

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 14TH DAY OF OCTOBER 2015/22ND ASWINA, 1937

WA.No. 1870 of 2015 ()

AGAINST THE JUDGMENT IN WP(C) 15521/2015 DATED 05-08-2015

APPELLANT/PETITIONER :

**A.P. RAGHAVAN, AGED 63 YEARS
S/O.APPU, ACHUPOYIL HOUSE, SOUTH KODUVALLY
KODUVALLY P.O., KOZHIKODE DISTRICT.**

**BY ADVS.SRI.P.V.KUNHIKRISHNAN
SRI.G.ANEESH
SRI.P.V.ANOOP**

RESPONDENTS/RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY ITS PRINCIPAL SECRETARY
LOCAL SELF GOVERNMENT (EM) DEPARTMENT,
THIRUVANANTHAPURAM, PIN: 695 001.**
- 2. KODUVALLY GRAMA PANCHAYAT
REPRESENTED BY ITS SECRETARY, KODUVALLY P.O.
KOZHIKODE, PIN-673 572.**
- 3. STATE ELECTION COMMISSION
KERALA, REPRESENTED BY ITS SECRETARY, L.M.S JUNCTION
THIRUVANANTHAPURAM, PIN- 695 033.**
- 4. STATE DELIMITATION COMMISSION
KERALA, REPRESENTED BY ITS SECRETARY, CWC BUILDING
L.M.S COMPOUND, THIRUVANANTHAPURAM, PIN- 695 033.**

***ADDL. R5 IMPEADED**

***ADDL. R5. A.P. MAJEED MASTER
S/O. MOHAMMED, AGED 48
AMIYAM POYIL, PALAKKUTTY
KODUVALLI POST, KOZHIKODE
KERALA STATE – 673 572.**

***IS IMPEADED AS ADDITIONAL RESPONDENT NO. 5 AS PER ORDER
DTD. 14/10/2015 IN IA NO. 1243/15 IN WA NO. 1870/15.**

R1 BY SPL. GOVT. PLEADER SRI. TOM K. THOMAS

R2 BY ADVS. SRI.K.M.FIROZ

SMT.M.SHAJNA

SRI.S.KANNAN

R3 & R4 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC

ADDL. R5 BY ADVS. SRI.P.A.MOHAMMED SHAH

SRI.SOORAJ T. ELENJICKAL

SRI.K.NANDAKUMAR

SMT.V.A.HARITHA

SMT.MARY RESHMA GEORGE

SMT.P.M.MAZNA MANSOOR

**THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 05-10-2015,
ALONG WITH WA. 1915/2015 & CONNECTED CASES, THE COURT
ON 14-10-2015 DELIVERED THE FOLLOWING:**

Mn

ASHOK BHUSHAN, CJ

&

A.M.SHAFFIQUE, J.

W.A.Nos.1870, 1915, 1946,
1948 and 2073 of 2015

Dated this the 14th day of October 2015

J U D G M E N T

Shaffique,J

W.A.No.2073 of 2015 and W.A.No.1915 of 2015 are filed against the common judgment dated 05/08/2015 in W.P.C.No.15718 of 2015 and W.P.C.No.14916 of 2015 respectively. W.A.Nos.1946 of 2015 and W.A.No.1870 of 2015 are filed against the common judgment dated 05/08/2015 in W.P.C.No.15137 of 2015 and W.P.C.No.15521 of 2015 respectively and W.A.No.1948 of 2015 is filed against the judgment dated 05/08/2015 in W.P.C.No.15669 of 2015. The appeals are filed by the writ petitioners, as their writ petitions were dismissed by the learned Single Judge.

2. Since the contentions urged on behalf of the appellants are somewhat common, these appeals are decided together.

3. W.P.C.No.15718 of 2015 is filed to quash Ext.P9 to P11 which are notifications dated 30/04/2015, by which the Governor

as well as the Government declared Panoor Grama Panchayath, Peringalam Grama Panchayath and Kariyadu Grama Panchayth together as a “smaller urban area” for constitution of Panoor Municipality. The main contention urged on behalf of the petitioner is that the aforesaid notifications are contrary to Article 243P and 243Q of the Constitution of India and violative of Section 4 of the Kerala Municipality Act, 1994 (hereinafter referred to as 'the Act'). It is contended that though objections were raised regarding inclusion of Kariyadu Grama Panchayath along with two other Grama Panchayaths and reports are available with the Government indicating that Kariyadu Grama Panchayath is not qualified to become a “smaller urban area” and part of a Municipality, without taking into consideration such reports and without any further material in that regard and without conducting a proper enquiry, the impugned orders have been issued.

