

CHAPTER- VI

“THE FACTS AND CIRCUMSTANCES WHICH LED To THE INCIDENTS AT MARAD BEACH, KOZHIKODE ON 2/5/2003 RESULTING IN THE DEATH OF NINE PERSONS, SERIOUS INJURIES TO MANY OTHERS AND DAMAGE TO PROPERTY

In Chapter No V, I stated how, a minor incident during the New Year day celebrations in the night of 31-12-2001 grew into communal riot on 3/4-1-2002 in which, two (2) Hindus and three (3) Muslims lost life several persons from either side suffered injuries and houses were torched or otherwise destroyed. Going by the evidence, the communal rivalry started in the area way back in 1954 when a dispute between two individuals belonging to the two communities developed into a communal clash. Going by the documents produced by the Government and the evidence of B W2, there was a dispute between a Hindu by name Thambi and Muslim by name Ahmadkutty, who were residents of Naduvattom within Beypore Panchayat limits. While so, the Hindus took out a precession in connection with the temple festival and deviating from the usual route, proceeded through the front side of the Naduvattom Mosque. When the procession reached in front of the Mosque, it is alleged, the processionists shouted slogans in praise of their Gods which was not appreciated by the ‘ Muslims who had gathered in the Mosque. A clash occurred, ultimately resulting in police firing resulting in the death of few persons. The official tally is four (4) while according to BW2, at least 10-13 Muslims died in the firing. From then onwards at least, there was communal division in the area. It is while so, that the minor incident occurred during the New Year Day celebrations on 31-12-2003. The A Parties alleged that the minor incident was exploited by C.P I.(M) / I.U.M.L. I N.D.F. to gain political

mileage. According to the B Parties, communal violence started in the area ever since the R.S.S/B.J.P. started infiltrating into the Hindu Community in the area. They say that the area was peaceful until a group of Hindu' migrants from Tanur took up residence at Marad. It is revealed from the evidence of AW6, Sri. T. Suresh, Secretary of the Arayasamajam representing the Hindu_ fishermen of Marad Beach that in fact, some Hindu families had shifted residence from Tanur about 30 years back and settled at Marad. He would say that in the coastal areas from Ponnani and reaching up to Puthiyangadi, there are no Hindu fishermen living since the last about 30 years. At Beypore, the Hindu fishermen are a minority. Rest are Muslim fishermen. According to AW6, the incidents during 2002-03 was the result of a long drawn plan to eliminate the Hindus from the coastal areas so that, the Muslims fundamentalists could dominate the area. He stated that there was no occasion for such large scale violence in January, 2002 and that the minor incident that occurred during the New year Day celebration on 31-12-2001 was blown up.

2. In Chapter V , I stated from Ext.S 13 series how the incident on 31-12-2001 developed in to communal riot on 3/4-1-2002. Though the A Parties have a case that one of the Hindu fishermen was attacked and killed by his Muslim adversaries in the evening of 3-1-2002 which sparked of the communal riot, going by the documents produced by Police, the first murderous assault was by the Thekkethodi Suresan and others on Kunhikoya, a Muslim at 7.45 PM. on 3-1-2002. At 8 PM, Prabhu and others attacked and killed Yunus. This was followed by the Latheef and others attacking the house of Pushparajan, an R.S.S worker, 'and killing his cousin, Shinjith. That incident occurred at 8.10 PM on 3-1-2002 It was at about 8 A.M. on 4-1-2002 that while Aboobacker, referred in the preceding Chapter was allegedly going to prepare the

grave for those Muslims killed the previous day, that he was fatally assaulted by Thekkethodi Suresan and others. The facts and circumstances which led to the murder of Kunhikoya at 7.45 P.M. on 3-1-2002 is also worth considering. The wordy altercation following the incident in the evening of 31-12-01 was settled on the spot itself. Even the wordy altercation between Sujith and Sakkir on 1-1-2002 also was settled. It is while so, that at about 7 pm , on 3-1-2002, Sakkir assaulted Sujith. At 7.15 pm, some Hindu men questioned Sakkir. Learning that, the friends and relatives of Sakkir reached the spot and there was a tussle. At 7.20 P M, both sides attacked each other with swords, chopper, stick etc. This was followed by Thekkethodi Suresan and others attacking and killing KunhiKoya at 7.45 P M. Therefore, the attack on Kunhikoya cannot be considered as the first onslaught in the series of , incidents. The series of incidents that happened until then, snowballed into that murderous assault. Exts. F2 and F 45 to F47 are the copy chargesheets in Cr. Nos 5/02, 6/ 02, 2/02. 3/02, and 4/02 registered by the Beypore Police for the murders on 3/4-1-2002. Ext. F 4 says about a bank announcement from the Marad Juma Masjid Mosque and following that, a group of people chanting `Bolo Takbir` marching into the house of Pushparajan and killing Shinjith. The Beypore Police registered as many as 115 cases for the incidents which occurred on 3/4-1-2002. Those cases involved altogether, 422 accused at the time of registering the cases but, chargesheets were filed against 393 accused. Of them, going by the statement filed by the District Collector , Kozhikode, 213 accused were R.S.S./ B.J.P workers while 78 were C.PI. (M) men. 86 accused were I.U.M.L.workes. There were two I.U.M.L. / N.D.F. men while, two others were I.N.L./N.D.F men. Four(4) accused were C.PI.(M) / N.D.F. men while, 6 were I.N.L. men. There is no serious dispute that large number of activists of C.PI.(M), I.U.M.L. and

B.J.P/R.S.S. were chargesheeted in those cases though, according to those Parties /Organization, their activists were falsely implicated.

3. The Commission is called upon to report on the facts and Circumstances which led to the `massacre on 2-5-2003. It follows, that it is within the scope of this Inquiry to identify what all facts and circumstances led or contributed to the massacre on 2-5-2003. It is not very much in dispute that one circumstance that contributed to the,, massacre was the communal riot on 3/4-1-02. According to the ; IUML and Muslim organizations among the B parties; the killing of Aboobacker, very popular among the Muslim fishermen of the area for no reason whatsoever, at a time when he was going to prepare the grave for his Muslim brethren killed on 3-1-2002 pained the Muslim community and in particular, the youngsters. The N.D.F. units and I.U.M.L. units among the B Parties therefore, claimed that the relatives and friends of Aboobacker wrecked vengeance by retaliating on 2-5-2003. The C.PI.(M) units among the B parties accused the State Govt. for adopting a policy of appeasement in favour of the fundamentalists and claimed that the communal clashes on 3/4-1-2002 was the result of that appeasement. The Govt. machinery failed to prevent the clashes. They claimed that the C.P I.(M) activists were striving to spread peace and secularism. They accused N.D.F. and other Muslim fundamentalists for the massacre on 2-5-2003. The A Parties on the other hand, say that it was not merely a revenge for the killing of Aboobacker, but a case of the Muslim fundamentalist/ terrorist elements and organizations capitalizing the issue, instigating and assisting the close relatives and associates of Aboobacker to attack the Hindus. In the above situation, it is necessary to go into the circumstance which resulted in the communal riot on 3/ 4-1-2002. In understanding how that incident

developed and culminated, it is necessary to go into the political situation that existed in the area.

4. BW3, the President of Beypore Grama Panchayat during 2000-05 and a C.P.I.(M) activist stated that the Beypore Panchayat was formed in 1936. That panchayat came into existence in the present' form in 1963. There was election to that Panchayat on political basis since 1979 onwards. Since then, C.PI.(M) has been (and still is) ruing the Beypore panchayat. During 2000, the total number of wards in the panchayat was 20. In the election in 2000, the C.P.I.(M) candidates won in 10 wards while its ally, the Janata Dal won from 2 wards. The I.U.M.L. had 4 seats, the Congress (I) had 3 seats and the B.J.P had 1 seat Thus, the Left Democratic Front (L.D.F.) led by the C.P I.(M) got majority and ruled the Panchayat. According to BW3, the B.J.P formed an alliance with the United Democratic Front (U.D.F.) in 2000. In the election to the State Legislative Assembly from Beypore Constituency in the year 1991, the B.J.P. had forged alliance with the U.D.F. to defeat the C.PI.(M) candidate. The C.PI.(M) candidate won the election by a margin of about 7000 votes. In the election to the State Assembly in 2001 also, the B.J.P had forged alliance with U.D.F. but, the C.PI.(M) candidate, Sri. V.K.C. Mammed Koya (BW1) won by a majority of 5071 votes. The version of BW3 is that C.P.I.(M) was preventing all sorts of communal activities and divisions in Beypore Panchayat area. As regards the communal clashes in Beypore Panchayat, the witness claimed that after the Police firing of 1954, there was , communal clashes in Beypore since 1974. In 19 74, some - Hindus migrated to Marad from Tanur side. In 1982, there was a dispute regarding the burial of the body of one Biyyathukkutty at Marad, when that was objected by the R.S.S. and Arayasamajam workers. The witness was of the view that since then, there was constant communal clashes and riots

in the area. Along with that, there were political clashes and murders. On 12-1-1993, the R.S.S. men murdered 'Peroth Rajeevan, a D.Y.F.I. worker. Ext. B 83 series are produced to show that case was registered against R.S.S. men for the murder of Sajeesh, a C.P.I.(M) activist at Marad. The witness claimed that learning about the communal riot on 3-1-2002, himself and others rushed to Marad Beach, but their vehicles were blocked and attacked by the R.S.S. men. He claimed that the C.PI.(M) participated in the peace initiatives and even set up secular relief camps. BW1, the M.L.A. from Beypore Assembly constituency said that mostly, People of Marad are fishermen and only few were fortunate to have education upto the 10th standard, with nobody employed in Govt./private institutions. The financial condition of the people of Marad was very poor. The Muslim fishermen are controlled by the Mahal committee and the Hindu fishermen are controlled by the Arayasamajam. He claimed that after the first communal riot on 3/4-1-2002, a peace meeting was convened in Beypore panchayat office on 5-1-02. That was attended by the leaders of the various political parties and officials like the R.D.O. Relief Committee was formed under the auspices to the Beypore Panchayat with the District Collector, Kozhikode as chairman and R.D.O., Kozhikode as Convener. The Committee met several times. Ext.B85 is the Minutes for Seven (7) meetings. It is claimed that all the political parties except, the B.J.P. attended those meetings. The committee decided to collect funds for repairing the houses. There were two relief camps, one for the Muslims organized by the Mahal Committee and the other for Hindus, organized by the Arayasamajam. The C.PI.(M) started a secular relief camp in the house of one of its local leaders, Balaraman (BW2). Thus, the C.P.I.(M) was in the forefront to propagate and protect secularism in the area. SW2 is a C.P.I.(M) activist of Beypore panchayat. He traced the history

of communal clashes in the area to the Naduvattam police firing of 1954. B W2 would say that the stand of the Communist Party (then, undivided) was that the procession was taken along the front of the Mosque intentionally, to create communal division.- He also referred to the Hindu families migrating ' to Marad from Tanur and about the communal clashes that followed. He claimed that after the riots in January, 2002 the C.P.I.(M) started relief camp in his house. The witness also referred to the political murders the area saw in the meantime and the elections on Political basis to the local authority. AW34, state Secretary of the B.J.P and resident of Naduvattom about 3 K.M away from Marad Beach claimed that the C.P I. (M) had upper hand in the Beypore Panchayat and Beypore Assembly Constituency right from its inception, people were unhappy under the C.P.I.(M) rule over the panchayat as the C.P I.(M) adopted partisan attitude even in the matter of development schemes, people wanted a change and thus, with the support of people of different communities, PP Moideen Koya (H party No.2), the candidate of the I.U.M.L. defeated the C.P.I.(M) candidate in ward No.20 (which takes in Marad) in the local body elections in 2000. He admitted that there was a Hindu - Muslim alliance. The C.P.I.(M) feared that the alliance, would seal its chances. To ward off that possible alliance, the C.P.I.(M) indulged in communal riot on 3/4-1-2002. The witness referred to the Political murders in the area involving the C.P.I.(M), B.J.P/ R.S.S. and I.U.M.L. activists. AW3B, a resident of Marad and R.S.S activist, claimed that the riots on 3/4-1-2002 were sponsored by the C.P.I. (M) and the N.D.F. and that the B.J.P./R.S.S. had no role in it. He produced some documents which according to him probablised his contention hat the B.J.P/ R.S.S men were not behind those incidents. CW23, Sri. P. Parameswaran referred to the long history of communal division in the Coastal areas of Kozhikode District

and stated how, in the Muslim dominated areas people belonging to that community had put up restrictions on the members of the Hindu Community even in the matter of religious observances.

5. It has come in evidence that the people of Marad are socially, educationally, and financially backward. Their main avocation of life is fishing operations and that too, using conventional methods. Evidence collected by the Commission revealed that the mental condition of persons engaged in conventional form of fishing in the Sea will be connected to their riskful, hazardous jobs. The evidence revealed that the average educational qualification of those who are accused in the incidents of 2002 as well as 2003 is 5th standard. It is also in evidence that politically, the people of the locality had taken sides, the major party in the area being the C.P.I.(M). Most of the Muslims were the activists of C.P.I.(M). Some of the Muslims were supporters of the I.U.M.L and very few were supporters of the Congress. It is while so, that the B.J.P./R.S.S. tried to set its foot in the area. Gradually, the R.S.S./B.J.P. took control over the Arayasamajam which represented the Hindu fishermen. These facts are not very much in dispute. It is also a fact that right from the time election was held to the local Panchayat on political basis in 1979, the C.PI (M) either on its own, or with the help of its allies was winning the Panchayat and even the Beypore Assembly Constituency, with U.D.F and the R.S.S./B.J.P opposing the C.PI.(M). Concededly, there was some sort of alliance between some of the U.D.F. partners and the B.J.P in the Assembly / Panchayat elections since 1991 and that alliance found result in word No.20 of the Panchayat in the 2000 elections. The C.PI.(M). candidate had to eat the dust at the hands of the I.U.M.L. candidate who had the support of the B.J.P R.S.S. BW2 conceded that I.U.M.L. leader, Mayin Haji (AW3) had secured 600 votes more than BW2 (C.PI.(M) candidate) from Beypore Panchyat, in

the Assembly elections in 2001. If the CPI(M) Candidate won the Beypore Assembly election in 1991 with a majority of around 7000 votes, that majority ` was reduced to 5071 in the year, 2001. Ext. F4 (a) also shows that a UDF - BJP / RSS alliance in the Panchayat would be a formidable enemy for the CPI(M) . It is quite possible in the light of Ext. F4 (a) also that the C.PI.(M). considered the alliance between the UDF partners and the BJP as a possible political threat to it in future. It is true that it has come in evidence that in spite of such alliance, the CPI(M) candidates won the panchayat, Assembly and even the later Lok-Sabha elections with convenient majority. That does not necessarily mean that the C.PI.(M) was unconcerned with the political threat created by the new alliance. It is difficult to say that it was because some members of the Hindu Community migrated to Marad from Tanur, that Marad area become communally divided. There is evidence to show that even before that, at least in the coastal areas of Kozhikode district, communal division had set in, whatever be the motive behind. Ext. F38, the report revealed that in the 1954 incident, the Communist Party took up the cause of the Muslims. The evidence before the Commission shows that whether it be the undivided Communist party or later the C.PI.(M)., they were supporting the Muslim Community on every issue.

