

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS**

WEDNESDAY, THE 1ST DAY OF APRIL 2015/11TH CHAITHRA, 1937

WA.No. 1299 of 2010 ()

**AGAINST THE ORDER/JUDGMENT IN WP(C) 17104/2010 of HIGH COURT OF KERALA
DATED 22/7/2010**

APPELLANT(S)/PETITIONERS IN WPC:

- 1. JOSE PALLIKUNNEL
PALLIKUNNEL HOUSE, CHINGAVANAM POST, KOTTAYAM.**
- 2. P.C.CHANDY, PUTHENPURAKKAL HOUSE,
PALLOM POST, KOTTAYAM.**

BY ADV. SRI.K.REGHU KOTTAPPURAM

RESPONDENT(S)/RESPONDENTS 1-3 & ADDL.RESPONDENTS 4 & 5 IN WPC:

- 1. THE STATE OF KERALA
PRINCIPAL SECRETARY TO GOVERNMENT
LOCAL ADMINISTRATION (EM) DEPARTMENT, SECRETARIAT
THIRUVANANTHAPURAM 695 001.**
- 2. NATTAKOM GRAMA PANCHAYAT (SPECIAL GRADE)
REPRESENTED BY ITS SECRETARY, MARIAPALLY P.O.
KOTTAYAM 686 023.**
- 3. THE KOTTAYAM MUNICIPALITY,
REPRESENTED BY ITS SECRETARY, KOTTAYAM 686 001.**

**ADDL.4) STATE ELECTION COMMISSION,
REPRESENTED BY ITS SECRETARY, CORPORATION OFFICE
COMPLEX, THIRUVANANTHAPURAM- 695 001.**

**ADDL.5) STATE DELIMITATION COMMISSION,
KERALA, REPRESENTED BY ITS SECRETARY
CORPORATION OFFICE COMPLEX, LMS JUNCTION
THIRUVANANTHAPURAM- 695 001.**

R3 BY ADV. SRI.PHILIP J.VETTICKATTU

R3 BY ADV. SRI.SIBY MATHEW

ADDL.4 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMMISSION

ADDL.5 BY ADV. SRI.MURALI PURUSHOTHAMAN,SC,DELIMITATION COMMN.

R2 BY ADV. SRI.P.KURUVILLA JACOB

BY SR.GOV.T.PLEADER SRI.M.K.ABOOBAKER

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 01-04-2015 ALONG
WITH WA NO.1348/2010, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

ANTONY DOMINIC & ALEXANDER THOMAS, JJ.
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Writ Appeal Nos. 1299 & 1348 of 2010
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Dated this the 1st day of April, 2015

J U D G M E N T

Antony Dominic, J.

These writ appeals are filed against the judgment in WP(C) No.17104/10. In the writ petition that was filed by the appellants in WA No.1299/2010, the challenge was against the notification and the final order that was passed under Section 4 of the Kerala Municipality Act, 1994, to the extent it united the area of Nattakom Panchayat with the area of Kottayam Municipality in terms of the provisions contained in Section 4(2)(e) of the said Act. The writ petition was considered by the learned single Judge along with a batch of other cases and by the common judgment reported in ***Sreekala v. State of Kerala*** (2010 (3) KLT 548), the writ petitions were dismissed. It is aggrieved by the said judgment of the learned single Judge, these appeals are filed.

2. We heard the learned counsel for the appellants, learned Government Pleader appearing for the 1st respondent and the learned standing counsel appearing for the State Election Commission and the State Delimitation Commission.

3. In so far as WA No.1299/10 is concerned, Ext.P2 is the notification issued under Section 4 of the Kerala Municipality Act proposing to merge Nattakom Grama Panchayat with the Kottayam Municipality. Ext.P6 is the objection filed by the 1st appellant in WA No.1299/10 and in so far as WA No.1348/10 filed by the Nattakom Grama Panchayat is concerned, Ext.P4 therein is the minutes of the meeting of the Panchayat resolving to object to the proposal. It was considering the objections thus raised, the Government passed Ext.P11 in WP(C) No.17104/10 rejecting the objections. It was accordingly that a final notification was also issued.

