

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

THURSDAY, THE 12TH DAY OF FEBRUARY 2015/23RD MAGHA, 1936

WA.No. 466 of 2014 ()

AGAINST THE ORDER IN WP(C).NO.5931/2014 DATED 03-03-2014.

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APPELLANT/2ND RESPONDENT:

**SMT. LISA NIZAM, WARD MEMBER,
WARD NO. 5, PALLICKAL GRAMA PANCHAYATH,
THIRUVANANTHAPURAM -695 604.**

**BY SRI.S. SREEKUMAR, SENIOR ADVOCATE.
ADVS. SRI.P.MARTIN JOSE,
SRI.M.A.MOHAMMED SIRAJ,
SRI.P.PRIJITH,
SRI.THOMAS P.KURUVILLA.**

RESPONDENTS/PETITIONERS/RESPONDENTS 1 AND 3:

- 1. PALLICKAL NAZEER @ S.NASEER, MEMBER,
WARD NO. 10, PALLICKAL GRAMA PANCHAYATH,
THIRUVANANTHAPURAM DISTRICT - 695 604.**
- 2. REMYA V.S., MEMBER, WARD NO. 11,
PALLICKAL GRAMA PANCHAYATH,
THIRUVANANTHAPURAM- 695 604.**
- 3. REMANI AMMA S., MEMBER, WARD NO. 01,
PALLICKAL GRAMA PANCHAYATH,
THIRUVANANTHAPURAM - 695 604.**
- 4. MANIKANTAN PALLICKAL, MEMBER,
WARD NO. 08, PALLICKAL GRAMA PANCHAYATH,
THIRUVANANTHAPURAM- 695 604.**
- 5. DEEPTHI V.D., MEMBER, WARD NO. 09,
PALLICKAL GRAMA PANCHAYATH,
THIRUVANANTHAPURAM- 695 604.**
- 6. AMBIKA KUMARI, MEMBER,
WARD NO.07, PALLICKAL GRAMA PANCHAYATH,
THIRUVANANTHAPURAM- 695 604.**

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**7. THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM - 696 001.**

**8. THE PALLICKAL GRAMA PANCHAYATH,
PALLICKAL, THIRUVANANTHAPURAM DISTRICT - 695 604,
REPRESENTED BY ITS SECRETARY.**

R1 TO R6 BY SRI.K.RAMAKUMAR, SENIOR ADVOCATE.

ADV. SRI.S.M.PRASANTH.

R7 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC.

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 12-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

rs.

C.R.

ASHOK BHUSHAN, Ag.C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 466 of 2014

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Dated this the 12th day of February, 2015

JUDGMENT

Ashok Bhushan, Ag.C.J.

This writ appeal has been filed against an interim order passed by the learned Single Judge dated 03.03.2014 in Writ Petition No.5931 of 2014. The appellant, who was the 2nd respondent in the writ petition, has filed this appeal with the grievance that appellant although was represented through counsel on the day when the matter was heard and an interim order was granted, the appellant's counsel was not given an opportunity to make submissions to oppose the grant of interim order.

2. It is submitted that learned Single Judge erroneously observed that the respondents to the writ

petition at the time of admission of the writ petition and grant of interim order has no right of audience. It is submitted that the said assumption by learned Single Judge was erroneous, which has prejudiced the case of the appellant.

3. Learned counsel appearing for the respondents/ writ petitioners had supported the order and submitted that no appearance was filed on behalf of the 2nd respondent and further the respondents in writ petition had no right to oppose the admission or interim order and it is only after passing of the order they can file appearance and seek such orders as they may be advised.

4. We have considered the submissions of learned counsel for the parties and perused the records.

5. The writ petition being pending before learned Single Judge, we do not see any necessity to narrate the facts or enter into the issues, which have been raised in the writ petition, on merits. We confine only to the

question as to whether the respondent, who was represented by counsel on the day, when the matter was heard, had any right of audience. Learned Single Judge was under the impression that the instructions by a party respondent to a learned advocate to enter appearance and oppose the interim relief is of little significance at that stage. It was observed by the learned Single Judge that present was not a case where the Court has issued notice to the respondent.

