

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:
THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 16TH DAY OF SEPTEMBER 2015/25TH BHADRA, 1937

WA.No. 1712 of 2015 () IN WP(C).15488/2015

AGAINST THE ORDER/JUDGMENT IN WP(C) 15488/2015 of HIGH COURT OF
KERALA DATED 26-06-2015

APPELLANT(S)/APPELLANT/PETITIONER:

BEENA JOLLY
PRESIDENT, KARIMANOOR GRAMA PANCHAYAT, THODUPUZHA
IDUKKI-685581.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S)/RESPONDENTS/RESPONDENTS:

1. STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT
DEPARTMENT OF LOCAL SELF GOVERNMENT, SECRETARIAT
THIRUVANANTHAPURAM-695001.

2. ELAMDESOM BLOCK PANCHAYAT
REPRESENTED BY THE SECRETARY
ELAMDESOM BLOCK PANCHAYAT, ELAMDESOM P.O.-685588.

3. THE SECRETARY
ELAMDESOM BLOCK PANCHAYAT, ELAMDESOM P.O.-685588.

4. KARIMANNOOR GRAMA PANCHAYAT COMMITTEE
REPRESENTED BY THE VICE PRESIDENT
KARIMANOOR GAMA PANCHAYAT, THODUPUZHA, IDUKKI-685581.

5. JOLLY AUGISTINE
S/O. AUGUSTINE, PUTHENPURAYIL HOSUE, PALLIKA MURI
KARIMANNOOR P.O., PIN:685581.

6. STATE ELECTION COMMISSION
KERALA, REPRESENTED BY THE SECRETARY
STATE ELECTION COMMISSION
CORPORATE OFFICE COMPLEX MUSEUM
THIRUVANANTHAPURAM-695033.

R1 BY SR.GOVERNMENT PLEADER SRI.C.R.SYAMKUMAR
R5 BY SRI.P.MARTIN JOSE
R6 BY SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMMISSION

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 9.9.2015
ALONG WITH W.A.NO.1979 OF 2015, THE COURT ON 16.9.2015 DELIVERED THE
FOLLOWING:

**ASHOK BHUSHAN, CJ
&
A.M.SHAFFIQUE, J**

W.A.Nos. 1712 & 1979 of 2015

Dated this the 16th September, 2015

JUDGMENT

Ashok Bhushan, CJ.

These two Writ Appeals arising out of two Writ Petitions being W.P(C).Nos.22150 and 15488 of 2015 filed by the appellant have been heard together and are being decided by this common judgment. Brief facts giving rise to these two Writ Appeals are:

W.A.No.1712 of 2015

The petitioner/appellant has been working as elected President of the Karimannoor Grama Panchayat. A notice for moving a no confidence motion against the petitioner was given by requisite number of elected members, to the Block Panchayat Secretary on 12.5.2015. The Secretary of the Block Panchayat issued a notice dated 14.5.2015

convening a special meeting on 27.5.2015 at 11 a.m for considering the motion. The petitioner, after receiving the notice, sent a letter dated 22.5.2015 requesting the Secretary of the Block Panchayat to adjourn the meeting to another date, since she was suffering from intense backache and numbness in her hands and legs. The Secretary of the Block Panchayat did not accede to the request of the petitioner. The petitioner filed W.P(C). No.15488 of 2015 challenging the notice dated 14.5.2015 convening the meeting on 27.5.2015 with some other reliefs. This Court passed an interim order on 26.5.2015 staying the holding of the meeting on 27.5.2015. In the Writ Petition, the petitioner had referred to her illness and submitted that it was not humanly possible for the petitioner to participate in the meeting, hence the meeting be stayed. The interim order, however, continued till 9.6.2015 and thereafter was not extended. The Writ Petition was ultimately dismissed on 26.6.2015 against which judgment, W.A.No.1712 of 2015 is filed.

