

A.M.Ummer Vs. State of Kerala

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Court : Kerala

Decided On : Jul-07-2015

Judge : Honourable Mr. Justice a.V.Ramakrishna Pillai

Appellant : A.M.Ummer

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI TUESDAY, THE 7TH DAY OF JULY 2015/16TH ASHADHA, 1937 WP(C).No. 6372 of 2015 (V) ----- PETITIONER(S) : ----- A.M.UMMER, AGED 65 YEARS, S/O.MOHAMMED KUNJU, CHAIRMAN, MANNAM PANCHAYATACTION COUNCIL, MANNAM POST, ERNAKULAM-683 520. BY ADVS.SRI.DENIZEN KOMATH SRI.P.J.YESUDAS RESPONDENT(S) : ----- 1. STATE OF KERALA, REPRESENTED BY ITS PRINCIPAL SECRETARY, LOCAL SELF GOVERNMENT (E.M) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695 001 2. SECRETARY, MINISTRY FOR PANCHAYATS AND SOCIAL WELFARE, SECRETARIAT, THIRUVANANTHAPURAM-695 001.

3. CHIEF ELECTION COMMISSIONER, STATE OF KERALA, THIRUVANANTHAPURAM-695 001.

4. STATE DELIMITATION COMMISSION, STATE OF KERALA, OBSERVATORY LANE, MUSEUM POST, THIRUVANANTHAPURAM-695 001. REPRESENTED BY ITS SECRETARY.

5. DIRECTOR OF PANCHAYATH, CIVIL STATION, KAKKANAD, ERNAKULAM-652 030.

6. DEPUTY DIRECTOR OF PANCHAYAT, CIVIL STATION, KAKKANAD, ERNAKULAM-682 030.

7. DISTRICT COLLECTOR, CIVI STATION, KAKKANAD, ERNAKULAM-682 030.

8. KOTTUVALLY GRAMAM PANCHAYAT, REPRESENTED BY ITS SECRETARY, VALLUVALLY, KOONAMMAVU, ERNAKULAM-683 518.

9. CHITTATTUKARA GRAMA PANCHAYAT, REPRESENTED BY ITS SECRETARY, VADAKKEKARA POST, NORTH PARAVUR, ERNAKULAM-683 522. ..2/- ..2.. WP(C).No. 6372 of 2015 (V) ----- 10.

KARUMALLOOR GRAMAMA PANCHAYAT, REPRESENTED BY ITS SECRETARY, KARUMALLOOR, NORTH PARAVUR, ERNAKULAM-683 511. R1,R2,R5,R6 & R7 BY GOVERNMENT PLEADER SRI.BOBBOY JOHN PULIKAPARAMBIL R3 & R4 BY ADV. SRI.MURALI PURUSHOTHAMAN, S.C R9 BY ADV. SRI.T.K.AJITHKUMAR (VALATH) THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/07-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: Msd. WP(C).No. 6372 of 2015 (V)

----- APPENDIX PETITIONER(S)' EXHIBITS :

----- P1: TRUE PHOTOCOPY OF THE RELEVANT PAGES 1 AND 2 OF THE NOTIFICATION DATED 16/08-1994 VIDE NUMBER 2877C1/94LSG. P1(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P1. P2: TRUE PHOTOCOPY OF THE PUBLIC NOTICE ISSUED BY THE PETITIONER'S ACTION COUNCIL, DATED 25/08-1994. P2(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P2. P3: TRUE PHOTOCOPY OF THE WALL POSTER PREPARED BY THE PETITIONER'S ACTION COUNCIL ON THE OCCASION. P3(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P3. P4: TRUE COPY OF THE REQUEST PREFERRED BY THE PETITIONER'S ACTION