6. It has come in the evidence that one section of Muslims put up a structure in Marad Beach near the temple and adjoining the sea wall. Alleging that the - construction is without permission and intended to be used as a Mosque, the Arayasamajam workers resisted it. According to them, the C.P:I.(M) led Panchayat Committee did not take any 'action against the unauthorized construction: Ext. C93 is the photocopy of the file No. C1-807/00 summoned from the Beypore Panchayat office. It is revealed from Ext. C93 that on 13-11-2000. the Sub Inspector, Beypore reported to the Panchayat Authorities about the unauthorized

construction and the possibility of that being used as Mosque by the A.P. group (A.P Aboobacker group). He also pointed out the law and order problems that could arise. On 14-11-00, the Secretary of the Panchayat directed enquiry and issued notice to stop the construction. On 15-11-00, the official of the Panchayat after enquiry, reported that the construction is unauthorized, violated the coastal regulations and that direction was given to stop the construction. On 16-11-00, the Secretary of the Panchayat issued notice to Sri. Aboobacker Mussaliar, President and Sri. Hamsa Mussaliar, Secretary of the SKSYS to demolish the structure and report compliance. Sri. Hamsa Mussaliar' replied that they had permitted construction of a temporary" shed in their property for the use of fishermen to keep their implements, the fishermen were unaware that permission of the Panchayat is required and that if the structure is removed, that will cause inconvenience to the fishermen. The staff of the Panchayat reported on 7-12-000 that it was not a temporary shed, it was a permanent building constructed eleven (11) meters away from sea wall and suggested further action for its removal. On 8-12-00, the Secretary of the Panchayat ordered removal of the structure . The Sub Inspector, Beypore was requested to take necessary action. On 28-12-00, the Secretary of the SKSYS offered to remove the structure. But, the file does not show that any further action was taken by the , Beypore Panchayat ruled by the C.PI.(M). BW3, President of the Panchayat committee during 2005 and C.P I.(M) leader admits that there was no sanction from the Panchayat for the construction but, he does not know whether, any action for its removal was taken by the Secretary. It is quite unlikely that BW3 was unaware of the file. Fact remained that the building still existed.

7. Though, AW26 (Sri. Kanthapuram A.P Aboobacker Mussaliar) was pleading ignorance about that structure and its use as a Mosque, there is

evidence to show that the , structure is really being used as a Mosque. Ext. C94 is the photocopy of letter dt. 5/O5 from AW 15, State Secretary of the C.PI.(M) to the Chief Minister of the State. It is revealed from Ext. C94 that AW26 had addressed a letter to AWIS seeking his intervention to open the 'Mosque' for prayers and AW 15' requested the Chief minister to do the needful in the matter. There is thus reason to think that the C.PI.(M) ruled Beypore grama panchayat had been soft-peddalling the issue regarding the unauthorized construction in a bid to appease the concerned group. It is only quite natural that such stand of the Communist party and later, the C.P I.(M) gave sufficient space for the B.J.P/R.S.S. to have its foot hold in the Hindu Community in the area and particularly, the Hindu fishermen under the Arayasamajam. There is evidence to show that there were several political clashes during 1999 and before at various places in Beypore Panchayat with the BJP/ RSS on the one side and either the CPI(M) or the IUML on the other side. Few persons lost their lives and several persons were wounded (see Exts. F42 and F43). There were also communal clashes between the Muslims and Hindus within' Beypore Panjayat area on 6-12-2001 and the subsequent days (see evidence of BW1). It is in that background that a minor incident occurred between the two young men of the Hindu/Muslim communities during the New Year Day celebrations in the night of 31-12-2001. Going by the official records and oral evidence, that minor incident was almost settled and there was nothing which remained for a flare up like what happened on 3/ 4-1-2002 as revealed by Exts. F48 series. Evidence revealed that at about 8.10 P.M. on 3-1-2002, Latheef and others belonging to the Muslim community attacked the house of one Pushparajan, an R.S.S. worker of Marad Beach. There was no reason why at that point of time, somebody should have gone in search of Pushparajan and attack his

house. For, Pushparajan was not involved in any prior incidents between 31-12-2001 and 3-1-2002. Sensing danger, Pushparajan saved himself by hiding in the water tank of his house. The assailants, however, unable to find Pushparajan, finished his nephew, Shinjith, a boy aged about 18 years who also was not involved in any incident. It is therefore, certain that the assailants were targeting Pushparajan, an R.S.S. worker. BW2 admitted that Sainudeen, one of the accused in the case for attacking the house of Pushparajan and murdering Shinjith is a C.P.I.(M) activist of Marad. It has come in the evidence of FW1 that Pushparajan, along with few other B.J.P/ R.S.S. workers were accused in Cr. 45/99 of Beypore P S. for the murder of C.P I.(M) activist, Sajeesh at Marad Beach. (see also Ext. B 83 Series) FW1 who supervised the investigation of the cases relating to the incidents on 3/4-1-2002 claimed that Pushparajan had no involvement in any incident at Marad Beech from 31-12-2001 to 3/4-1-2002 and that the only reason for attempting at the life of Pushparajan was that he was accused in Cr. , 45/99 for the murder of C.P.I.(M) activist, Sajeesh. Shinijith, 18 year old cousin of Pushparajan murdered in the house of Pushparajan was not involved in any case at all and was accidentally seen by the assailants in that house. There is therefore, strong reason to think that the C.P.I.(M) activists were utilizing the occasion to settle scores with Pushparajan, their political adversary. Ext.S 13 contains reports (at P.64) which indicate that the C.P I.(M) was unhappy about the alliance between the U.D.F. parties and the R:S.S/B.J.P in Beypore panchayat 'hat report dt. 910-2002 stated that the C.P I.(M) local leaders were trying to make the people believe that they were the protectors of the Muslims of the area. If any public function or demonstration of the C.PI.(M) took place at Vellayil area (that place is near Marad), the demonstrators shouted provocative slogans against the Hindus to

mentally harass the R.S.S/B.J.P workers and appease the Muslims. Due to that, the R.S.S. workers had strong enmity against the C.PI.(M) activists. Regarding their activities in Vellayil Beach, it was reported that Arayasamajam and the Mosque committee of that area were in good terms and were settling issues amicably among themselves, but that was disliked by the C.PI.(M) activists. The C.PI.(M) was quite unhappy about that development and wanted to take political mileage out of every minor incident reported from the beach, to establish their influence particularly, among the Muslim community. The C.P.I.(M) was not showing enthusiasm in conciliation and instead, were waiting for an opportunity to precipitate issues in the communally sensitive Vellayil Beach area. If that be the situation in Vellayil Beach area, I find no reason to think that different was its attitude in Marad Beach or other parts of Beypore Panchayat particularly, in the political scenario I stated above. There is evidence to show the C.P.I.(M) activists were involved in the incidents at Marad Beach between 31-12-2001- and 4-1-2002. I stated from the official records that 78 of the 393 accused are C.P.I. (M) activists. It is admitted by AWIS also that CPI(M) activists are chargesheeted for the incidents on 3/4-1-2002. According to him, it is a false implication. Prima facie, it is difficult to think so. CW3 has given evidence that the CPI (M) and the BJP were trying to exploit the sensitive nature of people of Marad. He explained how, one group was spreading rumours about the opposite group to widen the rift. I do .not forget that after the incidents on 3/4-1-2002, the C.P.I.(M) activists or C.P.I.(M) controlled local body had called for peace meetings or set up 'secular' rehabilitation camp admitting people of different Communities. That does not rule out the involvement of C.PI.(M) activists in the incidents on 3/4- 1 -2002.

8. There is no direct evidence to prove that the C.P.I.(M) as a Party is involved in the first communal riots on 3/4-1-2002. But, it is difficult to expect direct evidence for that. For, no Party activist involved in the incident will be inclined or willing to speak about that. It has come in evidence that Beypore panchayat and Marad area saw several, fierce political clashes and murders between the C.P.I.(M) or I.U.M.L. activists and B.J.P./ R.S.S. activists. There is reason to think that those clashes and murders were intended at gaining or retaining political upper hand in the area. AW3 and AW38 deposed that the communal riots in January, 2002 was sponsored by the C.P I.(M) which used its Muslim cadres for the incidents I stated above, the evidence of CW3 who conducted a thorough study of the matter, that the C.P I.(M) and the B.J.P. were trying to exploit the sensitive nature of the people of Marad. CW3 stated that rumours intended at creating tension were spread by the political activists against their adversaries. BWs 2 and 3 accused the BJP / RSS for the violent incidents on 3/4-1-2002. BW2 who is a local leader of the C.PI.(M) was accused in the case for attempt on the life of an R.S.S. worker, Chambayil Gireesh (he was acquitted in that case). BW2 figured as , accused in the FIR registered in connection with the death (alleged to be a murder) of an R.S.S. activist, Manoj. BW3, another local leader of the C.PI.(M) and the President of the Panchayat - and few other C.PI.(M) activists were accused iii SC. No. 75/O1 for attempt on the life of another R.S.S. worker, Soman by throwing bombs. Viewed in the above backdrop, it is only reasonably to think that the C.PI.(M) activists were also instrumental in , the minor incident that occurred during the New Year Day celebration on 31-12-2001 developing into a major communal issue to create communal polarization

9. Next is the issue regarding alleged role of I.U.M.L. and B.J.P/R.S.S. activists. I stated that 213 B.J.P./ R.S.S. activists and 86 I.U.M.L. activists are involved in the cases relating to the communal riot on 3/4-1-2002. The A Parties examined AW38 to show that , the B.J.P./ R.S.S. had no role in the incidents in January, 2002. They produced some documents also to support that claim. I have considered that evidence. But, it is not convincing. The reasons stated by AW38 are not sufficient or convincing enough to rule out the involvement of B.J.P. / R:S.S. men. There is no much dispute that the B.J.P. / R.S.S: had strong foothold in Marad Beach at least among the Arayasamajam activists. Next to the C.P.I.(M), the largest Political Parties in and around Marad Beach and elsewhere in the panchayat are the B.J.P./R.S.S. and the I.U.M.L. Evidence revealed that in all the political clashes the area-saw, the B.J.P./R.S.S. activists were on the one side and either, the C.P.I.(M) or the I.U.M.L. activists were on the other side. These Political Parties, facts, evidence and circumstances revealed were trying either, to retain, or gain or regain upper hand in the area. Kunhikoya, killed on 3-1-2002 is a close relative of H party No.2 (P.P. Moideen Koya), a local leader of the IUML. According to AW3, the IUML leader, Kunhikoya was a sympathizer of the IUML while, Yunus killed on 3-1-2002 was an activists of that party. Those murders also would have provoked the IUML activists to retaliate. The murder of Kunhikoya and Yunus belonging to the Muslim Community and that of Shinjith and Kunhimon belonging to the Hindu Community took place between 8 P M. and 9 P M. on 3-1-2002. According to F-W1, it is correct to say that there was sufficient arrangements made by the assailants to come armed on short notice. Weapons were later recovered from the houses/ compounds of the accused. It is difficult to believe that such large number of C.P I.(M), I.U.M.L. and B.J.P/R.S.S. men got involved in

such a major issue without the blessings of atleast, their local leadership. It was political interests and other vested , interests that developed , the minor incident on 31-12-2001 which was almost settled, into a major communal issue and ultimately, resulting in the killing of five(5) persons on 3/4-1-2002, injuring several others and damaging several houses. That incident certainly, was on of the circumstances that led to the massacre at Marad Beach on 2-5-2003.

10. Yet another unfortunate situation revealed by the evidence is the long delay in prosecuting the accused involved in the 115 cases registered in connection with the riot on 3/4-1-2002. Almost all witnesses, except of course DWI, the then Chief Minister claimed that there was unjustified delay in the Government granting sanction to prosecute the accused in those 115 cases which enabled the accused involved in those cases to come out on bail, indulge in conspiracy and other anti-social activities and gave occasion for the close relatives of some of those killed in the incidents of .2002 to wreck vengeance for such killings. According to DWI, there was no intentional delay. The delay was due to the unavoidable procedure.

11. AW21, the then Director General of Police claimed that there was long delay in filing the chargesheets in the cases relating to the first communal riot. The Police department on its side, wanted to file chargesheets within 90 days. Investigation was completed within that period and request was made to the State Government to accord sanction. There was much delay in granting the sanction. Aw32, the then Commissioner of Police, Kozhikode stated that everything possible' on the side of the Police was done for obtaining prosecution sanction but there was delay. AW32 produced Exts. H37 to H43 to prove the steps taken by him to obtain sanction, at the earliest. The

delay, according to AW32, was p one of the reasons which resulted in the massacre on 2-5-2003. FW 1, Sri.T. Ramraj was supervising the investigation of the 115 cases registered in connection with the first communal riots. Ext.F1 series are the correspondence seeking prosecution sanction since in those cases, ‘ offence u/s.153 A I.P.C. was involved). He claimed that the investigation of those cases was completed by 31-3-2002 and the C.D. file of the 102 cases were submitted to the Public Prosecutor for legal opinion as offence u/s.153 A I.P C. was involved. On 6-4-2002, the then Commissioner of Police (AW 32) addressed the D.G.P for sanction. On 8-4-2002, the file of those 102 cases with factual reports in each case were submitted to the Police headquarters. On 15-11-2002, prosecution sanction was received. But, a joint sanction order was received for 100 cases of Beypore police station (to be filed in various courts). Separate sanction orders were received for the cases of Feroke and Panniyankara Police stations. Thereon, FW 1 consulted the Public Prosecutor on the propriety and legality of producing joint sanction order for 100 cases. The Public Prosecutor opined that separate sanction order is required in each case. On 29-11-2002, the Commissioner of Police addressed the Director General of Police for separate sanction orders. On 3-1-2003, the D.G.P addressed the Home Secretary in that regard. On 8-1-2003, the Home Secretary opined that joint sanction is sufficient. On 4-3-2003, the Circle Inspector, Cheruvannor had Produced the joint Sanction order in one case before the J.F.M.C-V, Kozhikode. Hence, that Officer applied to that Court for certified copies of the joint sanction order. That application ,was rejected by that - the Court as the G.O. filed in that Court did not even appear to be the original (there cannot be a copy of a copy) ‘ The Circle Inspector, Cheruvannoor gave a report regarding that, to the Commissioner of Police. On 4-5-2003, the Home Secretary

opined that joint sanction is sufficient. FW1 claimed that while so, he was transferred to Kannur on 30-12-2002. Later, individual sanction in each case was received and following that, after the massacre on 2-5-2003, chargesheets were filed in those 102 cases on 13-5-2002 (it is admitted that some of the accused in Crime No:82/03 of Beypore police station (Cr. 116/CR/03 of C.B.C.I:D.) are accused in 'the cases relating to the incidents on 3/4-1-2002 also). In the- meantime, the accused in the cases relating to the incidents on 3/4-1-2002 who were in judicial custody got released on bail ,after 90: days of their arrest since the investigating agency could not file chargesheets (for want of proper sanction orders) within the said period. I have narrated in chapter how, some of those accused were instigated and influenced by the fundamentalist elements to retaliate on the Hindus and how, even the steps taken against those accused u/s 107 CrPC , did not yield the result.