W.A.No.1979 of 2015

2. After receipt of the information about the vacation of the interim order and after receipt of the direction from the State Election Commission to initiate further proceedings, the Secretary, Block Panchayat issued a notice dated 15.7.2015 to convene a meeting of no confidence motion on 27.5.2015 for considering the motion as submitted on 12.5.2015. The petitioner, after receiving the notice dated 15.7.2015, again rushed to this Court by filing W.P(C).No.22150 of 2015 praying for the following reliefs:

- “i) To issue a writ of certiorari quashing Exhibit P4 as unjust, illegal and unsustainable;*
- ii) To declare that Exhibit P4 is null and void in view of Section 157 of the Kerala Panchayat Raj Act and therefore the same cannot be acted upon.*
- iii) To issue a writ of mandamus directing the respondents to refrain from proceeding further on the basis of exhibit P4.*
- iv) To issue such other orders, directions or*

writs as may be prayed for and that this Hon'ble Court may deem fit on the facts and circumstances of the case."

3. This Court did not grant any interim order. Consequently, the no confidence motion was considered on 23.7.2015 and motion was passed with support of 10 members out of 13 members present in the meeting. Although the motion was carried on 23.7.2015, the Writ Petition was neither amended nor any challenge was laid to the carrying out of the no confidence motion on 23.7.2015 in the Writ Petition. W.P(C).No.22150 of 2015 has also been dismissed by the learned Single Judge by judgment dated 21.8.2015, against which judgment, W.A.No.1979 of 2015 has been filed.

4. Sri.Kaleeswaram Raj, learned counsel appearing for the petitioner submitted that the proceedings of no confidence motion can be held in accordance with the statutory provision as provided in the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as 'the 1994 Act'). It

is submitted that under Section 157(3), the meeting can be convened not later than 15 working days from the date on which notice under the sub-section is delivered to the officer. When the meeting scheduled to be held on 27.5.2015 could not be held, there was requirement of a fresh notice of no confidence motion for holding any meeting. It is submitted that the meeting convened by notice dated 15.7.2015 on the same motion dated 12.5.2015 is illegal and contrary to the provisions of Section 157 of the 1994 Act. It is submitted that when a statute requires a particular thing to be done in a particular manner, the same has to be done in the same manner or not at all. It is submitted that 7 days notice was not given for convening the meeting dated 23.7.2015. It is submitted that the subsequent meeting convened on 23.7.2015 being illegal, the learned Single Judge has committed error in dismissing the Writ Petition.

5. Sri.P.Martin Jose, learned counsel appearing for the party respondent and Sri.Murali Purushothaman, learned

Standing Counsel appearing for the State Election Commission, refuting the submission of learned counsel for the petitioner, contended that there was no illegality in convening the meeting for consideration of no confidence motion on 23.7.2015, since the earlier meeting, which was scheduled on 27.5.2015 got stayed by the petitioner herself by filing a Writ Petition. It is submitted that the statute do not bar convening a meeting after vacation of the interim order, which injuncted the respondent from holding the meeting as scheduled on 27.5.2015. It is submitted that there is no violation of Section 157(3) of the 1994 Act in the present case and the submissions made by the petitioner to the contrary are incorrect. It is submitted that the petitioner herself was responsible for getting the earlier meeting fixed for 27.5.2015 adjourned, hence, she cannot be heard in saying that the next meeting cannot be held. It is submitted that in the facts of the present case there was no necessity for giving any fresh notice for no confidence motion by the members and

there was no illegality in proceeding further on the basis of the motion received on 12.5.2015.

6. Learned counsel for the appellant has also placed reliance on the judgments of the Apex Court in ***Haresh Day Aram Thakur v. State of Maharashtra and others*** (2000(6) SCC 179) and ***Karthikeyan v. Deputy Commissioner of Excise, Ernakulam and another*** (2011(1) KHC 138).