4. In both these appeals, counsel contended that the proposal for the unification of the Nattakom Grama Panchayat with the Kottayam Municipality was finalised by the Government without affording an opportunity of hearing to the Panchayat or anybody else. In so far as this contention raised by the learned counsel for the appellants is concerned, the question of opportunity of hearing arises only if there is such an obligation in terms of the statutory provisions or when the rules of natural justice justify such an opportunity. Admittedly, the provisions of

Section 4 of the Kerala Municipality Act only obliges the Government to consider the views and suggestions of the Panchayat and no opportunity of hearing is provided either expressly or by implication in the Act. Then the question is whether the principles of natural justice are applicable to a proceedings under Section 4. It is the settled position of law that such principles are inapplicable when the proceedings are of a legislative character. In para 27 of the judgment under appeal itself, the learned single Judge has made reference to the Apex Court judgment in ***State of Punjab v. Tehal Singh & Ors.*** {(2002) 2 SCC 7}, where it was held that determination of territorial area of a grama sabha and the establishment of a grama sabha for that area is an act which is legislative in character. This, therefore, means that the exercise of power under Section 4 being legislative in character, the principles of natural justice have no place in such proceedings. If that be so, this complaint of the counsel for the appellants that the parties were not given an opportunity of hearing does not merit acceptance.

5. The other issue that was raised before us was that the requirements of Article 243-Q of the Constitution of India were not complied with. This contention was raised by the learned counsel for the appellants on the basis that despite statutory obligation, the Government did not consider the objections raised by the appellants in a proper sense. First of all, statute only requires consideration of the views of the Panchayat and in so far as that aspect of the matter is concerned, Ext.P4 minutes of the Panchayat referred to above shows that the Panchayat has only opposed the merger without raising any specific objection with regard to population, density, revenue generated for local administration, percentage of employment in non agricultural activities etc,. In such a situation, the Panchayat cannot be heard to complain that the requirements of Article 243-Q were not complied with.

6. In so far as the objection raised by the appellant in WA No.1348/10 is concerned, a statement has been filed on behalf of the Government. Para 7, 8 and 9 explains the steps that were taken by the Government to comply with the requirements of Article 243-Q, which, being relevant, are extracted below;

"7. Regarding compliance of statutory provisions in the Act and Article 243 Q of the Constitution, it is submitted that the Government by G.O (P)No.111/2010/LSGD dated 8.6.2010 issued notification under Article 243 Q(2) of the Constitution, with the approval of the Governor, specifying the area of Nattakam Grama Panchayat as a smaller urban area. A true copy of the said Government order is produced herewith and marked as Exhibit R1 (b). Government has issued G.O(P) No.114/2010/LSGD dated 8.6.2010 merging Nattakam Grama Panchayat with the Kottayam Municipality. A true copy of the said G.O is produced herewith and marked as Exhibit R1 (c). Exhibits R1(b) and R1(c) have been published in th Extra Ordinary Gazette dated 8.6.2010.

8. It is submitted that Exhibit P2 notification was preceded by a study of urban scenario to facilitate delimitation of boundaries of urban local bodies in the State. The study was conducted by the Chief Town Planner, Department of Town and Country Planning. A true copy of the study report dated 8.6.2009 submitted by the Chief Town Planner to the Principal Secretary, Local Self Government Department, along with the relevant data

regarding Kottayam District is produced herewith and marked as Exhibit R1(d). The Chief Town Planner conducted the study following the criteria mentioned in the Report of the Committee on Decentralization of Power. The report palpably shows that almost all the parameters of urban characteristics pertaining to Nattakam Panchayat qualify for its declaration as a smaller urban area.

