

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 15524 of 2015 (M)

PETITIONER(S):

1. SAIFUDEEN K.,
S/O.KASIM KUNJU,AGED 45 YEARS,
K.E.P. HOUSE, EDAPPADA,
VETTIYARA P.O., NAVAIKULAM,
THIRUVANANTHAPURAM DISTRICT.
2. SALEELA BEEGOM, W/O.FIROZ KOYA,
AGED 42 YEARS, FIROZ BUILDING, KETTIDAM MUKKU,
VETTIYARA P.O., NAVAIKULAM,
THIRUVANANTHAPURAM DISTRICT.
3. H. SHAREEF, S/O.HASSAN KUNJU,
AGED 46 YEARS, KUNNUVILA VEEDU, EDAMONNILA,
VETTIYARA P.O., NAVAIKULAM,
THIRUVANANTHAPURAM DISTRICT.
4. BEENA S.N., W/O.A.V. ANIL KUMAR,
AGED 40 YEARS, REVATHY, EDAMONNILA,
VETTIYARA P.O., NAVAIKULAM,
THIRUVANANTHAPURAM DISTRICT.

BY ADVS.SRI.K.SIJU
SRI.S.ABHILASH
SMT.S.SEETHA
SMT.NIMA JACOB

RESPONDENT(S):

1. THE STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY TO THE
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695 001.
2. DEPUTY DIRECTOR OF PANCHAYAT,
PANCHAYAT DEPUTY DIRECTOR'S OFFICE,
THIRUVANANTHAPURAM - 695 603.
3. NAVAIKULAM GRAMA PANCHAYAT, NAVAIKULAM P.O.,
THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY - 695 603.

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4. THE VILLAGE OFFICER,
NAVAIKULAM VILLAGE, NAVAIKULAM,
THIRUVANANTHAPURAM DISTRICT-695 603.
5. THE TAHSILDAR,
CHARAYINKIL TALUK, TALUK OFFICE, ATTINGAL-695 101.
6. THE DELIMITATION COMMISSION,
REPRESENTED BY THE STATE ELECTION COMMISSION,
CORPORATION OFFICE COMPLEX, LMS JUNCTION, PALAYAM P.O.,
THIRUVANANTHAPURAM-695 034.
7. THE STATE ELECTION COMMISSION,
CORPORATION OFFICE COMPLEX, LMS JUNCTION, PALAYAM P.O.,
THIRUVANANTHAPURAM-695 034.

R1,R2,R4 & R5 BY ADVOCATE GENERAL SRI.K.P.DANDAPANI
BY SPL.GOV'T PLEADER SRI.TOM K. THOMAS
BY GOVT PLEADER SRI.BOBBOY JOHN PULICKAPARAMBIL
R3 BY ADV. SRI.BIJU BALAKRISHNAN
R6 & R7 BY SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 30-06-2015 , ALONG WITH WPC.NO. 13978 OF 2015 AND CONNECTED
CASES, THE COURT ON 10-08-2015 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER(S)' EXHIBITS

- P1 - THE COPY OF ROUGH SKETCH OF EXISTING NAVAIKULAM GRAMA PANCHAYAT.
- P2 - THE COPY OF RESOLUTION PASSED BY THE NAVAIKULAM GRAMA PANCHAYAT BY VIDE NO.IV(4) DATED 29.5.2014
- P3 - THE COPY OF LETTER SUBMITTED BY THE 3RD RESPONDENT PANCHAYAT BEFORE THE 2ND RESPONDENT DATED 20.10.2014
- P4 - THE COPY OF PERFORMA SUBMITTED BY THE 3RD RESPONDENT PANCHAYAT FOR BIFURCATION.
- P5 - THE COPY OF RELEVANT PAGES OF GAZETTE NOTIFICATION DATED 25.1.2015
- P6 - THE COPY OF OBJECTION FILED BY THE ACTION COUNCIL OF PALAVACODE WARD THROUGH THE PETITIONERS 1 AND 2 BEFORE THE 1ST RESPONDENT ON 6.2.2015
- P7 - THE COPY OF OBJECTION SUBMITTED BY THE ACTION COUNCIL OF EDAMONNILA WARD THROUGH PETITIONERS 3 AND 4 ON 6.2.2015
- P8 - THE ROUGH SKETCH SHOWING THE AREA AFTER BIFURCATION UNDER NAVAIKULAM GRAMA PANCHAYATH.
- P9 - THE ROUGH SKETCH SHOWING THE AREA AFTER BIFURCATION UNDER KUDAVOOR GRAMA PANCHAYAT.
- P10 - THE COPY OF NOTICE DATED 26.2.2015 ISSUED TO THE PETITIONERS FOR HEARING BY THE 2ND RESPONDENT.
- P11 - THE COPY OF GO NO.140/2015/LSGD DATED 25.4.2015

RESPONDENT(S)' EXHIBITS:

NIL

/TRUE COPY/

P.S.TO JUDGE

sts

A.V.RAMAKRISHNA PILLAI, J.

