

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

**MONDAY, THE 31ST DAY OF AUGUST 2015/9TH BHADRA, 1937**

**SA.No. 547 of 2001 ( )**  
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**AGAINST THE JUDGMENT AND DECREE IN A.S. No.191/1994 OF THE DISTRICT  
COURT, PALAKKAD DATED 12-01-2001**

**AGAINST THE JUDGMENT IN O.S No. 18/1991 OF THE MUNSIF COURT, CHITTUR  
DATED 06-08-1994**

**APPELLANTS/RESPONDENTS/PLAINTIFFS:**  
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- 1. K.N.SUBHASH, AGED 36 YEARS,  
S/O.K.V.NARAYANAN,  
RESIDING AT KANDANKULANGARA,  
AYILUR VILLAGE,  
CHITTUR TALUK.**
- 2. K.N.SUNIL, AGED 33 YEARS,  
S/O.K.V.NARAYANAN,  
RESIDING AT KANDANKULANGARA,  
AYILUR VILLAGE,  
CHITTUR TALUK.**
- 3. K.V.NARAYANAN (EXPIRED)  
S/O.VELLATHANDAN, RESIDING AT KANDANKULANGARA,  
AYILUR VILLAGE,  
CHITTUR TALUK.**

**BY ADVS.SMT.V.PSEEMANDINI (SR.)  
SRI.M.R.ANISON**

**RESPONDENTS/APPELLANTS/DEFENDANTS:**  
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- 1. KERALA GOVERNMENT REP.BY  
THE DIST.COLLECTOR,  
PALAKKAD.**
- 2. THE TAHSILDAR,  
CHITTUR.**

**R1 & R2 BY SPECIAL GOVERNMENT PLEADER SMT.LALY VINCENT**

**THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 31-08-2015,  
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**



ALEXANDER THOMAS, J.

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S.A.547 of 2001

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Dated this the 31<sup>st</sup> day of August, 2015

JUDGMENT

The appellants herein are the plaintiffs in Original Suit O.S.No.18/1991 on the file of the Munsiff Court, Chittur, Palakkad District and the respondents herein (Government of Kerala and the Tahsildar, Chittur) are the defendants in O.S.No.18/1991. It is averred that the appellants herein are residents of erstwhile Travancore Cochin area and that they belong to Thandan Community which was then included in the list of Scheduled Caste of the State of Kerala. It is further averred that the various authorities concerned in the State of Kerala had conducted detailed enquiries regarding the caste status of the family members of the appellants and had accordingly issued community certificates duly showing their caste as Thandan and that they were thus enjoying the benefits of Scheduled Castes. That as early as in the year 1960, the 3<sup>rd</sup> appellant herein had contested the elections to the Kerala

Legislative Assembly in the constituency reserved for Scheduled Castes and had won the election and had become a member of the Legislative Assembly. That the defeated candidate in that election had instituted E.P.No.3/60 before the Election Tribunal, Palakkad for a declaration that the election of the 3<sup>rd</sup> appellant herein is void on the ground that he does not belong to Thandan (S.C) community. That in that adjudicatory process, the Election Tribunal, Palakkad had occasion to consider all the relevant documents produced on either side to establish the caste status of the 3<sup>rd</sup> appellant and after considering those 36 documents, the Election Tribunal by a detailed judgment dated 24/11/1960 had declared that the 3<sup>rd</sup> appellant herein belongs to Thandan (S.C) Community. It is thus averred that the above declaration made by the competent civil court has become final and conclusive as early as in the year 1960. That due to the attempts made by other sub caste among the Schedule Castes communities, complaints were raised that the Thandan (S.C) community members belonging to the erstwhile Malabar area should be excluded from the purview of the authorized list of the Scheduled Caste Community and thereupon the State authorities concerned had also taken a consistent

antagonistic stand against members of the Thandan (S.C) community who hailed from the erstwhile Malabar area of the State of Kerala and the official authorities concerned were taking an unlawful stand that Thandan (S.C) Community members who belong to erstwhile Malabar area should not be treated as members of the S.C community etc.

