Official apathy was unbearable. Despite being a 'United State', there remained separate budgets for Travancore and Cochin. He ridiculed the contention that the High Courts should not be placed in the Capital city because Ministers might influence them. Trivandrum was a better place to house the High Court, than Ernakulam. The shifting of the Law College from Trivandrum to Ernakulam was also severely condemned. This act was hastily executed, unmindful of the need, for making decent arrangements in this regard. The callousness shown by the Government and the University towards the plight of students of the Law College was indeed intolerable. Pattom strongly affirmed that the Law College ought to have been at Trivandrum, itself.[6]

Representing the Government, Panampilly Govinda Menon grew eloquent on the policy of the State towards affording facilities at Ernakulam, for lawyers, clerks and peons. Buildings within the premises of Ram Mohan Palace were told to have been set

aside for the convenience of these people. An Ordinance was also issued to facilitate convenient lodging for them. The Minister claimed that ample facilities were being provided for the proper working of the Law College and for lodging its students. An attempt was made to portray the condition of the Law College students in a lighter vein. Panampilly stated that the public would forget all these contentious issues within a span of three or four months. Concluding his response to the adjournment motion, Panampilly Govinda Menon expressed the hope that the motion would not be pressed in the light of the Government's assurances towards mitigating the crisis caused by shifting of the High Court and Law College. Conceding to the pressures from the treasury benches, Kalathil Velayudhan Nair decided not to press the motion.[7]

The year 1949 which saw the formation of the United State of Travancore-Cochin, also witnessed notable litigations involving the State Government. The Travancore Interim Constitution Act[8] promulgated by the then Maharaja of Travancore had aimed at establishing a responsible Government in the State. Accordingly, a Council of Ministers, headed by a Prime Minister, was constituted. Pattom Thanu Pillai was sworn in as the Prime Minister of Travancore. T.M. Varghese and C. Kesavan were inducted into the Ministry. However, the regime was short lived. It was succeeded by a new Council of Ministers, headed by Parur T.K. Narayana Pillai as the new Premier.

Meanwhile the *Malayali*, a newspaper, published a number of articles avowedly with a view to discredit the new dispensation in the State. Soon, the Government cancelled the license granted to the said newspaper by citing the relevant section of the

Travancore Newspapers Act[9]. The notice given under section 5 of the Act indicated fourteen different articles. Under section 10 of the Act, the High Court was bound to decide whether those articles were or weren't in fact of the nature described in the section 5. The printer and publisher of the *Malayali*, Ramakurup, questioned the legality of the Government's order by approaching the State High Court. He was represented in the Court by eminent lawyers namely, K.G. Kunju Krishna Pillai, Kalathil Velayudhan Nair and K. Parameswaran Pillai. They argued that the notice issued under section 5 of the Travancore Newspapers Act was insufficient in law and that the order of forfeiture was void and hence liable to be revoked for that very reason. Having issued the notice, the Government was told to have burdened itself with the responsibility of precisely indicating the articles that fell within the mischief of respective provisions of the section. The High Court was told that the Government's contention that the said fourteen articles contravened all the several clauses of the relevant section of the said Act, was in fact an insufficient compliance with the statutory requirements of that very section.[10]

The Court disagreed with these contentions. The Bench explicitly stated that its jurisdiction was circumscribed by section 10 of the Travancore Newspapers Act which had authorized the Court only to decide whether the words, signs, visible representation or matter contained in the newspaper in respect of which the order in question was made "were or were not in fact of the nature described in section 5". Moreover, section 15 of the very same Act had further provided that no order passed or action taken under the Act could be called into question in any court other than in

accordance, with the provisions of the Act. Rejecting the contention of the petitioner's counsel, the High Court held that to bring a newspaper publication within the mischief of sedition, it was enough if it was proved that the publication tended to or was likely to create feelings of disaffection, hatred or contempt towards the Government and not necessarily to incite people to rebellion. The Court however, observed that there was considerable scope for speculation in this regard and that it was applying the law as it stood then. The High Court observed that the law recognized a certain amount of liberty in the citizen to criticize the Government with reference to the latter's policies and added that it was never considered to be unlimited. The Bench pointed out that all the articles referred to in the case, were couched in strong and highly inflated language which at many instances had descended to vulgarity. Among the fourteen articles examined, six of them were considered by the High Court to be seditious, while two were held partly seditious.[11]

However, the *Malayali* was absolved from the charge of having created class hatred. A particular article was found to have exaggerated the influence of one section of the society, namely, the Syrian Christian community in the affairs of the State. The Court held that a statement to the effect that a section of the populace was in greater power than the others had not been known to create hatred against the former. The Court saw considerable force in the contention that the newspaper delights in discussing decent subjects in indecent language and in expressing them in terms of sexuality and obscenity. Even while holding two articles as defamatory, the Court expressed its inability to pronounce whether they were punishable under section 503 of the

Travancore Penal Code. Doubts were expressed on the feasibility of holding the newspaper guilty of habitual publication of defamatory matter. The Bench opined that the materials presented before the Court were insufficient to establish the above charge. The case was heard and decided by a Bench consisting of the then Chief Justice Puthupally S. Krishna Pillai and Judges, K. Sankaran and Mathew Muricken, on 14 October, 1949.[12]

The fiscal policy of the post-independence era has been characterized by deficit budgets of Governments. As a result, new avenues for taxation were explored. The possession and sale of tobacco within the confines the princely State of Travancore, was restricted by statute and regulated by rules. The Travancore Tobacco Act[13] of 1911 superseded all the earlier statutes in this regard. Section 4 was pertaining to the right of possession and sale of tobacco except under the rules framed under Section 31 of the Act. Consequently, rules were issued for providing a system of licensing, in which, stocking and sale of tobacco were authorized. Even though stocking and sale of tobacco were permissible only under licenses, the license itself was obtainable by all who applied for. The license had validity of one year and was renewable on the same teams.

Later, the Government introduced a new system, under which the right to stock and vend tobacco was to be farmed out to the highest bidder by public auction. The Gazette notification of 12 July, 1949 proposed to hold such public auctions at various places, in order to make the new system enforceable from 17 August, 1949, the day

when the earlier licenses were set to expire. A fresh set of rules was published in this regard in the Gazette dated 26 July, 1949. The new rules which were issued under section 31 of the Travancore Tobacco Act were in supersession of the then existing rules issued under the very some Act. Some merchants of Quilon and Trivandrum felt aggrieved at the said new initiative of the State Government. They filed petitions before the High Court, challenging the act of the Government. The petitioners were led by one Subrahmonia Iyer**.** As stockists and wholesale dealers in tobacco, they contended having customary and legally vested rights in the trade. The steps initiated by the Government, were alleged to be hostile to their enjoyment of such rights. The petitioners pleaded for the issuance of the writs[14] of *mandamus*, prohibition and *certiorari* against the Chief Minister, the Minister for Excise and Customs and the Excise Commissioners of the United State of Travancore-Cochin.

The High Court observed that the State Legislature had vested the Government with full powers to control and regulate the sale of tobacco, which included the power of modify it as often as the State deems it fit. This was told to be explicit from section 14 of the Travancore General Clauses Act of 1072 M.E (1896-97)[15]. The said provision had stated that where a power was conferred on any authority to make rules, regulations or byelaws, that power was to be construed as including a power to rescind, revoke, amend or vary these rules or regulations. The rules were to come into operation after the expiry of the licenses issued under the old rules. A writ of *mandamus* was sought to be issued against the Government. However, the Court opined that the petitioners failed to make out a case that they had acquired any

statutory or customary right to carry on forever, the trade as stockists and sellers of tobacco. Their sole privilege was told to be under a license granted under a statutory rule. The petitioners were told that they were not entitled to demand the continuance of their licenses, when the very system of licensing was abolished. A writ of prohibition was one intended to keep the inferior court (to which it is directed) within its proper jurisdiction. The High Court stated that neither the Chief Minister, who was in charge of Excise, nor the Excise Commissioner, could be treated as an inferior court. The Court added that the respondents could not be held to have acted in excess of jurisdiction as such jurisdiction was explicitly conferred on them by the statutory rules. Similarly, the writ of *certiorari* was for the purpose of seeking a review of a judicial act of an inferior tribunal. The system of farming out by public auction to the highest bidder the right to trade in tobacco in any particular area, was held not to be a judicial proceeding, even remotely.[16]

Initially, the Government Pleader T.N. Subramania Iyer had contended that despite being the highest court in the State, the High Court had no jurisdiction to issue any of the prerogative writs. The ground for the said contention was section 6 of the Ordinance II of 1124 M.E (1949). The above section had provided for the State High Court to be a court of record. The said statute had not clearly enumerated the jurisdictional power of a court of record, as such. Rejecting, the contention, the High Court held that its powers were not inferior to those a court of record, which happened to be the superior court elsewhere.

