

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

WEDNESDAY, THE 5TH DAY OF AUGUST 2015/14TH SRAVANA, 1937

WP(C).No. 15718 of 2015 (L)

PETITIONER :

**P.K.SOUMINI, AGED 53 YEARS,D/O.POKKAN, CHAIRPERSON
HEALTH AND EDUCATION STANDING COMMITTEE,
KARIYAD GRAMA PANCHAYATH
RESIDING AT SAJI NIVAS, PADINJARE KOVUMMAL
KARIYAD SOUTH P.O.**

**BY ADVS.SRI.P.V.SURENDRANATH
SMT.BINDUMOL JOSEPH
SRI.B.S.SYAMANTHAK**

RESPONDENTS :

- 1. STATE OF KERALA
REPRESENTED BY ITS CHIEF SECRETARY,
TO GOVERNMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. PRINCIPAL SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 3. KARIYAD GRAMA PANCHAYATH
REPRESENTED BY ITS SECRETARY, KARIYAD SOUTH P.O.,
KANNUR DISTRICT 673 316.**

***ADDL. R4 & R5 IMPEADED :**

- *4. THE KERALA STATE ELECTION COMMISSION,
REPRESENTED BY ITS SECRETARY,
CORPORATION OFFICE COMPLEX, LMS JUNCTION,
THIRUVANANTHAPURAM-33.**
- *5. STATE DELIMITATION COMMISSION, KERALA
REPRESENTED BY ITS SECRETARY
CORPORATION OFFICE COMPLEX, LMS JUNCTION
THIRUVANANTHAPURAM-33.**

WP(C).No. 15718 of 2015 (L)

***ADDL.R4 AND R5 ARE SUO MOTU IMPEADED AS PER ORDER
DATED 27.05.2015.**

**R3 BY ADV. SRI.CIBI THOMAS
R1 & R2 BY SPL. GOVERNMENT PLEADER SRI. TOM. K. THOMAS
ADDL.R4 & R5 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,
SRI.K.R.AVINASH (KUNNATH)
SRI.E.MOHAMMED SHAFI**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09-06-2015, ALONG WITH WPC. 14916/2015, THE COURT
ON 05-08-2015 DELIVERED THE FOLLOWING:**

bp

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: A TRUE COPY OF THE MAP OF PANOOR BLOCK SHOWING THE LIE OF KARIYAD GRAMA PANCHAYATH.
- P2: A TRUE COPY OF THE MAP OF PANOOR GRAMA PANCHAYATH.
- P3: A TRUE COPY OF THE MAP OF PERINGALAM GRAMA PANCHAYATH.
- P4: A TRUE COPY OF THE MAP OF KARIYAD GRAMA PANCHAYATH.
- P5: A TRUE COPY OF THE NOTIFICATION NO.EM 3/13 (3)/2014/LSGD DATED 25/1/2015 PUBLISHED IN KERALA GAZETTE EXTRA ORDINARY.
- P6: A TRUE COPY OF THE OBJECTION SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED 27/1/2015 IN PURSUANT TO EXT.P5.
- P7: A TRUE COPY OF THE REPORT SUBMITTED BY THE ENQUIRY OFFICER, REGIONAL JOINT DIRECTOR/ REGIONAL PERFORMANCE AUDIT OFFICER IN PURSUANT TO EXT.P5 NOTIFICATION OBTAINED UNDER RIGHT TO INFORMATION ACT.
- P8: A TRUE COPY OF THE REPORT OF SPECIAL SECRETARY, GOVERNMENT OF KERALA AS HEARING OFFICER REGARDING OBJECTIONS AGAINST UNIFICATION OF PANOOR, PERINGALAM AND KARIYAD GRAMA PANCHAYATH TO FORM AND CONSTITUTE PANOOR MUNICIPALITY OBTAINED UNDER RIGHT TO INFORMATION ACT.
- P9: A TRUE COPY OF TEH G.O(P)151/2015/LSGD DATED 30/4/2015.
- P10: A TRUE COPY OF THE SRO 270/2015 DATED 30/4/2015.
- P11: A TRUE COPY OF THE GO(MS) 153/2015/LSGD DATED 30/4/2015.
- P12: A TRUE COPY OF THE GO(RT) NO.3113/2014/LSGD DATED 27/11/2014.
- P13: A TRUE COPY OF THE FINAL REPORT DATED 29/12/2014.
- P14: COPY OF THE NOTICE DT 28/02/2015 ISSUED TO THE PETITIONER BY THE REGIONAL JOINT DIRECTOR FOR HEARING ON 16/3/2015.