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

8. From the submissions of the learned counsel for the parties and the materials on record, the following are the issues, which arise for consideration:

- I. **Whether after the stay granted in W.P (C).No.15488 of 2015 staying the convening of the meeting scheduled to take place on 27.5.2015 having been vacated by dismissal of the Writ Petition on 26.6.2015, issuance of notice dated 15.7.2015 for convening the meeting for consideration of no**

confidence motion on 27.5.2015 is violative of Section 157(3) of the 1994 Act?

II. When the meeting scheduled to take place on 27.5.2015 for considering the no confidence motion against the petitioner having been stayed till 9.6.2015, whether for convening another no confidence motion, a fresh notice by the members was required or whether on the basis of the notice dated 12.5.2015, the no confidence motion could have been considered?

III. Whether the notice dated 15.7.2015 violates any provisions of Section 157 of the 1994 Act?

9. All the issues being inter connected are being taken together.

10. The relevant provision of Section 157 of the Kerala Panchayat Raj Act, 1994 are as follows:

*“157. **Motion of no-confidence** - (1) Subject to the provisions of this section, a motion expressing want of confidence in the President or the Vice-President of a Panchayat may be moved in*

accordance with the procedure laid down herein.

(2) Written notice in such form as may be prescribed of the intention to move any motion referred to in sub-section (1) signed by such number of elected members of the Panchayat concerned as shall constitute not less than one-third of the sanctioned strength of elected members of that Panchayat together with a copy of the motion which is proposed to be moved shall be delivered in person by any of the elected members of the Panchayat signing the notice, to the officer as may be authorised by the State Election Commission in this behalf.

(3) The officer referred to in sub-section (2) shall convene a meeting of the elected members of the Panchayat for the consideration of the motion, to be held at the office of the Panchayat at a time appointed by him which shall not be later than fifteen working days from the date on which the notice under sub-section(2) is delivered to him.

(4) The officer referred to in sub-section (2) shall send by registered post to the elected members of the Panchayat concerned notice of not less than seven clear days of any meeting held under this section and the time appointed therefor. Notice regarding this shall be affixed in the office of the Panchayat.

(5) A meeting convened under this section shall be presided over by an office authorised by the State Election Commission under sub-section (2).

(6) A meeting convened for the purpose of considering the motion under this section shall not be adjourned except for reasons beyond human control. The quorum required for such meeting shall be one half of the elected members of that Panchayat.

xx xx xx

(13) If the motion is not carried by such majority as aforesaid or the meeting cannot be held for want of quorum, under sub-section(6), no notice of any subsequent motion expressing want of confidence in the same President or Vice-President shall be received until after the expiry of six months from the date of meeting, or the date fixed for the motion, as the case may be."

11. As noted above, the notice for moving no confidence motion was given by members on 12.5.2015 on which the meeting was convened for 27.5.2015 by notice dated 14.5.2015. The petitioner immediately made a request in writing for adjournment of the meeting on the ground of illness and thereafter filed W.P(C).No.15488 of

2015 praying for staying the no confidence motion proceedings. On 26.5.2015 the learned Single Judge passed an interim order. The relevant portion of the interim order is as follows:

“6. The learned counsel for the petitioner, per contra, inviting my attention to the medical records, which would show that the petitioner is not in a position to attend the meeting, requested for a stay.

7. Undoubtedly, there is a situation where it is humanely not possible for the petitioner to take part in the meeting.

8. Therefore, the meeting scheduled to be convened on 27.5.2015 for consideration of a no confidence motion shall be adjourned for a period of one week.

9. Post this case for counter of the respondents in the petition list on 1.6.2015.

Notice shall be issued to the other respondents by speed post.”

12. In view of the interim order dated 26.5.2015, the meeting was not held on 27.5.2015. W.P(C).No.15488 of 2015, in which the above interim order was passed, was

ultimately dismissed by judgment dated 26.6.2015. After dismissal of the Writ Petition, a fresh notice dated 15.7.2015 was given convening the meeting on 23.7.2015.

13. The main challenge before us is whether the notice dated 15.7.2015 is violative of Section 157(3) of the 1994 Act and as to whether a fresh motion for moving no confidence motion was required before convening the meeting on 23.7.2015.