WPC Nos.15524/2015, 15435/2015,
15732/2015, 15792/2015, 14985/2015,
16357/2015, 14755/2015, 14121/2015,
17248/2015, 16221/2015, 13978/2015,
14748/2015, 16386/2015, 16898/2015,
15842/2015, 14866/2015,
14145/2015,14301/2015, 18628/2015,
15670/2015 , 15887/2015,
15463/2015, 16633/2015,
15702/2015, 14171/2015, 15436/2015,
15651/2015,15694/2015,14807/2015,
14825/2015, 14900/2015, 15371, 15716,
16620/2015, 15717/2015, 15782/2015,
15194/2015, 15331/2015, 16798/2015,
15893/2015, 16026/2015, 16030/2015,
14840/2015, 15225/2015, 15888/2015,
16410/2015 and 15559/2015

Dated this the 10th day of August, 2015

JUDGMENT

Under challenge in these writ petitions are G.O.(P) Nos.140/15/LSGD and 141/15/LSGD dated 25.4.2015 by which the State Government constituted new Panchayats in different districts in the State carving out certain portions of the existing Panchayats. The process of formation of new Panchayats has been effected through different modes, viz. by bifurcating certain existing Panchayats or including portions of two or more existing

Panchayats. In certain cases portions of wards of existing Panchayats are added to the newly formed Panchayats.

2. The main challenge in these writ petitions is that the formation of all these Panchayats were made taking certain portions of the existing villages without notifying those portions as a new village as envisaged under Article 243(g) of the Constitution of India. There are also incidental challenges like want of proper consultation, non-consideration of objections, inconvenience caused to the public for geographical and financial reasons. Before going into the legal aspects of the issue involved, it is worthwhile to have a glance at the factual situation in each case.

3. For the convenience of the discussion, these writ petitions are grouped on the basis of Districts. Thereafter they are sub divided on the basis of the Panchayats.

I (Thiruvananthapuram District)

a) WPC No.15524/2015

The petitioners in this case are residents of Palavacode ward and Edamonnala ward of Navaikulam

Grama Panchayat in Thiruvananthapuram District. They are challenging Ext.P11 notification (G.O.P.No. 140/15/LSGD dated 25.4.2015) by which a new Grama Panchayat as Kudavoor Grama Panchayat was formed bifurcating existing Navaikulam Grama Panchayat. According to them, the said decision is arbitrary and illegal.

II (Kollam District)

a) WPC Nos.15435/2015, 15732/2015, 15792/2015

In these writ petitions, the petitioners are challenging the formation of Puthoor Grama Panchayat taking certain wards of Kulakkada Grama Panchayat as well as Neduvathoor Grama Panchayat in Kollam District.

The petitioner in WPC No.15435/2015 is a resident of Puthoor and the Chairman of a registered Charitable Trust. He is aggrieved by Ext.P6 notification (G.O.(P). No.140/15/LSGD dated 25.4.2015) by which Puthoor Grama Panchayat is formed taking the Manakkarakavu and Pandara in Karuvayam Ward without including other portions of Karuvayam ward which is situated one km.

away from Puthoor Town. He also alleges that though Puthoor is the Headquarters, the respondents have decided to constitute Pangode as the Headquarters. According to the petitioner, the decision is arbitrary.

WPC No.15732/2015 is filed by the Kulakkada Grama Panchayat and its President. They are challenging the same notification (G.O.(P).No.140/15/LSGD dated 25.4.2015). According to them, Attuvassery (Ward No.19), Puthoor (Ward No.18), Attuvassery East (No.16) and Mylomkulam (No.17) are included in the Puthoor Grama Panchayat. According to them, the Government made a bifurcation not on the geographical ground, but at the influence of the ruling political party members. It is alleged that the objection submitted by the petitioner Panchayat has not been considered in the matter.

WPC No.15792/2015 challenging the same notification is filed by the member of Ward No.19 of the Kulakkada Grama Panchayat. He is aggrieved by the inclusion of Ward No.19 in Puthoor Grama Panchayat. He also alleges that the process was without any consultation

and application of mind and ignoring geographical boundaries between Ward No.19 and Ward Nos.17 and 18.

b) WPC No.14985/2015

The challenge in this writ petition filed by two ward members and two local residents as well as the members of an action council is against the formation of Punnala Grama Panchayat taking portions of Piravanthur, Thenmala and Aryankavu Panchayats. They are challenging Ext.P9 notification (G.O.(P).No.140/15/LSGD dated 25.4.2015) on the ground that the formation of the new Panchayat is purely on political considerations.

c) WPC No.16357/2015

The petitioners are the former members of Thrikkovilvattom Grama Panchayat of Kollam District. They are aggrieved by Ext.P7 notification (G.O.(P). No.140/15/LSGD dated 25.4.2015) by which the Thrikkovilvattom Grama Panchayat is bifurcated into Kannanallur Panchayat and Thrikkovilvattom Grama Panchayat. According to them, there was no previous consultation and bifurcation which would cause revenue

imbalance.