RESPONDENT(S)' EXHIBITS :

- EXT. R4(a): COPY OF THE DECISION NO. 17/15 DT 9/2/2015 OF THE KARIYAD GRAMA PANCHAYAT.

//TRUE COPY//

P.A. TO JUDGE

'C.R'

A.V.RAMAKRISHNA PILLAI, J.

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W.P(C) Nos.15718 & 14916 of 2015

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Dated this the 5th day of August, 2015

JUDGMENT

G.O(P) Nos.151, 152 and 153/2015/LSGD. Dated 30.4.2015, by which the Government have decided to form a new municipality, i.e., Panoor Municipality merging Kariyad, Peringalam and Panoor Grama Panchayats, are under challenge in these writ petitions.

2. The petitioner in W.P(C) No.15718 of 2015 is the member of Kariyad Grama Panchayat. The petitioners in W.P(C) No.14916 are the local residents of Kariyad Grama Panchayat. The petitioners allege that Kariyad Grama Panchayat is economically and otherwise rural in character and backward and it has not acquired urban character so as to constitute a transitional area, smaller urban area or a larger urban area, having regard to the population of the area. According to them, it is clear from Exts.P1 to P4 that Kariyad Grama Panchayat is not adjoining or contiguous area of Panoor Grama Panchayat which is the most

developed urban area in Panoor block. According to the petitioners, on an objective consideration, the Kariyad Grama Panchayat could not be notified as a transitional area, a smaller urban area or a larger urban area so as to constitute a municipal council or a municipal corporation under Article 234Q of the Constitution of India.

3. It was also pointed out that the special committee constituted by the Government to study the feasibility of forming four municipalities has not recommended the constitution of Panoor Municipality merging Panoor Grama Panchayat, Peringalam Grama Panchayat and Kariyad Grama Panchayat. However, the Government without considering any of these aspects published the impugned notifications constituting Panoor Municipality with head quarters at Panoor unifying Panoor Grama Panchayat, Peringalam Grama Panchayat and Kariyad Grama Panchayat; it is alleged. According to the petitioners, this is against the provision of the Constitutions and the Kerala Municipalities Act.

4. In W.P(C) No.15718 of 2015, a third party got himself

impleaded as additional fifth respondent. The additional 5th respondent is supporting the action of the State.

5. In the counter affidavit filed by the respondent State, it is contended that the order is not vitiated by any substantive or procedural irregularities and it was issued after conducting a thorough study, and having regard to the special circumstances which are relevant and material. It is further stated that a committee appointed by the Government specifically for the purpose has submitted a report which was considered by the cabinet after hearing the objections and the notifications were issued. Therefore, according to the State, there is no scope for interference with the impugned notifications.

6. The petitioner in W.P(C) No.15718 of 2015 has filed a reply affidavit asserting their stand in the writ petition.

7. I have heard Mr. P.V.Surendranath, the learned counsel for the petitioner in W.P(C) No.15718 of 2015, Mr. M.Sasindran, the learned counsel for the petitioner in W.P(C) No.14916 of 2015, Mr. K.P.Dandapani, the learned Advocate General ably assisted by Mr. Tom

K. Thomas, the learned Special Government Pleader, Mr. K.R.Avinash, the learned counsel for the 5th respondent in W.P(C) No.15718 of 2015 and Mr. Murali Purushothaman, the learned Standing Counsel for the Kerala State Election Commission and the Delimitation Commission, who rendered proper assistance by placing various judicial pronouncements in the realm.

8. The stand taken by the learned counsel for the petitioners is that the areas now sought to be included in the proposed municipality are not fit for urbanisation. It was also submitted that the authorities concerned have not considered the objections.