12. The cultural /literary/political figures and ideologists examined before the Commission lamented on the lethargy on the part of the State Government in Prosecuting the culprits involved in the 15 communal riot without delay. It required a big hue and cry for the State Government to do that, even after the massacre' on 2-5-2003. All of them stated in one voice that the failure of the State government to prosecute those culprits without delay and the consequent delay in the trial of the cases emboldened the fundamentalist/terrorist elements to carry on with their communal activities, conspire, plan and execute the massacre on 2-5-2003. Sri.M.T. Vasudevan Nair (CW 19) opined that it appeared as if it required another massacre (on 2-5-2003) for the State Government to prosecute the culprits involved in the earlier communal riot. DW 1, the then chief Minister stated that the Law Department was of the opinion that joint prosecution sanction was sufficient in respect

of all the 102 cases, and that there was some procedural delay in granting sanction. It is not clear on what legal opinion, that decision if any, was taken by the Law Department. It is trite law that in all cases where offence u/s. 153 A of the Penal Code is involved, sanction for prosecution from the State Government is required. The various Authorities on, the point say that the sanctioning authority should apply its mind to the facts and circumstances of the particular case before granting sanction. The Law Department, Home Department or any other Department involved in the process of granting sanction should have known this basic position of law and that the order of sanction was required to be produced in each case. They should have in the normal course, learnt the difficulty that will be caused, apart from the legal flaw, if a joint sanction order is issued, that is produced in one case and then, certified copies are to be obtained to be produced in the remaining 99 cases. They should have, learnt the delay that process alone would cause. The concerned departments were not very alert on the issue. The State Govt. cannot shirk its responsibility in this matter. Evidence revealed that though the investigation of the cases relating to the first communal riot was completed by 31-3-2002 and since 6-4-2002 onwards, the local Police authorities were clamouring for prosecution sanction, proper prosecution sanction was granted after long delay and ultimately, it was only on 13-5-2003 that chargesheets were filed in those 102 cases which even involved murder. Since chargesheets could not be filed within 90 days of the commission of offence, all the accused involved in those cases including murder cases, were released on bail. The A parties have a case that prosecution sanction was purposely delayed by the U.D.F. Government at the instance of the I.U.M., a Partner in the ruling coalition. The Commission has no evidence before it to say, either that the delay was intentional or, that it

was at the instance of the I.U.M.L. But, from the facts and circumstances, the Commission can definitely reach the conclusion that there was unjustified delay on the part of the state Government in granting proper sanction for prosecution of the accused in the cases relating to the first communal riot.

13. How that delay had any effect on the subsequent incident is the next question. It is said, delayed justice is denied Justice. I stated from the evidence that five (5) persons lost lives, several persons were injured and several houses were either torched or otherwise destroyed during the riot on 3/4-1-2002. Certainly, the victims and their relatives were aggrieved. I also stated from the evidence that Aboobacker, killed on 4-1-2002 was a popular figure in the Muslim community of Marad Beach. Thirteen (13) of the accused in crime No.82/03 of Beypore Police station (Cr. 116/Cr/3 of C.B.C.I.D.) are close relatives of the three Muslims killed in first riot. As per Statement dated 24-1-2004 filed by the Commissioner of Police, Kozhikode, seven of the accused in cr.82/03 (Cr. 116/Cr/3 of C.B.J.P.C.I.D.) are close relatives of Aboobacker. Bijili, one of the accused is the son and Mohammedali, another accused is the brother of the said Aboobacker. Three of the accused in cr.82/03 are close relatives of Yunus, killed on 3-1-2002. Though, none of the eight (8) Hindus killed on 2-5-2003 were accused in any case relating to the riot on 3/4-1-2002, it is revealed from the statement filed by the Commissioner that eight persons who suffered injuries in the incident on 2-5-2003 were accused in some of the cases relating to the incidents on 3/4-1-2002. Of the said eight persons, three were involved in murder cases. Naturally, since the said persons found that 'those who were instrumental in the killing of Aboobacker and others were not placed before the Court for trial, they thought that justice was denied to them.. That ignited feeling of revenge in their

minds. That gave space for fundamentalist/terrorist elements to step in. Ext. C 22, the copy of documents received from the office of the Kerala State Human Rights Commission contained the copy to letter dt. 24-1-2003 addressed by AW29 to AW 32. It is stated in that letter that Bijili was found active among the Muslim fundamentalist elements (NDF/PDP) in Marad area and that he was being instigated for retaliation on the Hindus.

14. I stated how, the communal division started in the area in the year 1954 and the socially, educational and financially backward fishermen of Marad Beach were communally divided by vested interests to , protect or prop up their personal interests. Political clashes and murders marred the peace of the area. Then came the communal riot on 3/4-1-2002. Though tally wise, number of killing was more on the Muslim side by one, the Hindu side also came close by, with, two of their men loosing life. There was disturbing trend at Marad following the killings on 3/4-1-2002. The enmity between the two communities continued with added vigour. Both sides acquired weapons for offence or defence. Some of the relatives of Aboobacker were bent upon avenging his killing. The Hindu side also may not have been sitting quiet. They apprehended retaliation from the other side at any time. In fact; it is stated in Ext. S 12 that some R.S.S. men were stockpiling weapons in the building and business places of a house belonging to an R.S.S. activist, to protect the Hindu families in the event of a communal situation. That was the most opportune moment for the fundamentalist/terrorist elements to act. With their own agenda in mind, they instigated and assisted the relatives of Aboobacker to wreak vengeance for his killing, certainly to open up the issue again. This is revealed from various Intelligence Reports and other oral evidence produced before the commission. Witnesses have given evidence how

certain fundamentalist elements were operating in Marad Beach and giving trainings to their cadres. The delay in prosecuting the culprits involved in the first communal riot thus gave room for fundamentalist/terrorist elements to step in and poison the minds of the poor fishermen who were aggrieved at the killing of Aboobacker and others. That is how, the delay in granting prosecution sanction contributed to the massacre on 2-5-2003. Thus, it is revealed that the minor, insignificant incident that occurred in the course of the New Year Day celebrations at Marad Beach in the night of 31-12-2001 was utilized by the activists of the C.PI.(M), the I.U.M.L. and the B.J.P./R.S.S. with the blessings of atleast, their local leadership and that contributed to the communal riot on 3/4-1-2002 which was one of the circumstances that led to the massacre on 2-5-2003, the unjustified delay caused by the State Govt. in prosecuting the culprits of - the communal riot on 3/4-1-2002 emboldened and enabled the fundamentalist elements to carry on their divisive activities, the delay in prosecution provided room for the fundamentalist elements to poison the mind of the close relatives of some of the Muslims killed on 3/4-1-2002, and to carry out their own agenda, instigated them to indulge in violence.

THOMAS P. JOSEPH

COMMISSION OF INQUIRY

CHAPTER - VII

WHETHER, THERE WAS INVOLVEMENT OF ANY EXTERNAL OR INTERNAL ORGANIZATION OR ORGANIZATIONS IN THE PLANNING AND EXECUTION OF THE INCIDENT?

The A parties alleged and believed, that the massacre at ‘Marad Beach on 2-5-2003 was not a revenge for the killing of the three Muslims and in particular, Aboobacker on 3/4 -1-2002 but, it was a case of Muslim fundamentalist / terrorist elements and organizations, some of them having foreign links using the occasion to eliminate the Hindu community from the Marad Beach. It is their further case that certain political/ business interests were also actively behind the incident. They targeted the N.D.F. as the organization and the I.U.M.L. as the political party behind the massacre, with communal, political and business interest in mind. The CPI(M) organizations among the B parties also stated that the NDF is behind the massacre. The B Parties 2 and 3 and the Civil/ Police Administration stoutly denied these allegations .and claimed that the massacre on 2-5-2003 was purely a murder, the motive being the revenge for the killing of Aboobacker at Marad Beach on 4-1-2002. The Crime Branch C.I.D. Unit, Kozhikode led by AW19, Sri. T.V.

Kamalakshan, Superintendent of Police investigated into the massacre on 2-5-2003 and filed the chargesheet on 31-7-2003. Ext.C9 is the copy of the chargesheet. Ext. C10 is the copy of memo of evidence. As per Ext.C9 and evidence of AW 19, about 90 men among the 148 accused implicated in that case, participated in the execution of the massacre. They emerged from different sides at Marad Beach at about 6.15 P M. on 2-5-2003 and unleashed attack on every Hindu whom they found. The Crime Branch concluded that the motive for the crime was the killing of Aboobacker on 4-1-2002. In Ext. C 10 , the memo of evidence, it is stated that the accused entered into the criminal conspiracy at the Marad Juma Masjid in May, 2002, at Beypore on 8-8-2002 and again, at Marad on 16-8-2002. Going by Ext. C 10, the Crime Branch CID unit wanted to establish that some of the accused were undergoing training in 'Karate' on Fridays in the house of accused, Delhath at Marad Beach. This conclusion of the CBCID is not acceptable to the A parties who maintained that the CBCID had , not investigated into the involvement of other forces in the massacre. According to the A parties, the investigation of the CBCID was confined to the accused booked by them and: the conspiracy among them.

2. The Commission issued notice under section 8 B of the act to B party No.2 and the local units of the IUML in view of the materials placed before the Commission regarding their alleged involvement in the massacre on 2-5-2003. The Commission examined CW.32 who proved Exts. C37 and C38, statements of the accused in Crime No. 367/03 of Nooranad Police Station Going by Exts. C 37 and 38 and evidence ' of CW32 he arrested two of the accused in that case who were carrying iron rod, petrol in bottles and plastic can (which) were seized from them) and on questioning, it was revealed that they carried explosives

for the purpose of causing communal division by destroying certain places of worship and the Idol of Sree Narayana Guru. Going by the statements, those accused were NDF activists and were acting as per direction of their leaders. CW. 35 proved Exts - C57 to C63. As per Exts. C57 to C63, country bombs were seized from the Juma Ath Mosque in Meppayur Town on 16-12-1996, 4 of the accused connected with that were NDF activists and those country bombs were made to attack one Surendran, a scheduled caste for marrying a Muslim girl by name, Sulekha. Going by the statement of the accused, they were instructed by the local leader of the NDF to attack Surendran. (Ext. B 1 S 1 is the copy of judgement showing the acquittal of the accused for want of evidence to connect them with the weapons). CW.40 proved Exts. C86 to C88 in connection with Crime No. 257/96 of Perambra police station for offences punishable under sections 452, 427, 324, 307, 120 B and 109 read with 34 I.P.C. and sections 3 and 5 of the Explosive ~ Substances Act. Ext. C88 is the copy of the statement of the first accused therein, Kunhumammed Faisi, who claimed to be the area Convenor of , the NDF. That case was registered against Kunhumammed . Faisi and others for abetting and attempting to cause the death ' of Surendran, a Scheduled caste for marrying a Muslim girl. CW34 investigated Crime No. 62/98 of the Kasaba Police Station. It is revealed from his evidence that he questioned A.T. Muhammed Ashraf (BW29) , and Subair (BW28, accused in Cr. 62/98 and recorded their statements. Ext. C.49 series and C50 are the copy of the

said statements. Their statement is to the effect that they had harboured Ooma Babu, the Al-Umma leader who was involved in the Coimbatore Bomb Blast case. It is stated in Ext. C43, copy of seizure mahazar that while searching the body of Ashraf (BW29), an Indian passport and gun were seized. Ext. C49 series is to the effect that Abdul Nazar Madani

(BW30), now detained in the Central Prison Coimbatore in connection with the Coimbatore bomb blast case had sent Ashraf (BW29) to Pakistan for training under the ISI, Ashraf had gone upto Bangkok and unable to get US dollars, had to return. Ashraf who is ' a resident of Marad claimed that he was the unit secretary of the NDF. Ext. C50, statement of Subair (BW28) was to the effect that he was a member of the NDF. Ext C51 is the statement of one Harris recorded by CW.34 to the effect that NDF was giving training in the use of fire arms at Marad, 'NDF was getting foreign funds and that the NDF had connection with Al-Umma. Going by Ext.C46 and 48, CW. 34 had, in the search in the house of Ashraf (BW29) seized the flight tickets and immigration clearance certificate of the said Ashraf for his travel from Thiruvananthapuram to Bangkok. Exts. C52 and 53 are copy of the statements of Abdul Salam & Muhammed recorded by CW.34 which also are to the effect that they were NDF activists of the area. Ext. C45 is the statement of .. Ayyappan, accused in Cr. 62/98. He claimed that he was making firearms (for the use of some fundamentalists). Ext. C56 is the copy of draft chargesheet in Cr. 62/98. Going by the above statements and other documents, the activists of Al-Uma of Tamul Nadu, the PDP and the NDF were collecting weapons and were engaged in fundamentalist/terrorists activities. CW.36 proved Exts. C64 to 67. CW.36 investigated Crime No. 375/95 of Kuttiadi police station for offence's under sections 201, 286, 304 A IPC, section 9 (1) of the Explosives Act and Sections 3 and 5 of the Explosive Substances Act. The allegation was that the accused therein, claimed to be SIMI activists manufactured bombs in the Haul of Juma Ath Mosque, Kuttiadi on 13-12-95 meant to kill the accused in 'Aboobacker Master Murder Case' in case those accused (RSS men) were acquitted by the Court. The country bomb accidentally burst in the course of its manufacture and one of the

makers succumbed to the injuries. CW.3B proved Exts. C72 to 76 in connection with Crime No. 1039/03 of Kannur Town police station against the accused therein, claimed to be NDF activists for attacking the office of the. 'Rashtra Deepika' ' at Kannur on I O-12-2003 for publishing report against the NDF that the NDF is engaged in desecrating places of worship. CW.39 proved Exts. C77 to 84. Going by Exts. C77 to 84 and evidence of CW.39, the then Sub Inspector, Manjeri he learned about the explosion in the compound of Green Valley Foundation, Manjeri, in the morning of 8-7-2001, reached there, found remnants of explosives, prepared mahazar and recorded statement of the witnesses. According to the , witness, the Green Valley Foundation is controlled by the NDF. Material objects collected from the scene by the Scientific Expert were sent to the laboratory for examination and the report of examination revealed that Nitroglycerine which is an active principal of dynamite, was detected in those material objects. According to the witnesses, the explosion occurred when the secret unit of the NDF was testing a timer device. It is also revealed from Exts. C77 to 84^ and the evidence of CW 39 that the 26 and odd acre compound of the Foundation is well protected by barbed wire fencing on all sides, the NDF men stood guard there, day and night and that NDF activists were getting training in that Foundation. (That case is still under investigation). CW.41 proved Ext. C89 to C.92 in connection with Crime No. 220/04 of Chalissery Police Station: Going by Exts. C89 to 92, and evidence of CW41, then Addl. SI, Challissery, NDF activists who were running a secret training camp attacked the defacto complainant who stepped into that camp for food at the time of distribution of food for the trainees in the camp. It is alleged that the NDF activists thought that the defacto complainant had come there for Spy work. CW 33 proved Ext. C39 to 41. As per Exts. C39 to 41 and

the evidence of CW 33, about 100 pipe bombs were seized from beneath Koomankallu river at Vengara in Malappuram District on 31-12 1995. Ext. C40 and C40 (a) are ' the statement of the Ist accused in that case - Cr. 194/95 of Vengara PS. for offences under section 4 of explosive Substances Act and S. 120 (b) r/ w section 34 of the Penal Code that he was associated with SIMI and worked in that Organization till the age of 30 years. Imam Ali, the Al-Uma leader stayed for days in Vengara and gave training for the Ist accused and other SIMI activists in making country bombs. Imam Ali had undergone training in POK.

