

**TWELFTH KERALA LEGISLATIVE ASSEMBLY**

**COMMITTEE  
ON  
PUBLIC ACCOUNTS  
(2008-2011)**

**NINETY SIXTH REPORT**

(Presented on 29th June, 2009)



**SECRETARIAT OF THE KERALA LEGISLATURE  
THIRUVANANTHAPURAM 2009**

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**COMMITTEE  
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PUBLIC ACCOUNTS  
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**NINETY SIXTH REPORT**

**On**

**Action taken by Government on the Recommendations  
contained in the Thirty Ninth Report of the Committee  
on Public Accounts (1998-2000)**

## CONTENTS

		<i>Page</i>
Composition of the Committee	..	v
Introduction	..	vii
Report	..	1
Appendix :		
G. O. (Rt.) No. 515/2007/F&WLD. dated 13-9-2007	..	5

COMMITTEE ON PUBLIC ACCOUNTS (2008-2011)

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## INTRODUCTION

I, the Chairman, Committee on Public Accounts having been authorised by the Committee to present this Report on their behalf present the 96th Report on Action taken by Government on the Recommendations contained in the 39th Report of the Committee on Public Accounts (1998-2000).

The Committee considered and finalised this Report at the meeting held on 10th June, 2009.

Thiruvananthapuram,  
29th June, 2009.

ARYADAN MUHAMMED,  
*Chairman,*  
*Committee on Public Accounts.*

## **REPORT**

This Report deals with the action taken by Government on the recommendations contained in the Thirty Ninth Report of the Committee on Public Accounts (1998-2000).

The Thirty Ninth Report of the Committee on Public Accounts (1998-2000) was presented to the House on 1st February, 1999. The report contains seven recommendations relating to Forest and Wild Life Department. Government were addressed on 6th February 1999 to furnish the Statement of Action Taken on the recommendations contained in the Report and the final replies were received on 14th May, 2008.

The Committee examined the action taken statements furnished by Government at its meeting held on 24-10-2008 and accepted all the replies furnished by Government. The recommendations of the Committee and the statements of action taken by Government are incorporated in this Report.

**Recommendations of the Committee and the replies furnished by the  
Government**

FOREST AND WILDLIFE DEPARTMENT

**Recommendations**

*(Sl. Nos. 1, 2, 3, 4, 5, 6 and 7 Para  
Nos. 13, 14, 15, 16, 17, 18 and 19)*

1. The Committee came to know that the flood and landslide of 13th November, 1992 which reported to have isolated and cut off Achencoil area from the mainland gave a thunder blow to the State Exchequer by sweeping away Rs. 32.237 lakhs from it. The Committee considers this as a typical example of intrigue and resultant blatant and unethical deal to make money out of an adverse situation. The 'deluge' turned to be a 'divine dispensation' for the firm M/s. Poabsons, a sub contractor of M/s. Western India Plywoods, which as per the terms of contract were bound for the maintenance and upkeep of all the 17 coupe roads formed for their exclusive use. The Committee believe that the unholy alliance developed between M/s. Poabsons and the officers of the Forest Department during the course of its period as a sub contractor of M/s. Western India Plywoods led to awarding the work of repairing 19 roads to it without observing any procedural formalities.

2. The Committee firmly believe that the responsibility of the Forest Department ended with the restoration of access to Achencoil by repairing Thura-Achencoil road alone, which was stated to be damaged by the floods. But, as if waiting for an opportunity they had neglected all the procedural formalities and plunged into this affair with utmost eagerness along with M/s. Poabsons and allowed M/s. Western India Plywoods in keeping away from their obligation in maintaining the coupe roads and had done the work at the expense of Government.

3. The Committee consider this as a grave mistake and find fault with the Forest Range Officer, Achencoil who forwarded the estimates for 19 roads (of which 17 were termed as coupe roads, the maintenance of which was the obligation of M/s. Western India Plywoods) and the Divisional Forest Officer, Thenmala who endorsed the same to the Conservator of Forest, Kollam for sanction.

4. The Committee find that both of them have abused their official powers to favour the contractor without safeguarding the interest of the Government.

5. The Committee recommend that a thorough probe should be conducted on this shameful affair and those who were involved directly and those who

winked their eyes to favour the contractor to repair the 17 coupe roads at the cost of State exchequer should not be allowed to escape from the clutches of law.

6. The result of the investigation, recommended by the Committee and the action taken against the delinquent officers should be intimated to the Committee.

7. The Committee also desire to know whether the amount withheld had been released to M/s. Poabsons at a later stage.

#### **Action Taken**

8. Government have examined the recommendation of the Public Accounts Committee in detail. The matter was got enquired through the Chief Conservator of Forests (Vigilance). In his report the Chief Conservator of Forests (Vigilance) has stated that there is prima facie case of irregularity in the execution of work. Since the case involves a huge financial loss to Government, a Vigilance enquiry was ordered vide G. O. (Rt) No. 377/2000/F&WLD dated 3-8-2000 and the petitioner's claim for the balance payment was declined. Aggrieved by the decision the petitioner approached the Hon'ble High Court of Kerala with the O. P. No. 35366/00.