III (Pathanamthitta District)

a) WPC No.14755/2015

This writ petition is filed by the residents of Ward No.10 of Erathu Grama Panchayat against the formation of Enath Grama Panchayat bifurcating the existing Erathu Grama Panchayat in Pathanamthitta District. The challenge is against Ext.P5 notification (G.O.(P).No. 140/15/LSGD dated 25.4.2015). Absence of previous consultation and inconvenience caused to the public on account of the bifurcation are the main grounds projected in this writ petition.

IV (Alappuzha District)

a) WPC No.14121/2015 & 17248/2015

The challenge in these writ petitions is the formation of Charumoodu Grama Panchayat in Alappuzha District carving out portions of Chunakkara Grama Panchayat and Nooranad Grama Panchayat.

WPC No.14121/2015 is filed by the members of the Chunakkara Grama Panchayat and WPC No.17248/2015 is

filed by the residents of Chunakkara Grama Panchayat. According to them, the new Panchayat is formed on the request of an unregistered society of some businessmen who are able to influence the Government due to their political clout. According to them, the formation was in violation of the provisions of the Constitution as well as the Kerala Panchayat Raj Act.

b) WPC No.16221/2015

The challenge in this writ petition is Ext.P4 notification (G.O.(P).No.140/15/LSGD dated 25.4.2015) by which the South Cherthala Panchayat was ordered to be included to the newly constituted Arthungal Panchayat. According to the petitioner, there is a deviation from the draft publication while issuing final notification. It was also pointed out that there was failure to consult the concerned Panchayat while carving out a portion of the existing Panchayat while forming a new Panchayat. In that writ petition, the 6th respondent has filed a counter affidavit supporting the impugned notification.

V (Ernakulam District)

a) WPC Nos.13978/2015, 14748/2015, 16386/2015 & 16898/2015

Under challenge in these writ petitions is the formation of Pattimattom Grama Panchayat carving out of wards from existing Kizhakkambalam Grama Panchayat in Ernakulam District.

WPC No.13978/2015 is filed by a garment making company. The petitioner points out that the bifurcation would create insurmountable infrastructural and logistic problems to the petitioner. The petitioner points out that the petitioner's representation was not considered by the Government in the matter.

WPC No.14748/2015 is filed by certain residents of Kizhakkambalam Panchayat. They are challenging the bifurcation of one village to more than one Panchayat which is impermissible under the provisions of the Constitution of India as well as the Panchayat Raj Act.

WPC No.16386/2015 is filed by a member of Kizhakkambalam Grama Panchayat. He also points out

that the bifurcation is in violation of Article 243B of the Constitution of India and Section 4 of the Kerala Panchayat Raj Act.

WPC No.16898/2015 is filed by a resident of Ward No.8 of Kizhakkambalam Panchayat. He is also challenging the notification (G.O.(P).No.140/15/LSGD dated 25.4.2015) on the same grounds.

b) WPC No.15842/2015

The petitioner who is a resident of Ward No.14 of Edakkattuvayal Grama Panchayat and the elected chairperson of the Community Development Service (Kudumbasree) of the said Panchayat. He is aggrieved by the decision of the Government to transfer 70 buildings from Edakkattuvayal Grama Panchayat (Ward Nos.14 and 1) to Amballur Panchayat. According to the petitioner, it is without supported by any valid reason and it was done arbitrarily.

VI (Palakkad District)

a) WPC No.14866/2015

This writ petition is filed by two former Presidents of

Ongallur Grama Panchayat in Palakkad District. They are aggrieved by the formation of Karakkad Grama Panchayat in the same district carving out certain portions of the existing Ongallur Panchayat which consists of villages Ongallur I and Ongallur II. According to them, the proposal is entirely based on political consideration. It is alleged that the formation of the new Panchayat is without any consultation process and is incompetent as it offends the provisions of the Constitution of India and the Kerala Panchayat Raj Act. They would also submit that the notification is silent regarding the exact areas which are to be included in the newly formed Panchayat.

VII (Malappuram District)

a) WPC Nos. 14145/2015,14301/2015 & 18628/2015

In WPC Nos.14145/2015 & 14301/2015, the petitioners are challenging the inclusion of a ward of Ezhattur Grama Panchayat in Malappuram District to the newly constituted Pandikkad Grama Panchayat in Malappuram District.

In WPC No.18628/2015, the challenge is against the

bifurcation of the Pandikkad Grama Panchayat to form the new Chembrassery Grama Panchayat.

