

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 26TH DAY OF JUNE 2015/5TH ASHADHA, 1937

WP(C).No. 15488 of 2015 (I)

PETITIONER(S):

**BEENA JOLLY,
PRESIDENT, KARIMANOOR GRAMA PANCHAYAT,
THODUPUZHA, IDUKKI.**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF LOCAL SELF GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURA 695 001.**
- 2. ELAMDESOM BLOCK PANCHAYAT,
REPRESENTED BY THE SECRETARY,
ELEAMDESOM BLOCK PANCHAYAT, ELAMDESOM P. O.**
- 3. THE SECRETARY,
ELEAMDESOM BLOCK PANCHAYAT, ELAMDESOM P. O.**
- 4. KARIMANNOOR GRAMA PANCHAYAT COMMITTEE,
REPRESENTED BY THE VICE PRESIDENT,
KARIMANOOR GRAMA PANCHAYAT, THODUPUZHA , IDUKKI.**

*** ADDL.R5 & R6 IMPLEADED**

- 5. JOLLY AUGUSTINE, AGED 50 YEARS,
S/O.AUGUSTINE, PUTHENPURAYIL HOUSE, PALLICKA MURI,
KARIMANNOOR PO., PIN - 685 581.**

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**6. STATE ELECTION COMMISSION, KERALA
REPRESENTED BY THE SECRETARY,
STATE ELECTION COMMISSION, CORPORATE OFFICE COMPLEX,
MUSEUM, THIRUVANANTHAPURAM - 695 033.**

**ADDL.R5 AND R6 ARE IMPEADED AS PER ORDER DATED 01.06.2015 IN IA
7089/15 AND IA 7129/15.**

**R1 BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA
R5 BY ADVS. SRI.S.SREEKUMAR (SR.)
SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
R6 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-06-2015
THE COURT ON 26-06-2015, THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONER(S)' EXHIBITS

- EXT.P1 TRUE COPY OF THE APPLICATION DATED 29/4/2015
- EXT.P2 TRUE COPY OF THE MEDICAL CERTIFICATED DATED 29.4.2015
- EXT.P3 TRUE COPY OF THE RESOLUTION NO.3 DATED 4/5/2015
- EXT.P4 TRUE COPY OF THE APPLICATION DATED 11/5/2015
- EXT.P5 TRUE COPY OF THE CERTIFICATE DATED 8/7/2014
- EXT.P6 TRUE COPY OF THE INPATIENT DISCHARGE SUMMARY OF
M.O.S.C.MEDICAL COLLEGE HOSPITAL, KOLENCHERRY
- EXT.P7 TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY MEDICAL
CONSULTANT & CIVIL SURGEON, TJHQH. THODUPUZHA DATED
18/5/2015
- EXT.P8 TRUE COPY OF THE APPEAL PREFERRED BY THE PETITIONER
- EXT.P9 TRUE COPY OF THE ORDER DATED 20/5/2015
- EXT.P10 TRUE COPY OF THE NOTICE DATED 14/5/2015
- EXT.P11 TRUE COPY OF THE APPLICATION DATED 22/5/2015 TOGETHER WITH
COPY OF THE RECEIPT DATED 22/5/2015
- EXT.P12 TRUE COPIES OF THE RECEIPT FOR REGISTRATION FEES DATED
31/3/14 AND 4/6/14

RESPONDENT(S)' EXHIBITS & ANNEXURES

- EXT.R5(A): TRUE COPY OF REPRESENTATION DATED 17/2/15 FILED BEFORE THE
DISTRICT CONGRESS COMMITTEE PRESIDENT, IDUKKI
- EXT.R5(B): TRUE COPY OF THE MINUTES OF THE MEETING OF THE CONGRESS
PARLIAMENTARY COMMITTEE DATED 20/3/15
- EXT.R5(C): TRUE COPY OF MINUTES OF THE MEETING OF THE COORDINATION
COMMITTEE OF UDF DATED 12/4/15
- EXT.R5(D): TRUE COPY OF MINUTES OF THE MEETING DATED 17/4/15
- EXT.R5(E): TRUE COPY OF LETTER DATED 20/4/15 OF DCC PRESIDENT