4. W.A.No.1915 of 2015 which is against W.P.C.No.14916 of 2015 also raises similar contentions and is also in regard to inclusion of Kariyadu Grama Panchayath as a Municipality. In addition to the contentions urged in W.A.No.2073 of 2015,

petitioners contended that the materials available on record clearly indicate that the guidelines fixed by the Government for treating the Panchayath as a “smaller urban area”, has not been complied with.

5. The learned Single Judge observed that when the elected members of the Panchayath, by its majority decision, has supported the formation of a new Municipality, the petitioners cannot object to the same. It was also observed that inclusion of a rural area into an urban area would be advantageous to the people in the locality. Learned Single Judge also found that linking of Panchayath area to Municipal area is not contrary to any provisions under the Constitution and having further found that Government have conducted an appropriate study by a special committee and once it is found that all the parameters of urban characteristics pertaining to the Panchayath qualifies for a declaration as a smaller urban area, there is no reason to interfere with the impugned notification and accordingly the writ petitions are dismissed.

6. Sri.P.V.Surendranath, learned senior counsel appearing on behalf of the appellant contended that when Article 243Q(2) of

the Constitution of India clearly indicates the manner in which the Governor has to evaluate the fact situation before issuing the notification, none of the parameters specified therein has been complied with. Further, with reference to Section 4 of the Act, while exercising power under Section 4(2)(f), the Government is bound to ensure that the requirements under Article 243Q are fulfilled and suggestions and opinions of the local authorities are considered. It is argued that no material is produced before this Court to ensure a valid consideration of the objections raised by various objectors during the process of enquiry. Referring to the reports produced in the case, learned counsel submits that expert bodies have opined not to include Kariyadu panchayat as a smaller urban area and therefore in the absence of any further report negating the earlier findings, the action taken by the authorities are arbitrary and unreasonable.

7. Sri.M.Sasindran, learned counsel appearing on behalf of the appellants in W.A.No.1915/2015, while adopting the contentions urged on behalf of the appellant in W.A.No.2073/2015 further submits that the Kariyadu Grama Panchayath is virtually an agricultural area which is evident from the plan produced and

that the report submitted by the Committee for laying down the norms and guidelines for formation of a new Municipal Council had, in clear terms, opined that the Kariyadu Grama Panchayath does not have the features to become smaller urban area in order to qualify as a Municipality. Learned counsel also relied upon certain figures to indicate that the income derived by the Panchayath would also show that it cannot qualify to be a smaller urban area.

8. W.A.No.1870/2015, which arises from W.P.C.No.15521 of 2015 concerns constitution of a new municipality by name Koduvally by upgrading Koduvally Grama Panchayath. Appellant challenges the notifications Exts.P1 and P1(a) issued by the Government in that regard. The main contention urged by the petitioner is that there is no material in Ext.P1 to indicate that there was a valid consideration of the criteria mentioned in Article 243Q(2) before declaring Koduvally Grama Panchayath as a smaller urban area. It is contended that the parameters specified under the aforesaid constitutional provision has not been complied with. Further it is contended that the notifications were issued simultaneously which is totally against the proviso to

Section 4(2) of the Act. The learned Single Judge dismissed the writ petition along with three other cases forming an opinion that there is no illegality in the notification issued by the Government and that sufficient materials were available for converting the Panchayath to a Municipality.

9. W.A.No.1946/2015 arises from W.P.C.No.15137/2015. The issue is regarding conversion of Mukkam Grama Panchayath to Mukkam Municipality. Identical contentions have been urged on behalf of the petitioner.

10. Sri.P.V.Kunjikrishnan, the learned counsel for the appellant, in the aforesaid two cases, contended that the notification under Section 243Q(2) was issued without proper consideration of the objections raised. Further, he relied upon the judgment of the Supreme Court in **State of Uttar Pradesh v. Radhey Shyam Nigam and others** [(1989) 1 SCC 591] to contend that Government was not entitled to issue a notification under Section 243Q(2) and Section 4 of the Act simultaneously and on the same day. This, according to the learned counsel, amounts to non-application of mind as the Government could have issued a notification under Section 4(2) only after a

notification under Article 243Q(2) had been issued by the Governor.

11. W.A.No.1948 of 2015, which arises from W.P.C.No.15669 of 2015, is with reference to formation of Padanna Grama Panchayat to a 'smaller urban area' and a Municipality. The contentions urged are similar to that raised in the other cases as well. M.Sasindran, learned counsel appearing on behalf of the appellants, has taken the same contentions which he had taken in W.A.No.1915 of 2015 and contended that the materials available on record and relied upon by the Government do not justify conversion of the Grama Panchayath to a Municipal area.