The erstwhile Cochin High Court and the Travancore High Court had not claimed to have the power to issue the prerogative writs. However, the Bench considered these instances as of meagre importance. Ordinance II of 1124 M.E (1949) had declared that the jurisdiction and powers of the High Court were to be exercised subject to the provisions of the said Ordinance. This was explicitly stated in section 18 of the Ordinance. Section 6 was told to be conferring on the State High Court, all the powers of a court of record which existed elsewhere. Finally it was pronounced that the petitioner had not made out a case for the grant of extraordinary reliefs claimed by them. The case was decided by a Bench consisting of the then Chief Justice Puthupally S. Krishna Pillai and Justices, K. Sankaran and S. Govinda Menon, on 14 November, 1949. Justice S. Govinda Menon while concurring with the judgement, expressed doubts on the jurisdiction of the High Court pertaining to the issue of prerogative writs.[17]

Original Petitions formed only a part of the work done by the High Court. Appeals against the verdicts of the subordinate courts were also entertained by the High Court. One such case did help to throw light on the working of the judges of the High Court. This case had actually originated during the days of the Travancore High Court. A second appeal was heard by a Bench composed of Justices, Sankarasubba Iyer and Lukkose. They differed in their conclusion regarding the disposal of the said second appeal. Justice Sankarasubba Iyer was for confirming the decision of the lower appellate court and dismissing the plaintiff's suit. On the contrary, Justice Lukkose favoured reversing the decision of the lower appellate court and restoring the *munsiff's*

decree which had granted the plaintiff relief against the defendants. Due to this difference of opinion, the case was referred to another judge in accordance with section 9 of the Travancore High Court Act[18]. That judge happened to be the then Chief Justice, Joseph Thaliath. He was in agreement with the decision of Justice Lukkose. As a result, a decree was drawn up according to the majority opinion. However, when the decree had to be signed, Chief Justice Joseph Thaliath and Justice Lukkose, both had retired from their offices. This led to the decree being signed on their behalf by the new Chief Justice, T.M. Krishnaswami Aiyer.[19]

However, the decree bore the date 20-5-1118 M.E (1943), i.e, the date when the then Chief Justice Joseph Thaliath pronounced his decision. Justice Lukkose retired on 27-4-1117 M.E (1942). It was contended by the appellant that after the decision of the third judge the case should have gone back to a Bench for final disposal. The Court disagreed with the above view by throwing light on section 9 of the Travancore High Court Act. It read as follows-'in any case, civil or criminal, if the two judges forming a Division Bench agree as to the decree, order or sentence to be passed, their decision shall be final. But if they disagree, they shall deliver separate opinions, and their upon the Chief Justice shall refer, for the opinion of another judge, the matter or the matters on which such disagreement exists, and the decree or order or sentence shall follow the opinion of the majority of the judges hearing the case.' Thus it was affirmed that the High Court had only acted in consonance with the section 9. The Bench also observed that the High Court of the United State of Travancore-Cochin was following the precedents established by the High Courts of the erstwhile Travancore and

Cochin. The section 9 of the Travancore High Court Act was equated with section 48 of the Government of Cochin Act, 1938.[20]

The Appellant was told that the decree was not of a single judge (Chief Justice Joseph Thaliath), but of the majority of the judges who heard the case. It was also declared that there was nothing wrong in the Chief Justice T.M. Krishnaswami Aiyer signing the decree on behalf of his predecessor in office. The Civil Procedure Code was quoted in this regard. It had provided that when a judge had vacated office after pronouncing a judgement but without signing the decree, a decree drawn up in accordance with such judgement might be signed by his successor. The second appeals were hence, dismissed by the Bench consisting of Justices, K.T. Koshi and Mathew Muricken, on 23 December, 1949.[21]

By virtue of the United State of Travancore-Cochin Administration and Application of Laws Act, 1950, the High Court of the United State was designated to hear appeals from any order or sentence of the Special Tribunal.[22] The use of Malayalam in proceedings of the High Court was authorized by the Rajpramukh with the consent of the President of the Indian Union, with effect from 26 January, 1950. However, judgments decrees and orders, passed or made by the High Court were exempted from the rule. This initiative was based on the clause (2) of Article 348 of the Constitution of India.[23]

In 1950, the very appointment of the then Chief Justice of the United State of Travancore-Cochin was challenged in the course of litigation. The United State of Travancore and Cochin High Court Act[24] passed by the Legislature came into force on 28 December, 1949. Earlier on 16 July, 1949, the Rajpramukh had promulgated an Ordinance[25] for creating a Public Service Commission for the United State. The Ordinance was in force till 16 January, 1950. On 14 July, 1949, the Rajpramukh appointed C. Kunhiraman as the Chairman of the State Public Service Commission. The latter was an ex-judge of the Madras High Court. For the continuance of the Public Service Commission from 16 January, 1949 up to 26 January, 1950, the State Legislative Assembly passed the Act I of 1950.[26] On 20 January,1950, C. Kunhiraman resigned the chairmanship of the Public Service Commission. On the very same day itself, his resignation was accepted and he was appointed as the Chief Justice of the State High Court by the Rajpramukh.

According to the law prevalent in Travancore a sentence of imprisonment for life passed by a session's judge had to be submitted for confirmation by the High Court. In such a case, the reference for confirmation and the appeals preferred by the accused against their conviction and sentence, came up for hearing before a Division Bench consisting of the Chief Justice, C. Kunhiraman and Justice K.T. Koshi. The case was heard for two days. On the conclusion of the hearing the Chief Justice confirmed the conviction and sentence passed by the Sessions Judge. Ten days later on 24 February, 1950, petitions were filed by the accused to obtain certificates under Articles 132(1) and 134(1)(c) of the Constitution of India[27], to prefer appeals to the Supreme

Court. The grounds taken in those applications were that the Bench which heard and disposed of the appeals was not properly constituted resulting in it being incompetent to hear or decide the case and that the decision confirming the conviction and sentence was wrong and unsustainable in law. The petitioners were represented by K.G. Kunjukrishna Pillai and N. Padmanabha Panicker while the Advocate General T.N. Subramania Iyer appeared for the State.

The petitioner contented that the appointment of the then Chief Justice had contravened the provisions of sub-section (5) of section 3 of the Travancore-Cochin Public Service Commission Ordinance (read with the Travancore-Cochin Public Service Commission (continuance)) Act, 1950, which had made the Chairman and other members of the Public Service Commission ineligible for further employment under the Government of the United State of Travancore-Cochin. It was also urged on behalf of the petitioners that section 9(1) of the Travancore-Cochin High Court Act had also been violated. Petitioners claimed that non-compliance of mandatory provisions in the appointment of the Chief Justice had rendered the appointment invalid and thereby rendering the appointee's acts in that office void.[28]

In the course of the arguments Article 376 (2) of the Indian Constitution came to the notice of the Court. It read as follows- "The judges of a High Court in any Indian State corresponding to any State specified in Part B of the First Schedule, holding office immediately before the commencement of this Constitution shall unless they have elected otherwise, become on such commencement, the judges of the High Court in

the State so specified and shall not withstanding anything in clauses(1) and (2) of Article 217 but subject to the proviso to clause (1) of that Article, continue to hold office until the extirpation of such period as the President may by order determine". It was in pursuance of the above clause that the President had passed on order on 26 January 1950 which read as follows-

"In pursuance of the provisions of clause (2) of Article 376 of the Constitution, I hereby determine that Sri. C. Kunhiraman, Chief Justice of the High Court in the State of Travancore-Cochin shall, notwithstanding anything contained in clauses (1) and (2) of Article 217 but subject to the proviso to clause (1) of that Article continue to hold office until and including the 25th January 1952." The counsel for the petitioners, K.G. Kunjukrishna Pillai contended that the said order was invalid as the President could not fix any term for a judge who had passed the age of sixty.[29]

