

Jerlin Antony Vs. State of Kerala

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Court : Kerala

Decided On : Aug-05-2015

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

Appellant : Jerlin Antony

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI WEDNESDAY, THE 5TH DAY OF AUGUST 2015 14TH SRAVANA, 1937 WP(C).No. 13479 of 2015 (H) ----- PETITIONER(S): ----- 1. JERLIN ANTONY S/O.ANTONY, AGED 52 BLAIZY BHAVAN, MATHILIL PERINAD P.O., KOLLAM, PIN-691 601.

2. SIVAN PILLAI S/O.DAMODARAN PILLAI, AGED 62 REMYA BHAVAN, MATHILIL P.O. KOLLAM, PIN-691 601.

3. AJITHKUMAR S/O.BHASKARAN PILAI, AGED 42 ONAAVATTATHU VEEDU KUREEPUZHA P.O., KOLLAM PIN-691 601.

4. MANY K.R. W/O.JAYAKUMAR, AGED 43 KADAVUKARAN VEEDU, KOTTACKAKOM PERINAD P.O., KOLLAM.

5. ROBERT S/O.GREHARY, AGED 47 YEARS MATHILI P.O., KOLLAM.

6. WILLIAM GEROGGE S/O.GEROGGE, KOCHU VEEDU, KUREEPUZHA P.O. KOLLAM. BY ADV. SRI.V.JAYAPRADEEP RESPONDENT : -----
STATE OF KERALA REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT, DEPARTMENT OF LOCAL SELF GOVT. (E.M.) SECRETARIAT, THIRUVANANTHAPURAM - 695 001. ...2/- WP(C).No. 13479 of 2015 (H) -2- *ADDL. R2 & R3 SUO MOTU IMPEADED -----
*ADDL.R2. KERALA STATE ELECTION COMMISSION REPRESENTED BY THE SECRETARY, STATE ELECTION COMMISSION, CORPORATE OFFICE COMPLEX MUSEUM, THIRUVANANTHAPURAM - 695 033. *ADDL.R3. KERALA STATE DELIMITATION REP.BY THE COMMISSION, REP.BY THE SECRETARY STATE DELIMITATION COMMISSION, LMS COMPOUND THIRUVANANTHAPURAM - 695 033. *ARE SUO MOTU IMPEADED AS ADDL. RESPONDENTS VIDE

ORDER

DTD. 27.5.15. R1 BY SPL. GOVT. PLEADER SRI. K.P. DANDAPANI ADDL.R2 & R3 BY ADV. SRI.MURALI PURUSHOTHAMAN,SC THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON0506-2015, ALONG WITH WPC. 14873/2015, THE COURT ON0508-2015, DELIVERED THE FOLLOWING: Mn ...2/- WP(C).No. 13479 of 2015 (H) ----- APPENDIX
PETITIONERS' EXHIBITS : ----- EXT.P1. COPY OF THE NOTIFICATION DATED251/2015 ISSUED BY THE RESPONDENT. EXT.P2. COPY OF THE MATHRUBHUMI DAILY DATED254/2015 CONTAINING NEWS ABOUT THE WITHDRAWAL OF PROPOSAL. EXT.P3. COPY OF THE MINUTES OF THE THRIKKADAVOOR GRAMA PANCHAYAT DATED311/2015. EXT.P4. COPY OF THE MINUTES OF THE KOLLAM MUNICIPAL CORPORATION. EXT.P5. COPY OF THE COMPLAINT PRESENTED BY1T PETITIONER TO THE RESPONDENT. EXT.P5(a). COPY OF THE COMPLAINT PRESENTED BY2D PETITIONER TO THE RESPONDENT. EXT.P6. COPY OF THE NOTICE FOR HEARING ISSUED BY THE RESPONDENT. EXT.P6(a). COPY OF THE NOTICE FOR HEARING ISSUED BY THE RESPONDENT. EXT.P7 COPY OF THE

ORDER

DTD. 30.4.2015 OF THE RESPONDENT. EXT.P8 COPY OF THE MAP OF KOLLAM. EXT.P9 COPY OF THE LIST OF 35 COLONIES SPREAD OVER ALL THE 22 WARDS OF THE THRIKKADAVOOR GRAMA PANCHAYAT. EXT.P10 COPY OF THE REPORT OF THE FINANCIAL PERFORMANCE UNDER NGNREGA DURING 2014-2015. EXT.P10(a) COPY OF THE REPORT OF THE EMPLOYMENT GENERATED IN 2014-2015. EXT.P11 COPY OF THE G.O. NO. 3113/2014 LSGD DATED 27.11.14. EXT.P12 COPY OF THE 2D REPORT OF THE DELIMITATION COMMITTEE DATED NIL. RESPONDENT(S)' EXHIBITS : NIL
----- //TRUE COPY// P.A. TO JUDGE M
'C.R' A.V.RAMAKRISHNA PILLAI, J.