14. The meeting which was fixed for 27.5.2015 could not be held due to the interim order dated 26.5.2015. When a meeting is stayed and could not be held under order of the Court, it has to be treated that the meeting has been adjourned by Courts of law. The Andhra Pradesh High Court in **Somaraju v. Munsiff-Magistrate, Bhimavaram** (AIR 1968 AP 22) has held that meeting stayed by court's order must be deemed to be adjourned by force of law. The meeting, which was subsequently convened after dismissal of the Writ Petition, is nothing but adjourned meeting.

15. Shackleton on the “Law and Practice of Meetings” (Seventh Edition) has said the following with regard to adjourned meetings.

“Adjourned meetings: notice

An adjournment, if bona fide, is only a continuation of the meeting and the notice that was given for the first meeting holds good for and includes all the other meetings following upon it. If however the meeting is adjourned sine die, a fresh notice must be given.

No new business can be introduced unless notice of such new business is given.”

16. Adjourned meeting is treated as continuation of the earlier meeting and there is no legal impediment for convening the adjourned meeting. There is no requirement of a fresh motion notice by members for moving a no confidence motion. If the submission is accepted that due to adjournment of meeting, a fresh notice is required that will be frustrating the very purpose and object of giving right to the members of Panchayat to move no confidence motion against the President. To

frustrate the no confidence motion, the only thing required to be shown is to create such situation that meeting may not be held and subsequently, the person, against whom no confidence is to be considered, can escape the very considering of no confidence. This cannot be the purpose and object of the 1994 Act.

17. The Apex Court in ***Mohan Lal Tripathi v. District Magistrate, Rai Bareilly and others*** [(1992) 4 SCC 80] in paragraph 4 of the judgment has laid down the following:

“4. Vote of no-confidence against elected representative is direct check flowing from accountability. Today democracy is not a rule of 'Poor' as said by Aristotle or of 'Masses' as opposed to 'Classes' but by the majority elected from out of the people on basis of broad franchise. Recall of elected representative is advancement of political democracy ensuring true, fair, honest and just representation of the electorate.”

18. The right given to the members of no confidence motion is a statutory right, which cannot be frustrated by putting the interpretation as suggested by learned counsel for the appellant.

19. Sub-section (6) of Section 157 of the 1994 Act provided that a meeting convened for the purpose of considering a motion shall not be adjourned “except for reasons beyond human control”. Thus, the adjournment of meeting is a possibility as contemplated by the statute. In Section 157 there is no such indication that once a meeting is adjourned, it cannot be subsequently convened.

20. When the meeting fixed on 27.5.2015 was adjourned at the instance of the petitioner by obtaining an interim order from this Court, the petitioner cannot be heard in saying that now the meeting cannot be held permitting the petitioner to gain benefit from her own act to frustrate the motion.

21. It is true that Section 157(3) provides that the officer referred to in sub-section (2) shall convene a meeting of the elected members of the Panchayat for consideration of the motion to be held at the office of the Panchayat at a time appointed by him which shall not be later than fifteen working days from the date on which the notice under sub-section (2) is delivered to him. In the present case, notice was delivered on 12.5.2015 and the initial meeting convened on 27.5.2015 was within the time limit as prescribed. The meeting scheduled to be held on 27.5.2015 having been stayed by this Court, holding of subsequent meeting within 15 days from delivery of notice has now become an impossibility. Law does not compel the doing of an impossibility. Thus, the above statutory provision under Section 157(3) laying down a duty to convene meeting within 15 days from the date of receipt of notice cannot be asked to perform when its performance has become impossible due to adjournment of meeting.