2. That there upon the appellants herein had filed O.S.No. 18/1991 before the Munsiff Court, Chittur for a permanent injunction restraining the respondents therein from denying the S.C benefits already enjoyed by them. The suit was decreed by judgment dated 06/08/1994. The State authorities concerned who are the defendants in that suit had filed an Appeal Suit as A.S.No.191/1994 before the District Court, Palakkad in which the lower appellate court interfered with the judgment of the Munsiff Court in O.S.No.18/1991 and had rendered the judgment dated 12/01/2001 allowing A.S.No. 191/1994 by setting aside the judgment in the Original Suit and by dismissing the Original Suit etc.

3. The main ground on which the lower appellate court had interfered with the considered judgment of the Munsiff Court was

on the ground that after the institution of the Appeal Suit, A.S.No.191/1994 the State Legislature had enacted "The Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act, 1996 " whereby Section 24 thereof has specifically barred the jurisdictional civil court in respect of any order passed by any Officer or authority under the said Act (Act 11/1996) and that no stay or injunction shall be granted by a Court in respect of any action taken or to be taken by such officer or authority under the said Act in pursuance of any power conferred by or under this Act. Accordingly the lower appellate court held that in view of the enactment of the Act 11 of 1996, the statutory scheming and verification committees have been constituted in the State of Kerala for the issue of scrutinizing and verifying the Scheduled Caste status of a particular category to see whether that person or category belongs to a SC/ST and in the list thereon included by presidential proclamation. Accordingly the lower appellate court held that it can be safely concluded that the civil court has no jurisdiction to entertain the suit like the instant one viz, O.S. 18/1991. In this view of the matter, the lower appellate court held that the plaintiffs are not entitled to get any relief in the

said suit as civil court has no jurisdiction to entertain the suit etc. It is this judgment rendered on 12/01/2001 in A.S. No. 191/1994 that is under challenge in this Second Appeal.

4. The following questions of law have been formulated in the Memorandum of this Second Appeal which reads as follows:

- “(A) Whether the civil rights available to the appellant under section 9 of CPC to approach the civil court for enforcement of their civil rights can be denied to them solely for the reason that they happened to be a member of schedule caste?
- (B) Whether the right conferred on a schedule caste citizen to file a civil suit under section 9 of CPC for enforcement of his civil rights can be retrospectively taken away by any state enactment like the Kerala (Scheduled Castes & Scheduled Tribes) Regulation of issue of community certificates Act 1996, so long as section 9 CPC remains as such in the statute book.
- (C) Whether the rights of a citizen to approach the Court of law under section 9 of CPC for enforcement of his civil rights can be taken away retrospectively by a judgment of the Hon'ble Supreme Court.
- (D) Whether in the facts and circumstances of his case the declaration made by the civil court in Ext.A5 judgment in respect of the appellants scheduled caste status is liable to be re-opened or nullified by any authority constituted by the State Government at this distance of time?”

5. Heard Smt.V.P.Seemandini, learned senior counsel instructed by Sri.M.R.Anison learned counsel appearing for the appellants herein and Smt.Laly Vincent learned Special Government Pleader appearing for the respondents herein.

6. The first issue to be considered in this case is as to

whether the bar of civil court jurisdiction envisaged in Section 24 of (Act 11 of 1996) is applicable in respect of the instant suit (O.S No.18/1991). It has been instituted as early as in the year 1991. It is also to be noted that the judgment in O.S.No.18/1991 was pronounced by the Munsiff Court, Chittur, Palakkad District as early as on 06/08/1994. It is also common ground that Appeal Suit 191/1994 was also instituted on 10/10/1994 where as the "Kerala SC/ST (Regulation of issue of Community Certificates) Act, 1996" (Act 11 of 1996) had come into force only on 01/12/1996. Therefore in view of these factual aspects this Court has no hesitation to hold that the bar envisaged under Section 24 of (Act 11 of 1996) is not applicable in respect of the institution of the instant civil suit is concerned. That apart Section 24 of (Act 11/1996) reads as follows:

"24. Bar of jurisdiction of Civil Courts- No Civil Court shall have jurisdiction in respect of any order passed by any Officer or authority under this Act and no stay or injunction shall be granted by a Court in respect of any action taken or to be taken by such officer or authority under this Act in pursuance of any power conferred by or under this Act."