===== W.P(C) Nos.13479 & 14873 of 2015 =====
===== Dated this the 5th day of August, 2015 =====

JUDGMENT

Under challenge in one of these writ petitions is the exercise undertaken by the State to form a new municipal corporation i.e. Corporation of Kannur, adding a portion of the existing municipality as well as certain existing grama panchayats. The challenge in the other writ petition is against the de-linking of certain portions of an existing panchayat and adding those portions to an existing municipal corporation.

2. In W.P(C) No.13479 of 2015, the petitioner is challenging G.O(P) No.146/2015/LSGD. dated 30.4.2015 (Gazette Notification No.1055 dated 30.4.2015) by which Thrikkadavoor Grama Panchayat was ordered to be de-linked and added to the existing Kollam Corporation. In W.P(C) No.14873 of 2015, the petitioner is challenging G.O(P) No.150/2015/LSGD. dated 30.4.2015 by which certain areas of Kannur municipal council and five grama panchayats were ordered to be clubbed to form the municipal corporation of Kannur.

3. In W.P(C) No.13479 of 2015, the petitioners are elected members of Thrikkadavoor Grama Panchayat. They are the local residents of the said panchayat. By Ext.P1 notification, the State WP(C)s13479&14873/15 -:-2:- proposed to add four grama panchayats, including the aforesaid panchayat to the nearest municipal corporations viz., Kollam and Thrissur. According to the

petitioners, due to political pressure that proposal was dropped. However, the Government proceeded with the proposal for linking Thrikkadavoor Panchayat and Kollam Corporation. The petitioners point out that the Kollam Corporation and Thrikkadavoor Grama Panchayat are against the said proposal. According to them, before taking the aforesaid decision, the opinions of the grama panchayat and municipal corporations were not taken and the present decision is only on political interest. Therefore, the petitioners are seeking interference of this Court in the matter.

4. In W.P(C) No.14873 of 2015, the first petitioner is the President of Azhikode Grama Panchayat, the second petitioner is an industrialist engaged in business in the same panchayat and the third petitioner is the leader of the opposition party belonging to the LDF of Kannur Municipality. In this writ petition, the petitioners allege that Exts.P1 and P3 notifications are unconstitutional, as the proposed new municipal corporation of Kannur is intended to be formed taking areas of some existing village panchayats. According to the petitioners, it is against the statutory provisions contained in the Kerala Municipality Act. WP(C)s13479&14873/15 -:3:-

5. The respondent State has filed a counter affidavit in both the writ petitions justifying their stand in linking the aforesaid portions to the corporation. It was contended that a number of petitions demanding bifurcation and annexation of the aforesaid areas to the aforesaid corporations were received by the Government and thereafter the same was examined in detail through a committee constituted as per order dated 10.4.2014. Guidelines were also issued to this committee as per order dated 27.11.2014. After conducting a thorough study and having regard to the special circumstances which are relevant and material, the committee submitted a report to the Government and the report was placed before the cabinet and accordingly, it was decided to call for the objections from the general public. The objections were heard and ultimately, the impugned orders were passed. Therefore, according to them, there is absolutely no basis in the allegation that the notifications are in violation of the constitutional provisions as well as Kerala Panchayat Raj and Municipalities Act and Rules.

6. In W.P(C) No.14873 of 2015, apart from the State, Director of Panchayats and Kannur Municipality, Grama Panchayats concerned were also impleaded. The

sixth respondent which is the Edakkad Grama Panchayat has filed a WP(C)s13479&14873/15 -:4:- detailed counter affidavit supporting the action of the Government.

7. I have heard Mr. Jayapradeep V, the learned counsel for the petitioners in W.P(C) No.13479 of 2015, Mr. K.Ramakumar, the learned Senior Counsel appearing for the petitioners in W.P (C) No.14873 of 2015 ably assisted by Mr. S.M.Prasanth, Mr.K.P.Dandapani, the learned Advocate General ably assisted by Mr. Tom K.Thomas, the learned Special Government Pleader, Mr. K.K.Chandran Pillai, the learned Senior Counsel for the sixth respondent in W.P(C) No.14873 of 2015 and Mr. Murali Purushothaman, the learned Standing Counsel for the Kerala State Election Commission and the Delimitation Commission; who acted as a ready reckoner of the various judicial pronouncements in the realm.

8. Mr.Jayapradeep, the learned counsel for the petitioners in W.P(C) No.13479 of 2015 would submit that the decision to add Thrikkadavoor Panchayat with Kollam Municipality is against the interest of common people. Inviting my attention to Exts.P3 and P4, the learned counsel submitted that the committee of the grama panchayat and the corporation council were against the said merging. It was also pointed out that other panchayats like Neendakara, Kollam have not raised any objections. However, WP(C)s13479&14873/15 -:5:- Needakara was excluded and Thrikkadavoor was added to the Kollam Corporation. This, according to the learned counsel for the petitioners, was on account of political considerations.