22. In this context, reference is made to the judgment of the Apex Court in ***Election Commission, In Re: Reference No.1 of 2002*** [(2002)8 SCC 337], wherein the Apex Court in paragraph 151 the following has laid down:

“151. The impossibility of holding the election is not a factor against the Election Commission. The maxim of law impotentia excusat legem is intimately connected with another maxim of law lex non cogit ad impossibilia. Impotentia excusat legem is that when there is a necessary or invincible disability to perform the mandatory part of the law that impotentia excuses. The law does not compel one to do that which one cannot possibly perform. “Where the law creates a duty or charge, and the party is disabled to perform it, without any default in him, and has no remedy over it, there the law will in general excuse him.” Therefore, when it appears that the performance of the formalities prescribed by a statute has been rendered impossible by circumstances over which the persons interested had no control, like an act of God, the circumstances will be taken as a valid excuse. Where the act of God prevents the compliance with the words of a statute, the statutory provision is not denuded of its

mandatory character because of supervening impossibility caused by the act of God. (See Broom's Legal Maxims, 10th Edn., at pp 1962-63 and Craies on statute law, 6th Edn.,p.268). These aspects were highlighted by this Court in Special Reference No.1 of 1974. Situations may be created by interested persons to see that elections do not take place and the caretaker Government continues in office. This certainly would be against the scheme of the Constitution and the basic structure to that extent shall be corroded."

23. Learned counsel for the appellant has relied on a judgment of the Apex Court in **Haresh Day Aram Thakur's case** (supra), wherein the Apex Court has laid down in paragraph 20 as follows:

"20..... The position is well settled that if the statute prescribes a procedure for doing a thing, a thing has to be done according to that procedure. Thus the order passed by the High Court confirming the settlement agreement received from the conciliator is wholly unsupportable."

24. To the similar effect is the another judgment of

the Apex Court in **Karthikeyan's case** (supra) as relied by the learned counsel for the appellant, wherein the following was laid down in paragraph 5:

"5. More than a century and a quarter ago, in Taylor (Taylor v. Taylor, 1871(1) Ch D 426), it was categorically laid down that where a power is given to do a certain thing in a certain way, that thing must be done that way, or not at all, and that other methods of performance are necessarily forbidden. When law prescribes the manner of exercising jurisdiction and confers power for that purpose, it has to be exercised in that manner only. This principle was applied by the Privy Council in Nazir Ahmed (Nazir Ahmed v. Emperor, 63 Ind App 372) and also by the Apex Court in several cases, including Rao Shiv Bahadur Singh (Rao Shiv Bahadur Singh and Another v. State of Vindh. P., 1954 KHC 472: AIR 1954 SC 322: 1954 SCR 1098: 1954 CriLJ 910) and Deep Chand (Deep Chand v. State of Rajasthan, 1961 KHC 729: AIR 1961 SC 1527: 1962(1) SCR 662: 1961(2) CriLJ 705: 1962 (2) KLJ 1). In Banarsi Das (Banarsi Das v. Brig. Maharaja Sukhjit Singh

and Another, 1998 KHC 718: 1998(2) SCC 81: AIR 1998 SC 179), this position was reiterated by the Apex Court. In *Babu varghese (Babu Varghese and Others v. Bar council of Kerala and Others*, 1999 KHC 194: 1999(3) SCC 422: 1999(1) KLT 836: 1999(1) KLJ 671: AIR 1999 SC 1281: 1999 AIR SCW 968: JT 1999(2) SC 200: 1999(2) Scle 65: 1999(3) SUPREME 34), THE Apex Court laid down that it is a basic principle of law that if the manner of doing a particular action is prescribed under any statute, that act must be done in that manner or not at all. The Apex Court stated in *Bhavnagar University (Bhavnagar University v. Palitana Sugar Mill (P) Ltd. and Others*, 2003 KHC 811: 2003(2) SCC 111: AIR 2003 SC 511: 2003(2) Guj LR 1154), that it is settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities, while acting under the statute, are only creatures of statute and they must act within the four corners thereof. The Apex Court noticed in *Ramachandra Keshav Adke (Ramachandra Keshav Adke v. govind Jot*

Chavare and Others, 1975 KHC 886: AIR 1975 SC 915: 1975(1) SCC 559: 1975(3) scr 839) that the said rule has stood the test of time. To the same view is the judgment of this Court in Shamin Sainudhen (Shamin Sainudhen and Others v. Medical Council of India and others, 2010(4) KHC 204 (DB): 2010(4) KLT 103: ILR 2010(4) Ker. 183)."

