

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE V.CHITAMBARESH

TUESDAY, THE 6TH DAY OF OCTOBER 2015/14TH ASWINA, 1937

WP(C) .No. 21590 of 2015 (W)

PETITIONER(S) :

MOHAMMEDKUTTY,
WARD MEMBER, WARD NO. 16,
THENHIPALAM PANCHAYATH,
RESIDING AT PARAMKANDATHIL, CHENAKKALANGADI,
CHENAKKALANGADI P.O., MALAPPURAM.

BY ADV. SRI.P.C.SASIDHARAN.

RESPONDENT(S) :

1. THE KERALA STATE ELECTION COMMISSION,
THIRUVANANTHAPURAM-695 001.

2. P. KHADEEJA,
WARD MEMBER, WARD NO. 17,
THENHIPALAM PANCHAYATH,
MALAPPURAM-673 635.

R2 BY ADV. SRI.K.M.FIROZ
R2 BY ADV. SMT.M.SHAJNA
R2 BY ADV. SRI.S.KANNAN
BY SRI.MURALI PURUSHOTHAMAN, SC, K.S.E.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
06-10-2015, ALONG WITH WPC NO.21591/2015 AND WPC NO.21671/2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rvs.

APPENDIX

PETITIONER(S) ' EXHIBITS :

EXT.P1. TRUE COPY OF THE WHIP DATED 21-4-2015.

EXT.P2. TRUE COPY OF THE ORIGINAL PETITION ALONG WITH THE DELAY PETITION.

EXT.P3. TRUE COPY OF THE AFFIDAVIT AND PETITION FILED BY THE PETITIONER.

EXT.P4. TRUE COPY OF THE DOCUMENT EVIDENCING THIS ACT.

EXT.P5. TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 24-6-2015.

RESPONDENT(S) ' EXHIBITS:

NIL.

/TRUE COPY/

P.A.TO JUDGE

RVS.

V. CHITAMBARESH, J

W.P.(C). Nos. 21590, 21591

&

21671 OF 2015

Dated this the 06th day of October, 2015

JUDGMENT

The second respondent moved the first respondent for disqualification of the petitioners in terms of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000 (the 'Rules' for short). Rule 4A(2) of the Rules as amended prescribes a time limit of thirty days for filing an application for disqualification. The election to the post of President in the instant case was on 27.04.2015. The allegation is that the petitioners abstained from the election violating the party whip.

2. The period of thirty days for making a motion under the Rules expired on 27.05.2015. But Rule 4A(2) of the Rules itself enables the delay to be condoned on sufficient reasons. The application put in by the second respondent is dated 28.05.2015. The delay in this case is only one day and at any rate does not exceed two days.

3. The second respondent has specifically stated that she was seriously ill and was taking medical

treatment from the Government Ayurveda Hospital, Kozhikode. This was the reason stated for not filing a petition under the Rules within the stipulated time. The averment that the second respondent was taking medical treatment from the Government Ayurveda Hospital, Kozhikode is not specifically denied. I say so in the light of Ext. P2 petition for condonation of delay and Ext. P3 objection filed by the petitioners. The only averment as can be seen from the counter affidavit is that the second respondent has not furnished the details regarding the treatment.

4. The fact that the second respondent attended the sitting and received the sitting fee during the month of April and May, 2015 is highlighted. This ofcourse is seriously disputed by the second respondent. The mere acceptance of the sitting fee does not mean that the second respondent was hale and hearty. The sitting is done locally at Malappuram whereas the petition under Rule 4 of the Rules has to be filed far away at Thiruvananthapuram.

5. The petitioners rely on the judgment in **Vinayakumar R. and Others v. A.A. Raouf and Another [2015 (3) KHC 787]**. That was a case where the Election Commission refused to entertain a petition on the ground of delay of 41 days. This is a case where the Election Commission has received a petition under the Rules after condoning the delay. The decision cited by the petitioners is of little help for the facts involved in this case.

6. The first respondent has thought it fit to accept the explanation and condone the delay. It is the subjective satisfaction of the first respondent that matters in the condonation of delay. The delay is only trifle and the second respondent cannot be said to be callous. I am not prepared to interfere with Ext. P5 order condoning the delay in these writ petitions.

The writ petitions fail and are dismissed.

**V. CHITAMBARESH
JUDGE**

DCS