9. Mr.Ramakumar, the learned Senior Counsel for the petitioners in W.P(C) No.14873 of 2015 would argue that before issuing the notification like the one impugned, there should be a notification declaring the area to be linked to the corporation as a larger urban area. This mandatory requirement has not been complied; so submitted the learned Senior Counsel for the petitioner. It was further submitted that there is no provision in the Panchayat Raj Act providing for conversion. It was argued that in the case of Kannur Corporation, Valapattanam which is an industrial area has been excluded. It was argued by the learned Senior Counsel that only municipalities can be converted into corporations. The learned Senior Counsel relied on the decision in Raveendran v. State of Kerala [2006 (1)

KLT427 in support of the argument.

10. The learned Advocate General as well as Mr. K.K. Chandran Pillai, the learned Senior Counsel for the sixth respondent in W.P(C) No.14873 of 2015 would submit that the aforesaid decision is not applicable to the present case. It was pointed out that what was objected to in the aforesaid decision WP(C)s13479&14873/15 -:6:- was regarding degradation of parts of urban area to rural area.

11. Here, it was pointed out that on account of the general public interest and taking into account the long standing demand, the ares of panchayats are intended to be linked with the existing corporation as well as the newly formed corporation of Kannur. Therefore, according to the learned Advocate General and Mr. Chandran Pillai, there is no illegality in the procedure now adopted by the State. It can be seen from the impugned notification that the source of power exercised by the State is under Article 234Q of Constitution of India as well as Section 4 of the Municipality Act.

12. The main argument advanced by the learned counsel for the petitioners is that none of the panchayats now proposed to be converted as part of municipal corporation of Kannur and Kollam are notified as required under Article 243Q of the Constitution of India and under Section 4 of the Municipality Act as urban or larger urban area as those expressions are defined under the Constitution of India. According to them, there is no provision empowering the Government of Kerala to convert rural area into a larger urban are without satisfying the norms regarding the population, income and urban activities etc.

13. As rightly pointed out by the learned Advocate General WP(C)s13479&14873/15 -:7:- and Mr. K.K.Chandran Pillai, the learned Senior Counsel for the sixth respondent in W.P(C) No.14873 of 2015, the argument that rural area can be declared as only a transitional area in the first instance under Article 243Q is not the scheme envisaged in Article 243P of the Constitution of India. As per Article 243P, municipality includes.- (a)Nagar Panchayat for a transitional areas (b)A Municipality for a smaller urban areas (c)A Municipal Corporation for a larger urban area.

14. Therefore, a 'Municipality' takes all the aforesaid three instances. There is nothing in the Constitution of India or the Kerala Municipality Act, 1994 or any law for the time being in force which prevents the Governor from declaring a rural area to be a larger urban area directly. This question has since been finally settled by number of judicial interpretations.

15. My attention was invited to the decision of this Court in *Sreekala v. State of Kerala* [2010 (3) KLT548 which covers all legal contentions taken by the petitioners. There, it was observed that there is no restriction under the Constitution of India to merge/unite a village panchayat to a municipal corporation. It was made clear that absence of the words 'municipal corporation' in Section 4(2)(e) will not effect the WP(C)s13479&14873/15 -:8:- exercise of said power. That apart, the term 'municipal corporation' is not defined under the Act. Reference to Sections 2 (6), 2(9), 2(21) and 2(43) of the Municipality Act would show that the two words are used as synonyms and, therefore, there is no distinction between a municipality and a corporation in the matter of considering the issue raised in the above writ petition.

16. Section 4 of the Act provides for joining the area of a grama panchayat to form a municipal corporation. The decision of this Court in *Saji Joseph v. State of Kerala* [2010 (3) KLT672 would also support this view.

17. Now the next question to be answered is whether the absence of the notification by the Governor as contemplated in the above provision would vitiate the impugned orders. Article 166 of the Constitution of India relied on by the petitioners can only be interpreted in favour of the notification issued by the Government. The Governor is not exercising its powers under Article 243(Q)(2) in his discretion, but he is acting on the advice of the council of Ministers only. Rules of business of Government under Article 166 governs the matter of advice. Under such circumstances, the Governor can act only on the advice of the Council of Ministers. Therefore, the notification published by the Government in the name of the Governor which is clear from WP(C)s13479&14873/15 -:9:- Ext.P1 produced in W.P(C) No.14873 of 2015 is sufficient compliance with the requirement of the Articles and the Section.

18. The argument that there was no proper enquiry and consultation process will not stand because the files produced before this Court would indicate that there was a notification followed by calling of objections and consideration by the same. Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that there is absolutely no scope for interference with the impugned action. In the result, the writ petitions fail and accordingly, they are dismissed. Sd/- A.V.RAMAKRISHNA PILLAI JUDGE krj /true copy/ P.A to Judge

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