COUNCIL DATED 13/11-2012 BEFORE THE 1ST RESPONDENT. P4(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P2 IS PRODUCED HERewith AND MARKED AS. P5: TRUE PHOTOCOPY OF THE REPLY GIVEN BY THE 1ST RESPONDENT DATED 06/12-2012 IS PRODUCED HERewith AND MARKED AS FOR REFERENCE. P5(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P4. P6: TRUE PHOTOCOPY OF THE NOTICE ISSUED FROM THE OFFICE OF THE 6^H RESPONDENT GRAMA PANCHAYAT DATED 12/11-2014. P6(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P6. P7: TRUE PHOTOCOPY OF THE REQUEST TABLED BY THE PETITIONER'S ACTION COUNCIL BEFORE THE 6^H RESPONDENT. P7(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P7. P8: TRUE PHOTOCOPY OF THE OBJECTION PREFERRED BY THE PETITIONER'S ACTION COUNCIL BEFORE THE 1ST RESPONDENT DATED 19/01-2015. P8(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P8. P9: TRUE PHOTOCOPY OF THE NEWS ARTICLES PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 25/01-2015. WP(C).No. 6372 of 2015 (V) ----- P9(A): TRUE ENGLISH TRANSLATION OF EXHIBIT P9. RESPONDENT(S)' EXHIBITS : ----- NIL //TRUE COPY// P.A.TO JUDGE. Msd. A.V.RAMAKRISHNA PILLAI, J.

===== W.P(C) No.6372 of 2015 =====
===== Dated this the 7th day of July, 2015

JUDGMENT

The petitioner, who is the chairman of the action council constituted by the local residents within the area of respondents 8 to 10 that were intended to be bifurcated, is before this Court.

2. In the year 1994, agitations and requests of this action council paved way for inclusion of the new Grama Panchayat in Ext.P1 notification. However, unfortunately, the subsequent Government did not follow through the proceedings. Subsequently, an assurance was given by the Government that request of the petitioner council would be considered when the tenure of elected bodies in all Grama Panchayats throughout the State is over. Accordingly, the zenith of present committee's by Ext.P6 applications were invited for creation of new Grama

Panchayats and the petitioner preferred Ext.P7 request in proper format before the 6th respondent.

3. However, when the new draft notification list was published, WP(C)6372/15 -:2:- there was no whisper about the previously approved and intended new Grama Panchayat in the name, Mannam Grama Panchayat. The petitioner and his council have understood that the evasion was purely political. The grievance of the petitioner is that common people are suffering due to the existing geographical lie of that portion within the area of the respondent panchayat and no developments are there in that area. According to the petitioner, only if a new panchayat is created, the woes of common people residing in that area would be solved. It is with this background, the petitioner has approached this Court.

4. I have heard the learned counsel for the petitioner, the learned Government Pleader, the learned standing counsel for the respondent panchayat and the learned standing counsel for the 4th respondent Delimitation Commission.

5. The State Delimitation Commission has filed a detailed statement stating that in view of the provisions of Section 10 of the Panchayat Raj Act, 1994, the Delimitation Commission could delimit the constituencies only after the Government fixes/alters the strength of a panchayat. The Government have not so far altered the strength of respondents 8 to 10 WP(C)6372/15 -:3:- after the publication of 2011 census figures. The strength of respondents 8 to 10 were last fixed by the Director of Panchayats in exercise of powers under Section 6 as per notification dated 20.11.2009. As per the said proceedings, the strength of the 8th respondent is fixed as 22, the 9th respondent is fixed as 18 and the 10th respondent is fixed as 20 and is not hitherto altered or re-fixed. On the basis of the said proceedings issued under Section 6, the State Delimitation Commission as per order dated 30.6.2010 by notification in the gazette had delimited the constituencies of the respondents 8 to 10 and by proceedings dated 30.6.2010 delimited the constituencies, the constituency of the 6th respondent panchayat has been delimited.

6. As the Government have not hitherto altered or re-fixed the strength of respondents 8 to 10 in exercise of the powers under Section 6, the State

Delimitation Commission cannot delimit the constituencies of the respondents 8 to 10 in exercise of its powers under Section 10.

7. Shri Murali Purushothaman, the learned standing counsel for the commission further submitted that the term of the present municipalities, municipal corporations and panchayats are due to expire on 31.10.2015 WP(C)6372/15 -:4:- and as per the Constitutional mandate under Article 243-E and 243-U, the elections to these Local Self Government Institutions have to be conducted before the expiry of the term and the new members would have to be posted by 1.11.2015. As it is too late to direct the Government to consider the request of the petitioner for bifurcation, this writ petition is disposed of directing the respondent State to consider the grievance of the petitioner before the next general election for the local bodies to be held in the year 2020. sd/- A.V.RAMAKRISHNA PILLAI
JUDGE krj

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