WPC No.14145/2015 is filed by a resident of Keezhattur Grama Panchayat in Malappuram District. He alleges that the annexation of Ward Nos.1 & 2 from the existing Panchayat to the newly formed Pandikkad Panchayat is to create a ground for delimiting wards of Keezhattur Grama Panchayat. It is pointed out that Keezhattur Grama Panchayat to which this was annexed is yet another village.

WPC No.14301/2015 filed by the residents of Oravampuram in Keezhattoor Panchayat challenging the notification, by which Pandikkad Panchayat was formed, on the allegation that there was no consultation with the existing Panchayat. According to them, the notification is vitiated by extraneous considerations.

WPC No.18628/2015 is filed by a member of Ward No.7 of Pandikkad Grama Panchayat and a resident of Ward No.15 of the said Panchayat. They are aggrieved by the bifurcation of Pandikkad Grama Panchayat to form

Chembrassery Grama Panchayat. According to them, their objections were not taken into account while issuing the impugned notification.

b) WPC Nos.15670/2015 & 15887/2015

Under challenge in these writ petitions is the inclusion of a portion of Ward No.2 of Cherukavu Grama Panchayat in Malappuram District to Vazhayur Grama Panchayat.

WPC No.15670/2015 is filed by a resident of the Cherukavu Grama Panchayat. He alleges that 8 houses from the existing Panchayat is de-linked and added to Vazhayur Grama Panchayat without any rhyme or reason. WPC No.15887/2015 is also filed against the de-linking of 8 houses from the Cherukavu Panchayat.

c) WPC Nos.15463/2015 & 16633/2015

WPC No.15463/2015 is filed by an employee of the Urban Co-operative Bank, Perinthalmanna residing in Ward No.16 of Ponmala Grama Panchayat in Malappuram District. He is challenging the de-linking of certain areas of Kuruva Grama Panchayat and portions of Ward No.1 of

Moorkkanad Grama Panchayat to form Pang Grama Panchayat. According to him, it is against the provisions of law and done on political considerations.

WPC No.16633/2015 is filed by a former Vice President of Ponmala Grama Panchayat of Malappuram District. He is aggrieved by taking away of Ward Akkapparambu from Ponmala Grama Panchayat to form Pang Panchayat. He also points out that the proposal is incompetent and was made solely on the basis of political consideration.

d) WPC No.15702/2015

In this writ petition filed by a resident of Wandoor Grama Panchayat, the bifurcation of the Wandoor Grama Panchayat into Wandoor Panchayat and Vaniyambalam Panchayat is challenged. The petitioner alleges that the consultation process has been a mockery and the bifurcation was effected at the instance of some members of the ruling party. In this writ petition, an additional respondent got himself impleaded as 6th respondent. He is the present member of Ward No.10 of Wandoor

Panchayat. He supports the bifurcation.

e) WPC No.14171/2015

The petitioners who are the residents of Thrikkalangod Grama Panchayat in Malappuram District are challenging the bifurcation of existing Thrikkalangod into Thrikkalangod Panchayat and Elankur Grama Panchayat which, according to them, is against the provisions of the Constitution of India and Panchayat Raj Act. It is alleged that new Panchayats are formed without any specific demarcating boundaries.

f) WPC No.15436/2015

This writ petition is filed by the resident of Ward Nos.14 and 15 of Mangalam Grama Panchayat in Malappuram District. They are aggrieved by the formation of the Kuttayi Grama Panchayat carving out of certain wards from Mangalam Grama Panchayat. The petitioner alleges that the division is unscientific, illegal and politically motivated.

g) WPC No.15651/2015

The petitioner is the general convenor of Aliparamba

Jenakeeya Koottaima Action Committee. He is challenging the bifurcation of the existing Aliparamba Grama Panchayat in Malappuram District into Arakkaparambu Grama Panchayath and Anamangad Grama Panchayat on the ground that the bifurcation is against the provisions of the Constitution as well as the Kerala Panchayat Raj Act. According to the petitioner, the abolition of the existing Grama Panchayat is illegal and politically motivated.

h) WPC No.15694/2015

The petitioner is the resident of Ward No.17 of the Thirunnavaya Grama Panchayat of Malappuram District. He is aggrieved by the impugned notification forming Thirunavaya Grama Panchayat and Anathavoor Grama Panchayat bifurcating the existing two revenue villages to form parts of the two Panchayats. According to the petitioner, the same cannot be supported by law. In this writ petition, the second respondent which is the Thirunavaya Grama Panchayat has filed a counter affidavit supporting the bifurcation.

VIII (Kozhikode District)

a) WPC No.15717/2015 & 15782/2015

The petitioners in these writ petitions, challenge the formation of Kaveli Grama Panchayat by carving out some portions of existing Kayakkodi and Naripatta Grama Panchayat of Kozhikode District.