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- EXT.R5(F): TRUE CPY OF RESOLUTION NO.3 DATED 4/5/15 OF PANCHAYAT COMMITTEE**
- EXT.R5(G): TRUE COPY OF ACKNOWLEDGMENT ISSUED BY P.V.MATHAI**
- EXT.R5(H): TRUE COPY OF MINUTES BOOK OF THE PANCHAYAT DATED 18/4/15**
- EXT.R5(I): TRUE COPY OF MINUTES BOOK OF THE PANCHAYAT DATED 28/4/15**
- EXT.R5(J): TRUE COPY OF REPORT DATED 1/6/15 SUBMITTED BY THE SECRETARY BEFORE THE R1**
- ANNEXURE R5(A): THE PHOTOCOPY OF THE JUDGMENT DATED 2/7/04 IN WPC.19439/2004**
- ANNEXURE R5(B): THE PHOTOCOPY OF THE ACKNOWLEDGMENT ISSUED BY THE DEPARTMENT OF POSTS EVIDENCING RECEIPT OF EXT.P10 NOTICE BY THE PETITIONER ON 16/5/15**
- ANNEXURE R5(C): THE PHOTOCOPY OF THE LETTER NO.C-922/2015 DATED 23/5/15 ISSUED BY THE R3 TO THE WRIT PETITIONER**

/ TRUE COPY /

P.S. TO JUDGE

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A.V.RAMAKRISHNA PILLAI, J

WPC No.15488 of 2015

Dated this the 26th day of June, 2015

JUDGMENT

Aggrieved by Ext.P10 notice proposing a no confidence motion against the petitioner, she has come up before this Court.

2. The petitioner is the elected President of Karimannur Grama Panchayat. The petitioner is aggrieved by the decision taken by the 4th respondent as per Resolution No.3 dated 4.5.2015 (Ext.P3) rejecting the petitioner's application for leave dated 29.4.2015 (Ext.P1) and the subsequent move from some members of the Panchayat, they proposing a no confidence motion against the petitioner which resulted in Ext.P10 orders.

3. The petitioner alleges that the respondents are well aware that the petitioner is bed ridden and is not in a position to attend the meeting scheduled to be held on 27.5.2015 for the reason beyond her control. The petitioner alleges that she was subjected to double edged

injustice as her legitimate request for leave was declined and after declining the same, even without facilitating a forum or occasion for the petitioner to defend herself, a no confidence motion is proposed to be held.

4. The 5th respondent has filed a detailed counter affidavit in which he has contended as follows:

The petitioner and the 5th respondent won the election as candidates of Indian National Congress(I). The petitioner was the nominee of UDF to the post of President of the Panchayat and she was elected. The entire people were disgusted with the functioning of the petitioner as President of the Panchayat. Eight members of the Panchayat including the 5th respondent filed a representation dated 17.2.2015 before the District Congress Committee President, Idukki informing their resentment in continuing the petitioner as President and requested to remove her from the post of President, a true copy of which was produced as Ext.R5(a). The DCC President convened the Parliamentary Party meeting of Congress-I on 20.3.2015. In the meeting the DCC

President was authorised to take a decision in the matter. A true copy of the minutes of the meeting of the Congress Parliamentary Committee dated 20.3.2015 is produces as Ext.R5(b). The co-ordination committee of UDF met on 12.4.2015 with the Congress Mandala President on the chair expressed their resentment in continuing the petitioner as the President of the Panchayat. A true copy of the resolution is produced as Ext.R5(c). The Congress Parliamentary party of the Congress-I member of the Panchayat met on 17.4.2015 in the Chairmanship of DCC President and sought the resignation of the petitioner from the post of President of Panchayat. A true copy of the same is produced as Ext.R5(d). The DCC President had a meeting with the petitioner in which the petitioner expressed her willingness to resign on or before 30.4.2015. The DCC President by letter dated 20.4.2015 informed the Mandala Congress President, the decision of the petitioner to resign on or before 30.4.2015. A true copy of the same is produced as Ext.R5(e). However, the petitioner refused to resign from the post of President of

the Panchayat. Anticipating no confidence motion, the petitioner submitted a leave application on 29.4.2015 and handed over charge to the Vice President. The Panchayat Committee as per Resolution No.3 dated 4.5.2015 resolved not to accept the leave application. A true copy of the resolution is produced as Ext.R5(f). On the advice of DCC President the Congress Karimanoor Block President suspended the petitioner from the Congress party for gross indiscipline and misconduct; it is contended.