12. Having regard to the contentions urged on behalf of the appellants, the issue to be considered are :

i) Whether there is proper consideration of the objections raised by various stake holders before issuing notification under Article 243Q(2) of the Constitution of India and Section 4(2) of the Act.

ii) Whether the respective Panachayts qualify for upgradation to "smaller urban area" and thereby as a

Municipality?

iii) Whether notification under Article 243Q(2) of the Constitution of India and Section 4(2) of the Act, is bad on account of it being notified simultaneously.

13. Both the issues are considered together. Articles 243P(d), (e) and (g) of the Constitution of India define Municipal area, Municipality and population as under:

“243P(d): 'Municipal area' means the territorial area of a Municipality as is notified by the Governor;

243P(e): 'Municipality' means an institution of self-Government constituted under article 243Q;

243P(g): 'Population' means the population as ascertained at the last preceding census of which the relevant figures have been published.”

Article 243Q reads as under:

“243Q. Constitution of Municipalities.- (1)

There shall be constituted in every State,-

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area.

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, 'a transitional area', 'a smaller urban area' or 'a larger urban area' means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part."

14. In terms of the aforesaid provisions, a Municipal Council is constituted for a 'smaller urban area'. In the case on hand, the complaint of the petitioners is with reference to conversion of a Panchayath area to a 'smaller urban area'. It cannot be disputed that the power is vested in every State to

constitute a Municipal Council for a smaller urban area. Municipal area is given the meaning as the territorial area of a Municipality as notified by the Governor. Article 243Q(2) gives the meaning of 'smaller urban area' as such area as the Governor may specify by public notification, having regard to the population of the area, density of population, revenue generated for local administration, percentage of employment in non-agricultural activities, economic importance and such other factors, as may deem fit. Sub Article (2) is only a general guideline by which the Governor may, taking into consideration the various parameters specified thereunder, notifies a particular area as transitional area, a smaller urban area or a larger urban area.

Section 4 of the Act reads as under:

“4. Constitution, alteration and conversion of Municipalities.- (1) *The Government shall, by notification in the Gazette, constitute with effect from such date as specified in the notification,-*

- (a) a “Town Panchayat” for a transitional area;*
- (b) a “Municipal Council” for a smaller urban area; and*
- (c) a “Municipal Corporation” for larger urban area, and specify the names of such Municipalities.*

- (2) *The Government may, by notification,-*
- (a) exclude any municipal area from the operation of this act; or*
 - (b) exclude from a municipal area comprised therein and defined in the notification; or*
 - (c) divide any municipal area into two or more municipal areas; or*
 - (d) unite two or more municipal areas; or*
 - (e) unite the territorial area of a Panchayat geographically lying adjacent to a Municipality area, with the Municipality; or*
 - (f) convert a Village Panchayat into a Town Panchayat or a Municipal Council or*
 - (g) convert a Town Panchayat into a Municipal Council; or*
 - (h) convert a Municipal Council into a Municipal Corporation:*

Provided that, before issuing such a notification the requirements under Article 243Q and sub-section (1) shall be fulfilled and the suggestions and opinions of the Village Panchayath or Town Panchayat or Municipal Council or Municipal Corporation concerned, shall be considered.

Provided further that any notification issued under this sub-section shall not be brought into force except in such a way as to coincide with the expiry of

the term of the existing Municipal Council or Village Panchayat in that territorial area.”

15. Section 4(2) refers to conversion of a Village Panchayat into a Municipal Council. This has to be done by virtue of a Government notification. This power is available to the Government by notification in the Gazette. However, the proviso indicates that before issuing such a notification, it has to be ensured that the requirements under Article 243Q and sub Section (1) shall be fulfilled and the suggestions and opinions of the Village Panchayat, Town Panchayat or Municipal Council or Municipal Corporation concerned, shall be considered.

16. Therefore, in order to invoke the power to convert a Village Panchayat to a Municipal Council, two requirements are to be complied. One is a notification in terms of Article 243Q(2) declaring a particular area as a smaller urban area and secondly the Government issuing notification under Section 4(1) of the Act. Proviso only indicates that before issuing a notification under Section 4(1), the requirements under Article 243Q and sub Section (1) shall be fulfilled, and the suggestions and opinion of the Village Panchayat shall be considered.