The Advocate General launched his broadside by throwing light on Article 13 of the Covenant entered into by the Rulers of Travancore and Cochin. It was the founding document of the United State. The said article clearly stated that until a Constitution comes into operation, the Rajpramukh and the Council of Ministers were bound to comply with the directions of the Government of India. The appointment of the Chief Justice took place in compliance with a direction issued by the Government of India. Meanwhile, the relevant extract from a communication received from the Union Government dated 16 January 1950 was produced in the Court. It explicitly showed that the appointment of the than Chief Justice was made with the consent and approval of the Government of India. The Advocate General claimed that the

judgeship of the Travancore-Cochin High Court was not an employment under the Government of the State. He told the Bench that the sub-section 5 of section 3 of the Public Service Commission Ordinance had only made its members, including its Chairman ineligible for further employment under the Government of Travancore-Cochin State. On the contrary, the petitioner was of the view that, since the judges of the High Court were appointed by the Rajpramukh, by virtue of him being the head of the State, such an appointment did constitute an employment under the Government of the United State.[30]

The Section 9(1) of the Travancore-Cochin High Court Act had provided for every permanent judge to hold office until he was sixty years old. The Advocate General did not regard it to be an obstacle in the way of appointing a person above the age of sixty, to the office of judgeship of the State High Court. He told the Bench that being above the age of sixty years, was not a disqualification under section 9(2) of the High Court Act and that the provision in section 9 (1) only gave a guarantee of service to those appointees who were under sixty years of age. It was contended on behalf of the State that the said sections of the Public Service Commission Ordinance and the High Court Act were not of a mandatory nature but merely directory. It was also urged that the objection to the constitution of the Bench was an afterthought as no objection was raised when the appeals were heard. The High Court also observed that clause (1) of Article 217 of the Indian Constitution, too, fixed the normal retiring age of a judge at sixty. But, the Bench added, that it neither did operate as an absolute bar against a judge being retained in service beyond the age of sixty years nor disqualify a judge

from holding office on completing sixty years of age. Among the qualifications prescribed for being a judge of the High Court, neither clause (2) of section 9 of the High Court Act, nor clause (2) of Article 217 of the Indian Constitution, had mentioned any such age limit. Moreover, Article 224 of the Constitution had expressly provided for entertaining the services of retired High Court judges, on the Bench, under certain circumstances.[31]

When the Constitution came into force an 26 January 1950, C. Kunhiraman was holding the office of the Chief Justice. On the very same day, the President of the Republic of India issued an order contemplated by clause (2) of Article 376 of the Constitution, which effectively empowered the Chief Justice to continue in office until and including 25 January 1952. It was not an order of appointment. However, the Bench opined that the said order had the effect of ratifying the initial appointment made by the Rajpramukh, and of accepting the appointment as a proper and valid one. By strictly and literally construing clause (2) of Article 376, it was clear that the President could act as if clause (1) and (2) of Article 217 did not exist. There was a temporary and transitional provision in Article 376 which empowered the President to fix the period of service of those judges of the High Court in the States specified in Part B of the First Schedule of the Constitution, who were holding office at the commencement of the Constitution.[32]

The Court was of the view that judicial tenure was essentially different from employments under the Executive Government. Identical provisions in the Indian

Constitution and in the Travancore-Cochin High Court Act had emphasized the independent status of judges. In fact the independence of judiciary was recognized in the United State of Travancore-Cochin even before the commencement of the Constitution of Free India. Article 12 of the Covenant, which gave birth to the United State, had expressly forbade the Rajpramukh from assuming to himself any of the powers vested in or exercisable by the High Court or to suspend either wholly or partly, any law relating to the High Court.[33]

The appointment of C. Kunhiraman was made with the approval and as per direction of the Government of India. This fact was clearly proved by a communication to that effect sent by the Government of India to the Government of the United State, on 16 January 1950. By virtue of Article 13 of the Covenant, the State was bound to obey that direction. It was only on 19 January 1950 that the legislature of the United State passed a resolution, adopting the Indian Constitution as the Constitution of the State too. A Proclamation was issued to that effect by the Rajpramukh on 25 January 1950. Until that date Article 13 of the Covenant was in full force. Hence the High Court concluded that the direction issued by the Government of India on 16 January 1950, pertaining to the appointment of C. Kunhiraman as the Chief Justice of the High Court was perfectly correct and that the validity of the appointment was unquestionable. The applications of the petitioners were dismissed on 3 June 1950.[34]

In the course of the trial of a murder case at the Parur Sessions Court, the judge made strong remarks against the conduct of the then Assistant Surgeon in charge of

Moovattupuzha, Hospital. She was accused of being indifferent towards the injured person. The Sessions Judge had opined that the deceased could have survived if the necessary medical aid was rendered in time. The doctor's professional competence was questioned by the Sessions Judge.[35] The aggrieved Assistant Surgeon petitioned the High Court to expunge the remarks about her in the judgment of the Sessions Judge. The High Court discovered that the remarks made by the Sessions Judge were unwarranted and unjust. Justice Govinda Pillai observed that the witnesses were not given an opportunity to defend themselves. The Bench categorically stated that the courts should not travel beyond the necessities of the case and that remarks in bad taste were unworthy of being a part of a judgement. The High Court affirmed that it had the power to entertain an application by way of revision to expunge such remarks made in a judgment, against witness. Meanwhile, the Government Pleader who appeared for the State did concede that the remarks made by the Sessions Judge were unwarranted and devoid of evidentiary support. Finally, on 8 August, 1950, the said contentious remarks were expunged by the High Court.[36]

The continuous strife between the INC and the TTNC was a notable feature of the polity of the United State of Travancore-Cochin. T.M. Varghese, a prominent member of the INC became the first Speaker of the Legislative Assembly of the State. The legality of T.M. Varghese holding the speakership of the State Assembly was questioned by A. Nesamoni, who was a legislator and the leader of TTNC. The latter filed a writ of *Quo-warranto* in the High Court, in this regard. The Legislature of the United State of Travancore-Cochin was constituted under the Covenant entered into

by the Rulers of these two erstwhile princely states. T.M. Varghese held the office of the Speaker of the above body. After the commencement of the Constitution, the State Assembly continued to exercise the powers and duties of the Legislature for the United State, by virtue of Article 385 of the Constitution.[37] However, no provision of the Constitution had provided for the President of the Assembly to remain in that place, after 26 January 1950. According to the petitioner the then Speaker had committed an illegal usurpation of a public office.

The State was also impleaded in the case. T.N. Subramania Iyer, the then Advocate General appeared on behalf of the counter petitioners. Raising a preliminary objection, the Advocate General stated that the petition of the kind which was being considered could be filed only by a person who was defeated in an election for speakership or someone having a similar interest. Overruling the said contention, the Bench observed that apart from his right as a citizen, the petitioner in being a member of the Legislative Assembly had every right to know by what authority does the Speaker functions. Hence the petitioner was considered competent to file the said petition. Article 382 of the Indian Constitution had provided for the continuance of the Speaker of the Legislative Assembly in Part-A States. But, there was no such corresponding provision in Article 385 with regard to the Speaker in the Legislature of Part-B States.

The historical evolution of the Constitution was analyzed by the High Court. The Constituent Assembly was created by virtue of section 8 of the Indian Independence Act 1947. The Legislatures in Part-A States (originally known as Provinces) were

constituted under section 18 of the Government of India Act 1935. These Acts of 1947 and 1935 had in fact laid the foundation for legislative bodies that existed before 26 January 1950. The above Acts were repealed by Article 395 of the Indian Constitution. The Legislative Bodies of Part-B States were not governed by either of the above two Acts. Had they joined the Federation as envisaged in the 1935 Act, the Part-B States (formerly known as Native or Princely states) would have come within the purview of the Government of India Act, 1935. As a result Part B states stood on an entirely different footing from the Part-A States.