7. Therefore the bar of jurisdiction is primarily relatable to orders passed by any officer or authority under Act 11/1996 etc. The Act 11/1996 was brought into force only as late as on



01/12/1996. It is nobody's case that the plaintiffs herein or anyone opposing the claim have instituted any proceedings before the appropriate forums envisaged in Act 11/1996 in regard to the entitlement or otherwise of the plaintiffs herein as members of the Scheduled Caste Community. Therefore this Court has no hesitation to hold that the lower appellate court went wrong in holding that the bar under Section 24 of (Act 11 of 1996) is attracted in the facts of the instant case. In the light of these discussions, the aforesaid questions (A) to (C) are answered accordingly.

8. However it is to be noted that both sides had pointed out that major amendments have been brought about in regard to the status of Thandan community members belonging to erstwhile Malabar area as regards the claim for SC status and that this amendment has been brought into force with effect from 30/08/2007. Therefore the decretal portion of O.S.No.18/1991 passed by the Munsiff Court, Chittur, Palakkad District requires necessary modification and modulation. It is to be noted that decretal portion given on last paragraph immediately below issue No.8 on page No.10 of the judgment dated 06/08/1994 in O.S.No.18/1991 reads as follows:

" In the result the suit is decreed as prayed for without cost with an observation that the defendants shall not deprive the privileges enjoyed by the plaintiffs herein, unless and until that the plaintiffs are found men belonging to purely Ezhavas or Thiyyas Community and not Thandans by caste or confirmation of powers and appropriate amendment caused in the constitution adhering to due procedure."

9. In this crucial aspect of the matter the following important matters are to be borne in mind. The provisions of Article 366(24) of the Constitution of India define the expression "Scheduled Castes" to mean "such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of the Constitution of India." Article 341(1) of the Constitution of India provides that the President may with respect to any State or Union Territory, and where it is a State after consultation with the Governor thereof, by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory, as the case may be. Clause (2) of Article 341 further stipulates that the Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) of Article 341, any caste, race or tribe or part of or group within any caste, race or

tribe, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification.

10. The Constitution (Scheduled Castes) Order, 1950, specified the castes that are recognised as Scheduled Castes for different States in the country. Part XVI thereof related to the erstwhile State of Travancore and Cochin and item 22 of that Part specified 'Thandan', as a Scheduled Caste for the purposes of the entire State. The Presidential Order was modified by the Scheduled Castes and Scheduled Tribes Lists (Modification) Order, 1956, whereunder Part-V thereof is applicable to the State of Kerala, which was the successor to the erstwhile States of Travancore and Cochin, whereby 'Thandan' as a caste that was included at item No.14 for the purposes of the entire State except Malabar District. Thereafter, the Scheduled Castes and Scheduled Tribes Orders (Amendment) Act, 1976 came into force with effect from 27<sup>th</sup> July, 1977 and in the First Schedule under Part-VII thereof is applicable to the State of Kerala, in which 'Thandan' as a caste which show at in item No. 61 thereof. Unlike two other castes shown in the said Part, viz., Boyan and Malayan, which were shown as Scheduled Castes for the specific areas of the State of Kerala, the

caste/community 'Thandan' had no such geographical or limitation in the State of Kerala as per the said First Schedule appended to the above said amendment Act, 1976. This clearly meant that 'Thandan' was included as Scheduled Caste for the entire State of Kerala.

11. Doubts were raised by the revenue authorities and other authorities in the State of Kerala about the eligibility to enjoy the Scheduled Castes status in respect of the 'Thandan' domiciled in Malabar including Palakkad District and the authorities concerned took the stand that notwithstanding the provisions in the aforementioned Amendment Act, 1976, persons like the petitioners, who belong to 'Thandan' community domiciled in Palakkad District of the State of Kerala, cannot be treated as members of Scheduled Castes community and that such persons should be treated as belonging to Other Backward Classes (OBC).