WPC No.15717/2015 is filed by the President of Kayakkodi Grama Panchayat. According to him, the present decision to bifurcate Kayakkodi Grama Panchayat to form Naripatta and Kaveli Grama Panchayat is purely mechanical without having any logical back drop and rational nexus to the object sought to be achieved. In this writ petition additional 7th respondent got himself impleaded who supported the formation of the new Panchayat.

WPC No.15782/2015 is filed by the President of Naripatta Grama Panchayat. He points out that the formation has been effected without following the guidelines in Ext.P1.

b) WPC Nos.15194/2015, 15331/2015 & 16798/2015

Under challenge in these writ petitions is the decision of the Government in the impugned notification to form Cherukulathoor Grama Panchayat by including parts of other Panchayats.

WPC No.15194/2015 is filed by the ward member as well as a resident of Mavoor Grama Panchayat. They would point out that the new Panchayat has been constituted without a notification by the Governor under Article 243(g) of the Constitution and without giving sufficient opportunity to the public for their objections.

WPC No.15331/2015 is filed by a resident of Vellassery Village in Chathamangalam Panchayat in Kozhikode District. He points out that for the formation of the Cherukulathoor Panchayat taking portions of Kunnamangalam, Peruvayal, Chathamangalam and Mavoor Panchayats. According to him, the same was done in an unscientific and illegal manner for purely political reasons.

WPC No.16798/2015 is filed by the President of the

Chathamangalam Panchayat. He also opposes the formation of Cherukulathoor Panchayat carving out portions of the nearby Panchayats.

c) WPC No.15893/2015

The petitioner is the resident of Thiruvalloor Grama Panchayat. He is aggrieved by the delimitation of the territories of Thiruvallor and Villiappilly Grama Panchayats to form Memunda Grama Panchayat. According to the petitioner, the decision is illegal and politically motivated.

d) WPC No.16026/2015

The petitioner herein is a member of the Unnikulam Grama Panchayat. He is aggrieved by the formation of Punoor Grama Panchayat by carving out some wards of Unnikulam Grama Panchayat, which, according to him, is purely illegal for want of a proper notification by the Governor under Article of the Constitution.

IX (Wayanad District)

a) WPC No.16030/2015

The petitioner is aggrieved by the delimitation of Poothadi Grama Panchayat in Wayanad District to form

Nadavayal Grama Panchayat. According to him, the exercise was undertaken without conducting geographical as well as scientific study and was headed by political consideration. The 7th respondent in the writ petition ,who got himself additionally impleaded, filed a counter affidavit supporting the bifurcation. He is the Chairman of the Nadavayal Vikasana Samithi.

X (Kannur District)

a) WPC Nos.14807/2015, 14825/2015 & WPC No.14900/2015

The petitioners in these writ petitions challenge the bifurcation of the Naduvil Grama Panchayat in Kannur District and formation of the new Karuvanchal Grama Panchayat.

The petitioners in these writ petitions are members of Karimbala community which is a Scheduled Tribe of Kannur District. They are the residents of Naduvil Grama Panchayat. They are challenging the impugned notification on the ground that it is illegal and politically

motivated.

b) WPC No.15371/2015

In this case, the challenge is against the formation of new Vallithode Grama Panchayat in Kannur District by including formation of parts of other Panchayats.

The petitioner is the resident of Payam Grama Panchayat. He points out that now, by the impugned notification the Government has decided to delimit the territory of Payam Grama Panchayat and to create Vallithode Panchayat carving out certain areas from Payam Grama Panchayat, Ulikkal and Ayyankunnu Grama Panchayat which, according to the petitioner, is illegal and politically motivated.

c) WPC No.15716/2015

The petitioner is the resident of Koodali Grama Panchayat. He points out that now, by the impugned notification the Government has decided to delimit the Koodali Grama Panchayat by creating Pattannur Grama Panchayat. This, according to the petitioner, is illegal and politically motivated.

d) WPC No.16620/2015

The petitioner is the resident of Chirakkal Grama Panchayat. He is aggrieved by the impugned notification as it delimits the territory of Chirakkal Grama Panchayat and creates Kattamballi Panchayat carving out certain areas from the Chirakkal Grama Panchayat which, according to him, is politically motivated.

XI (Kasargod District)

a) WPC Nos.14840/2015, 15225/2015, 15888/2015
&16410/2015

Under challenge in these writ petitions is the formation of new Panayal Grama Panchayat including parts Uduma and Pallikkara Panchayats in Kasargod District.

WPC No.14840/2015 and WPC No.15225/2015 are filed by the residents of Uduma Panchayat in Kasargod District.

The petitioner in WPC No.15888/2015 is a resident of Pallikkara Grama Panchayat.