9. As per Exhibit R1(d), the total population in Nattakam Panchayat is 41702. The density of population per square km. is 1616.98. The percentage of population engaged in non agricultural activities is 88.58. The revenue generated for local administration (other than grants from Government) is 73.07 lakhs. The percentage of employment in non agricultural activities and revenue generated for local administration are indicative of economic importance of the area. The report palpably shows that almost all the parameters of urban characteristics pertaining to Nattakam Panchayat qualify for its declaration as a smaller urban area. Government inter alia considered Exhibit R1(d) report of the Chief Town Planner and issued Exhibit P1 notification proposing to unite Nattakam Panchayat with the Kottayam Municipality. After considering

the objections received against Exhibit P2 and after hearing the objectors, including the first petitioner, the Government issued Exhibit P11 order.”

There is absolutely no material before this Court to reject the explanation offered. In such circumstances, this objection raised by the appellants also is only to be rejected.

7. Counsel for the appellants then contended that Section 4(2)(e) of the Kerala Municipality Act permits unification of the territorial area of a Panchayat geographically lying adjacent to the Municipality only. In other words, his contention was that only two wards of the Nattakom Grama Panchayat lie geographically adjacent to Kottayam Municipality and therefore only those wards would have been unified and not the entire Panchayat.

8. Section 4(2)(e) reads thus;

**“4. Constitution, alteration and conversion
of Municipalities - (1) xxxx**

(2) The Government may, by notification,-

- (a) xxxx**
- (b) xxxx**
- (c) xxxx**
- (d) xxxx**

(e) unite the territorial area of a Panchayat geographically lying adjacent to a Municipal area, with the Municipality."

9. A plain reading of Clause (e) shows that this provision enables the Government to unite the territorial area of a Panchayat geographically lying adjacent to a Municipal area, with the Municipality. The territorial area of a Panchayat geographically lying adjacent to a municipal area is the entire area of the Panchayat and the language used by the legislature does not permit us to impart a restricted reading and thereby to interpret the same as now canvassed before us.

10. Learned counsel for the appellant in WA No.1348/10 also contended that the Panchayat was not given an opportunity of personal hearing. We have already dealt with this contention and therefore, we are not dealing with the same once again. Counsel then contended that the objections raised by the Panchayat and the Kottayam Municipality against the unification were ignored by the Government. As we have already stated, the objections raised were too vague and in any case, the final notification issued by the Government shows that these

objections were also dealt with as is required under Section 4 of the Kerala Municipality Act.

11. Learned counsel then invited our attention to Ext.R1(a) notice dated 18/1/10 addressed to the President of the Panchayat and contended that such notice was a fabricated one and that the same was not issued to the President. He also referred to Ext.P7 notice dated 18/1/10 issued to the Vice President of the Panchayat and contended that while Ext.P7 carried the emblem of the Government of Kerala, Ext.R1(a) did not carry such an emblem. On this basis, counsel contended that since Ext.R1(a) was not even issued to the Panchayat, the requirements of Article 243-Q were not complied with. However, we are unable to accept this contention of the learned counsel. First of all, Ext.R1(a) itself states that it is only a true copy of the notice. Secondly, Ext.R2(a) in WA No.1348/10 is the minutes of the meeting of the Panchayat that was convened after 18/1/10. Reading of this minutes shows that even according to the Panchayat, the only complaint was that Ext.R1(a) did not carry an emblem and there was no complaint whatsoever that Ext.R1(a) was not received by the President of the Panchayat. In any case, admittedly, Ext.P7 was

received by the Vice President of the Panchayat and therefore nothing prevented the Panchayat from placing its objections before the Government.

12. Learned counsel lastly contended that the merger was a politically motivated one and was not intended to the benefit of anybody. First of all, there is total dearth of materials on this issue and when an act has been complied with in accordance with the statutory and constitutional provisions, we cannot interfere with the said act on the unsubstantiated allegation of political motivation, which is now canvassed before us.

We do not find any reason to interfere with the judgment under appeals. Appeals fail and are accordingly dismissed.

Sd/-
**ANTONY DOMINIC
JUDGE**

Sd/-
**ALEXANDER THOMAS
JUDGE**

Rp

//True Copy//

PA to Judge