12. The dispute in this regard was agitated upto the Apex Court. In the case between Palghat Jilla Thandan Samudhaya Samrakshana Samithi & Anr. v. State of Kerala (W.P.Nos.12486-87 of 1984, judgment dated 3.12.1993), reported in 1994(1) KLT 118 (SC), the Supreme Court considered this issue as to the entitlement

of the persons who belong to 'Thandan' community domiciled in places like Palakkad District outside the erstwhile Travancore area. The Apex Court mainly relied on two Constitution Bench decisions in B.Basavalingappa v. D. Munichinnappa reported in 1965 (1) SCR 316 and Bhaiyalal v. Harikishan Singh and others reported in (1965) 2 SCR 877, wherein it was held that any amendment to the aforesaid Presidential Orders could only be made by legislation enacted by the Parliament as mandated in Article 341(2) of the Constitution of India. It was held by the Apex Court that the courts could not assume jurisdiction and order an enquiry to determine whether the terms of the Presidential Order included a particular community and that the State Government is only entitled to initiate appropriate proposals for modification in cases where it is satisfied that such modifications are necessary and, if after appropriate enquiry, the authorities were satisfied that a modification is required, then an amendment through legislation should be undertaken as provided in Article 341(2) of the Constitution of India.

13. Accordingly, the Apex Court in Palghat Jilla Thandan Samudhaya Samrakshana Samithi (supra) held that as 'Thandan'

community is listed in the Scheduled Castes Order as contemplated by the provisions of the Constitution, it is not open to the State Government or, indeed, to any court including the Apex Court, to embark upon an enquiry to determine whether a section of Ezhavs/Thiyyas, which are called 'Thandan' in the Malabar area of the State, was excluded from the benefits of the above said Scheduled Castes Order. Accordingly, the Apex Court allowed the Writ Petitions and directed the Government of Kerala to grant to all members of the 'Thandan' community, including those belonging to the erstwhile Malabar District and the present Palakkad District, the benefits due to a Scheduled Caste included in the Schedule to the Scheduled Castes Order as amended upto date and issue to them the community certificates, accordingly, and, thus, the impugned order of the State Government was quashed and set aside and necessary reliefs were also granted to the claimants of Scheduled Caste status.

14. It is also to be noted that later the Parliament enacted the constitution (Scheduled Caste) order (Amendment) Act 2007 which receive the assent of the President of India on 29/08/2007 and the said Amended Act was duly published in the Gazette of India

on 30/08/2007. As per this Amendment Act, 2007 (Central Act No.31 of 2007), which came into force on 30.8.2007, the lists of Scheduled Castes concerning the State of Kerala was amended to the following effect.

“Part VIII– Kerala, for entry 61, substitute – “61. Thandan (Excluding Ezhuvas and Thiyyas who are known as Thandan, in the erstwhile Cochin and Malabar areas) and (Carpenters who are known as Thachan, in the erstwhile Cochin and Travancore State)”.

15. The impact of the above said Constitution (Scheduled Castes) Order (Amendment) Act, 2007 (Act No.31 of 2007) published in the Gazette of India on 30<sup>th</sup> August, 2007, was considered by a Division Bench of this Court in the case between Madhavan P. and others v. State of Kerala and others reported in 2010(2) KHC 739. The Division Bench therein held that members of the 'Thandan' community domiciled in the erstwhile Cochin and Malabar areas are eligible and entitled to enjoy the Scheduled Castes benefit prior to the date of commencement of the above said Amendment Act, 2007, as the said Act is only prospective in nature and that after the commencement of the above said Amendment Act, 2007, the members of the 'Thandan' community in the erstwhile Cochin and Malabar areas are not eligible for Scheduled Castes benefits. The Division Bench unequivocally held that in view