The petitioner in WPC No.16410/2015 is the President

of Uduma Panchayat. He is challenging the impugned notification on the ground that it is illegal and politically motivated.

b) WPC No.15559/2015

The challenge in this writ petition is the bifurcation of Ajanur Grama Panchayat for the formation of Manikkot Grama Panchayat. The petitioner is a resident of Ajanur Grama Panchayat. He alleges that by the formation of Ajanur Grama Panchayat, a part of Ajanur village is retained in Ajanur Panchayat and a part of Chittari village is included in the Ajanur Panchayat, which, according to the petitioner is against the provisions of law. In this writ petition, the 7th respondent has filed a counter affidavit supporting the action of the State.

3. Through detailed counter affidavits, the State has justified their stand in issuing the impugned notifications. It was pointed out that the bifurcation was on account of long standing public demand and in view of the various representations received from the general public. It is also pointed out that a special committee has been

constituted by the Government as per order dated 10.6.2014 and as per order dated 27.11.2014, specific guidelines have issued to the committee. The committee submitted its report before the Government. The Government approved the report with certain modifications and accordingly, the Government proposed to constitute 70 new Grama Panchayats bifurcating the areas of existing Grama Panchayats and to attach areas of 16 Grama Panchayats considering its geographical features to its nearby Grama Panchayats. It was also pointed out that suggestions and objections were called for and the parties were heard. Therefore, there is absolutely no justification for interference by this Court in exercise of the powers under Article 226 of the Constitution of India; it was contended.

4. I have heard the learned counsel for the petitioners including the learned senior counsel for the petitioners, the learned Advocate General assisted by the learned Government Pleaders, the learned Standing counsel for the Kerala State Election Commission and the

Kerala State Delimitation Commission, the learned standing counsel for the Panchayats and the learned counsel for the party respondents.

5. I was ably assisted by Murali Purushothaman, the learned standing counsel for the Election Commission in grouping the cases and supplying the copies of relevant judicial pronouncements which made the decision making process smooth and speedy.

6. As pointed out at the outset, by the impugned notifications, new Panchayats are constituted in different districts, carving out certain parts of existing Panchayats. Though various grounds have been raised in these writ petitions, the learned counsel appearing for the petitioners in all cases gave thrust to the argument that formation of Panchayats for parts of existing villages is incompetent for the reason that a Panchayat can be formed only in respect of an existing village or a group of villages. It was pointed out that a village has to come into existence by a notification by the Governor as envisaged by the provisions of the Constitution before a Panchayat

has to be constituted.

7. A perusal of the impugned notification would show that they were passed in exercise of powers under Section 4(1)(a) and 4 (2) of the Kerala Panchayat Raj Act. Section 4 reads as follows:

4. Power of the Government to constitute and specify the name and headquarters of Panchayat- (1) The Government shall, by notification in the Gazette, constitute with effect from such date as may be specified in the notification,-

a) a Village Panchayat for each village or for group of villages;

b) a Block Panchayat at intermediate level; and

(c) a District Panchayat for each District Panchayat area and specify the names and headquarters of such panchayats.

(2) The Government may, at the request of the Panchayat concerned, or after consultation with the Panchayat and after previous publication of the proposal by notification,-

a) increase the area of any Village Panchayat by including within such Panchayat area any village or group of villages;

b) diminish the area of any Village Panchayat by excluding from such Panchayat area any village or group of villages;

c) alter the headquarters of a Panchayat at any level; or

d) alter the name of a Panchayat at any

level:

Provided that any alteration extending or reducing the area of a Village Panchayat under clause (a) or clause (b) shall not be brought into force before the expiry of the term of the existing committee of that Panchayat.

(3) The Government may, after consultation with the Panchayat, pass such orders as they deem fit as to the disposal of any part of the property vested in a Village Panchayat which has ceased to exercise jurisdiction over any village or group of villages and the discharge of the liabilities of the Village Panchayat relating to such property or arising from such village including all matters connected therewith or incidental thereto." (emphasis added)

8. What could be discerned from section 4(1) of the Panchayat Raj Act is that, it envisages constitution of a Village Panchayat only for a village or group of villages. Similarly under Section 4(2), the increase in area of the existing village Panchayat or the reduction in area of the existing village Panchayat can be only by addition of or exclusion of any village or group of villages. That means the legislation never envisages a Panchayat for a part of a village.

9. Article 243(g) of the Constitution reads as under:

'village' means a village specified by the Governor by public notification to be a village for the purposes of this Part and

includes a group of villages so specified.”

Therefore, a declaration by the Governor in exercise of powers under Article 243(g) of the Constitution is mandatory for the formation of a village for the purpose of Part IX of the Constitution. Without such declaration, no village comes into existence. Therefore, without a prior notification conferring the status of village over the area in respect of which the panchayat has to be formed, no village panchayat can be constituted. It is also crucial to note that Article 243B of the Constitution which says about the Constitution of Panchayats does not envisage the constitution of Panchayats for part of a village. The gist of the arguments advanced by Mr.N.Nandakumara Menon, Mr.K.Ramkumar, Mr.Kurian George Kannanthanam, Mr.S.Sreekumar and Mr.T.Sethumadhavan, the learned senior counsel as well as Mr.P.V.Kunhikrishnan, Mr.Subhash Chand, Mr.V.G.Arun, Mr.Mohan C.George and Mr.K.Rajendran is that a Panchayat cannot be constituted without a declaration by the Governor under Article 243(g) of the Constitution.