3. C W 1 was the commissioner of Police, Calicut during 1997-99 (she is now working in Uttar Pradesh. She was examined by Video Conferencing). Ext. C 17 is an unauthenticated copy of Police report sent to the Inspector General of Police (Intelligence), during 1998. That copy was produced before the Commission by AW7, Sri. Kummanam Rajasekharan (there is a controversy how, AW7 got a copy of the Police report. But, the Commission - is not required to go in to that question and hence that issue is left there). On the basis of Ext. C 17, the Commission directed the D.S.B., Kozhikode Unit to produce the attested copy of Ext. C 17. Accordingly, CW2 who was holding charge of the Asst. Commissioner, D.S.B., Kozhikode . Unit produced the attested copy which is marked Ext.C18. CW 1, Smt. Neera Rawath filed an affidavit before the Commission. That affidavit is dated 12-4-2005 and is marked Ext.C 16. In that affidavit and in her evidence, she asserted that Ext.C 18 is a copy of the report kept in the office of the. Assistant Commissioner (District Special Branch); Kozhikode and that ' it is a genuine record relating to the confidential files about the activities of the N.D.F. and other organizations kept in the office of the Asst. Commissioner, D.S.B., , Kozhikode during her tenure as the Commissioner. She claimed that she had directed the then Circle

Inspector, Nadakkavu , (CW3, Sri. Pradeepkumar) to conduct study about the forces targeting at destroying the communal amity in the city. It is based on that study that the said report (copy of which is Ext.C 18) was , prepared. It is stated in Ext.C 18 that the N.D.F. was running physical training centres at various places in Kozhikode district and that such physical training included training in Karate and 'Kalari' with swords and other weapons. Selected members from the N.D.F were sent for further training 'for one year, at its training center at Manjeri. Iran and the I.S.I. of Pakistan were the money sponsoring agencies of the NDF. Sympathizers from Gulf countries also contributed largely. It is also stated in Ext.C 18 that the Students Islamic Movement of India (SIMI) was working under the direction of the N.D.F. leaders. Several cases were registered against persons belonging to those groups. A ' further report in Ext. C 18 is that two Ambulance vans ' of Solidarity Trust and Crescent Cultural Trust (both at Kozhikode) were moving in Calicut. City, carrying not only patients, but also weapons. The report said that the N.D.F. was having units at Kappakkal, Chakkumkadavu, Panniyankara and Beypore (all these places are near Marad) and that Sri. A. Wahab, Maliyekkal House, Kinasseri (AW36) was a member of the N.D.F (the Govt. may refer to Ext.S 15, the profile of AW36 prepared by the S.S.B. where, his organizational affiliations are reported. Aw36 however, denied that he was a member of the N.D.F.) It is mentioned in Ext. C 18 on the list of N.D.F. activists maintained in Beypore police station that Aboobacker @ super Aboobacker s/o. Muhammed kutty, a resident of Marad, (it has come in the evidence of B W2, a resident near Marad Beach and AW24 that Super Aboobacker is none other than Aboobacker, killed i at Marad Beach on 4-1-2002. That version of BW2 and AW24 is not challenged) was an N.D.F activist. In page No:66 of E xt.C18, 'it is stated Ashraf and Subair Police Station

and presently, undergoing detention in the Central Prison, Coimbatore in connection with the Coimbatore Bomb Blast) were AI-Uma workers. They along with Rasheed, also accused in Crime No. 62198 are also described as N.D.F. workers associated with its Payyanakkal unit. (As per Ext. C49 and C50, statements of Ashraf and Subair recorded by CW34, they are NDF activists. Subair claimed that he was the Unit Convenor. According to them, they had collected weapons for Ooma Babu) CW3, Sri.C.M. Pradeepkumar, now working as Dy.S.P., Vigilance stated that as per the direction of CW 1, he had ‘ conducted study about the activities of certain forces targeting at communal amity, and indulging in drug trafficking and gold smuggling . He claimed that he had conducted study about the N.D.F. The N.D.F. tried to achieve publicity by involving itself in human rights activities, discrimination against the socially backward classes and other social problems. though, the N.D.F. highlighted human right issues, their field level workers were communally sensitive, were previously working in communal organizations and were involved in several cases. The workers of the N.D.F. infiltrated into many Political parties to get protection for their unlawful activities. N.D.F. and other fundamentalist organizations religious / fundamentalist activities. He claimed to have questioned Abdul Nassar Madani (BW 30), involved in the Coimbatore Bomb Blast case. Madani had sent Asharf (BW 29) to Pakistan for training under the ISI. CW3 had also questioned Subair of Marad Beach, an N.D.F. worker (BW 28) involved in Crime No.62/98 of Kasaba Police station. CW3 assisted the police team in searching the house of the said Subair. The witness claimed that the Muscat- Karachi boarding pass and luggage coupons were seized from the house of the said Subair. The diary seized from the house of Subair (Ext.C100 is its photo copy) revealed his connection with the N.D.F. and how the N.D.F. raised funds from the .

Gulf. The witness claimed that Ooma Babu was involved in many terrorist activities in North Kerala. After the Coimbatore Bomb blast incident, Ooma Babu was given shelter at Kozhikode by Ashraf and Subair, accused in crime No.62/98 of Kasaba Police station. Ooma Babu was an Al-Uma worker of Tamil Nadu. The witness claimed that I.S.I. had strong base in Kashmir, Delhi, Bengal and Bombay. Kerala is placed in a very sensitive situation. According to the witness Intelligence Reports in that line are correct. The Intelligence Agency had reported that the Bomb blasts in Coimbatore and Bombay are linked with the I.S.I. Explosives like RDX were seized from Badukkal near Mangalapuram, Coimbatore etc. In such a situation, the witness claimed that it is difficult to believe that Kerala is isolated or insulated from such activities (of the I.S.I.). The witness claimed that SIMI, banned by Central Government for its alleged unlawful and terrorist activities was the student wing of the banned Jama-ath - Islami. Information is that many SIMI members later Joined the N.D.F. AW24 who -retired as Supdt. of Police and worked in Kozhikode District for long in different capacity, claimed that he was a member of the special squad formed by the Police Head Quarters in the year, 2000 for investigation some cases involving murder and such other offences allegedly, committed by certain Muslim fundamentalists. He claimed that some of those murders were planned and executed by certain extremist elements in the N.D.F. He reported to his superior officers that to some extent, the N.D.F. was indulging in communal activities. The N.D.F. was defending many of its activities under the label of human rights activities. AW 24 had visited Marad Beach and learnt that 'super Aboobacker' killed in the 1st communal riot was an N.D.F. activist within Beypore P.S. limits and that the name (super Aboobacker) was included in the list of N.D.F. activists maintained by

the Beypore Police. (as stated in Ext.C18). FW1 who supervised the investigation of the cases relating to the incidents on 3/4-1-2002 claimed that while questioning the accused, he learnt about the activities of the NDF in Marad Beach.

4. According to FW6, the Commissioner of Police, Kozhikode at the time of the massacre, that incident was meticulously and carefully planned and executed by the radical Muslims with the help of some of the relatives of the Muslims killed in the 1st communal riot. Aw21, the .then D.G.P claimed that there were reports that the N.D.F. is a terrorist organization. According to him, the Police considered the N.D.F. as a terrorist organization. AW21 does not have the impression that the massacre on 2-5-2003 was the result of revenge by the relatives of Aboobacker, killed in the first riot.

5. As regards the alleged involvement of ‘ the N.D.F. and I.U.M.L. in the planning and execution of the massacre at Marad Beach on 2-5-2003, the A parties adduced the following evidence:

AW3 is a local leader of the I.U.M.L. and chairman of the Calicut Development Authority (CDA). He claimed that Sri.P.P. Modieen Koya (H Party No.2), one of the accused in Crime No.82J03 of Beypore PS (cr. 116/03/CR of CBCID) was treasurer of the I.U.M.L. committee, Beypore and member of the Beypore Panchayat (representing the I.U.M.L.). Sri. P P Modieen Koya was also the secretary of the Marad Juma Masjid Committee during the’ relevant time. During April- May, 2002, P P Modieen Koya met AW3. Modieen Koya came with Muhammed Ali, brother of late Aboobacker (and accused in Cr. 82/ 03 of Beypore P S.-Cr.116/CR/03 of C.B.C.I.D.). Muhammed Ali told AW3 that he wanted to avenge the killing of his brother, Aboobacker but, Aw3 dissuaded him. AW3 claimed that he thought that though the threat

made by Muhammed Ali was potential, the latter had given up the idea as per his advise. Ext.A5 (a) is the report in 'Desabhimani' dated 8-5-2003 to the effect that the massacre on 2-5-2003 was with the knowledge of AW3. The witness claimed that he was questioned by the Crime Branch (which investigated the massacre) twice. He denied that he had produced some of the accused before Crime ' Branch and stage-managed their arrest. He also denied that himself or any other I.U.M.L. leader had any role in the massacre. According to AW 3, 13 accused including Moideen Koya involved in crime No.82/03 relating to the massacre on 2-5-2003 are his party members but claimed that they were suspended from the Party pending enquiry. He was confronted with press reports that the Chief Minister (DW 1) had stated in the State Assembly that 82 of the accused are I.U.M.L. activists. The witness claimed that the said statement is not correct. It is revealed from Ext.X2, the copy of the reply given by the Chief Minister in the state Assembly on 22-7-2003 regarding Party affiliation of the accused in Crime No. 82/ 03 that 82 accused were members of the I.U.M.L. It is also revealed that Sl/no. 71 in Ext. X2 is another local leader of the I.U.M.L. AW3 claimed that he is aware that some N.D.F. men were engaged in activities in Marad Beach. He is aware that there were N.D.F. men in that area (Marad Beach).

6. AW4 was the Chief Reporter of 'New Indian Express', Kozhikode during the relevant time. Ext.A 12 (a) is his report dated 11-5-2003 that the idea (of the assailants) was to ignite large scale riot than what happened on 2-5-2003, taking advantage of the revenge some persons had in the killing of Aboobacker. The witness learnt from his source in the police that few persons alone could not plan, operate and execute a massacre, so meticulously. There was organizational backing behind the massacre. There was a well knit organization which was capable of

providing intelligence input, training and funding, behind the massacre on 2-5-2003. Ext.A13(a) is his report in the 'New Indian Express' (NIE) dated 7-6-2003 that accused, Muhammed Rafi and Sakeer (Crime No.82/03) had links with terrorist organizations. Sakeer was an old N.D.F. worker. They ignited desire for revenge in the mind of some of the relatives of Aboobacker. Ext.A15 (a) is another report in the 'New Indian Express' dated 8-5-2003. That report stated that the real force of the N.D.F. is still a puzzle. Ext.A 14 (a) is yet another report in the 'New Indian Express' dated 10-6-2003 to the effect that the arrest of some of the accused in crime No.82/03 was stage-managed to save I.U.M.L. interest since the I.U.M.L. feared that if a proper investigation is made, its leaders will be in the dock. An I.U.M.L. leader was producing some of the accused before the Crime Branch team which investigated into the massacre. The witness claimed that the N.D.F. leaders had, in a press conference claimed that their activists are working in all political parties except, the B.J.P. He had attended that press conference called by Sri. E. Aboobacker, the then Chairman of the N.D.F. in the office of the N.D.F. at Kozhikode. According to the witness, E. Aboobacker, P Koya and Nazarudheen Elamaram were members of the erstwhile SIMI. Enquiry by the witness revealed that Aboobacker, killed on 4-1-2002 was an N.D.F. worker though, everybody thought that he joined the C.P.M. (The C.P.I.(M), leaders, B.Ws.1 and 2 denied that Aboobacker was their party man) Ext.A16 (a) is a report in the 'New Indian express' dated 4-5-2003 that a well knit gang was behind the massacre, as revealed by his sources in the police department. Ext.A20 (a) is the report dated 24-5-2003 that satellite phones seized from terrorists of Kashmir revealed , telephone numbers up to Malappuram District. Ext.B7 (a) is the report in 'New Indian Express' dated 5-5-2003. That is a statement of AWIS; Sri. Pinarai

Vijayan.. State Secretary of the C.PI.(M) blaming the N.D.F. for the massacre at Marad Beach. Going by the report, Sri. Pinarai Vijayan was of the opinion that the massacre was w deliberate and well planned, one sided attack carried out by the Muslim fundamentalists led by the N.D.F.