The legislatures of Travancore and Cochin States were integrated by virtue of Article 10 of the Covenant. The Rajpramukh had promulgated Ordinance III of 1124 M.E (1949) to regulate and control the Legislative Assembly of the United State. The counter-petitioner was elected Speaker under the provisions of the above statute. He continued to hold that office by virtue of Ordinance VIII of 1124 M.E (1949). Thus the body of authority which functioned immediately before the commencement of the Indian Constitution as the Legislature of the United State was the Legislative Assembly created by the Covenant and strengthened by the above two Ordinances. It was this legislature which was referred to in Article 385 of the Constitution.[38]

Article 372(1) of the Constitution and the Adaptation of Laws Order 1950 led to the continuance of the existing laws in Part-B States. Article 385 had provided for the continuance of legislatures in Part-B States. In the light of these facts, the Bench opined that the Speaker was legally eligible to continue in his office. It was also

affirmed that a Speaker had a special status and separate existence apart from the Assembly over which he presided. The Speaker was told to be an officer of the Legislature who continues to be in office even if the Assembly was dissolved and who continues in that office till the commencement of the next Assembly. Finally, on 27 June, 1950, the High Court declared that the mere absence of a provision for the continuance of the Speaker of the Legislative Assembly of Travancore-Cochin in Article 385 of the Indian Constitution was not liable to affect the tenure of speakership of T.M. Varghese.[39]

On 1 April, 1952, P.S. Nataraja Pillai proposed the Travancore-Cochin High Court Act (Amendment) Bill. However, a point of order was raised against it at the very outset itself. The competency of the State Legislative Assembly to consider the said Bill was questioned by the Minister for Finance and Civil Supplies, Panampilly Govinda Menon. The subject matter of the Bill was alleged to have fallen under Entry No.78 in List I, Schedule VII of the Constitution, which exclusively sets it apart for the consideration of the Union Parliament. The Bill was portrayed as one which sought to reconstitute the High Court, by having a Bench at Trivandrum. It was told that the Bill was legally invalid for not being accompanied by the previous sanction or recommendation of the Rajpramukh. The Minister did not fail to draw the attention of the House to a few legal and constitutional points, in order to buttress his stand on the issue.[40]

Rule 35 of the Assembly Rules stated the following, ‘Every Bill shall unless the Speaker otherwise directs be accompanied by a financial memorandum which shall

invite particular attention to the clauses involving expenditure and shall also give an estimate of the recurring and non-recurring expenditure involved in case the Bill is passed into law'. The Speaker had exempted P.S. Nataraja Pillai from the production of such a financial memorandum. Article 207(3) of the Constitution had said, "A Bill which of enacted and brought into operation would involve expenditure from the Consolidated Fund of a State shall not be passed by a House of the Legislature of the State unless the Governor (or the Rajpramukh) has recommended to that House the consideration of the Bill". According to Rule 34 of the Assembly Rules, "Any member other than a Minister desiring to move for leave to introduce a Bill, shall give notice of his intention and shall, together with the notice, submit a copy of the Bill and a full Statement of objects and Reasons". If the Bill happened to be one which, under the Constitution, cannot be introduced without the previous sanction or recommendation of the Rajpramukh, the member had to annex to the notice a copy of such sanction or recommendation, and the notice was not be valid until this requirement was complied with. Questions with regard to sanctioning or recommending such a Bill, was to be referred to the Rajpramukh whose decision was final. This was the substance of the then prevalent legislative procedure.[41]

P.S. Nataraja Pillai countered the point of order raised by Panampilly Govinda Menon. The former's request for exemption from the requirement of a financial memorandum was granted on 13 March, 1952. It was claimed that the Bill did not contemplate any additional charge on the Consolidated Fund. The Speaker was told to possess the absolute right to decide whether a Bill was a Money Bill or whether it contemplated a

charge on the Consolidated Fund. This was on the strength of Article 199(3) of the Constitution which ran as follows, " if any question arises whether a Bill introduced in the Legislature of a State …….is a Money Bill or not the decision of the Speaker of the Legislative Assembly of such State thereon shall be final ". As a result, the matter was solely under the Speaker's discretion. Unless the House and the Speaker was satisfied that the Bill contemplated a charge on the Consolidated Fund, the question did not require the recommendation of the Rajpramukh. The Speaker's decision was told to be final, in this regard.[42]

Article 124, which began with the heading 'Establishment and constitution of the Supreme Court', deals with the number of judges and their appointment by the President of India. Article 216, having the marginal heading entitled," Constitution of High Court," dealt with the judges. It read, "Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself." As far as its 'constitution' was concerned, the Article further read as follows, "Every High Court shall consist of a Chief Justice and such other judges as the President may ……appoint. As long as the issue did not deal with the number of judges or about the composition of the Benches, the House was free to handle other matters, which definitely fell within the purview of the 'Administration of Justice', that was well within the ambit of the State Government. The judges were the organs of the High Court. As such, matters dealing with them alone, qualified to be associated with the 'organization' of the High Court. The subordinate officers and servants do not come within its purview. Entry 3 of List II had clearly placed the officers and servants

of the High Court within the purview of the House which had the power of locating the Court anywhere where justice would be administered. A precedent was already set in the Legislature, in this regard; it was by Act I of 1952, which regulated the business and jurisdiction of the High Court. The said Act had been approved by the President of India. It was taken as proof to show that the House had the right and jurisdiction to legislate on such and other analogous matters.[43]

Nedumangad R. Kesavan Nair took the Minister for Finance to task for obstructing the Bill at the introduction stage. Article 207(3) had said that a Bill involving expenditure from the Consolidated Fund of the State should not be passed without the Governor's sanction. It does not say that the Bill should not be introduced without the Governor's sanction. The objection that the Rajpramukh's sanction had to be obtained before the introduction of the Bill did not stand on the reading of sub-clause 3 of Article 207. The Travancore-Cochin High Court (Amendment) Act, 1951 (Act I of 1952) was passed by the Legislature of the State, which received the assent of the President on 8 January, 1952. The preamble of the Act says, "Whereas it is necessary to make provision regulating the business of the High Court for fixing the jurisdiction and powers of single judges, Division Benches and Full Benches and for certain other matters connected with the functions of the High Court, it is hereby enacted as follows". In the light of this fact, it was claimed that the question of regulating the business of the High Court was very recently, treated essentially as a State subject.[44]

A. Kunjan Nadar and M. Gopalan Nair too spoke in favor of the Bill. N. Raghava Kurup submitted that the shifting of the High Court from the then location to a new place, would not affect the constitution of the apex court of the State. He pointed out that during the last mid-summer vacation, the then vacation judge (a single judge) held his court at Trichur, away from the seat of the High Court at Ernakulam. The Member affirmed that the Bill, which was proposed to be introduced before the House by P.S. Nataraja Pillai, had just contemplated a similar circumstance where one single judge and a Division Bench, would have to sit at a place different from the seat of the High Court. By the example of the above vacation sitting, the High Court was assumed to have opined that the shifting of the Bench from the then location did not come within the ambit of the 'constitution' of the High Court'. The above incident had taken place well after the inauguration of the Constitution of India.[45]

The Advocate-General, as expected, spoke in favour of the Government of the State. He justified the Travancore-Cochin High Court (Amendment) Act (Act I of 1952) on grounds of it being a matter of jurisdiction and powers of the High Court which was based on entry No.65 of the State List in the Constitution. He opposed the use of words 'constitution' and 'organization' in juxtaposition to 'jurisdiction' and 'power'. Pattom Thanu Pillai dealt with the previous legislation regarding the State High Court i.e., Act I of 1952. Article 225 of the Constitution was quoted as follows, "Subject to the provisions of the Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the

respective powers of the judges thereof in relation to the administration of justice in the Court including any power to make rules of court and to regulate the sitting of the court and of members, thereof, sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution". No.46 in the Concurrent List has the following words- "Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in the list". Pattom remarked that the proposed Bill dealt with a matters of much less importance in respect of administration of justice than taking away power from judges, investing them with new powers, investing the Division Bench with powers of a Full Bench, dispensing with the Full Bench altogether in respect of civil matters.[46]

The Speaker, after examining all facets of the matter, held that the Bill proposed by P.S. Nataraja Pillai was within the legislative competence of the State Legislature. The latter moved for leave to introduce the Travancore Cochin High Court Act (Amendment) Bill. It was seconded by A. Achuthan. Panampilly Govinda Menon opposed the motion. While speaking on the Bill, P.S. Nataraja Pillai opined that the integration of Travancore and Cochin was a political act which was not based on the willingness and consent of the people, whose representatives were not a party to the Covenant. The Legislative Assembly which came into being after the integration was a creation of the Executive. The general public of Travancore was denied the opportunity to know why the High Court situated at Trivandrum was shifted to Ernakulam, after integration. The responsible authorities had paid little attention to the popular aspirations, in this regard. In order to rectify manifold grievances of the

litigants, it was proposed to have the High Court located at two places-one portion at Trivandrum and another at Ernakulam. The Government opposed the Bill tooth and nail. A.J. John, the then Chief Minister vehemently spoke against the very idea of shifting the seat of the High Court back to Trivandrum. He also opposed the proposal to have a Bench of the High Court at Trivandrum. As there was opposition to the introduction of the said Bill, a poll was taken in which fifty one legislators voted in favour of considering the Bill, while thirty one opposed it. One stood neutral.[47]