10. If a village has come into existence on the basis of a notification issued by the Governor, then, nothing prevents the Government to form a Panchayat for that village. However, as the legislature in its wisdom has prescribed a particular method to constitute a Panchayat as well as for varying the area of existing Panchayats, the same method has to be adhered to in letter and spirit. Presumably, such a method is provided to safeguard the interest of general public. If portions of a village come under different Panchayats, the same may cause inconvenience to the residents of that village.

11. The inevitable result is that a village cannot be bifurcated by including portions of the same in different Panchayats. In the instant cases, portions of the villages have been carved out to form the newly formed Panchayats.

12. When the matter came up for hearing on the last date of hearing, the learned Advocate General invited my attention to G.O.(P).No.234/2015/LSGD dated 10th July 2015 published in official gazette No.1675, by which the

villages specified in column No.1 of the schedule to the said notification were formed extending over the areas mentioned against each in column-2 thereof to be villages for the purpose of Part-IX of the Constitution of India in exercise of the powers conferred by clause-(g) of Article 243 of the Constitution of India and in partial modification of the notification issued under G.O.(P). No.86/94/LAD dated 20th April 1994 published as SRO No.468/1994 in the extraordinary gazette No.351 dated 20th April 1994. Obviously, the said notification was issued to ward off the inevitable evil that may stem out due to the want of notification under Article 243(g). The learned Advocate General made available to me a copy of the said notification for my perusal. The promulgation of the aforesaid notification itself would indicate that the State is admitting the proposition that a Panchayat can be constituted only for a village or a group of villages.

13. As it is evident, that present notification dated 10th July 2015 was issued in an attempt to put the impugned notification in order, I may now examine

whether the said attempt has improved the case of the Government.

14. As already pointed out the present notification is dated 10th July 2015 and the impugned notifications are dated 25th April 2015. The argument advanced by the learned Advocate General is that in the absence of a challenge against the new notification, all the writ petitions are bound to fail. This argument was met by the learned counsel for the petitioners as under.

15. Mr.Kurian George Kannanthanam, the learned senior counsel for one of the petitioners would submit that there is absolutely no need to challenge the present G.O. for the purposes of these writ petitions and it is only to be ignored as the same would not serve the purpose sought to be achieved by the State. It was rightly pointed out that the said notification issued on 10.7.2015 has no retrospective operation at all. Even if retrospective operation is attributed to the said notification by any legal fiction, the same will not improve the situation because Article 243(g) does not envisage a retroactive notification.

It was pointed out by Mr.Kurian George Kannanthanam that the said Article does not empower the Government to do so. By the new notification, a set of new villages have been notified. From the explanatory note, it is clear that 84 more villages are coming into existence. As already pointed out, this notification itself is a clear admission on the part of the Government that the impugned notifications are incompetent for want of a previous notification by the Governor in exercise of the powers under Article 243(g) of the Constitution of India forming new villages consisting of the areas carved out the existing villages.

16. As per the impugned notifications, the new Panchayats will come into force on 1.11.2015. Section 4 (1) of the Panchayat Raj Act mandates that the date of coming into existence of the Panchayat has to be specified. In the absence of a second notification constituting Panchayats for the villages or group of villages newly formed as per the notification dated 10th July 2015, the present notification can be used only for the

local body elections of 2020. The Government have already exercised its powers under Section 4(1) by issuing the impugned notifications much prior to the present notification by which the new villages are formed. Therefore, the present notification cannot be made use of for validating the impugned notifications. If the present notification has to be made use of it has to be followed by another notification under section 4(1), which, cannot under normal circumstances, take place before the forthcoming election.

17. The learned Advocate General made an attempt to meet the arguments raised by Mr.Kurian George Kannanthanam inviting my attention to the decision of the Apex Court in ***State of U.P. and others v Pradhansingh Kshethra Samithy and others*** (AIR 1995 SC 1512) and submitted that a pre-conceived notion of village cannot be read into Article 243(g) of the Constitution.