7. AW6, the Secretary of the Arayasamajam claimed that N.D.F. was active at Marad.. He claimed that a gang from Tanur planned the massacre. Ext. A24 (a) is the report in 'Malayala Manorama' dated 10-5-2003 to that effect. Ext.A26 (a) is the report in 'Madhyamarn' dated 4-5-2003 that Sri. T.K. Vinod Kumar, Commissioner of Police, Calicut (FW6) stated that the attack (on 2-5-2003) was in 'guerilla style'. Ext.A23 (a) is the report in the 'Deepika' dated 8-5-2003 about the role of highly placed person of the Calicut Development Authority (CDA-AW3 is the Chairman of the CDA) in the incident on 2-5-2003.

8. AW7, Sri. Kummanam Rajasekharan was .of the opinion that fundamentalist/ terrorist activities increased in the State during the last 5 years, that the State Government was not seriously considering' the reports of the Judicial Commissions on communal clashes or carrying out the recommendations made in it. He referred to the instance where 'Aravindaksha Menon Commission' which inquired into the 'Poonthura Riots' had pointed out that a vehicle was used by the terrorists to transport weapons but, no action was taken to trace that vehicle though, ist registration number was given in the report. He claimed that after the SIMI was banned, its activists joined the N.D.F. and alleged that the N.D.F was leading the terrorist activities in the State for the last 6-7 years, but the Government did not initiate any action against them. No serious action was taken on the blast in the Green Valley Foundation (Manjeri) which is the headquarters of the N.D.F. The witness was of

the opinion that the massacre on 2-5-2003 was not a retaliation for the murder of Aboobacker. One reason is that none of those killed on 2-5-2003 were accused in any of the cases registered for violence on 3/4-1-2002. Aboobacker was an N.D.F. activist. If the motive for the massacre was to take revenge for the killing of Aboobacker, the assailants should have targeted the accused in the case for the killing of Muslims on 3/4-1-2002. Instead, the assailants attacked unsuspecting Hindus who were either chatting on the beach or doing business in their premises. It is also the complaint of the witness that the then District Collector, Sri.T.O. Suraj was not impartial. The District Collector was lethargic in dealing with the communal situation. The I.U.M.L. was also involved in the massacre on 2-5-2003. Relying on Ext.X2, the witness claimed that 82 of the accused i Crime No.82103 were I.U.M.L. men. They included PP. Moideen Koya, local leader of I.U.M.L. But, the witness was not very ' sure whether the I.U.M.L. leadership as a whole, had prior information about the massacre. He is sure that certain leaders of' I.U.M.L. including AW3; had prior information about the massacre. P P Moideen Koya, one of the accused in Crime No.82/03 and local leader of the I.U.M.L. was closely associated with the Marad Juma Masjid. That mosque committee also^ had prior information about re massacre. The witness alleged that Sri. P K. Kunhalikkutty, (AW 12) the then Industries Minister had close connection 'with the N.D.F. He produced Exts.X3 and X4 to substantiate that claim. It is also the ' opinion of the witness that the investigation conducted by the Crime Branch on the massacre was not proper in that, the Crime Branch did not investigate into the involvement of external/' internal forces and instead, proceeded on the line that the massacre was retaliation for the killing of Aboobacker. The Crime Branch wanted to avoid C.B.I. investigation, as decided by the State Government. The State .Government on its part,

wanted that involvement of forces behind the massacre should not be revealed. The State Government was succumbing to the pressure of the I.U.M.L. The witness referred to the discussions at Thiruvananthapuram at the instance of Kozhikode Press Club for rehabilitation of the displaced families at Marad Beach and claimed that Sri. P.K. Kunhalikkutty (AW 12) had apprehended that if the C.B.I. investigated the case, even himself and other I.U.M.L. leaders might be put behind the bars. The witness complained that though the State Government had reached an agreement with the Hindu organizations for the peaceful rehabilitation of the displaced Muslim families, the Government backtracked from its commitment: Ext.XS is the report dated 19-1-2004 placed by the Chief Minister in the State Assembly, which contained the terms of the agreement. The witness produced Ext.X6, the article published by Justice V.R. Krishna Iyyer, in the 'Hindu' to buttress his contention that the massacre on 2-5-2003 was not a retaliation by the relatives of Aboobacker. Instead, that was ,an attempt of the Muslim fundamentalists /terrorists to eliminate the Hindus from the coastal areas and monopolize that area.

9. The A parties examined few journalists. They are AW8 , Special Correspondent of the 'Hindu', Kozhiokode , Aw9, Bureau Chief of 'Malayala Manorama', Kozhikode, AW10, Bureau in-charge of 'Varthamanam', Kozhikode, AW11, Bureau Chief of 'Desabhimani', Kozhikode,, AW13, Bureau Chief of 'Kerala Kaumudi, Kozhikode (a resident of Naduvattom, near Marad) and AW14, Bureau Chief of 'Madhyamam', Kozhikode . They proved various reports in their respective newspapers regarding the massacre on 2-5-2003 and the , forces behind that. They claimed to have conducted on the spot study and collected information from their sources in the police following the massacre on 2-5-2003. They were of the view that the attack on 2-5-

2003 was in the form of terrorist attack, not directed against any particular individual but, directed against the Hindu community, killing any member of that community found by the assailants just as being done by the terrorists on unarmed victims of Jammu Kashmir. They suspected the N.D.F. behind the massacre. Those reports carried statements allegedly given by the Crime Branch Investigation Team including Sri. Mahesh Kumar Singla, who was supervising the investigation. Ext.X9 is the report produced by AW8. Ext.X9 is the report that the statement of AW3S, Sri. Mahesh Kumar Singla indicated the role of the N.D.F. behind the massacre. Ext.A54 (a) is the report in 'Desabhimani' dated 16-6-2003 about AW3S disclosing that formed office bearers of N.D.F. had role in the massacre. Ext.A35 (a) is the reported statement of AW3S in the 'Malayala Manorama' dated 28-5-2003 that the massacre was not merely a revenge for the incidents on 3/4-1-2002. Ext.A24. (a) and A36 (a) are reports in the 'Malayala Manorma' that the group from Tanur had planned the massacre and that the C.B.C.I.D revealed that the said group had links with the N.D.F. It is further stated that Aboobacker, killed on 4-1-2002, was an N.D.F. activist. Ext.A38 (a) is the report in 'Varthamanam' daily dated 11-5-2003 that police circles indicated the role of N.D.F. in the massacre. Ext.A46 (a) is the report dated 11-5-2003 in the 'Desabhimani' about police circles indicating the role of N.D.F. in the incident. Ext.A66 (b), the report in the , 'Kerala Kaumudi' dated 4-5-2003 was that the attack on Hindus at Marad Beach on 2-5-2003 was in 'guerilla style'. According to AW13, the massacre was carried out with a professional touch. Ext.A26(a) is the report in 'Madhyamam' that FW6 indicated that the attack was in `guerilla style and that assailants used bombs as generally used by the terrorists. The B party No.2 (NDF) produced Ext. B43(a) report in 'Hindu' dated 31-7-2003 that Sri. Mahesh Kumar singla

had ruled out the involvement of outside elements in the incident- He had also claimed that no political party or organization had role in the conspiracy.

10. AW 12 was the Industries Minister, Kerala during the relevant time. Ext.A6 is a report based on his Press conference at Thiruvananthapuram on 6-5-2003. He is reported to have stated that certain dark forces which wanted to communalize the State are behind the massacre on 2-5-2003 and that there must be an impartial investigation into that matter. The witness claimed that he might have said so, but did not mean anybody in particular. Ext.A63(a) is the report in 'Chandrika' (the mouthpiece of the I.U.M.L.) dated 24-5-2003. That report is based on the statement of the witness that the massacre was the result of a small section of the Muslim community which tried to , unleash terror for gain. The witness ' claimed that he might have stated so. AW 15, the State Secretary of the C.P.I.(M) referred to the history of communal, clashes in the State during various period and claimed that during 1991-1996 when the U.D.F. was in power, 40 persons lost lives in communal clashes. After the U.D.F. came to power in 2001, 18 persons lost their lives. He claimed that it was because the U.D.F. Government was appeasing the fundamentalists for political gain. The witness was definite in his opinion that 1 fundamentalists are operating among the Muslim community in the State and that the N.D.F. is the major Muslim terrorist organization functioning in Kerala. He believed that the . N.D.F. is behind the massacre on 2-5-2003. Ext.A77 is a report in the 'Malayala Manorama' dated 22-11-1997 to the effect that the Kozhikode District Committee of the C.PI.(M.) alleged in a resolution that in many parts of Kozhikode District; Muslim/Christian fundamentalists are spreading their roots and that Muslim fundamentalist organizations like the N.D.F. are trying to gain influence

among the youngsters. ; The witness claimed that the N.D.F. men killed Binu, a C.PI.(M) worker of Nadapuram. The witness also referred to certain other instances of the N.D.F. activists killing C.PI.(M) activists. He claimed that the mode of attack in all these places as 'well as at Marad Beach was the same - sudden attack on unsuspecting adversaries and killing them. The witness ' was of the opinion that the massacre on 2-5-2003 was not the result of the retaliation by an individual or group of individuals pained at the killing of anybody. Instead, a trained group was behind the massacre. AW 17 was residing at Vellayil Beach till about 4 months before 2-5-2003. He is a fisherman by occupation and claimed that at about 7-8 P M. on 2-5-2003, while himself and colleagues were returning to the Beypore harbour, they were attacked by a group of Muslims who came in country boats fitted with Yamaha engines. Those persons carried weapons such as swords and explosives. Explosives were thrown at AW17 and others. One fell in the country boat in which AW 17 was sailing and it resulted in loss of vision of his left eye. The A parties examined AW 17 to show that a group of assailants had escaped through the sea immediately after the massacre and in the course of that, attacked AW 17 and others.

11. BW6, professor in the English department, Calicut University had occasion to conduct study about the communal violence. He claimed that the massacre (2-5-2003) was initiated by the Muslim fundamentalists.

12. AW27, the A.S.I. who was engaged in intelligence work in Marad beach claimed that Aboobacker was running a 'Kalari' and hence, he was called 'Usthad' He learnt that N.D.F. had its activities at Marad Beach. He had reported on the activities of N.D.F. workers at Marad.

Ashraf, accused in crime No.62/98 of Kasaba Police station and involved in the Coimbatore bomb blast case was an N.D.F. worker.

13. Ext. C22 contained the letter dt. 24-1-2003 sent by AW29 to . AW32, that Bijili was found active among the Muslim fundamentalists (NDF/PDP) in Marad Beach and that he is being instigated by those elements for retaliation on the Hindus. I referred to Ext.C 18, the report of the year, 1998 and prepared by the special squad formed as per the direction of CWI and which studied the activities of fundamentalist / terrorist elements. In Ext.C 18, it is asserted that Aboobacker was an N.D.F. activist. Though, B party No. 2 (N.D.F) has a case that Aboobacker was a C.PI.(M.) activist, that is not supported by any evidence.

14. BWS 9 and 10 are accused in Crime No. 129/ 96 of Meppayur police station. Though they admitted that they are NDF activists, denied that they are involved in the said case. They have not given any statements like Exts. C58 and C59: They are falsely implicated in the case. B WS 11 and 12 are accused in Crime No. 1039/ 03 of Kannur Town Police Station and denied involvement in that incident. They have not given any statement like Exts C. 73 and 74. They admitted that they are NDF activists. BWS 13 to 15 are accused in Crime No. 220/ 04 of Chalissery Police Station and denied giving any statement like Ext.C91 series. They claimed that they are falsely implicated in the case. They admitted that they are NDF activists. BWS 19 to 21 referred in Ext. C18 denied any such activity as attributed to them in Ext. C. 18. They claimed that .they have no connection with the NDF. BW23 claimed that he has not given any statement like Ext. C 54, to CW.34 (in Crime No. 62/98 of Kasaba Police Station). BW 23, the first secretary of Green Valley Foundation and member of the Supreme Council of the NDF and

presently the Chairman of that Organization denied that there , was any such explosion in the Green Valley Foundation compound while testing the timer device on 9-7-2001. He claimed that the enemies of the NDF had planted country bombs in its compound which exploded. When he learned that the investigation is turning against the NDF, he preferred complaint to the Superintendent of Police, Malappuram. The witness claimed that all the persons referred in Ext. C 18 are not NDF activists. He gave a list of NDF activists from among the persons referred in Ext. C 18. B W 28., detained in the Central Prison, Coimbatore in connection with the bomb blast case denied any connection with Ooma Babu, harbouring him or giving any statement like Ext. C51. He was an NDF activist attached to its Payyanakkal Unit. He was expelled from that Organization following his arrest in Crime No. 62/98. He admitted that Ext. C 100 is the photocopy of his diary seized by the police from his house but, claimed that he was compelled to make certain entries in Ext. C.100. BW 29 also denied any connection with any Al-Umma or NDF leader and denied harbouring Ooma Babu. He has not given any statement like Ext.C49 series. It is not true that he was sent to Pakistan for ISI training. He went to Bangkok for job and unable to trace the agency which was to provide the job, returned. He admitted that his flight ticket, luggage coupon and immigration clearance certificate etc. were seized by the police. BW 30, Abdul Nazar Madani, detained in the Central Prison, Coimbatore in , connection with the bomb blast case, denied the statements in Exts. C44 series. He had not sent anybody to Pakistan for ISI . training. He admitted that Muhammed Nafi (A.104), accused in Crime No. 82/03 of Beypore Police Station had met him, several times (before the massacre on 2-5-2003) but, that was in connection with the appointment of Muhammed Nafi as ‘Editor of National Review’ .