of the decision of the Apex Court reported Palghat Jilla Thandan Samudhaya Samrakshana Samithi (supra), the members of the 'Thandan' community in the erstwhile Cochin and Malabar areas are entitled to the benefits of the Scheduled Castes prior to the commencement of the above said Amendment Act and that any benefits obtained by them before the commencement of the above said Amendment Act, 2007 cannot be taken away but that after the amendment of the Schedule as per the above said Amendment Act, 2007, such community members are not entitled to claim benefits as Scheduled Tribes. The Bench held that all the benefits including educational benefits granted to them on the basis of their Scheduled Caste status prior to the Amendment Act, 2007 cannot be cancelled or deprived in any manner. But they cannot claim any benefit including employment in future claiming to be members of the Scheduled Caste and from the date of commencement of the Amendment Act, 2007, they cannot be treated as members of the Scheduled Castes. It was specifically directed by the Division Bench that the employment benefits secured by them prior to the Amendment Act, 2007 cannot be in any way terminated or cancelled as the initial appointment was correct in law and that they are



entitled to get salary and pension till their date of superannuation. But they cannot claim any future benefit as Scheduled Caste with effect from the date of commencement of the Amendment Act, 2007, as the Schedule has been amended, whereby the community to which the petitioners belong have been excluded from the purview of the status as Scheduled Caste. It is also made clear by the Division Bench that children/offspring of such claimants also will not be entitled to any benefit of the Scheduled Caste community after 29<sup>th</sup> August, 2007 though their admissions to educational purpose or appointments in employment obtained by them before the amendment of the Schedule are valid in law.

16. A learned Judge of this Court in the case between Raveendranath P. v. State of Kerala and Others reported in 2012(1) KHC 175, also followed the above said principles enunciated in the aforementioned Division Bench judgment in Madhavan P. v. State of Kerala reported in 2010(2) KHC 739.

17. It is brought to notice by both sides that the judgment of the learned single Judge in P.Raveendranath's case (reported in 2012(1) KHC 175) has subsequently been affirmed by the Division Bench in judgment dated 22/02/2012 in Writ Appeal No. 284/2012

and in judgment dated 05/08/2015 in Writ Appeal No.921/2012.

18. The matter is now no more res integra, as the Apex Court in the case between Unnikrishnan v. Mahanudevan (C.A.No.3468 of 2007 and connected cases, judgment dated 10.1.2014) reported in 2014(2) KLT 524(SC)=2014(4)SCC 434 has also taken the similar view and held that the Scheduled Caste benefits granted to the respondents therein till 30<sup>th</sup> August, 2007 shall remain undisturbed and that only those advantageous in terms of promotion or otherwise which the respondent therein may have been granted after the said date of commencement of the Amendment Act, 2007 solely on the basis of his being treated as Scheduled Caste candidate may if so advised be withdrawn by the competent authority. It is made clear that the respondent therein shall not be entitled to claim any benefit in future as a Scheduled Caste candidate but no benefit admissible to him as an OBC candidate shall be denied. The Apex Court categorically held therein that the above said Amendment Act, 2007 is prospective.

19. It is also brought to notice that the Apex Court in the judgment dated 22/01/2015 in the case "M.Rugmini v. The Director, Kirtads and Ors. Etc. " in Civil Appeal Nos.1162-1163 of

2015 has also followed the similar line of action and the said judgment reads as follows:

"Leave granted.

Heard learned counsel for the parties at length.

Having considered the submissions raised at the Bar, we are of the considered opinion that the controversy is covered by the decision in R.Unnikrishnan & Anr. vs. V.K.Mahanudevan & Ors. [(2014) 4 SCC 434]. In paragraph 41 of the said decision, it has been held:

"41. In the instant case there is no evidence of lack of bona fide by the respondent. The protection available under the decision of Milind's case (supra) could, therefore, be admissible even to the respondent. It follows that even if on a true and correct construction of the expression 'Thandan' appearing in the Constitution (Scheduled Castes) order 2007 did not include 'Ezhuvas' and 'Thiyyas' known as 'Thandan' and assuming that the two were different at all relevant points of time, the fact that the position was not clear till the Amendment Act of 2007 made a clear distinction between the two would entitle all those appointed to serve the State upto the date of the Amending Act came into force to continue in service."

In our considered opinion, the said paragraph shall apply in full force to the case at hand.