9. While disposing of the O. P. No. 35366/2000 on 1-1-2007 the Hon'ble High Court directed the Secretary to Government, Forest & Wild Life Department, the 1st respondent in the OP to consider the claim of the petitioner for payment afresh, with reference to the Vigilance report in this regard.

10. On finalising the enquiry, the Vigilance came to the conclusion that there is no concrete evidence to show that the departmental officers misguided Government in issuing the original order accepting the claim of the petitioner.

11. It is revealed in the enquiry report that major allegations against the Contractor are not proved in evidence except the case of excess payment, occurred due to the non-deduction of Sales Tax and Income Tax. It is stated that there is no record specifically showing the works were executed either by convenor system, or by contractual basis. The Vigilance felt that the tax was not deducted from the bills on the presumption that the work was carried out as per convenor system and the matter was left to Government for taking a decision. The excess amount including the excess in work side come to Rs. 1,22,309 and Vigilance recommend that the same can be deducted from the final payments due to the Contractor.

12. It is also seen that, the Vigilance exonerated the parties concerned from the allegations except from payment of excess amount mainly due to the non-deduction of tax dues, and there also they left the matter to Government with the suggestion that the excess towards the payment of tax can be deducted from the final payments to the contractor.

13. Further the Divisional Forest Officer, Thenmala has stated that the contractor Sri. P. A. Jacob has never been a convenor at Achencoil Range and the works in question were not seen carried out under convenor system, as per records and hence he is not eligible for tax exemption and the tax dues are to be deducted from the final settlement. In accordance with the directions of Hon'ble High Court of Kerala. Government have re-examined the matter in detail in the light of the findings of Vigilance and the aforesaid report of the Divisional Forest Officer, Thenmala. Government decided to accept the findings in the vigilance report and to effect the payment deducting the tax dues as suggested therein, since there is no departmental or other evidence to show that the work was executed under Convenor System and orders were issued accordingly vide the G. O. (Rt) 515/07/F&WLD dt. 13-9-2007, in compliance with order of Hon'ble High Court of Kerala. Copy enclosed as Appendix—I.

14. In the above circumstances further action on the recommendation may kindly be dropped.

Thiruvananthapuram,  
29th June, 2009.

ARYADAN MUHAMMED,  
*Chairman,*  
*Committee on Public Accounts.*

## APPENDIX I

## GOVERNMENT OF KERALA

**Abstract**

FOREST AND WILDLIFE DEPARTMENT—OP. No. 35366/2006 OF HON'BLE HIGH COURT  
 FILED BY SHRI P. A. JACOB—SATISFACTION OF DECREE—SANCTION  
 ACCORDED—ORDERS ISSUED

## FOREST AND WILDLIFE (D) DEPARTMENT

G. O. (Rt.) No. 515/2007/F &WLD. Dated, Thiruvananthapuram, 13th September, 2007.

- Read:*—1. G. O. (Rt.) No. 86/94/F&WLD. dated 23-2-1994.  
 2. G. O. (Rt.) No. 377/2000/F&WLD. dated 3-8-2000.  
 3. The judgment dated 1-1-2007 in OP. No. 35366/00 of High Court filed by Shri P. A. Jacob.  
 4. Letter No. P8-32957/92 dated 21-5-2007 of CCF (D).  
 5. Letter No. D. 6377/92/IV dated 21-7-2007 from DFO, Thenmala.

## ORDER

While disposing of the O. P. No. 35366/2000 in 1-1-2007 the Hon'ble High Court directed the Secretary to Government, Forest and Wild Life Department, the 1st respondent in the O. P. to consider the claim of the petitioner for payment afresh, with reference to the Vigilance report in this regard, after giving the petitioner an opportunity of being heard.

Accordingly the petitioner was given an opportunity of being heard. During the hearing Shri K. A. Abraham, the authorised personnel has submitted that the alleged irregularities pointed out for denying the payment were proved baseless in the enquiries conducted by Forest & Wild Llife Department and Vigilance as well as the State Vigilance Department, and hence the petitioner is eligible for payment based on their findings.

It is also submitted that the work was awarded to him under convenor system and hence the formalities as per the Contractor System is not obligatory, they are therefore, not liable to pay sales tax or income tax.

The Chief Conservator of Forests (D) in the letter read as paper (4) above, has offered the following remarks on the contentions of the petitioner.

“1. The contention to the petitioner that he is eligible for payment of Rs. 588741 as the alleged irregularities were proved baseless in the enquiries conducted by Department Vigilance as well as State Vigilance cannot be agreed since the Vigilance enquiry was conducted around 12 years after the execution of the work and they could not collect evidence because enquiry was much delayed.

2. His claim that the work was awarded to him under convenor system has yet to be proved. The Vigilance report which the petitioner claims to be in his favour is also not specific as to whether the work was done in the convenor system or contractor system. The petitioner had claimed to be a forest contractor and in the convenor system the convenor should be one among the workers. There is a procedure following which convenors are appointed in each range. There is no evidence to show that Shri. P. A. Jacob was appointed as a convenor. His claim to be convenor is not correct and hence he is liable to pay the taxes as per rules.