15. The B Party No.2 . (N.D.F) has a case that it is a socio-cultural or charitable organization engaged in human rights protection and the uplift of the downtrodden particularly, the backward classes: Chairman of its Supreme Council and presently member of that Council gave evidence as B- He claimed that N.D.F. is a socio-cultural, charitable organization formed in November, 1993 to fight fascism which was intended at eliminating the Muslims from the Country. The objective of the N.D.F. is to presume secularism. The N.D.F. is a society registered under the Societies Registration Act. Ext.B99 is its bye-law. Ext.B 100 to B 107 are produced to show that N.D.F. has been striving to protect human rights interest of the backward classes and to preserve secularism. It is revealed from Exts. B 100 to B 107 that the N.D.F. organized several meetings and conducted agitations with that objective. The witness claimed that N.D.F. had no involvement in any incident at Marad Beach or elsewhere in the State and none of its leaders workers are accused in the cases relating to the incidents at Marad. On the other hand, Arayasamajam was under the control of the R.S.S. since the last 15-20 years. The witness proved Ext.B9 (a) and Ext.B 16(a) to show that these facts are admitted by AW6 himself. According to BWS, motive for the massacre on 2-5-2003 was the revenge for , the killing of Muslims on 3/4-1-2002. He alleged that Aboobacker was ‘ killed in the presence of the Police. Aboobacker was very popular in the area and was loved by everybody. His relatives and associates retaliated, which resulted in the massacre on 2-5-2003. He denied that Aboobacker or his son Bijili were members of the N.D.F. and claimed that the Organization had no unit even, at Marad Beach. The R.S.S. men collected and stockpiled weapons at Marad Beach. That enabled the Hindus to come with arms against the Police immediately after the incident on 2-5-2003. The witness alleged that after the massacre on 2-

5-2003, Marad Beach was under the control of B.J.P /R.S.S. activists and that even the Chief Minister had to seek their permission to visit the place. Regarding Subair (BW 28) who is accused in Crime No.62/98 of Kasaba police station and involved in the Coimbatore Bomb Blast, the witness claimed that he was an N.D.F. activist at the time of the bomb blast but, he was expelled from the Organization after that incident. BWS claimed that a legal aid cell was formed under the leadership of the N.D.F to give legal aid to some of the accused in the Coimbatore bomb blast case. Legal aid was given to them as part of its human rights activity. He admitted that he was a member of SIMI during his student days. The membership in that Organization was up to age of 30 years. Though SIMI was banned in the year 2001, the witness did not know the reason for that. In cross-examination by the A parties, the witness admitted that some local leaders of N.D.F are accused in the case for the murder of Binu at Nadapuram. The Division Convener and Division Joint Convenor, Vatakara and State Council Member of the N.D.F. are accused in that case. The witness admitted that he is presently the Chairman of the Green Valley Foundation Trust, Manjeri but claimed that the Trust has no connection with the N.D.F. It's former chairman was a member of the N.D.F. Supreme council. None other than the N.D.F. men were ever chairman of the Trust He admitted that there was a blast in the Green Valley Foundation Trust compound during the night in 2001 and claimed that the blast occurred 3/4 km. away from the office of the Trust. The Manjeri police had registered a case, but he does not know its present stage. He does not know whether the explosion occurred when the explosive unit (of the NDF) was testing a timer device. He does not also know whether the scientific expert had visit the spot. Enemies of the . N.D.F planted bombs which exploded. Ext. A96 is the photocopy of the charge sheet in crime No.257/96 of

Perambra police station against N.D.F. men for allegedly attacking a scheduled caste for marrying a Muslim girl. The witness claimed that the N.D.F. men were falsely implicated in that case: The witness denied that N.D.F. is involved in any fundamentalist/terrorist activities in the State. Bw24, Chairman of the supreme council of N.D.F. and the first Secretary of the Green Valley Foundation denied that the explosion occurred in the compound of that Organization on 9.7.2001, when the timer devise was tested.

16. Question arose whether, fundamentalist/terrorist elements are operating in this State. Going by the evidence of AW12 and Exts. A6 and A63(a) which AW12 himself did not deny, certain 'dark forces' which wanted to communalise the Kerala society is working among the Muslim community in the State. AWIS who was a Minister and Legislator in Kerala for long and a senior political leader, has stated that there are Muslim fundamentalists working in the State (I am not confining the fundamentalism, or terrorism to any community - evidence before the Commission refers to such fundamentalist activities from other communities / religions as well. Ext. A77 is the resolution of the District committee of his party appearing ' in the Press on 22-11-1997 about activities of the Muslim/Christian fundamentalists in this State). I referred to the evidence of CWs. 1 and 3, Aw24 (police officers), Ext.C 18 and other documents to show that there is fundamentalist /terrorist activities in the State. Ext.C 18 gives detailed information about that. Ext.C68 to C71 and the evidence of Cw37 prima facie shows that certain elements set fire to the bus belonging to the Tamil Nadu State Road Transport Corporation, at Kozhikode on 29-12-02. Ext.C39 to C41 and the evidence of CW33 shows that about 100 Pipe bombs were seized from Koomankallu in Vengara PS limits in Malappuram Dt on 31-12-1995. The statement of the 1st accused in that case (Ext. C40, C40(a)

prima facie revealed that he was associated with the SIMI until the age of 30 years and was trained by Imam Ali (involved in Coimbatore Bomb blast case), leader of Al-Umma (who himself got training in POK) to ‘ make country bombs for fundamentalist / terrorist activities and that for the , said purpose, Imam Ali even stayed in Kerala for sometime. Exts. C40 and C41 state that Imam Ali had got training in POK. Exts. A 88 and A89 series prima facie, show that several tube bombs were seized from Kadalundi river, in Malappuram district during January, 1996, and that a three member gang engaged in setting fire to the theatres in Malppuram district exhibiting its photographs in the Gulf countries and collecting large sum of money were arrested by the Police. Ext. C40 prima facie shows that BW29 (Ashraf, accused in CR. 62 / 98 of Kasaba PS) had told about the Muslims of India and Kashmir suffering at the hands of the Hindus, ‘his being sent to Pakistan for training under the ISI, his going upto Bangkok and unable to go to Pakistan, returning. Ext. C51 prima facie, refers to certain Organizations in the State receiving tube money for its activities. Ext.C 14 is the record in Cr. No.246/CR. KNRI/ 99 of CBCID, Kannur. That case was registered against certain Muslim fundamentalists for attempt on the life of the then State Chief Minister (late), Sri. E.K.Nayanar, EW1, the District. Collector, Kozhikode during the time of massacre states that he had issued direction to the police to closely watch and take action against organizations and persons indulging in fundamentalist activities - in Kozhikode district. Evidence of AWs7 and 21 refer to the bomb blast in the Thrissur Railway Station. As pointed out by Cw3, there is no reason to think that the terrorist fundamentalist operation in other parts of the Country had not crossed into the territory of Kerala State. Going by the manner in which the successive Government ^acted and the police investigated the cases, there is no reason to think that the State was able

to keep such terrorist/fundamentalist activists beyond its territorial limits. It will be a folly to think so. It is seen from Ext.A84(a), A85(a) and A86 (a) that Vice Admiral Sureesh Mehta of the Indian Navy had stated in a Press conference that the proposed Beypore Cost Guard will plug the entry points in Malabar region for sneaking in weapons and explosives by the terrorists, Kozhikode was the hub of such activities, earlier, it was drug trafficking and now; ammunities are also being smuggled in. The same report has come in all the leading dailies of the State on 16-7-2004. Hence, prima facie, there is no reason to discard it. This statement of Vice , Admiral Sureesh Mehta corroborates the evidence of CWs. 1 and 3, the findings in Ext.C18 and the report in Ext.C22. I do not forget that the witnesses examined by B Party No. 2 and 3 and who are mentioned ‘ in Ext. C18 denied the allegations against them. But, I do not expect them to admit all those. From the oral and documentary evidence placed before the Commission, it is only reasonable to think that such fundamentalist/ terrorist activities are being carried on in Kerala as well.

17. The immediate question for consideration then is, whether external/internal forces are behind the massacre on 2-5-2003 ? I stated that the crime Branch (CID.) Unit Investigated the case relating to the massacre on 2-5-2003 and filed charge sheet (Ext.C9), about the claim of the B party No. 2 that the massacre was the result of retaliation while the A parties claimed that it was an operation by the N.D.F. and other fundamentalist terrorist elements. Though, B party No.2 has a case that Aboobacker who was killed on 4-1-2002 was a CPI (M) activist, B W5 admitted that they stated so, only on hearsay information. BWs 2 and 3 denied that Aboobacker was a CPI(M) activist. AW4, AW24 and CW3 have given evidence that Aboobacker was an NDF activist. AW24 says that the name of Aboobacker was included in the list of NDF activists

maintained in the Beypore PS. This version is corroborated by Ext. C 18. In Ext. C 18, Aboobacker is shown as an NDF activist. There is no reason why in the year 1998, a false entry was made regarding the organizational connection of . Aboobacker. It is pertinent to remember that even BW5 admitted that some of the persons shown in Ext. C 18 are NDF activists. Going by the evidence of B Ws 9 to 15 who are admittedly NDF activists examined by the B party No.2, documentary or other direct evidence about membership in the NDF is quite impossible. For even according to them, though they are NDF activists, there is no document to prove that . Only the Notebook maintained by the Area Convenor would show who are the members of the NDF unit. I do not expect that Notebook to come before the Commission. On a consideration of the above facts and circumstances, I find no reason to discard the evidence of AW4, 24 and CW3 that Aboobacker was an NDF activist. From Ext.X2, the report placed by the Chief Minister in the State Assembly' on 22-7-2003, it is seen that 11 of the accused in Crime No.82/03 of Beypore Police station Cr.li6/Cr/03 of C.B.C.I.D) are N.D.F activists while 9 others are N.D.F. activists working in the I.U.M.L. and the C.P.I.(M). In Ext.X2, Bijili, one of the main accused in Cr.82/03 of Beypore Ps (Cr.116/CR/03 of CBCID) is shown as an NDF/I.U.M.L. activist. I referred to the evidence of AW26 and CW3 that the N.D.F. infiltrated into other Political parties (except the B.J.P) and acted under its banner to conceal their activities. I also referred to the evidence of AW 4, supported by Ext. A15(a) about the Press Conference of some of the ' N.D.F. leaders that the N.D.F. men are workina in all Political parties except the B.J.P. BW5 has admitted that there is no prohibition in the N.D.F. men working in any political party provided, the ' ideology of that party was not against the ideology of the N.D.F. It is revealed from Ext. C49 series and the evidence of that

BW29 v who was admitted by an N.D.F. activist was working in the PDP also. Therefore, the official version stated in Ext. X2 that 9 accused are N.D.F. men working under the label of I.U.M.L. and C.P.I..M.(M) can be accepted. The statement in Ext. X2 about involvement from N.D.F. activists in the massacre on 2-5-2003 gets corroboration to Exts.S1 to S3, the copy of confession statements of A2, A97 and A98 in Cr. No. 82/03 'of Beypore P.S. There, they claimed that they 'were' N.D.F. activists as if, their connection with the N.D.F. was prior to the massacre on 2-5-2003. But, none of them said how they ceased to be members of the N.D.F. None of them said that ' they joined any other organization after leaving the N.D.F. It is true that there is no documentary evidence to show that any of the accused in Cr.82/03 of Beypore Police Station (Cr. 116/Cr/03 of C.B.C.I.D.) are N.D.F activists. It is also true that BWS, BW24 and Bw28 denied that any of those accused are N.D.F. activists According to them, N.D.F. did not even have a unit at Marad Beach. But, there is evidence to show that N.D.F was active at Marad Beach. AW3, AW4, AW6, AW24 AW2S, AW27, AW30, AW38, BW2, BW4 and CW3 . have given evidence about the activities of N.D.F. activists at Marad Beach. The letter dt. 24-1-2003 sent by AW29 to AW32 (see Ext. C22) also referred to the activities of the NDF at Marad Beach. Ext. C51 shows that the NDF was active at Marad Beach, giving training to its cadres in the use of fire arms. It is revealed prima facie, from Ext. C49 series, statement of 8W30 and Ext.S1, statement: of A2 (Sakeer) in Cr.82/03 of Beypore PS (Cr.116/CR/03 of CBCID) which I find no reason to discard, that the N.D.F. had a unit which covered . Marad Beach. BW28 admitted that he was an N.D.F. activist. He belonged to Payyanakkal which is very near Marad Beach. He was an N.D.F. activist of Payyanakkal unit. He would say that there is an N.D.F. unit at Chakkumkadavu, about 1/2 K.M.

away from Payyanakkal. There is no territorial limitations while working in one unit of the N.D.F. If that be so even if there was no separate unit for the N.D.F. at Marad Beach proper, there was nothing wrong or unusual in that Organization having its activists in Marad Beach also permitted. I have referred to the various press reports referring to the presence of NDF at Marad Beach and their involvement in the massacre, which in the light of the other evidence on record, can safely be accepted. Even going by the version some of the witnesses examined by B party No.2 who are admittedly N.D.F. activists, collection of documentary or other direct evidence regarding their membership in the N.D.F is not possible for. BWs 9 to 11 and BWs.13 to 15 who are admittedly N.D.F. activists of different units at different places and districts would say that there are no membership cards or receipts issued to them from their organization. Their respective Unit Convenors maintained a notebook where, the name of the members is written: No other document will show that they are N.D.F. activists. Similar evidence is given by B W5, leader of the N.D.F. If so, it is difficult to expect direct evidence whether, somebody is an NDF activist or whether, the N.D.F. has a unit at a particular place. I am not impressed in the facts, circumstances and evidence, by the version of A2, 97 and A98 in Ext. S 1 to S3 that they were N.D.F. activists. BW28 was admittedly an N.D.F. activist. He says that he was 'expelled' from the N.D.F. But, there was no official communication, oral or written to him regarding that. He learnt about his expulsion from the news papers. Ext. x8 is the news paper about the News Conference of Dr. M.K. Muneer, minister in the state cabinet. He is reported to have stated that the NDF is an amoebic body. This version is justified by the statement of BW 14 that he does not know who is the leader of NDF. next to the area convener. BW28 at a time when he was admittedly an NDF

activist, wrote in his diary. (Ext. C 100) that he met chief. It is true that BW28 has a case that he was, under threat from CW34 made to make that entry. But prima facie, there is no reason to think so. When asked to say who was that 'Chief', BW2B said that 'Chief' meant 'leader'. He does not know anything else. The statement of A2, A97, and A98 in Ext.S 1 to S3 that they 'were' N.D.F. activists was certainly an attempt made by them to make it appear that they 'were' not N:D.F. activists at the time of massacre on 2-5-2003. Being the cadres of a disciplined organization, it is quite natural that they tried to disassociate themselves from their organization.

18. I stated from the evidence of BW1, the socio economic and educational background of the people of Marad. Evidence revealed that the average education of the accused in Crime No.82/03 is 5 standard. They are all fishermen. It is difficult to think that those accused who are all fishermen placed in such poor situation were able to raise the enormous funds required for the planning, operating and carrying out the massacre and were able to do that so meticulously, even surpassing the Intelligence Wings. This fact is not concealed by the higher police authorities as well. The statement of Fw6, Sri. T.K. Vinod Kumar, Commissioner of Police during the relevant time that the attack was in 'guerilla style' (see Ext.A26 (a) is a definite indication that there was some other agency behind the massacre, than the accused booked by the Crime Branch. This is the indication given by AW12 the then Industries Minister also when he claimed that certain 'dark forces' which wanted the State to be on communal turmoil was behind the massacre. Evidence revealed that there was a long drawn conspiracy and that the massacre was meticulously carried out. The large collection of weapons including country bombs shows that the attempt of the assailants was not merely to kill certain persons. They wanted to

create still bigger havoc. Certainly, the attempt was to ignite large scale riot. AW 21, the then Director General of Police, was not prepared to believe that the massacre was the result of the revenge of certain persons. FW 6, the Commissioner says that Radical Muslims are involved in the massacre. The nature of the attack - armed groups emerging from different sides and unleashing a sudden attack - revealed that the attempt was to kill as many persons (from the Hindu community) as possible within the shortest time and escape. Evidence of AW17 shows that infact, a group of assailants or who had stood behind for lending assistanceto the assailants, did escape through the Sea after the massacre. The escape of some ' of the assailants failed only because they were held up in the Marad Juma Masjid and the police party reached the spot immediately after the incident.