Resultantly, the appeals are allowed and the benefits shall be extended to the appellant in terms of paragraph 43 of the aforesaid judgment. There shall be no order as to costs."

20. The Apex Court in the aforementioned decision mainly relied on the judgments as in State of Maharashtra v. Milind reported in (2001) 1 SCC 4, Kavitha solunke v. State of Maharashtra reported in (2012) 8 SCC 430 and Sandeep Subhash Parate v. State of Maharashtra reported in (2006) 7 SCC 501 etc. for coming to the above said conclusion.

21. The Apex Court in the aforementioned decision in Unnikrishnan v. Mahanudevan (supra) in paragraph 28 thereof has noted that after the coming into force of the above said Constitution (Scheduled Castes) Order (Amendment) Act, 2007, the Government of Kerala by Order No.93/2010/SC/ST dated 30<sup>th</sup> August, 2010 has ordered that Ezhavas and Thiyyas who are known as 'Thandan' in the erstwhile Cochin and Malabar areas shall be treated as OBCs in List III of Other Backward Classes (OBC) in the State of Kerala. The Apex Court unequivocally held that the deletion incorporated in the aforementioned Constitution (Scheduled Castes) Order (Amendment) Act, 2007, is only prospective in nature for Ezhavas and Thiyya known as 'Thandan' in the erstwhile Cochin and Malabar areas and that in view of the earlier conclusive declaration of the law made by the Apex Court, the said community is entitled to be treated as Scheduled Caste prior to the coming into force of the Amendment Act, 2007. In view of the order dated 30.8.2010 including them as OBC, the Apex Court also ordered that in paragraph 34 in Unnikrishnan v. Mahanudevan (supra) that though the respondent therein shall not be entitled to claim any benefit in the future as a scheduled caste candidate, no benefit admissible to

him as an OBC candidate shall be denied.

22. It is indisputable that the main matter in issue raised in this writ proceedings are covered in view of the legal principles laid down by the Division Bench in the aforementioned decision in Madhavan P. and others v. State of Kerala and others reported in 2010(2) KHC 739 and by the Apex Court in the aforementioned decision reported in Unnikrishnan v. Mahanudevan 2014(2) KLT 524(SC).

23. Accordingly, it is ordered that all benefits and rights that were granted to the plaintiffs as Schedule Castes prior to the commencement of constitution (S.C) Order (Amendment) Act 2007 shall not be deprived of or cancelled in any manner as directed in the aforestated Division Bench judgment and the Apex court judgment referred to above. However it is equally made clear that on and with effect from 30/08/2007, the plaintiffs/appellants are not entitled in law to be treated as members of SC community in view of the deletion of 'Thandan' community of the erstwhile Cochin and Malabar area from the purview of the Scheduled Caste order by virtue of the aforestated Amendment Act 2007. It is further made clear that orders of the competent authority or the

Government of Kerala dealing with the status of the appellants community may be worked out subject to the condition that any benefit granted or approved to them as Scheduled Caste prior to 30/08/2007 shall not be deprived of or cancelled in any manner . But it is equally made clear that the State of Kerala and its subordinate authorities concerned are fully entitled in law to treat the plaintiffs and their successors in interest as not belonging to SC community on and with effect from 30/08/2007 in view of the aforestated Amendment Act, 2007. Accordingly it is made clear that the decree of the Munsiff Court, Chittur in Palakkad District in O.S.No.18/1991 will be operative till 29/08/2007 and not thereafter as far as the claims of the plaintiffs/appellants for the benefit of the Scheduled Caste is concerned.

24. In the light of the aforestated discussions, the aforestated question of law (D) is answered by holding that the benefits earlier granted to the plaintiffs can be altered and modified in the manner discussed herein above.

25. Accordingly, in this view of the matter the impugned judgment and decree dated 12/01/2001 in AS No. 191/1994 of the District Court, Palakkad is set aside. But the decree granted by the

trial court will stand modified as ordered in paragraph 23 of this judgment.

With these observations and directions, the Second Appeal stands finally disposed of. But there will be no order as to costs.

Sd/- ALEXANDER THOMAS, JUDGE

MJL