It is contended by the 5th respondent that eight members of the Panchayat including the 5th respondent submitted the notice proposing no confidence motion against the petitioner before the Secretary, Block Panchayat, Elamdesom, who in turn issued an acknowledgment. A true copy of the same is produced as Ext.R5(g). Ext.P10 notice was published fixing the date of no confidence motion as 27.5.2015. It is submitted that the petitioner was regularly attending the Panchayat till 29.4.2015. Ext.P2 medical certificate was obtained for

creating evidence. It is submitted that the petitioner could easily move about and her locomotor movement is not prevented due to the alleged illness. It is submitted that Ext.P2 was deliberately procured to evade from appearing in the no confidence motion. There is absolutely no *bona fides* in issuing Ext.P2. Ext.P3 resolution was taken since the members were fully satisfied that the petitioner has no illness and pretension of back ache was only a camouflage to avoid the consequences of her non resignation as promised; it is alleged. Ext.P5 medical certificate is dated 8.7.2014 and thereafter, the petitioner had been attending all her personal needs and Panchayat Office till 29.4.2015. As per Ext.P6, the petitioner was admitted to the hospital on 4.5.2015 and was discharged on 5.5.2015. Ext.P6 does not disclose any serious ailment and Ext.P7 certificate was procured for the purpose of the case. None of the medical certificates show that the petitioner has been incapacitated to move out. It is submitted that the petitioner is not at all bedridden and she is moving around till date.

5. To the counter affidavit filed by the 5th respondent, the petitioner has filed a reply affidavit and the additional 5th respondent had filed an additional counter affidavit.

6. Though this Court by interim order dated 26th May 2015 granted an interim stay against the meeting scheduled to be held on 27.5.2015, the same was valid only up to 8.6.2015 as it was not extended subsequently.

7. I have heard Mr.Kaleeswaram Raj, the learned counsel for the petitioner and Sri.S.Sreekumar, the learned senior counsel for the 5th respondent, Mr.Murali Purushothaman, the learned counsel for the Kerala State Election Commission and Mr.Shyson P.Manguzha, the learned Government Pleader in the matter.

8. The learned counsel for the petitioner would submit that this is the second time the petitioner has been elected as a President of the Panchayat. It was pointed out that since 1995, the petitioner has been elected and working as the President of the Panchayat. Therefore, according to the learned counsel for the petitioner, she is a well supported leader in her locality. It was also pointed

out that she has brought many developmental projects to the Panchayat to achieve ISO Certification. According to the petitioner, the DCC President had a meeting with the petitioner in which the petitioner was asked to tender her resignation on account of certain baseless allegations. Those allegations were raised before the DCC President by other members as many of the policies that have been followed and implemented by the petitioner during her tenure has been against the vested interests and ulterior motives of the respondents.

9. The learned senior counsel for the 5th respondent, per contra, would submit that the petitioner has handed over the charge to the Vice President on 29.4.2015 in anticipation of no confidence motion. This, according to the learned counsel for the petitioner, is incorrect. The petitioner would submit that as the petitioner was too much indulged in the welfare activities of the Panchayat, the petitioner was unable to take ample rest after an accident and her illness worsened due to her restless schedule. It was also argued that the alleged indiscipline

and misconduct of the petitioner as a member of the political party is not a matter in issue in this writ petition.

10. Evidently, some of the members are intending to move a no confidence motion against the petitioner. The same cannot be curtailed by an interference of this Court.

As per Section 157(6) of the Panchayat Raj Act, a meeting convened for the purpose of considering the motion under that 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. Therefore, the only question that has to be considered in this case is whether the health condition of the petitioner is of such a nature which prevents her from attending the meeting where the no confidence motion is proposed to be staged. In support of the case of the petitioner that she is suffering from ailments after an accident and she was asked to take rest. She has produced certain documents. The documents pressed into service are Ext.P2 medical certificates issued by a consultant, Orthopedic Surgeon which states that she is

suffering from Radiculopathy and she was advised to be absent from duty for a period of 8 weeks as it was necessary for the restoration of her health. Ext.P6 which is another medical certificate reveals that she was admitted to MOSC Medical College Hospital, Kolencherry on account of suspected drug induced gastritis. No alarming features were noted and she, who was admitted on 4.5.2015, was discharged on 5.5.2015 with an advise to review after two weeks with a plan for endoscopic evaluation, if there is recurrence of symptoms. Ext.P7 is another medical certificate which is issued by the consultant surgeon of the Taluk Head Quarters Hospital on 18.5.2015 which states that she is suffering cervical spondylosis with poly-radiculopathy. In Ext.P7, three months' absence from duty was advised. None of these medical records would reveal that she is not in a position to move. No bed rest is advised. The mere fact that the petitioner is suffering from cervical spondylosis with allied ailments is not a sufficient reason to postpone the no confidence motion. Therefore, this Court is of the view

that an interference at this juncture is quite unnecessary as no circumstance warranting a postponement as envisaged by Section 157(6) is there. In the result, this writ petition fails and accordingly, dismissed.

sd/-
A.V.RAMAKRISHNA PILLAI
JUDGE

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/true copy/

P.A to Judge