19. At this stage; I may refer to the investigation conducted by the Crime Branch which of course, came to the conclusion ' that the massacre was the result of revenge on account of the killings of .3/4 -1-202. I refer to the evidence of AW19. Going by his evidence, the question whether other forces (ie., forces behind the accused) were involved in the massacre was not even an issue for the Crime Branch team. He claimed in unambiguous terms that there was no direction - oral or written from AW 35 (Sri. Maheshkumar Singla) to investigate into the involvement of other forces behind the massacre. The stand of AW 19 is that the Crime Branch Team did not get evidence of involvement of other forces and hence, they did not investigate that. I am unable to understand how, the Crime Branch could wait for evidence to come to them, to conduct investigation. I was under the impression that the police should investigate and collect evidence, rather than waiting for evidence to come to the police for investigating. Putting the horse behind the cart and then blaming it for not pulling the cart!

AW3S, the Inspector General who was supervising the investigation was directed by this Commission to file affidavit whether he had issued any direction verbally or in writing, to investigate into the involvement of other forces in the massacre. I find from his affidavit that he was reluctant to make warned that unless ' he filed proper affidavit in the matter, he will face the consequence for that. Then, he came with an affidavit dated 16-11-2004 where, in para 4, he claimed (as against the assertion of AW 19) that he had given verbal instruction to investigate into the involvement of other forces to the limited extent of the information that some of the accused 'were' sympathisers of the N.D.F./ I.U.M.L./C.PI.(M) etc. In spite of the fact that going by the evidence of DW 1, the State Government had given full freedom to the Crime Branch Investigation Team to probe in to all aspect (ie., including the involvement of other forces) if any behind the massacre, they did not investigate into that aspect. Evidence of AW 19 shows that the CBCID had not even investigated on the information contained in Exts. S 1 to S5. They had no idea about the Organizational connection of Aboobacker, killed on 4-1-2002. Why was the Crime Branch Team particular in not probing into the alleged involvement of the other forces? The A parties have a case that investigation in that line was sabotaged by AW 35 (I will refer to that aspect in the latest chapter) it is a fact that the Crime Branch had not investigated into the involvement of other forces behind the incident. In spite of the various intelligence reports, referring to the alleged involvement of fundamentalists/terrorists elements in the incident, AW35 had no difficulty to say that he had not seen any such Intelligence Reports (at least for guidance in the course of investigation) he claimed that he was unaware of such reports. He was one of the respondents in the Writ Petition filed by the mother of one of the victims of the massacre (on 2-5-2003) in the Hon'ble High

court for direction for C.B.I. Investigation. In that case, the Additional Home Secretary. Smt. Sobhanakumari filed counter affidavit stating that the Intelligence Wing had collected some information regarding the possible violence at Marad and the same was conveyed to the local Police. Ext.C 19 contained that counter affidavit. AW3S was present in the Hon'ble High court in connection with that case and even explained certain matters to the hon'ble Judges. Still, Aw35 claimed that he was 'unaware' of the statement in the counter affidavit of the Additional Home Secretary. Quite unbelievable, the statement made by a senior Police officer like the Inspector General! On the other hand, evidence of AW3O is that the Crime Branch officials who investigated the case had interacted with the S.S.B and that the Intelligence Wing had disclosed all details to them. AW 19 claimed that he tried through AW3S to get the Intelligence Reports, Aw35 had asked for those reports but, did not get it . It that be so, Aw35 was simply speaking untruth before the Commission that he was v 'unaware' of the Intelligence Reports. Nor am I inclined to think that inspite of AW19 trying to get the Intelligence Reports, he did not get it. AW19 and AW3S wanted to avoid questions based on the Intelligence Reports regarding the involvement of fundamentalists/ terrorists in the incident and even the organizational connection of Aboobacker and Kunhikoya killed, in the riot on 3/4-1-2002.

20. I asked AW 19 whether, he felt anything particular in the statement of the accused referred in Exts.S 1 to S 3 that they 'were' N.D.F. activists. The witness stated that - he did not feel anything particular about that. Quite surprising that a Senior Officer like AW 19 investigating such a massacre (which, in the normal course could not have been planned and executed by few under educated and poor fishermen alone) was not alerted by that statement of the accused in

Exts.S1 to S3. Any way, even according to AW19, no further investigation was made on the said statements in Exts.S 1 . to S3. AW 19 and AW3S were asked whether A105, Mohammed Nafi had met Abdul Nazar Madani (BW3O) in the Coimbatore Central Prison, eight (8) times before the massacre on 2-5-2003. They claimed that their investigation revealed that A105 had met Abdul Nazar Madani (Bw 30) only 2 or 3 times. The Investigation Team was generous enough to simply believe that statement of A105 (Nafi) without even cross checking with, the Jail Register. AW 19 and AW3S Visitors were confronted with the extract of the Jail Register and its English translation sent by the Supdt. of that Prison, and the statement therein, that A105 (Nafi) had visited Madani (BW3O) in , the Prison, eight times before the massacre on 2-5-2003. Awl9 was sure that if A105 had visited Madani eight (8) times, there would be suspicious in that . Then AW 19 stated that a something conspiracy in the visitors room of Coimbatore Central Prison was not possible since the Visitors will be permitted to have interview with the prisoners only in the presence of the Jail authorities. At this stage, I have to refer to the evidence of Abdul Nazar Madani (BW3O). He stated that A105 met him in the Central Prison, Coimbatore several times but, in connection with the appointment of A 105 as the editor of 'National Review' a Magazine run by him from Ernakulam and its management. Whether that version of A.105 and BW 30 was true, was required to be probed. Fact remained that going by Ext.S4, Mohammed Nafi (A105) had also met BW29 (A.T.Mohammed Ashraf) in the same Prison who, going by Ext.C 49 series and evidence of CW34 was the unit leader of the N.D.F. during the said time and who, evidence prima facie revealed, was sent to Pakistan for I.S.I. training and for the said purpose, went up to Bankok but, had to return. Prima facie, those meetings with BW29 was not that

much innocent. It is stated in Ext.C43 to C51 and evidence of CW34 that BW2B and 29 had connection with some of the Al-Uma leaders (B29 was concededly an N.D.F. activist and allegedly expelled from that organization in 1998). Ext. C51 and the evidence of CW34 is to the effect that N.D.F. had connection with the Al-Uma and that N.D.F was collecting foreign funds. AW 19 or AW3S had not even gone through the records of Cr.62/98 of Kasaba P S. to ascertain the above facts. They were not even aware of that case. Fact remained that the Crime Branch Investigation Team did not properly question A 105. (The extract of Jail register and its English translation are not separately marked in evidence. Hence it is appended to Ext. S4).

21. It is revealed from the evidence that A94 (Latheef) in Crime No.82/03 of Beypore Police Station (Cr.116/03 of C.B.C.I.D.) who is one of the prime conspirators of the massacre on 2-5-2003 was a close associate of BW29 (Ashraf). As per the , Crime Branch Investigation, A94 had assisted the other accused in making country bombs (which were meant , to be used for the massacre but, fortunately not used). Exts. S 1 to S3 show that A94-Latheef also is an NDF activist. A94 allegedly surrendered in court after the Crime Branch filed the chargesheet in Crime No.82/03 on 31-7-2003. The crime Branch Team had no occasion to question A94 regarding his connection with Bw28, 29 or any other fundamentalist elements. I referred to the evidence of CW34 and ‘ Exts.C43 and C46 to 49 series which prima facie revealed that Ashraf (BW29) was sent to Pakistan for training and for the purpose , he , had travelled from Trivandrum to Bangkok but unable to get US dollars at Bangkok, had to drop the plan and return. Going by ext.C100, BW2B had met ‘chief’ in relation to the expansion of Coimbatore’ etc. These aspects were not investigated, not , even attempted by the Crime B ranch. AW19 admitted that the CBCID had no

occasion to question some of the accused who surrendered in Court after the filing of the chargesheet. On the question whether, he could deny that those accused had terrorist link, AW19 said that he did not get evidence. I asked AW 19 and Aw35 why, even if they were not able to question A94 as he surrendered in Court after the Crime Branch Team filed the chargesheet, they did not seek the permission of Court to question A94 and if necessary, further investigate. If the crime Branch were sincere enough to investigate into the involvement of other forces, it could and should have sought the permission of the concerned Court, questioned A94 who was then in judicial custody and if necessary, investigated the matter further with the permission of Court as provided u/s. 173 (8 Cr. P.C. AW3S absolved himself claiming that it was the responsibility of the Investigating Officer. AW 19, who headed the investigation tried to escape saying that since the involvement of A94 in the incident (ie. conspiracy and making , bombs) was revealed from other accused and witnesses, it was not necessary to question A94. How generous the Crime Branch Team was? Goin; by the evidence of CW28, Dy.S.P who was a member of the Crime Branch team, the Collection of funds for the massacre started even several months before the incident. But, according to AW3S, only small amount was required in the planing and execution of, the massacre. But, AW3S forgot that even after the massacre, enormous money is needed to conduct the case, maintain the family of the accused and such other matters. Evidence revealed that there was no second investigation into the source of the funds (Govt. may refer to the report in the documents marker initially as Ext. C I 9 that a person called "FM" raised the funds for the massacre, he came from Dubai to Kozhikode on 2-5-2003 - and returned few days after the massacre) CW 28 was of the opinion that A94 had to be interrogated and had conveyed that opinion to the 'superiors. But AW19 and AW3S did

not consider that as necessary. Evidence revealed that the Crime Branch did not also investigate into the source of the large number of weapons. At the end, AW 19 also confessed that the Crime Branch investigation was limited to the involvement of the , accused booked by them which in other words, meant that the Crime Branch did not investigate into the involvement of other forces behind the massacre. It is revealed from the evidence of AW 17 that a group of persons who in all probability had taken part in the massacre or, involved in it in some way escaped through the sea in country boats. The CBCID investigation was not directed against that group. Thus, the conclusion arrived by the Crime Branch is no answer to the issue regarding the involvement of other forces behind the massacre.

22. I found from the evidence that the N.D:F was active at Marad Beach at least after the communal riot on 314 -1-2002, was giving physical training for its cadres and further, that some of the accused in crime No. 82/ 03 are N.D.F. activists. I also referred to the oral and documentary evidence which revealed that Aboobacker” killed on 4-1-2002 ‘was an N.D.F activist. Though, the C.B.C.I.D’ had arrayed altogether 148 accused in connection with the massacre on 2-5-2003, it is revealed from the official records (AW19 was not able to give specific reply in this regard) that of the said 148 accused, only seven (7) are close relatives of Aboobacker, eight (3) are related to Kunhikoya and three (3) are related Yunus who were killed on 3/4-1-2002. Even according to the CBCID (See Exits. C9, C10), communal hatred towards the Hindus was one of the motives for the massacre. If thus, only 18 persons among the 148 accused involved in the conspiracy and murder and among the 90 accused who actually took part in the murder were related to the three Muslims killed on 3/4-1-2002, what was the interest of the accused (other than those 18) to be involved in the planning and

execution of the massacre? What was the interest of those large number of accused who were neither related to Aboobacker, Kuuhihikoya or Yunus, nor belonged to Marad Beach? Was it merely a revenge for the killing of the three persons, or was it merely Communal hatred arising from those killings? .It is difficult to believe so. It is revealed from the evidence that the assailants did not spare even persons aged 65 years. Few of the victims were aged 20 years. Some of the victims were chatting on the sandy beach while some others were engaged in other activities. . There was no provocation at all for the massacre. The assailants were not targeting any person or persons. Instead, they , emerged on the beach from different sides like bolt from the blue and attacked whichever Hindu they found, within the shortest possible time which left 8 Hindus dead and several others wounded. The surprise attack must have baffled the victims. The communal riot on 3/ 4-1-20 2002 was not a one sided attack so that, for that reason alone, the entire Muslim Community rose up in arms against the Hindus. In that riot, two persons from the Hindu Community and three persons from the Muslim Community died. People from both sides suffered injuries and both side suffered property loss (See Ext. F48 series). So, it is 'difficult to understand the massacre on 2-5-2003 as an upsurge of the whole Muslim Community against the Hindu Community. It is pertinent to note that if the massacre on 2-5-2003 was in retaliation of the killing of Aboobacker 4-1-2002, the assailants must have targeted any of the accused in the case for the murder of Aboobacker. Concededly, none of the 8 Hindus killed on 2-5-2003 are involved in any of the cases registered for the incidents related to the Communal riot on 3/4-1-2002. None of the injured in the incident on 2-5-2003 are accused in the case for the murder of Aboobacker. These circumstances indicated that the massacre on 2-5-2003 was not merely revenge for the killing of Aboobacker,

Kunhikoya or Yunus on 3/4-1-2002. Instead, that was an attack on the Hindus as anticipated and dictated by AW 29 in his letter dt. 24-1-2003 (see Ext. C22) and addressed to AW32. At this stage, it is relevant to consider the evidence of AW21, the then Director General of Police regarding the very appointment of the then Asst. Commissioner (South), Kozhikode Sree Abdul Raheem (FW2). It is revealed from the evidence of FW2 that he had no special interest at being posted in Kozhikode District and had not also requested for that posting. AW21 stated that after the massacre on 2-5-2003, he checked up and found that the posting of the Asst. Commissioner (South) FW2 at Kozhikode was not as per the proposal made by him. He enquired and learnt that the posting of FW2 as Asst. Commissioner (South) was to oblige a Muslim leader. This, AW21 asserted in Ext. A 104 (a) as well. Going by Ext. C 18, AW36 who is closely related to FW2 is an NDF activist (I do not forget that AW36 had denied that and FW 2 claimed ignorance about the Organizational connection of AW36). These are circumstances indicating that it was not merely the 148 accused who are behind the massacre on 2-5-2003 but, there are other forces behind that incident

23. The B Party No.2 (N.D.F.) examined BW25 show that R.S.S. workers are accused in Cr. No.282/98 of Tirur Police station for the murder of one Yassir for his conversion from Hinduism to Islam. BW27 is examined to show that one Venugopal, said to be an R.S.S. activists is accused in Cr. No. 101/99 of Fort Kochi police station for the unauthorized possession of explosive: BW16 is examined and Exts. B152 and 153 marked to prove that R.S.S. activists are accused in Cr. No. 39 05 of Vallikunnu Police Station for attacking the N.D.F. activists. BW 17 is examined and Exts. B154 and 155 marked to prove that R.S.S. activists are involved in Cr.No.81/05 of Kathiroom Police Station for unauthorized possession of explosives. BW 18 is examined and Exts. B

156 and 157 marked to prove involvement of R.S.S; activists in the murder of an NDF activist.

