

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 26TH DAY OF MAY 2015/5TH JYAISHTA, 1937

WP(C).No. 14335 of 2015 (N)

PETITIONER(S) :

**K.K.SURESH BABU,
S/O.KRISHNANKUTTY, MANIYELI HOUSE,
WEST KADUNGALLUR P.O., ALUVA- 683 110.**

BY ADV. SRI.DINESH MATHEW J.MURICKEN

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY THE CHIEF SECRETARY, SECRETARIAT,
PALAYAM P.O, THIRUVANANTHAPURAM DISTRICT, PIN- 695 001.**
- 2. THE ELECTION COMMISSIONER,
STATE ELECTION COMMISSION (KERALA)
CORPORATION OFFICE COMPLEX, LMS JUNCTION, PALAYAM,
THIRUVANANTHAPURAM DISTRICT, PIN- 695 001.**
- 3. THE RETURNING OFFICER,
G9 KADUNGALLUR GRAMA PANCHAYATH AND SUB REGISTRAR,
NORTH PARAVUR P.O., ERNAKULAM DISTRICT, PIN- 683 513.**
- 4. KADUNGALLUR GRAMA PANCHAYATH,
MUPPATHADAM P.O, ALUVA- 683 110,
REPRESENTED BY ITS SECRETARY.**

**R1 & R3 BY GOVERNMENT PLEADER SMT.K.A.SANJEETHA
R2 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26-05-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

APPENDIX

PETITIONER(S)' EXHIBITS

**EXHIBIT P1: TRUE COPY OF THE ELECTION NOTICE ISSUED BY
THE 3RD RESPONDENT DATED 30.04.2015.**

**EXHIBIT P2: TRUE COPY OF THE REPRESENTATION SUBMITTED BY
THE PETITIONER BEFORE THE 2ND RESPONDENT
DATED 05.05.2015.**

RESPONDENT(S)' ANNEXURS

**ANNEXURE R2(A): THE PHOTOCOPY OF THE ELECTION NOTIFICATION
NO.77/2015/SEC DATED 30.04.2015 ISSUED AND GAZETTED BY
THE 2ND RESPONDENT.**

**ANNEXURE R2(B): THE PHOTOCOPY OF THE NOTIFICATION NO.78/2015/SEC
DATED 30.04.2015 ISSUED BY THE 2ND RESPONDENT.**

**ANNEXURE R2(C): THE PHOTOCOPY OF THE LETTER NO.2922/B/2015/SEC
DATED 11.05.2015 OF THE 2ND RESPONDENT ADDRESSED TO
E.K.SURESH BABU.**

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.14335 of 2015

Dated this the 26th day of May, 2015

JUDGMENT

Alleging that the election notified by the second respondent in Ward No.10 of Kadungallur Grama Panchayat to be held on 26.5.2015 is against Article 243E of the Constitution of India and Section 149 of the Kerala Panchayat Raj Act, the petitioner has come up before this Court.

2. The petitioner who is a voter of the aforesaid ward of Kadungallur Grama Panchayat alleges that the general election to the Panchayats in Kerala including Kadungallur Grama Panchayat was held on 25.10.2010 and the first meeting of the members of the Kadungallur Grama Panchayat was held on 1.11.2010. A casual vacancy of panchayat member arose on 26.2.2015 due to the death of a sitting member who was declared elected from Ward No.10. According to

the petitioner, as per Article 243E of the Constitution of India and Section 149 of the Kerala Panchayat Raj Act, if a casual vacancy of the panchayat member arises, to fill the said casual vacancy, election need be conducted only if there is a period of more than 6 months period for the existing panchayat committee. According to the petitioner, if Article 243 of the Constitution of India and Section 149 of the Act is read together, the only interpretation which can be given to Section 149 of the Act is that there must be six months time remaining for the elected panchayat member to discharge his duty as a panchayat member during the currency of existing panchayat committee. It is alleged that in this case, election is scheduled to be held on 26.5.2015 and the term of the present panchayat committee will expire on 31.10.2015 and hence, there is only five months period for the elected member for discharging his duties as panchayat member.

3. I have heard the learned counsel for the

petitioner, the learned standing counsel for the Election Commission and the learned Government Pleader in the matter.

4. Mr.Murali Purushothaman, the learned standing counsel for the Election Commission invited my attention to a decision of this Court in ***Mohanan v Kerala State Election Commission, TVM*** (2015(2) KHC 829) wherein the notification issued by the Election Commission for by-elections while little more than six months left for general elections was challenged. The learned Single Judge who disposed of the writ petition held that the statutory prescription of upper time limit of six months to have by-elections before general elections are to be given due weightage and though it may sound illogical in notifying the elections when little more than six months only are left for general elections, the commission was fully justified in issuing notification for election as there was a clear period of six months for general election. Therefore, if there is time gap of six months between

the date of arising of casual vacancy and expiry of the date of the panchayat committee, the election can be held to fill the casual vacancy of the panchayat member. Therefore, this Court is of the view that there is little scope for interference in the impugned notification.

In the result, this writ petition fails and accordingly, dismissed.

sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/

true copy

P.S.TO JUDGE