17. Petitioners do not have a case that no enquiry was conducted by the Government or the Governor in the matter relating to conversion of a Panchayat to a Municipal Council. Their contention is that the enquiry was not proper. The learned counsel points out certain infirmities in the reports to claim that there was no necessity for converting the Village Panchayat to a Municipal Council. We do not think that this Court, sitting in judicial review, should be concerned about each and every factual circumstances or materials that were relied upon by the Government in issuing the notification in terms of Section 4(1) and the manner in which the Government had considered the objections. The learned counsel for the appellants relied upon certain reports which indicate that there was no necessity for converting a Village Panchayath to a 'smaller urban area' and consequently to a Municipal Council. In fact, it could be seen from the manner in which power is vested with the Government under 243Q(2) that several parameters are to be verified by the Government to enable the Governor to notify a smaller urban area or a larger urban area, as the case may be. Needless to state that the notification need not contain all the particulars

which had been considered by the Governor or the Government, as the case may be, in order to issue such notifications. It is enough that Government had relied upon sufficient materials and had taken a decision in the matter. The learned Single Judge had observed that the Government as well as the Governor had taken the decision to issue the notification based on sufficient materials. Under such circumstances, we do not think that by exercising the appellate jurisdiction, this Court will be justified in taking a different view unless the finding is so perverse or is illegal. There is no such material produced to indicate that the learned Single Judge had committed serious error of law or perversity in arriving at the conclusion based on the materials made available before the Court, for perusal.

18. It is stated in the counter affidavits filed by the Government that, on receipt of several representations regarding bifurcations/annexation of Grama Panchayat / Municipalities / Municipal Corporations by the Government from local bodies, general public, non Governmental organisations etc., the Government constituted a Committee with the Director of Panchayat as Convener and Director of Urban affairs, State

Performance Audit Officer and the Chief Town Planner as members as per Government order dated 10/06/2014 to consider the said representations and to submit a report. The Government also prescribed guidelines as per Government order dated 27/11/2014 for the guidance and strict adherence by the Committee while proposing bifurcations, annexation, constitution of Municipalities etc. It is stated that 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. The report was placed before the Cabinet and the Cabinet decided to call for objections from the general public. Accordingly preliminary notifications were issued on 25/01/2015. It is, after considering the objections and suggestions received from the public, the affected parties, the local bodies etc. that final notification has been issued. It is therefore contended that appropriate steps had been taken by the Government before issuing the notification. With reference to Kariyad Grama Panchayat, it is stated that when the three panchayats are taken together, the required norms for the purpose of formation of a new Municipality is satisfied. It is also stated that such measures

have been taken, as it is beneficial for the people in the locality. With reference to Mukkom Grama Panchayat also, it is stated that similar study had been conducted and it is found that the residents of Mukkam Panchayat would be benefited as they will be in a position to enjoy various benefits under different centrally sponsored schemes. The additional fifth respondent, in his counter affidavit, submitted that the Panchayat is having more than 40,670 population and the revenue is more than Rs.2 Crores. It has various institutions, hospitals, schools etc. and therefore the said Panchayat qualifies for upgrading. With reference to Padanna Grama Panchayat also, the Government had taken similar contentions. It is stated that the said Panchayat is annexed to the existing Neeleshwar Municipality as the Panchayat was lying isolated. While hearing interested parties, majority of the people in the area opted in favour of annexing the said area to the Municipality. It is stated that such annexation has been done for good governance and speedy delivery of service and after taking into consideration all relevant parameters. Having regard to the fact that sufficient enquiry has been conducted by the Government, as rightly held by the learned Single Judge, it is

not for this Court to consider the factual matters involved in such consideration and to find out whether there is any infirmity in such decision. In so far as no illegality or arbitrariness is brought to the notice of this Court in these matters, we do not think that the learned Single Judge has committed any error in dismissing the writ petitions.

19. As far as the contention regarding simultaneous notifications by the Governor under Article 243Q(2) and the Government under 4(1) of the Act are concerned, the judgment in **Radhey Shyam's** case (supra) has no application to the factual circumstances of the case. That was a case that was decided on the basis of the Land Acquisition Act, 1894 where there was a specific provision that declaration under Section 6 has to be issued only "after the date of the notification". The said case had been decided based on the specific statutory provision and cannot have application to the case on hand. The learned counsel has taken up the argument based on the proviso to Section 4(2). The proviso only says that before issuing notification under Section 4(1) by the Government, the requirements under Article 243Q and sub Section (1) shall be fulfilled and the suggestions

and opinions shall be considered. It does not even indicate that a notification under Article 243Q should precede a notification under Section 4(1). In the present case, at any rate, the notification under Article 243Q and Section 4(1) has been published on the same day and the notification under Article 243Q was a prior notification, though published on the same day. What the proviso indicates is only that the requirement under Article 243Q has to be complied with. Article 243Q(2) refers to a notification by the Governor but prior to issuance of the notification, necessarily various other parameters and factors require to be considered. Proviso to Section 4(2) only indicates that the requirements of Article 243Q and sub Section (1) shall be fulfilled. Therefore we do not find any error in the notification issued by the Government on the same day itself.

These writ appeals are dismissed.

(ASHOK BHUSHAN, CHIEF JUSTICE)

(A.M.SHAFIQUE, JUDGE)

jsr