The Travancore Cochin High Court Act (Amendment) Bill, moved by P.S. Nataraja Pillai intended to remedy the hardship and inconvenience to people of Travancore region, who were aggrieved at the shifting of the High Court to Cochin. Formerly, both Travancore and Cochin had their respective High Courts. Comparative statistics showed that more than half of the cases filed in the High Court were from the area of jurisdiction of the four District Courts of Nagercoil, Trivandrum, Quilon and Mavelikkara. Nataraja Pillai reminded the House that the shifting of the High Court was not included as provision in the Covenant entered into by the erstwhile states of Travancore and Cochin. Also, there was no agreement to this effect. The Rajpramukh, under the advice that was tendered to him by the Ministry, promulgated the Ordinance II of 1949, which resulted in the shifting of the High Court. The aforesaid Bill proposed not only the shifting of the High Court, back to Trivandrum, but also the establishment of a Division Bench at least at Ernakulam. Thus there was complete absence of the element of regionalism in the Bill. On the contrary it sought to alleviate the suffering of a vast section of the population, without making any other section feel aggrieved. The

learned members also narrated instances of how, the bifurcation of the High Court of other states, were effected with perfect harmony. The examples of Allahabad and Lucknow in Uttar Pradesh, Gwalior and Indore in the then Madhya Bharat and that of Jaipur and Jodhpur in Rajasthan were cited vividly. At the time of integration, the Travancore High Court was of the opinion that the High Court might be bifurcated and allowed to function, one at Ernakulam and the other at Trivandrum. Unfortunately, by the necessity of political exigencies of the time, it was decided to shift or re-locate the Trivandrum High Court to Cochin to be called Travancore-Cochin High Court.[48]

Nataraja Pillai proposed the referring of the Bill to a Select Committee, having for its members, other than himself and the Deputy Speaker, Nedumangad R. Kesavan Nair, N.P. Varghese, C. Achutha Menon, R. Gangadharan, M. William and T. A. Majeed. The Advocate General was to be an ex-officio member. The quorum of this committee was decided to be four and its report was to be submitted with ten days**.** The Chief Minister, A.J. John, opposed the motion to refer the Bill to a Select Committee, and stated that the decision to locate the High Court of the United State of Travancore-Cochin was taken at the time of integration. He referred to the report of the Integration Committee, i.e., the Buch Committee. Despite the Government's opposition to the change of seat of the High Court as proposed by the Bill, the Chief Minister explicitly informed the House about his intention to introduce a Bill to amend the High Court Act in the next session of the Assembly, so as to enable the constitution of Bench at Trivandrum. He also told the Legislature that the Chief Justice would be invested with the authority to decide the details of the Bench and its personnel. The Chief Minister

wished that Nataraja Pillai would withdraw the Bill in the right of the formers statement.[49]

The CPI member, T.V. Thomas criticized the so-called 'delaying tactics' of the Congress Government. Despite being not in favour of shifting the High Court back to Trivandrum, he did support the installation of a Bench at that place. He exhorted the Government to work through the Select Committee if it had any bonafide designs, in this respect. M. Gopalan Nair and C. Kunjan Nadar, too, spoke in favour of the Bill moved by P.S. Nataraja Pillai. M.M. Abdul Khader admitted to the absence of any provision regarding the shifting of the High Court in the Covenant signed between the rules of Travancore and Cochin. He found no harm in the Bill being referred to a Select Committee on the definite understanding that the seat of the High Court shall be at Ernakulam and only a Single Division Bench need be situated at Trivandrum.[50]

Chandrasekhara Pillai and K.P. Krishna Menon requested for the withdrawal of the Bill in the light of the assurance given by the Chief Minister. Pattom Thanu Pillai spoke strongly supporting the initiative of P.S. Nataraja Pillai. He also supported the contention that it would be better to have both the High Court and the seat of Government at one place. He cited the example of the Advocate General who had to be present in the Assembly. Pattom stressed the point that facilities for litigation in both Ernakulam and Trivandrum should be the same. The then High Court was to be managed by eight judges. Thanu Pillai advocated stationing of four judges at

Trivandrum and the rest for at Ernakulam. He told that he had no objection to head quarters of the High Court being at Ernakulam .The Select Committee was to have full power to decide the number of judges. Pattom did cast aspersions on the sincerity of the Government, which spoke of its intention of bringing in a fresh Bill in the next session, even when a Select Committee was going to be sufficiently empowered to decide the matter amicably. He again informed the House that the sole aim behind the Bill was the bifurcation of the High Court.[51]

Suit in S.A and A.S	Trivandrum - 2774
	Cochin - 380
C.M.P	Trivandrum – 5855
	Cochin -168
C.R.P	Trivandrum - 991
	Cochin - 77
Session Appeals	Trivandrum -171
	Cochin - 2
Criminal Appeals	Trivandrum -171
	Cochin - 6
Criminal R.P.S	Trivandrum – 400
	Cochin -13

Another member of the Assembly, Nedumangad R. Kesavan Nair, thanked P.S. Nataraja Pillai for having set the ball in motion. He also endorsed the statements made by Pattom Thanu Pillai. Kesavan Nair revealed the finding of the Buch Committee with regard to Trivandrum being the most suitable place for locating the High Court. The statistics taken by them was astounding. The Committee also gave figures prevalent as on 10 September, 1949.[52]

The Buch Committee's arguments showed that they were definitely in favour of locating the High Court at Trivandrum. The quality of the buildings here, the facilities for accommodation and above all a continuous tradition dating back to 1882, weighed in favour of Trivandrum. After having said all these things, the Committee instead of arriving at the natural conclusion, held that the High Court had to be located at Ernakulam so as to "respect the sentiments of the Cochinites'. Kesavan Nair reminded the House of the need for the Central Government's permission for bifurcating or relocating the High Court. Despite being in favour of the Bill, he preferred to follow his party line as he was satisfied by the Chief Minister's assurance in this regard.[53]

T.K. Diwakaran, the eminent leader of the RSP supported the move for referring the Bill to a Select Committee. He commended the tone of moderation in the legislative proposal by P.S. Nataraja Pillai and asked the treasury benches to respond favorably in the interests of public convenience The then Minister for Home Affairs, T.M. Varghese, reiterated the stand of the Government regarding the Bill, i.e., the promise

of an alternative legislation in the next session. He also enumerated the need for securing the nod of the Union Government in favour of any changes in the High Court. The Minister did make a candid disclosure to the effect that the decision to locate the High Court at Ernakulam was taken under the direction of the Central Government. This in effect vindicated the statement made by P.S. Nataraja Pillai that the location of the High Court at Ernakulam was decided upon as a result of political action. Unfortunately, when the poll was taken, only forty-two members voted in its favour; fifty-eight opposed it. As a result the motion was declared lost.[54]

When the United State of Travancore-Cochin was under the President's rule, the Parliament passed the Travancore-Cochin High Court (Amendment) Act, 1953. As a result, the following was added to Section 6 of the Principal Act, "provided that such judges of the High Court, not exceeding three in number, as may from time to time be nominated by the Chief Justice shall sit at Trivandrum and exercise, in respect of cases arising in the district of Trivandrum, the jurisdiction and powers conferred by this Act on a single judge or a Division Bench of 2 judges, as the Chief Justice may determine".[55]

On 14 June 1954, K.T. Koshi, the then Chief Justice, inaugurated the Bench of the High Court at Trivandrum. In his address on the occasion he admitted that the judges of the State High Court were against the very idea of a Bench away from their principal seat. However, he added that they were yielding to the legislative enactment which

had established a Bench of the High Court at Trivandrum.[56] Justices, K.S. Govinda Pillai and T.K. Joseph were nominated to sit at the Trivandrum Bench.[57]

During the second session of the Travancore-Cochin Legislative Assembly, the Chief Minister Pattom A. Thanu Pillai moved for a supplementary grant of Rs. 1, 94,000 under the Demand of Administration of Justice. It took place on 31 July 1954. The motion was seconded by P.K. Kunju. In it, Rs.6000 was set apart as salary for two Government pleaders at the Trivandrum Bench of the High Court. It was contented by many Congressmen in the House that there was no need for two pleaders at Trivandrum and that one was just enough to handle the cases at the Bench. The Chief Minister spoke on the matter by citing relevant data. The total number of Government pleaders in the High Court was six. Out of them, two were then posted at the Trivandrum Bench. There were one hundred and fifty and one hundred civil appeal cases, respectively, at Ernakulam and Trivandrum. The number of criminal appeal cases was fifty and thirty, at Ernakulam and Trivandrum, respectively. Earlier, there was only a single Government pleader at the Trivandrum Bench, which heard about forty percent of the cases in which the Government itself was a party. In the light of such workload, the Chief Justice, and the Advocate General had strongly asked for one more pleader to handle Government's cases before the Bench. As a result, R. Narayana Pillai and one Mr. Aiyengar were appointed as Government pleaders. These two persons were well known for their legal acumen.[58]

Panampilly Govinda Menon, the leader of the Congress Legislature Party made few observations regarding the matter. Out of the eight judges of the High Court, only two were nominated to sit at the Trivandrum Bench. Both of them either sat together as a Division Bench or heard cases separately as two single judges. Usually, it was the Division Bench which heard cases involving the Government. Appeals from the decisions of District and Sessions courts used to come before a single Bench. However, the bulk of its work arose from the revision petitions and second appeals from the *munsiff* courts to which the Government was not a party. Panampilly alleged that the appointment of more than one pleader at Trivandrum was a wasteful expenditure. While negating the criticism, the Chief Minister gave few more details regarding the cases being fought by the Government in the High Court. One hundred and fifty Division appeals were pending at Ernakulam, while over a hundred of such cases were pending before the Trivandrum Bench. The number of criminal cases at Ernakulam and Trivandrum were sixty and thirty, respectively. Fourteen criminal appeals had already been filed at the Trivandrum, in addition to thirty similar cases, brought from Ernakulam. In all, one hundred and eleven single appeals were delegated by the High Court for hearing at the Bench in the Capital city. The fact that the number of judges sitting at Ernakulam was equal to the number of Government pleaders there was stressed by the leader of the House. Unfortunately the efforts of the Government proved to be a futile exercise. The motion under Demand for Administration of Justice was defeated in the Legislature. Only fourteen votes were cast in its favour, while thirty three opposed it. Twenty seven stood neutral. The House was adjourned after this event.[59]

However, a new development came to the fore. Joseph Chazhikkat, an independent member representing Ramapuram constituency moved a motion under Rule 43 expressing confidence in the then Ministry. Being a matter concerning the very existence of the Government, it was given top priority by the Speaker. At this juncture a point of order was raised by a legislator belonging to the CPI, Changarapilli P. Narayanan Pootti. It was regarding the fact that the mover of the confidence motion was neither a member of the ruling party not he belonged to any other party in the House. Also by quoting Rule 40 (a) of the Assembly Rules, he reminded the House that having seen a confidence motion hardly a year ago, another motion of the same kind was not legally feasible. The previous confidence motion had taken place on 23 September 1953. Rule 40 (c) said, “It shall not raise a question substantially identical with one and which the Assembly has given a decision within the space of one year previous……” The Speaker opined that as an independent member, the mover had every right to bring a motion expressing confidence in the Government. The Chief Minister expressed the view that the motion may be taken up just as if it were being brought by a member of the party in power.[60]

Joseph Chazhikkatt grew eloquent on the motion. He reminded the House that they had passed the Budget for the year 1954-55 after having discussed it for the fifteen days. The Budget had estimated an income worth Rs.17.5 crore. An expenditure of Rs.18.75 crore was anticipated. The Appropriation Bill was also passed. The House was accused of behaving in a childish manner by rejecting the supplementary grant of Rs.1, 94, 000. The ground on which it was rejected was told to be hollow. The work of

the PSP led Government was appreciated. The Cabinet was praised for practicing austerity by having the ministers' salary reduced from Rs.750 to Rs.500. The Congress which was more or less the supporting opposition was accused of harassing the Government by voting against a mere supplementary grant, after having voted for the whole Budget. This was told to be nothing short of treachery and deception.[61]

P. Viswambaran, a PSP legislator representing Nemon constituency, lashed out at the Congress Party. He reminded the House that when Congress regimes were at the helm in the State, Government pleaders were appointed mostly from the ranks of Congressman who had failed to get elected to the Assembly. The earlier practice of temporarily hiring eminent lawyers on very high fees, to argue particular cases for the Government, was criticized. The PSP Government, however made a break with past and appointed top legal brains as pleaders in the High Court.[62]

The leader of the Congress Party, Panampilly Govinda Menon tried to portray the crisis as a mere storm in a tea cup. He assured the House that his Party continues to support the PSP Government. However, he advised the ministry to work cautiously as it was a minority regime. He threw light on his two letters to the Chief Minister in which he had assured the latter, the full support for running the Government, even after the confrontation over the supplementary grants. Panampilly sought to negate the misgivings regarding his party's stand over land reforms. P.K. Kunju, a Minister in the PSP cabinet had alleged that the Congress was conspiring to overthrow the PSP Government owing to the latter's proactive attitude towards land reforms. Panampilly

quoted the circulars issued by the AICC President to all state units of the party, in which the importance of land reforms was specially stressed.[63]

M.P. Menon, a CPI legislator cast doubts on the necessity behind the confidence motion, in the light of repeated assertions from the Congress leaders that they were still backing the minority regime. He exhorted the PSP to abandon the reins of power in order to avoid insults from the Congress. The member explicitly told the House that the CPI was not going to vote in favour of the motion as their policies and those of the PSP were in no way similar. The Government's policy of suppressing the Tamilnad agitation and the transport workers strike were severely criticized. He claimed that as his party was the effective opposition in the legislature, they were in no obligation to rescue the Government.[64]

T.K. Divakaran of the RSP opposed the confidence motion. He lashed out at the PSP for aligning with the INC, thus subverting the anti-Congress mandate. The then Government of Travancore-Cochin was accused of being hostile towards the activities of labour unions. He compared the clash between the PSP and the Congress to the storm in a tea cup. He ridiculed the PSP to be nothing more than a personal fief of Pattom Thanu Pillai. The delay in the separation of the judiciary from the executive was severely criticized. Congress regimes in other states had already accomplished it. The Government was also accused of ignoring the services, by breaking the promise of bringing in a hike in the pay of employees. T.V. Thomas too, spoke strongly against Pattom Thanu Pillai, for having defected from the left-front after contesting the mid-

term elections in unison. The policies of the regime were also made a subject of criticism.[65] Joseph Mundassery, a communist fellow-traveler informed the PSP that they were ready to consider the matter of cooperation with the ruling dispensation on the basis of specific conditions.[66] Finally the motion expressing confidence in the ministry was put to vote and passed. Sixty one voted in its favour, while, forty opposed it. One legislator, T.S. Ramaswami, stood neutral.[67]

The TTNC always demanded the merger of Tamil speaking areas of the Travancore region with the Madras State. Meanwhile, the PSP led by Pattom Thanu Pillai and a section of the INC was opposed to any such initiative. In the elections of 1954, no party secured a majority of seats in the State Assembly. This finally led to the formation of a minority government led by the PSP, with the support of the INC. Pattom Thanu Pillai, the Chief Minister was determined to defeat the designs of the TTNC, which unleashed a violent agitation against the regime. Police dealt with the excited agitators in a stern manner. 11 August, 1954, saw unprecedented violence which resulted in Police firing. Kunjan Nadar, a prominent legislator of the TTNC was taken into custody by the Police at Nagercoil. On 23 August, 1954, a petition was filed, on behalf of Kunjan Nadar, before the High Court at Ernakulam questioning his arrest and detention. After a preliminary hearing on 25 August a Division Bench consisting of Chief Justice K.T. Koshi and Justice Kumara Pillai directed the respondents of the said petition to show the cause why the petition should not be allowed. The High Court issued directions for the prisoner to be produced before the Trivandrum Bench on 31

August 1954. Twelve similar petitions which were filed on behalf of the associates of Kunjan Nadar were also posted for hearing at Trivandrum on the very same day.[68]

The respondents to these thirteen petitions were the same. They were the Inspector General of Police, the District Magistrate of Trivandrum and the United State of Travancore-Cochin, represented by the Chief Secretary to the Government. The arguments lasted three full days- 31 August, 2 and 3 September 1954. The petitioners were represented by T.N. Subramania Iyer while the Advocate General Mathew Muricken represented the respondents. The petitioner's affidavit in support of the petition claimed that the prisoner (A. Kunjan Nadar) was arrested for having committed no crime and that he was not produced before any Magistrate, resulting in him being in illegal detention. On the contrary, the counter affidavit on behalf of the respondents clearly showed that the arrest was related to the prisoner's involvement in two cases involving several cognizable and non-bailable offences. These events were told to be forming part of a series of acts of lawlessness committed on 11 August 1954. As the dictator of Travancore Tamil Nad Congress which was holding 11 August as Deliverance Day, Kunjan Nadar was accused No.1 in both the said cases.[69]

The Court was informed of the fact that within twenty four hours of his arrest Kunjan Nadar was produce before the Kuzhithura Stationary First Class Magistrate. He was remanded to Police custody first for ten days, then for five days. On the expiration of the period of the second remand, the Police had their charge-sheets laid in the two said cases. Thereafter Kunjan Nadar was kept in custody as an under-trial prisoner.[70]

The Counsel for the petitioner T.N. Subramania Iyer raised a number of objections against the legality of the arrest and the validity of the detention. However, the Court firmly stated that it was absolutely irrelevant to consider whether the arrest or the detention up to the point of the magisterial order remanding the prisoner to custody as an under trial was valid or not. Though the petitioner's affidavit stated that the prisoner was never produced before the Magistrate and that he was manhandled, the prisoner had not filed an affidavit of his own supporting that of his wife, who happened to be the petitioner.[71]

Meanwhile, it had become clear that on 13 August 1954, Kunjan Nadar had moved for bail. The bail application signed by him had no averment of him being illegally detained or subjected to any physical violence. The said bail plea was rejected by the Magistrate on 20 August 1954. Thereafter no attempt was made to take the matter before a higher tribunal. The Advocate General urged that the petition be rejected on the sole grand of the absence of material facts in the affidavit supporting it. The Bench went to the extent of citing records which showed that free interview with the prisoner had been allowed for his relations and friends, with the permission of the court. The High Court refused to believe the contention that the wife of the prisoner was unaware of the proceedings in the court. That the prisoner Kunjan Nadar himself was able to take an application for bail on 13 August was taken as proof of the fact that there was no impediment in him, making the motion himself. The facts of the case were told to negate the averment that the restraint of the Police had prevented the accused from

making the motion himself. Despite having admitted to the substantial nature of the above point, the High Court refused to dispose of the petition on that narrow ground alone.[72]

On the basis of several decisions of the erstwhile Federal Court and the Supreme Court, the High Court opined that it was not necessary for the purpose of the said case to examine whether the detention prior to the order under which Kunjan Nadar was in custody on 31 August 1954 or the arrest which led to it, was valid or not. The need to examine the validity of the order in force on 31 August was too stressed. Towards the final stages of the argument T.N. Subramania Iyer laid emphasis on the point that the accused persons, including Kunjan Nadar were sent by the Magistrate back to the custody of the Police and not to judicial custody. However, the High Court considered it to be a distortion of the true facts of the case. It was stated by the Bench, that the character of the remand or the nature of the detention was not altered by the fact that the Sub-Inspector had to keep the accused persons in Police lock-up. The Court noted the fact that some districts or *taluk* centers in Travancore area had no separate Sub-Jails which led to under-trial prisoners being kept in Police Stations of those regions. The Court asserted that the remand since 26 August 1954 had been to judicial custody.[73]

Turning back to the pages of History, the High Court threw light on the relevant section of the Criminal Procedure Code of Travancore as enunciated by Act V of 1067 M.E (1892), Act VIII of 1117 M.E (1942) and Act V of 1908. It read as follows, “Unless

when otherwise provided by any law for the time being in force, our Government may direct in what place any prisoner liable to be imprisoned or committed to custody under this code shall be confined". Rule I (a) of the rules promulgated by the Government of Travancore on 7 March 1935 under section 59 of the Travancore Prison's Act of 1071 M.E (1895-96) had provided the following- "subsidiary jails shall be the ordinary place of confinement of persons committed to custody pending trial or preliminary investigation before a Magistrate". Rule 2 (e) had stated "In stations where there is no subsidiary jails, prisoners of the clauses mentioned in clauses (a) to (e) of Rule (1) shall be confined in the Police lock-up".[74]

There was no subsidiary jail in Kuzhithura or any other place within the jurisdiction of the Stationary First Class Magistrate of that place. There was also none within the jurisdiction of the Sub-Divisional Magistrate of Padmanabhapuram who had remanded to custody some of the prisoners in the companion cases. The High Court referred to Rules which were issued under Criminal Procedure Code dated 12 November 1925. Rule I of the said set of Rules read, "The Local Magistrate shall be primarily responsible for the well-being of remanded and short term convicted prisoners confined in police station".[75] The notification which amended the above Rules, led to remodeling of Rule I which became as follows, "The local stipendiary Magistrate of the lowest class shall be primarily responsible for the well-being of the remanded and short term convicted prisoners confined in Police Stations; provided however that in respect of under-trial prisoners who are involved in cases before the Session's Court, the Sessions Judge concerned shall be so responsible." [76]

The High Court clearly pointed out the lack of proper facilities for detaining under trial prisoners. It expressed the hope that the Government would make necessary provisions in that regard. The Court stated that the Code of Criminal Procedure had given the Government the right to direct at what place under trial prisoners were to be confirmed. It went on to say that the provisions which were discussed above appeared to be the only directions which were in force then. Accordingly, the arguments of the counsel T.N. Subramania Iyer in that respect were negatived. Finally, the Bench consisting of Chief Justice K.T. Koshi and Justice T.K. Joseph refused to hold that the detention of A. Kunjan Nadar since 26 August 1954 had been illegal or irregular. The allegations made in the affidavit of the petitioner, were dismissed on 20 September, 1954 and A. Kunjan Nadar was sent back to the custody of the Kuzhithura Stationery First Class Magistrate.[77]

After the initial debacle Kunjan Nadar again approached the High Court of the United State of Travancore -Cochin. The purpose of the fresh petition was for the writ of *mandamus*[78] in order to enable Kunjan Nadar himself to attend the session of the State Legislative Assembly which was summoned to commence its sittings on 25 January 1955. It was argued on behalf of the petitioner, that it was his paramount right to attend the proceedings of the Legislative Assembly. Though admitting that his detention was under due process of law, the petitioner wanted it to be subordinated to the right to attend the session of the Legislative Assembly. However, the counsel for the petitioner did admit to the fact that the claim made by his client was not available to

a member of the House of Commons in the United Kingdom and that the petition was based on the assumption that a wider privilege existed in India by virtue of Article 190(3) (a) and Article 191(1) (e) of the Constitution and Section 7(b) of the Representation of People Act 1951.

Article 190(3)[79] provided that- "If a member of a House of the Legislature of a State

(a) becomes subject to any of the disqualifications mentioned in clause(1) of Article 191 his seat shall there upon become vacant.

Article 191(1) said the following-

"A person shall be disqualified for being chosen as and for being a member of the Legislative or Legislative Counsel of a State-

(e) if he is so disqualified by or under any law made by Parliament.

Section 7 of the Representation of the People Act[80] states- "A person shall be disqualified for being chosen as and for being a member of either House of Parliament or of the Legislative Assembly or Legislative Council of a State:

(b) if, whether before or after the commencement of the Constitution he has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for not less than 2 years, unless a period of five years or such less

period as the Election Commission may allow in any particular case, has elapsed since his release".

The Court remarked that the arguments based on the above said provisions, were devoid of relevance or substance, thus being fit for rejection. The judges added that the grounds on which a disqualification might be incurred and seat vacated had nothing to do with what the Court was called upon to decide, in the said case. The present petition was told to be one concerned with the existence or otherwise of the privilege or immunity claimed by the petitioner. The next argument taken up by the petitioner counsel was based on Article 195(4)[81] which provided that-

'If for a period of 60 days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof the House may declare his seat vacant".

The substance of the argument was that the petitioner stood in danger of his seat being declared vacant by the House, if he was not allowed to attend the impending session of the Legislative Assembly. It was also told that the petitioner stood to lose the allowance of Rs.10 per day if he does not attend the proceedings of the Legislative Assembly. The Court opined that as long as the detention was legal, the danger of the petitioner losing his seat or the certainty of his losing his daily allowance could not form the basis of relief against the very normal or probable consequences of the detention. Finally, the counsel for A. Kunjan Nadar pleaded for amending the order of the High Court in which bail was denied to the petitioner. This was to enable him to

attend the session of the Legislative Assembly under Police escort. However the Bench was of the view that such a prayer had to be sought within the framework of the Code of Criminal Procedure, 1898 and that the petition moved could not be possibly adjudged in that regard. As a result, the petition was dismissed by the Division Bench consisting of Chief Justice K.T. Koshi and Justice M.S. Menon, on 7 January, 1955.[82] Later the TTNC leaders approached the Supreme Court and got their cases transferred to the Mysore High Court. Soon, they were released on bail.

In the erstwhile Travancore State, the Judiciary was not separated from the Executive, unlike the erstwhile Cochin State where it stood separated. Article 50 of the Constitution of India had a directive for the States to separate the Judiciary from the Executive. The United State of Travancore-Cochin took earnest steps to bring about a uniform system throughout its realm. Initially, the scheme of separation was told to take effect on 1 April, 1955.[83] However, it was delayed due to problems pertaining to housing of new courts. The scheme took effect on 1 May, 1955.[84] As a result two categories of Magistrates came into being. The Judicial Magistrates, who were brought under the direct control of the High Court, dealt with the work related to the disposal of cases. The Executive Magistrates performed purely administrative work. They were Revenue Officers invested with the powers of Magistrate under the Code of Criminal Procedure and had to preserve law and order within their respective jurisdiction.

The integration of Travancore and Cochin was based on the Covenant signed between its Rulers. Article 21 of the Covenant had authorized these Rulers to exercise

the powers of suspension, remission or commutation of death sentences awarded by courts. A person who was accused of murder was tried and awarded death sentence by the Additional Sessions Judge of Trichur. He was kept in custody at the Central Jail, Viyyur. The High Court upheld the conviction and confirmed the sentence while the Supreme Court refused to interfere in the matter. Mercy petitions filed before the President of India and the Rajpramukh of the United State of Travancore-Cochin proved to be a futile exercise. Meanwhile the Superintendent of the Central Jail Viyyur on 28-3-1955, addressed the sessions court for the issued of warrant fixing the date of execution. It was issued on 29-3-1955 in which the Court fixed 6-4-1955 as the date for execution. On 1-4-1955, the Superintendent informed the Court that the petitioner had sent a mercy petition to the Maharaja of Cochin. The Superintendent requested the court to intimate him as to whether the execution had to be stayed pending receipt of orders on the said mercy petition. However, the court itself had no prior intimation regarding the above mercy petition. Under such circumstances the Sessions Court passed an order staying execution of the death sentence. On 30-5-1955, the public prosecutor prayed for an order vacating the stay an execution by claiming that no mercy petition lay to the Maharaja of Cochin.

While vacating the order staying execution of the death sentence the judge observed that the judicial power of pardon guaranteed to the Maharaja of Cochin under Article 21 of the Covenant[85] did not come within the personal rights, privilege and dignities referred to in Article 362 of the Indian Constitution. The Court affirmed that no mercy petition lay to the Maharaja of Cochin.

The High Court fully agreed with the above verdict. The Bench consisting of Chief Justice K.T. Koshi and Justice Kumara Pillai, explicitly stated that the powers of suspension remission or commutation of death sentences retained by the Maharaja of Cochin by virtue of Article 21 of the Covenant in respect of offences committed in the territory of Cochin cannot survive the passing of the Constitution of India. After 26 January 1950, no power of sovereignty continued to vest in the members of the princely order. The Bench made it clear that after the commencement of the Constitution no individual or body or institution in India could exercise any executive judicial or legislative power unless the Constitution confers it or countenance its exercise. The counsel for the petitioner, K.K. Mathew had readily acceded to the request of the High Court to appear as *amicus curae* in the case. He had contended that the Covenant should be treated as law in force within the meaning of Article 372 of the Constitution. On that ground the counsel interpreted that the Covenant would continue in force until altered or repealed or amended by a competent legislature or other competent authority. On the contrary, the High Court was of the view that Article 372 had provided for the continuation of pre-constitution laws only subject to the other provisions of the Constitution. The President and the Governor had the power to grant pardon, reprieves or remissions by virtue of Article 72(1) and Article 161 respectively of the Constitution. Article 238 read along with Article 161, conferred the said powers on the Rajpramukh too.[86]

When the petitioners counsel sought to uphold Article 21 of the Covenant by taking refuge under Article 362 of the Constitution, the Bench squarely rejected the contention. It was clearly stated that Article 362 had nothing to do with an executive power like the suspension remission or commutation of a sentence passed by a competent court. That Article of the constitution was told to be concerning itself only with the guarantee or assurance given under such a Covenant or agreement as was referred to in clause(1) of Article 291 with respect to the personal rights, privileges and dignities of the Ruler of an Indian State. Dismissing the petition, the High Court held that after the commencement of the Constitution, the Maharaja of Cochin could not invoke the powers reserved in him under Article 21 of the Covenant.[87] This verdict was delivered on 17 June 1955.

END NOTES

1. *Buch Committee Report*.
2. *Proceedings of the Travancore-Cochin Legislative Assembly, 2nd session, Vol. ,* dt. 27 October, 1950, pp.502-4.
3. *The Covenant*
4. *Ibid.*
5. *Proceedings of the Travancore-Cochin Legislative Assembly, 1st session, Vol.1,* dt. 6 August, 1949, pp.56-71.
6. *Ibid.*
7. *Ibid.*
8. *Travancore Government Gazette No.52,* dt.10/8/1948.
9. *The Regulations and Proclamations of Travancore, Vol.6,* pp.1167-1173.
10. 1949 KLT.27
11. *Ibid.*
12. *Ibid.*
13. *The Regulations and Proclamations of Travancore, Vol.3,* pp.208-259.

14. 'Writ' is an instrument to utilize the Right to constitutional remedies, as embodied in the Constitution.
15. *The Acts and Proclamations of Travancore, Vol.1,* pp.324-61.
16. 1949 KLT.77
17. *Ibid.*
18. *The Regulations and Proclamations of Travancore, Vol.5,* pp.568-81.
19. 1950 KLT.101
20. *Ibid.*
21. *Ibid.*
22. *Travancore-Cochin Gazette Extraordinary,* dt. 7/9/1950.
23. *Travancore-Cochin Gazette,* dt. 5/9/1950.
24. *The Travancore-Cochin Code, Vol.1,* pp.117-124.
25. 1949 KLT.33 (Pt.1)
26. 1950 KLT.1
27. *Shorter Constitution of India, Vol.1,* p.781;811.
28. 1950 KLT.439
29. *Ibid.*
30. *Ibid.*

31. *Ibid.*

32. *Ibid.*

33. *Ibid.*

34. *Ibid.*

35. 1950 KLT.392

36. *Ibid.*

37. Article 385 was repealed by the Constitution (Seventh Amendment) Act, in 1956.

38. Actually, Articles 379-391, were repealed in 1956.

39. 1950 KLT.372

40. *Proceedings of the Travancore-Cochin Legislative Assembly, 1st session, Vol.5, dt. 1 April, 1952, p.456.*

41. *Ibid.,* p.459.

42. *Ibid.,* p.461.

43. *Ibid.,* pp.463-66.

44. *Ibid.,* pp.467-68.

45. *Ibid.,* pp.470-71.

46. *Ibid.,* pp.477-79.

47. *Ibid.,* pp.482-84.

48. *Proceedings of the Travancore-Cochin Legislative Assembly, 2nd session, Vol.6,* dt. 5July, 1952, pp.521-33.

49. *Ibid.*

50. *Ibid.*

51. *Ibid.,* pp.539-52.

52. *Ibid.*

53. *Ibid.*

54. *Ibid.*

55. *Travancore-Cochin Gazette,* dt. 29/12/1953

56. 1954 KLT.27

57. *Travancore-Cochin Gazette,* dt. 15/6/1954.

58. *Proceedings of the Travancore-Cochin Legislative Assembly, 2nd session, Vol.11,*dt. 31 July, 1952, pp.1595-99.

59. *Ibid.*

60. *Proceedings of the Travancore-Cochin Legislative Assembly, 2nd session, Vol.11,* dt. 2 August, 1954, pp.1615-33.

61. *Ibid.*

62. *Ibid.*

63. *Ibid.*

64. *Ibid.,* pp.1635-50.

65. *Ibid.*

66. *Ibid.,* p.1664.

67. *Ibid.,* p.1683.

68. 1954 KLT.71

69. *Ibid.*

70. *Ibid.*

71. *Ibid.*

72. *Ibid.*

73. *Ibid.*

74. *The Acts and Proclamation of Travancore, Vol.10, Appendix,* p.221.

75. *The Acts and Proclamation of Travancore, Appendix,* pp.1311-12.

76. *The Acts and Proclamation of Travancore, Vol.13, pt.2,* p.835.

77. *Op.cit.,* 1954 KLT.77

78. Writ of Mandamus

79. D.D. Basu, *Shorter Constitution of India, Vol.2,* pp.1127-28.

80. S. Malhotra, *Manual of Election Laws,* pp.206.

81. D.D. Basu, *op.cit.,* p.143.

82. 1955 KLT.211

83. G.O. No. CJ.3. 12614/4/CS dt. 15/3/1955

84. G.O. No. CJ.3. 12614/54/CS dt. 30/3/1955

85. The Covenant.

86. 1955 KLT.727

87. *Ibid.*