6. The observations of learned Single Judge in this context are as follows;

“ xxx xxx xxx. In the circumstances and in the absence of any precedents directly applicable in these circumstances I am of the considered view that at the stage of admission and consideration of the interim relief a party respondent cannot, as a matter of right, claim for any right of audience. It is also to be noted in this context that this is not a case wherein this Court ordered notice on admission. In the circumstances, I am of the view that the instructions by a party respondent to a learned Advocate to enter appearance and oppose the interim relief is little significance at the stage. In

such circumstances, I think it only appropriate to proceed with the question of admission and then on the question of grant of interim relief.”

Learned Single Judge was hearing a writ petition filed by the 1st respondent under Article 226 of the Constitution of India.

7. By virtue of the power under Article 225 of the Constitution of India, Section 122 of the Civil Procedure Code, 1908 and all the powers enabling in that behalf, the High Court of Kerala had made Rules, namely, Rules of the High Court of Kerala, 1971. Certain Rules, which may have bearing on the issue, need to be noted. Chapter IV of the Rules deals with service of notice. Chapter IX of the Rules have been framed especially for the proceedings under Article 226, 227 and 228 of the Constitution of India. Rule 148A provides for service of notice in cases, where the Central Government/State Government is the party. The Rule mandates that 'unless the Court otherwise directs, without service a prior notice

with a copy of the application on the previous day, motion be not made'. Rule 149 deals with posting for admission, which is to the following effect:

“**[149. Posting for admission.--** Every petition shall, soon after it is numbered, be posted for order of court for admission. The Court may, upon hearing the petitioner or his advocate, either admit the same or reject it. On admission notice shall be ordered to the respondents. Where notice has been ordered, the petitioner shall furnish as many copies of petition, affidavit and annexures thereto as there are respondents, forthwith, unless the Court otherwise directs. Where the petition stands disposed of on admission with direction to any one or more of the respondents, petitioner shall furnish as many copies of petition, affidavit and annexures thereto as there are respondents against whom direction is issued.]”

8. Rule 149 contemplates also disposal of the writ petition on admission with the direction to anyone or more of the respondents. Rule 150 deals with the interim orders, which provides that in admitting the application, it shall be competent for the Court to pass the interim order or motion made for the same so as to meet the ends of justice. When Rule 149 contemplates disposal of the writ petition at the admission stage itself and further also

interim order can be passed by the Court to meet the ends of justice, we see no prohibition in the Rules regarding entering appearance of any party respondent at the time of admission or grant of interim order. The interim order can be passed by the Court to meet the ends of justice and when party respondents, against whom interim order is prayed for by the petitioner, are represented through advocate, we see no inhibition or prohibition from hearing such party respondent by the Court.

9. Article 226 Sub Clause (3) also throws some light on the above aspects. Article 226 Sub Clause (3), which was substituted by Constitution 44th Amendment Act, 1978, although deals with the right of the respondent to make an application to the High Court for the vacation of interim order, Article 226 Sub Clause (3) Clause (b) enumerates one of the condition when there shall be right to make an application, that is, when the order was

passed “without giving such party an opportunity of being heard.” The above constitutional provision thus indicates that there may be ample number of instances, where interim order is passed after hearing the party respondent. Thus we do not find any prohibition or inhibition in the Rules of the High Court of Kerala, 1971, or any constitutional provision from refusing to hear a party respondent, who appears at the time of admission to oppose the grant of interim order. We thus, are of the clear view that party respondents, who are represented on the day when the matter was heard and the interim order was granted, had right of audience before the Court and had every right to oppose the grant of interim order.

10. In view of the fact that the writ petition is pending, the appellant, if she has not already filed an application for vacating the interim order, she may do so, and the learned Single Judge may consider such

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application and pass appropriate orders. We clarify that we are not entering into the merits of the case nor expressing anything on merits of the case.

With this observation, the writ appeal is disposed of.

Sd/-
**ASHOK BHUSHAN,
ACTING CHIEF JUSTICE**

Sd/-
**A.M. SHAFFIQUE
JUDGE**

das

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P.A. to Judge