3. It is true that vigilance report concluded that there is no duplication of work.

4. Petitioner's contention that the repairs of roads was an immediate necessity and Achancoil-Alappady Road is the entrance to Kallar Valley and the contractor had transported 6000 m<sup>3</sup> timber costing Rs. 4 crors are admitted.

5. No comments can be offered on the claim of the petitioner that he had not taken up the work voluntarily and it was at the request of the peoples representatives and Forest Department officials however, there is no such procedure to undertake works in the department.

6. It is seen that the petitioner has stated that the Vigilance could not find out any irregularity in the work and recommended payment. But the findings of Vigilance on Point (K) reads, “measurements were prepared on actual measurements, and also the Government had rectified the estimates, which is acceptable at this stage. Hence the rate provided in the estimate are admissible”. “This stage” refers to the inspection time which took place 12 years after execution of work.”

The CCF (D) has therefore, requested Government to take a decision after examining the vigilance report and other documents related to the case.

Government have examined the case in detail. It is seen that the works in question were executed by the then DFO, Thenmala, without obtaining proper Administrative Sanction of Technical Sanction from the competent authority. The

action was later explained by him that the execution of the works, was an unavoidable necessity due to the unexpected flood damages that occurred on 13-11-1992, due to which Achencoil area was practically seperated from the mainland for a few days. After having examined the case in detail, government ratified the action on 23-2-1994 vide the G. O. read as paper (1) above. But later, on 3-8-2000, based on the findings of Accountanant General that there are considerable irregularities in the work, Government re-examined the case and came to the conclusion that the Department misguided Government in this regard and the measurements recorded in respect of the work done did not tally with those reported in the Administration Report of the Department. It was also found that there is no concrete evidence to prove that the contractor has actually carried out the work as per measurements. The claim for balance payment was therefore declined vide the G. O. read as paper (2) above and a vigilance enquiry was ordered in the matter. Aggreved by the decision, the petitioner approached the Hon'ble High Court of Kerala and on which the aforesaid direction has been issued by the Hon'ble Court.

After the enquiry, the vigilance came to the conclusion that there is no concrete evidence to show that the departmental officers misguided Government in issuing the original order accepting the claim of the petitioner as observed in the G. O. read as paper (2) above.

The enquiry report also shows that major allegations are not proved in evidence except the case of excess payment, occured due to the non-deduction of Sales Tax and Income Tax. It is stated that there is no record specifically showing the works were executed either by convenor system or by contractual basis. The vigilance felt that the tax was not deducted from the bills on the presumption that the work was carried out as per convenor system, and the matter was left to Government for taking a decision. The excess amount including the excess in work side come to Rs. 1,22,309 and vigilance recommend that the same can be deducted from the final payments due to the Contractor.

In brief, the Vigilance report exonerated the parties concerned from the allegations except from payment of excess amount mainly due to the non-deduction of tax dues. There also the Vigilance left the matter to Government with the suggestion that the excess can be deducted from the final payments to the contractor, if it is decided so.

It is seen that the party has not produced any concrete evidence showing that the work was executed as per convenor system along with the WP in

question or during the time of hearing, despite the oral statment given before the hearing officer. In the report furnished by Chief Conservator of Forests (D) there is also no indication that the work was executed under convenor system.

In the letter read as paper (4) above, the Divisional Forest Officer, Thenmala has stated that the contractor shri. P. A. Jacob has never been a convenor at Achencoil Range and the work in question will not seen carried out under convenor system, as per records and hence, he is not elegible for tax exemption and the tax dues are to be deducted from the final settelment.

In the above circumstances, Government are pleased to accept the findings in the vigilance report and to accord sanction to effect the payment deducting the tax dues as suggested in the Vigilance report, since there is no departmental evidence to show that the work was executed under Convenor system and also that the petitioner failed to produce any documentary evidence to prove that he has done the work on convenor system and they order accordingly.

By order of the Governor,

L. RADHAKRISHNAN,  
*Secretary to Government.*

To

Shri. P. A. Jacob, Panachayil House, West of Othera P. O., Thenmala.  
The Chief Conservator of Forests (D), Thiruvananthapuram.  
The Chief Conservator of Forests (WL), Thiruvananthapuram.  
The Advocate General, Ernakulam with covering letter.  
Accountant General (Audit/A&E), Kerala, Thiruvananthapuram.  
Finance Department.

The Divisional Forest Officer, Thenmala (The following documents are returned herewith. Please acknowledge receipt)

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<i>Sl. No.</i>	<i>File/M Book No.</i>	<i>No. of pages</i>
1	File No. D1-6377/92	706 pages (Pages 681 to 700 are missing)
2	File No. D1-6377/92	412 pages (pages 33 to 76 are missing Page 273 and 281 to 300 are repetition)
3	File No. D1-6377/92	386 pages
4	File No. C1-1180/91	504 pages
5	M. Book No. 9/58-59	1 to 99
6	M. Book No. 1/70	1 to 99
7	M. Book No. 6/60-61	1 to 93
8	M. Book No. 8/58-59	1 to 99

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