25. There cannot be any dispute about the proposition laid down in the aforesaid cases. When a statute requires a thing to be done in a particular manner, the said thing has to be done in the same manner. In the present case there is no violation of the aforesaid principle, since after receipt of the notice on 12.5.2015, the Secretary, Block Panchayat has convened the meeting by notice dated 14.5.2015 for 27.5.2015, which was in accordance with the procedure prescribed in Section 157. The requirement as provided in Section 157(3) of the 1994 Act for convening the meeting not later than fifteen working days from the date on which the notice has been received cannot be insisted on for an adjourned meeting,

more so, if the meeting has been adjourned at the instance of the petitioner herself.

26. We, thus, come to the conclusion that notice dated 15.7.2015 cannot be said to be violation of any requirement under Section 157(3) of the 1994 Act and the submissions raised by the appellant are misconceived. In the submission of the learned counsel for the appellant fresh notice for moving no confidence motion by the members was required for convening any subsequent meeting as in the present case has been fixed for 23.7.2015. The notice, which was given by the members on 12.5.2015 for no confidence motion has to come to its logical end, although meeting already fixed for 27.5.2015 due to obtaining of interim order by the appellant from this Court could not be held. After vacation of the interim order, the proceedings initiated by giving notice has to be brought to the logical end. Any other interpretation shall defeat the right given to the members of the Panchayat to move a no confidence motion against the President of the Panchayat.

27. We, thus, are of the view that there was no requirement of any fresh notice for moving a no confidence motion by the members and no legal infirmity has been committed by the Secretary of the Block Panchayat for convening meeting for 23.7.2015 on the basis of the notice received by him on 12.5.2015.

28. The third submission made by the learned counsel for the appellant is that notice given by the Secretary, Block Panchayat dated 15.7.2015 does not give seven days period, which is mandatorily required under Section 157(4) of the 1994 Act. The petitioner's case is that notice dated 15.7.2015 was received by her on 16.7.2015 at 3 'O' clock. Notice was sent only on 15.7.2015 at 4.53 p.m.

29. What is required by Section 157(4) of the 1994 Act is that the officer referred to in sub-section (2) “shall send by registered post to the elected members”. Notice of not less than seven clear days of the meeting. In the present case, according to the petitioner's own case,

notice was sent on 15.7.2015. The meeting having been convened on 23.7.2015, there was clear seven days notice given to the members, even if both days, i.e., 15th and 23rd July, 2015 are excluded.

30. One more submission raised by learned counsel for the appellant is that the meeting scheduled for 27.5.2015 was stayed till 9.6.2015, and the judgment was delivered on 26.6.2015 and after excluding the period of interim stay, there is 15 days period. It is suggested that after vacation of the interim order, the meeting should have been held within 15 days. The petitioner himself has filed a copy of the judgment of this Court in W.P(C). No.15488 of 2015 as Exhibit P3. A perusal of the last page of the judgment indicates that the copy of the judgment was ready on 14.7.2015 and it was delivered on 14.7.2015. Even from the date of delivery of the judgment, meeting has been convened within 15 days. Thus, no error was committed by the respondent in awaiting the final judgment of the court for convening the

meeting, although the interim order was not extended with effect from 9.6.2015. The procedure adopted by the respondent does not violate any statutory provision and no infirmity can be found by issuing notice on 15.7.2015 for convening meeting on 27.5.2015.

31. In view of the foregoing discussions, we do not find any error in the notice dated 15.7.2015 and the convening of meeting on 23.7.2015. No error could either be pointed out by learned counsel for the appellant in the judgment dated 26.6.2015 as well as in the judgment dated 21.8.2015, which are impugned in the present appeals.

In the result, both the Writ Appeals are dismissed.

**ASHOK BHUSHAN
CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs