

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN

&

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 21ST DAY OF MAY 2015/31ST VAISAKHA, 1937

WP(C).No. 13707 of 2015 (S)

PETITIONER(S) :-

P.J. ABRAHAM, S/O. P.J.JOSEPH. PATTIYALIL,
KIDANGOOR SOUTH P.O., KOTTAYAM

BY ADVS.SRI.V.G.ARUN
SRI.T.R.HARIKUMAR

RESPONDENT(S) :-

1. THE KERALA STATE ELECTION COMMISSION
REPRESENTED BY ITS SECRETARY
THIRUVANANTHAPURAM - 695 001.
2. THE RETURNING OFFICER
B 49, PAMPADY BLOCK PANCHAYATH, KOTTAYAM - 686 502
(DEPUTY DIRECTOR OF SURVEY AND LAND RECORDS,
KOTTAYAM)
3. STATE OF KERALA REP. BY THE SECRETARY TO GOVERNMENT
LOCAL SELF GOVERNMENT DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANATHAPURAM - 695 001.
4. THE PAMPADY BLOCK PANCHAYAT,
REP. BY ITS SECRETARY, PAMPADY, KOTTAYAM - 686 502.

R1 BY SRI.MURALI PURUSHOTHAMAN, SC, K.S.E.COMM
R3 BY SPL.GOVERNMENT PLEADER SMT.GIRIJA GOPAL

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 21-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

jvt

WP(C) .No. 13707 of 2015 (S)

APPENDIX

PETITIONER(S) ' EXHIBITS :-

EXHIBIT P1: A TRUE COPY OF THE RELEVANT PAGES OF THE FINAL VOTERS LIST OF WARD NO.10 OF KIDANGOOR GRAMA PANCHAYATH ALONG WITH ENGLISH TRANSLATION.

EXHIBIT P2: A TRUE COPY OF THE RELEVANT PAGES OF THE ELECTION NOTIFICATION NO.2310/B/2015/S.E.C DATED 24.4.2015 ALONG WITH ENGLISH TRANSLATION.

RESPONDENT(S) ' EXHIBITS :-

ANNEXURE R1(A) : THE PHOTOCOPY OF THE ELECTION NOTIFICATION No.77/2015/SEC DATED 30.4.2015 ISSUED AND GAZETTED BY THE 1ST RESPONDENT.

ANNEXURE R1(B) : THE PHOTOCOPY OF THE NOTIFICATION No.78/2015/SEC DATED 30.4.2015 ISSUED BY THIS RESPONDENT.

//TRUE COPY//

P.A. TO JUDGE

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

W.P.(C) No.13707 of 2015

Dated this the 21st day of May 2015

J U D G M E N T

Ashok Bhushan, CJ

Heard both sides.

2. This writ petition has been filed as a public interest litigation praying for quashing notification, Ext.P2, in so far as the election to the Kidangoor South (Ward No.02) of Pampady Block Panchayat.

3. Learned counsel for the petitioner submits that since the vacancy arose in February, 2015 and the tenure of the present committee is only upto 2.11.2015, for the short period, there is no necessity to conduct any election. He has referred to Sec.149 of the Kerala Panchayat Raj Act, 1994 and submitted that the intention of the Legislature is not to fill up the vacancy which occurs within six months before the ordinary date of retirement by efflux of time. The notification is being challenged only on the above ground. For considering the

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submission of the petitioner, it is useful to refer to Sec.149 of the Kerala Panchayat Raj Act, 1994, which is to the following effect :-

“149. Term of office of members - (1) The term of office of members of a village Panchayat, a Block Panchayat or a District Panchayat shall be five years from the date fixed for convening the first meeting of that Panchayat.

(2) Ordinary vacancies in the office of members of Panchayat at any level shall be filled at general elections which shall be fixed by the Government to take place on such day or days within three months before the occurrence of the vacancies as they think fit.

(3) A casual vacancy in the office of a member of Panchayat at any level shall be filled by the State Election Commission, within six months after the occurrence of the vacancy, through a bye-election.

(4) No bye-election shall be held to fill a vacancy occurring within six months before the ordinary date of retirement by efflux of time.

(4a) A casual vacancy of a member of the Panchayat at any level shall be reported directly by the Secretary concerned, to the State Election Commission within seven days of the occurrence of such vacancy and the Secretary who defaults in reporting the vacancy to the Commission within the said period without reasonable cause, shall be punishable with fine which may extend to one thousand rupees and for this purpose the State Election Commission shall have the power to initiate prosecution proceedings.

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(5) A member of a Panchayat at any level elected at a bye-election shall enter upon office forthwith, but shall hold office only so long as the member in whose place he is elected would have been entitled to hold office if the vacancy had not occurred."

Although it is true that Sec.149(4) provides that no bye-election shall be held to fill a vacancy occurring within six months before the ordinary date of retirement by efflux of time, sub section (3) of Sec.149 mandates State Election Commission to fill up the casual vacancy within six months after the occurrence of the vacancy, through a bye-election.

4. In the present case, the vacancy admittedly arose on 28.2.2015. Under sub section (3), the Commission is mandated to conduct the election within six months. The tenure, as per the petitioner's own case is to expire on 2.11.2015. When a statute casts a mandatory duty on the Commission to conduct bye-election within six months, it cannot be absolved from its mandatory duty on the spacious ground that now, less than six months' period is there for term being over. When a statute requires a particular thing to be done in a particular manner, the same has to be done in the said manner. We do not find any

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infirmity in the notification issued by the State Election Commission for bye-election for filling up the vacancy.

There is no merit in the writ petition. It is hence dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M. SHAFFIQUE
JUDGE

Jvt