9. Mr. M.Sasindran would point out that the 4th State Finance Commission appointed as per Article 243-I of the Constitution while making its recommendations had observed that delimitation of constituency be done once in 20 years as frequent delimitation destroys the identify of the most critical participatory forms viz., the Grama Sabhas and Ward Sabhas and it is mandatory to complete all formalities, including the drawing of boundaries at least one year

before the general election to local Governments are due. It was submitted that the aforesaid recommendation has been accepted by the Government and as the elections are due in September, 2015, the exercise of re-drawing of the area of panchayats and municipalities just four months prior to the election is impermissible as the accepted report is binding on the Government.

10. Mr. P.V.Surendranath, the learned counsel for the petitioner in W.P(C) No.15718 of 2015 would argue that Kariyad Grama Panchayat has not attained urban character to be notified as a transitional area, a smaller urban area or a larger urban area, to constitute a municipal council or municipal corporation under Article 234Q of the Constitution. It was pointed out that no material is forthcoming which shows that the Government has considered the issue objectively after considering the report and objections of the general public.

11. The learned Advocate General would submit that a new municipality was constituted with *bona fide* intention as the Government had given prominence to the public good in this process.

However, Mr. P.V. Surendranath would argue that the merging of Kariyad Grama Panchayat and Panoor Panchayat to form Panoor Municipality would be detrimental to the effective administration and development of the Local Self Government Institution. It was pointed out that the distance from Kariyad Grama Panchayat to Panoor, which is the proposed head quarters of the Panoor Municipality is 12 to 14 kilometres and there is no transport facility from Kariyad Grama Panchayat to Panoor Grama Panchayat.

12. However, the stand taken by the State as well as the additional 5th respondent is that the criteria such as total population, density of population and the revenue generated for local administration etc., were clearly considered while forming the new municipality. It was further pointed out that in fact it was after consultation with the various representatives of the people and as per the wish of the majority of the persons, that the new municipality has been formed.

13. In support of the argument, the additional party respondent

has produced the decision No.17/15 dated 9.2.2015 of the Kariyad Grama Panchayat in W.P(C) No.1718 of 2015 which would indicate that the decision to include Kariyad Grama Panchayat in Panoor Municipality was taken by the panchayat board by a majority decision dated 9.2.2015. It is crucial to note that when the elected members by its majority decision has supported the formation of new municipality, it reflects the Will, pleasure and wish of the people. The petitioner who is one among the members cannot object the same at this later stage. Certainly, the inclusion of a rural area to an urban area would be for the advantage of the people; so found the panchayat.

14. It was pointed out that as per the statistics prepared by the Government, Kariyad is included in an urban area and majority of the people are working abroad. This Court in **Sreekala v. State of Kerala** [2010 (3) KLT 548] has observed that there is no provision in the Constitution against the power of the Government in linking a village area which has attained the character of a semi urban area to a municipality.

15. The only question to be considered is whether the linking of the panchayat area to the municipality area is in violation of the provisions of the statute or that of the Constitution. This Court in **Sreekala's** case (cited supra) referring to **State of Punjab v. Tehal Singh and others** [(2002) 2 SCC 7] observed that determining the territorial area of a Grama Sabha and thereafter establishing a Grama Sabha for that area is an act legislative in character in the context of the provisions of the Act and hence it is not subjected to the Rule of natural justice. However, it was observed that particular enactments may provide for observance of natural justice and if provisions are there, the same should be observed and if provisions are absent, the residents in the area cannot insist for giving an opportunity of being heard.

16. Answering the issue, on loss of beneficial schemes and increase in taxes, this Court in **Sreekala's** case (cited supra) observed that every change in the mode of governance needs some re-adjustments and people share the prosperity and so must be prepared to pay additional price by way of additional taxes.

17. In the counter affidavit filed by the State, it was contended that the notification was preceded by a study on urban scenario to facilitate delimitation of boundaries of urban local bodies in the State which is conducted by a special committee constituted for that purpose. It was pointed out that the report palpably shows that almost all the parameters of urban characteristics pertaining to the panchayat qualify for its declaration as a larger urban area.

18. Therefore, on a consideration of the entire materials placed on record, this Court is of the view that the matters need not be interfered with at this point of time, as it can be seen that merger of Kariyad, Peringalam and Panoor Grama Panchayats with Panoor Municipality would be only beneficial to the general public and it would catalyze the process of development of that area.

In the result, the writ petitions fails and accordingly, they are dismissed.

Sd/-

A.V.RAMAKRISHNA PILLAI
JUDGE

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