

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

**PRESENT:**

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN  
&**

**THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

**MONDAY, THE 6TH DAY OF JULY 2015/15TH ASHADHA, 193**

**WA.No. 1482 of 2013**  
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**AGAINST THE JUDGMENT IN O.P.NO.38307/2002 (I), DATED 01-10-2004**  
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**APPELLANT(S)/PETITIONERS 1 & 3 :**  
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- 1. K.V.BALAN,  
THIRUVANGOTH HOUSE, PATHIYARAKKARA,  
VATAKARA.**
- 2. K.GOPALAN MASTER, KOTTITTAYIL HOUSE,  
PUTHIYANAKKARA P.O., KOZHIKODE DISTRICT.**

**BY SMT.SUMATHY DANDAPANI (SENIOR ADVOCATE)**

**RESPONDENT(S)/RESPONDENTS & 2ND PETITIONER :**  
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- 1. UNION OF INDIA,  
REPRESENTED BY THE SECRETARY TO GOVERNMENT,  
MINISTRY OF COMMUNICATION, NEW DELHI-1.**
- 2. BHARAT SANCHAR NIGAM LTD.,  
REPRESENTED BY THE MANAGING DIRECTOR,  
B.S.N.L., NEW DELHI.**
- 3. THE CHIEF GENERAL MANAGER,  
BHARAT SANCHAR NIGAM LTD.,  
THIRUVANANTHAPURAM.**
- 4. THE GENERAL MANAGER,  
BHARAT SANCHAR NIGAM LTD., KOZHIKODE.**
- 5. THE DIRECTOR OF CENSUS OPERATION,  
KERALA, TRIVANDRUM.**
- 6. THE COMMISSIONER,  
CENSUS OPERATIONS, NEW DELHI.**

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**7. THE ACTION COMMITTEE FOR TELEPHONE SERVICES,  
PALAYAD NADA, REPRESENTED BY THE CONVENOR,  
M.C.NARAYANAN, S/O.SANKARAN, MEETHALACHARUVATTU,  
MUDUVANA, KOZHIKODE DISTRICT.**

**R1 TO R4 BY ADV. SRI.MATHEWS K.PHILIP,SC, BSNL  
R5 & R6 BY ADV. SMT.MARIAM MATHAI  
R7 BY ADV. SRI.K.R.ARUN**

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION  
ON 06-07-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

Msd.

**ASHOK BHUSHAN, CJ**

**&**

**A.M. SHAFFIQUE, J.**

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W.A No.1482 of 2013

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Dated this, the 6<sup>th</sup> day of July, 2015

**J U D G M E N T**

**Shaffique, J**

This appeal is filed by the petitioner in O.P.No.38307/2002 by which he challenges the judgment dated 01/10/2004 dismissing the original petition. The original petition was dismissed based on the judgment in **Mavoor Peruvayal Perumanna Grama Vikasana Forum v. Union of India** [2003 (3) KLT 353].

2. The learned counsel for the appellants submits that though the judgment covers right of the Department to classify villages/Panchayats on the basis whether it is rural or urban, the question mooted by the learned counsel for the petitioners/appellants has not been considered. The facts involved in the writ petition would disclose that, as per Ext.P1 public notice issued by BSNL, Palayad Panchayat is treated as town and forming part of urban area. Petitioner challenged the

same by filing objection which was considered by the General Manager, Telecom, BSNL Calicut. By Ext.P5 proceedings dated 22/10/2002, it is observed that, as per census report 2002, Palayad has been classified as urban and the constituent village is specified as Palayad.

3. Petitioner has a case that as per Ext.P6, taking into consideration the population in Palayad, it should not have been classified as urban area, whereas it should be classified as rural area. If it is rural area, the charges for telephone will be less than that of an urban area. It is for that reason, petitioner submits that Exts.P1 and P5 are illegal and arbitrary.

4. Counter affidavit has been filed by the respondent inter alia stating that as per Ext.R4(a) dated 14/02/1996, it was clarified by the Planning Commission that the Census of India identifies all areas into urban and rural and urban areas are defined as under:

*“(a) All places with a municipality, corporation  
cantonment board or notified town area committee,  
etc.*

*(b) All other places which satisfy the following  
criteria:*

- (i) a minimum population of 5,000*
- (ii) at least 75 per cent of make working population engaged in non-agricultural pursuits; and*
- (iii) a density of population of at least 400 persons per sq.km.”*

5. Further, after the 2002 census, Palayad has been treated as a town which is evident from Ext.R4(c). It is therefore contended that the petitioner is not entitled to challenge Exts.P1 or P5 especially on account of the fact that the classification has been made based on the population in the area as per the census report in 2002.

6. The learned counsel for the appellants submits that the manner in which Ext.P1 notice and Ext.P5 order has been passed is totally illegal and arbitrary.

7. Since the authorities had gone through the latest census report and had come to the conclusion that Palayad area has been classified as urban, there is no reason for this Court to interfere with the said decision. The decision has been made based on the census report, as per the directions issued by the Planning Commission. Under such circumstances, we do not think that in the absence of any arbitrariness in the said decision

making process, there is no reason for this Court to interfere with the decision taken by the respondents.

We do not find any ground to interfere with the judgment of the learned Single Judge and hence the writ appeal is dismissed.

(sd/-)

**(ASHOK BHUSHAN, CHIEF JUSTICE)**

(sd/-)

**(A.M.SHAFFIQUE, JUDGE)**

jsr

W.A.No.1482/2013

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