24. Certainly, the above mentioned evidence produced by the B party No.2, prima facie refers to some of R.S.S. activists involving in fascist/fundamentalist activities. In fact , Aw24 opined that the R.S.S., V H.P and N.D.F. are terrorist organizations operating in the S of Kerala . But , that the R.S.S. or V H.P are stated to be terrorist organizations is no answer to the issue on hand. I do not forget that the B Party No.2 produced several books, magazines, extracts from Judicial Commission Reports etc. which, according to the B P ‘ No. 2 indicated the fascist and fundamentalist nature of the’ SanghParivar Organizations. The Commission is not present inquiring into the question which are all the fundamentalist terrorist , organizations operating in the State. That is at matter for the State Government to probe into deeply

25. In the light of the facts, circumstances and the oral and documentary evidence stated above, there is weight in the evidence of CW1, CW3 and AW24 regarding the fundamentalist/terrorist activities indulged in by some NDF activists. Prima facie, it is difficult accept the contention of the B party No. that its activities are confined to what is stated 1 Ext. B 99 to B 107.

26. The evidence on recorded thus revealed that N.D.F. activists were actively involved in the planning and execution of the massacre on 2-5-2003. Then, the next question is whether the N.D.F. as an organization is behind the massacre?. I did not come across any direct evidence in that line . The B party No.2 relied on the version of AW3S that the CBCID team had checked up with the office bearers of the N.D:F. and verified their telephone call sheets but, found no involvement for the

organization. But it is difficult to expect such direct evidence for the involvement of the organization. It is prima facie revealed from Ext.CS1, statement of an N.D.F. activist recorded by CW34 that the N.D.F. men were undergoing training in shooting at Marad Beach using air guns. There is the evidence of AW27 and BW3 about the NDF giving physical training to its cadres at Marad Beach. It is unlikely that this was done without the blessings of their local leadership, at least. It is disclosed from the evidence that the massacre on 2-5-2003 was the result of a long drawn plan, spread over several months. Weapons including country bombs were collected or made from different places, brought to Marad Beach and stock-piled there, well in advance. Though, according to AW35, only a small amount was used for the planning and execution of the massacre, in the way the conspiracy was made and was carried out and the collection of large number weapons from different places the large funds required to defend the case that will follow and maintain the family of the accused, it is difficult to accept that version of AW3S. Large funds must have been raised for the purpose. Ext. C 51 stated that foreign funds were used at Marad Beach. Ext C 29 series shows that collection of funds started even from abroad, about 7 months before the massacre. It is revealed from Ext.SS (the statement of A141 - H Party No.2) that the conspirators had obtained the help of N.D.F leader, Hamsakoya of Chettipady and others to prepare the plan and execute it. (According to AW3S, Hamsakoya referred in Ext.SS, is a 'congress man' and he was questioned. But he does not remember whether the statement of Hamsakoya was recorded. Counsel for F party submitted that no such statement was recorded. But that version of AW3S that Hamsakoya was a congressman cannot be accepted in the light of the statement in ExtSS that he was an N.D.F. activist.) Ext. S 1 to ' S3 and S5 revealed that some of the local

leaders of the NDF are involved in the conspiracy for the massacre. I also stated that the attack was in guerilla style as described by FW6. The operation was planned and executed in such a meticulous manner that the intelligence Wings also were not able to do much about it. In the normal course, it is difficult to think that few poor, uneducated or under educated and unsophisticated fishermen would be able to do that. The facts, circumstances as well as the methodology used by the perpetrators strongly indicated the presence of a well knit organization behind It is quite unlikely that the NDF activists would involve in the planning and execution of the massacre without the blessings of their local leadership, atleast.

27. Notice u/s. 8 B were served on the Beypore unit of the I.U.M.L., the Mahal Committee of the Marad Juma Masjid (H Party No.1), Sri. P. P. Moideen Koya (H Party No.2) and AW3 (H Party No.3) They denied involvement in the massacre in any manner.

28. So far as the I.U.M.L. is concerned, there is no direct evidence to show that the I.U.M.L. units as a party are involved in the conspiracy or massacre. Though, the A parties have a case that AW 12, Sri. P K. Kunhalikutty is connected with the massacre, after consideration of the entire materials, I did not find sufficient evidence in that line. True, as per Ext. C44 series (statements of BW30 recorded by CW34), AW12 reportedly had some connection with the NDF. AW7 proved Exts. X3 and X4, also to show that AW 12 had connection with the NDF. AW 12 explained that when a representation from the local MLA. for withdrawal of Cr. 87/100 of Kondotty P S. (allegedly involving NDF activists) came before him, he only put the note C.M. may see' and forwarded the file to the Chief Minister. That item of evidence is not sufficient to hold that AW 12 had connection with the NDF. Even if it is

assumed that AW12 had some connection with the NDF, that did not mean that he is in any way connected with all the activities of NDF, good or bad. The, fear expressed by AW 12 against CBI investigation of the case is not sufficient to hold that AW 12 is connected with the massacre.

29. AW3 (H Party No.3) is the local leader of the I.U.M.L. and Chairman of the Calicut Development Authority. Sri. PP Moideen Koya (H Party No.2) is also a local leader of the I.U.M.L. and was member from ward No.20 Which took in Marad Beach as well. He is the brother of Kunhikoya killed at Marad Beach on 31-2UU2. He was also secretary of the Mahal Committee of the Marad Juma Masjid (H Party No.1). He is A 141 in Cr. 82 /03 of Beypore PS- (Cr. 116/ CH/03 of CBCID). Going by Ext.X2, SI.No. 71 there, is also a local leader of the I.U.M.L. and accused in that case. It is revealed from the evidence of AW2 that in the Calendars seized from the Marad Juma Masjid following the massacre on 2-5-2003 the date “2-5-2003” had been rounded in red ink. According to H Party No.2 and associates, it was because the ‘Nikah’ of a resident nearby was scheduled to be held in the Madrassa attached to the Mosque on 2-5-2003. It is difficult to believe that it was on account of the ‘Nikah’ that the date ‘2-5-2003’ was specifically rounded in ‘red’ ink in both the Calendars. If that be so, the Calendars should have shown other days also in the same way, When some other ‘Nikah’ were performed there. There is no such case or evidence. The use of ‘red’ ink is indicative of bloodshed planned on 2-5-2003. 2-5-2003 was a Friday when the Muslim fishermen will be off duty and remaining at the shore while as usual the Hindu fishermen would have gone into the sea for fishing . A most convenient day indeed, for the murderous assault the Khasi of the mosque is an accused in Cr.82/03 of Beypore PS. Part of’ the conspiracy was hatched up in the Mosque. Evidence revealed

that large number of weapons including countrybombs were stockpiled in the mosque and its compound, well in advance. Facts, circumstances and evidence revealed that the date for the assault, in the normal course must have been fixed with the knowledge of the Mahal Committee or at least, its leaders, Evidence of AW27 shows that few minutes before the incident, getting some information about that, he telephoned to the Marad Juma Masjid, somebody attended the call but learning that AW 27 is an intelligence official, disconnected the phone. After the massacre, some of the culprits escaped into the Mosque. Immediately after the Police reached the place, the local Muslims including women and children blocked the police entering the Mosque and for the purpose, surrounded the Mosque. The evidence on record revealed that on 3-1-2002, following the 'murder of Kunhikoya, there was a bank call from the same Mosque and following that chanting 'Bolo Takbir', some Muslims marched to the house of Pushparajan and killed Shinjith.. Thus; evidence revealed that the Mahal committee or its leaders were involved in the conspiracy, had prior information about the incident and allowed its premises to be used for the conspiracy and the preparation for the crime. The evidence of FW3 shows that Sri. PP Moideen Koya (H Party No.2 had tried to convince him that Bijili S/o. Aboobacker (one of the prime accused in Cr.82/03 of Beypore PS) was an I.U.M.L. activist, that Bijili is not involved in any criminal activity and hence, Fw3 need not conduct much enquiry about 'Bijili or even suspect Bijilli. Evidence of FW5 is that when himself and party were coming to the Marad Beach learning about the massacre and reached Priya Junction near Marad, P P Moideen Koya (H Party No.2). and others who carried knives, country bombs, stones and sticks obstructed their movement throwing stones, country bombs etc. at them. Evidence of AW3 shows that Sri P P Moideen Koya (H party No.2) was aware of the

threat made by Mohammadali to avenge the murder of Aboobacker. These circumstances are sufficient to show that the Khasi, PP Moideen Koya (H party No.2) and other members of the Mahal committee (H party No.1) were parties to the conspiracy or atleast, had information about the conspiracy and the ° impending violence. I stated from Ext. X2 that Sl.no.71 there, is another local leader of the I.U.M.L. and reported to be party to the conspiracy., Ext.X2 shows Mohammed Ali, one of the main conspirator and accused in the massacre on 2-5-2003 as an I.U.M.L. activist.

30. Turning to AW3 (H party No.3), I stated that the he was the Chairman of the Calicut Development Authority during the relevant time and a prominent leader of the I.U.M.L. in the District. Ext.AS (a) is the report in 'Deshabhimani' dt 9-5-2003 that the massacre was with the knowledge of AW3. Though business interests were attributed against AW3 for allegedly being party to the conspiracy to eliminate the Hindu community from Marad Beach arid though; AW3 conceded that she has some landed property in Marad Beach, evidence is not sufficient to hold that AW3 had any such business interest or was a party to the .conspiracy. AW3 conceded that he was questioned by the C.B.C.I.D. thrice. He admitted that during April - May, 2002, P.P. Moideen Koya (H party No.2) had met him along with Muhammed Ali, brother of late Aboobacker (another accused Crime No.82/03). Muhammed Ali told AW3 about his desire to avenge the death of his brother. AW3 claimed that he dissuaded Muhammed Ali and sent him away. It is his further claim that he had informed the ` Relief Committee that they should be more vigilant but he had never intimated any of the authorities about Muhammed Ali expressing his desire to avenge the killing of his brother . AW3 was under the impression that though the threat made by Muhammed Ali was potential, he had later given up that idea. That

version of AW3 cannot be accepted without a pinch of salt. A person of the stature of AW3 who was aware of the grave situation at Marad Beach following the communal riot in January, 2002 when informed by Muhammed Ali about his desire to avenge the killing of his brother should have in the normal course, intimated the authorities about that, rather than keeping quiet about that and asking the Relief Committee to be more vigilant. I have referred to the evidence of FW3 that on one or two occasions, P.P. Moideen Koya (H party No.2) had come to the police station accompanying Bijili and claimed that the latter is an I.U.M.L. worker and that there is no need to suspect Bijili or conduct any enquiry about him. It is difficult to think that AW3 was unaware of all these happenings inspite of his conceding that P P. Modieen Koya had come to him. along with Muhammed Ali, that it was in. the presence of P P. Moideen Koya that Mummedali revealed his desire to avenge and that according to AW3, he was having close contact with P.P Moideen Koya (though, according to AW3, in connection with party affairs).

31. There is a case for the A parties that the arrest of some of the accused made by the C.B.C.I.D. Unit was stage managed and that AW3 had produced those accused before the C.B.C.I.D. AW3 denied that . But I found a report suggesting that, from the Central Intelligence Wing (the State Govt. may refer to the tile initially marked as Ext.S 19). It is revealed from . Ext.X2 that 82 accused in Crime No.82/03 of Beypore police station (cr. 116.CR/03 of C.B.C.I.D.) were I.U.M.L. workers. It is in evidence that after the massacre , when the Police entered the Marad Juma Masjid Mosque and wanted PP.Modieen koya (H Party No.2) to come out of the Mosque, he wanted the I.U.M.L. leaders from the District Committee office of that Party to arrive at the scene before he came out of the Mosque. Certainly, P.P. Modieen Koya (H party

No.2) was soliciting, awaiting or expecting help from his Party leaders. Ext.S5, the statement of P.PMoideen Koya (H Party No.2) shows that Muhammedali had atleast, sought the assistance of I.U.M.L. for the retaliation. Reports say that immediately after the incident on 2-5-2003, there was a telephone call from one of the accused to the Mobile phone of AW3. AW3, would however, say that the said Mobile phone, though belonged to him, was in the use of his business partner, Basheer during 2-5-2003. But Ext.A7 is the statement of AW3 to he police that the said mobile connection was transferred in the name of Basheer one month before the incident. AW3 denied making such statement. It is only reasonable to think, in the above facts and circumstances that AW3 had information about the conspiracy and the impending violence at Marad Beach. It is quite unlikely, in the facts and circumstances that such large number of I.U.M.L. workers including few of its local leaders were involved in the conspiracy without the blessings of their leaders atleast,' at the local level. That is the reason for AW 12 opposing the C.B.I. investigation and raising his own apprehension about the CBI investigation.

32. The above discussion leads me to the conclusion that the massacre at Marad, Beach on 2-5-2003 was not merely a retaliation for the murder of the three Muslims at Marad Beach on 3/4-1-2002. Instead, the Muslim fundamentalist / terrorist elements, taking advantage of the communal divide in the area and the revenge, some of the relatives of Aboobaker (killed on 4-1-2002) had in his killing, attacked the Hindus at Marad Beach on 2-5-2003. Evidence, facts and circumstances revealed that (apart from the accused already booked) there are other forces behind the conspiracy and the massacre. The NDF and IUML activists are involved in the conspiracy and massacre. It is quite unlikely that those activists got involved in the conspiracy and ‘

massacre, without the blessings of their local leadership, atleast. Some of the Mahal Committee members of Marad Juma Masjid (H Party No. 1) were parties to the conspiracy. Sri P.P Moideen Koya (H Party No. 2) was a Party to the conspiracy or had prior information about that. There is every reason to think that AW3 (H party No.3) had prior formation about the conspiracy and the impending violence at Marad Beach. A Multi Agency consisting of the officers of the Central Bureau of Investigation, Central Intelligence Bureau and Directorate of Revenue Intelligence has to investigate into the larger conspiracy involving other forces behind the conspiracy and massacre, and, fix the liability.

THOMAS P. JOSEPH

COMMISSION OF inquiry