18. It is true that the definition of the word 'village' in Article 243(g) of the Constitution raises the question as

to what is a village which the Governor can specify as a village for the purpose of constituting the Village Panchayat. The Apex Court in *Pradhansingh's case* (see supra) observed that a revenue village is a documented readymade concept of village and the Governor while acting under Article 243(g) of the Constitution for specifying the village may adopt the same as village. That means, no restriction has been placed by Article 243 (g) on the governor for accepting the revenue villages as a village for the purpose of constituting the village Panchayat. It was further observed that no restriction has been placed by Article 243(g) on the Governor for accepting the revenue village or any inhabited areas in rural areas as villages. It is true that there cannot be any restriction on the powers of the Governor to notify a particular area as village and the Court cannot substitute its concept of village for that of the State Government. However, in the instant case that power has been exercised only after the power to constitute the Panchayats has been exercised under Section 4 of the

Panchayat Raj Act.

19. The decision in *Pradhansingh's* case (supra) will not come to the rescue of the State which issued a notification forming Panchayats for areas carving out portions of villages which had already come into existence on the basis of a notification issued by the Government in exercise of powers under Article 243(g) of the Constitution of India. Any subsequent modification of such villages can only be on the basis of a similar notification under Article 243(g). In the absence of such a notification, no village is created. In the absence of formation of new village, formation of a new panchayat is incompetent.

20. Mr.Subash Chand, the learned counsel for one of the petitioners also endorsed the view expressed by Mr.Kurian George Kannanthanam and submitted that in the light of the notification now produced, the Government has to undertake the entire process once again and as the same is not possible before the forthcoming elections to the local bodies, the Government will have to wait for its implementation in the election to

the local bodies to be held in the year 2020.

21. Mr.Nandakumara Menon, the learned senior counsel appearing for the petitioners in one of the cases would submit that the formation of the villages which had already been taken place cannot be tampered with by the impugned notification.

22. The argument that the new notification won't serve any useful purpose for improving the impugned notifications has been supported by Mr.Mohan Jacob George, Mr.Babu Karukapadath, Mr.V.G.Arun and Mr.K.Rajendran who were appearing for some of the petitioners. Mr.George Poonthottam, the learned standing counsel for Ullikkal Panchayat also supported the aforesaid view. He would further point out that the present notification cannot be used for any purpose because of the vague distribution of the boundaries of the new villages in the schedule attached to the said notification. The same view was shared by Mr.Kurian George Kannanthanam also. They took me to the description of the areas in column No.2 of the present

notification. It is impossible to locate the boundaries of the so called villages with certainty, which itself is sufficient to indicate that the present notification is half becketed and was issued only to counterblast the writ petition.

23. As the entire exercise has to be started afresh by the State on the basis of the new notification (if not annulled in appropriate proceedings), the same can be made use of only for the elections to the local bodies to be held in the year 2020. It cannot cure the defects in the impugned notifications.

24. Though it was strenuously argued by the learned Advocate General inviting my attention to the recital in the present notification that the same was issued in partial modification of the notification G.O.(P) No.8694/LAD dated 20th April 1994 published in SRO No.468/94 in the Kerala extraordinary gazette No.351 dated 20th April 1994, the same has to be reckoned as a notification issued in the year 1994 and therefore, the villages made mention of in the present notification have

to be reckoned as formed as per the notification of 1994, I am not inclined to accept the said argument as the exclusion of the areas from the existing villages have not taken place before the promulgation of the present notification, and also because of the fact that no village can come into existence retroactively.

25. Some of the petitioners have a case that there was no meaningful consultation before the new Panchayats were formed. However, they could not substantiate the said allegations. In the counter affidavit filed by the State, it is specifically averred that the objections were called for and the same were considered before issuing the final notification. Other arguments pointing out inconvenience of the people, will of the people saying that the power to specify villages vests with the people etc. cannot be countenanced, as those divisible sentiments and feelings are bound to erode the foundation of the unity and integrity of the nation, if nurtured from the grass route level. Here, I must alertly note the observation of the Apex Court in **State of**

Punjab v Tehal Singh and others (2002) 2 SCC 7) that the functions of the Government in such matters is legislative in character. It is well settled that legislative functions can be subjected to judicial review only on the ground of legislative incompetence, violation of fundamental right and violation of the provisions of the Constitution. The scope of interference in these cases is only on account of the legislative incompetence as well as the violation of the provisions of the Constitution, which this Court cannot endorse or approve for the reasons pointed out in the preceding paragraphs.

26. The net conclusion, however, that can be drawn from the materials now placed before me is that the impugned notifications are incompetent as the said notifications constitute Panchayats for parts of existing villages without a prior notification by the Governor in exercise of powers under Article 243(g) forming those areas as villages. Therefore, they are liable to be interfered with.

In the result, the writ petitions are disposed of

quashing G.O.(P).No.140/15/LSGD and G.O.(P) No.141/15/LSGD dated 25.4.2015 so far as those notifications create new Panchayats carving out areas or parts of the existing villages without a prior notification by the Governor under Article 243(g) of the Constitution of India.

It is hereby made clear that the validity of G.O.(P) No.234/2015/LSGD dated 10th July 2015 has not been considered in these writ petitions and it is left open to be decided in appropriate proceedings, if challenged.

Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

CSS/