

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

FRIDAY, THE 21ST DAY OF AUGUST 2015/30TH SRAVANA, 1937

WP(C).No. 22150 of 2015 (P)

PETITIONER(S) :

**BEENA JOLLY,
PRESIDENT, KARIMANOOR GRAMA PANCHAYAT,
THODUPUZZHA, IDUKKI DISTRICT.**

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENT(S) :

- 1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF LOCAL SELF GOVERNMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.**
- 2. ELAMDESOM BLOCK PANCHAYAT,
REPRESENTED BY THE SECRETARY,
ELAMDESOM BLOCK PANCHAYAT, ELAMDESOM.P.O.-685 585.**
- 3. THE SECRETARY,
ELAMDESOM BLOCK PANCHAYATH, ELAMDESM.P.O- 685 585.**
- 4. KARIMANNOOR GRAMA PANCHAYAT COMMITTEE,
REPRESENTED BY THE VICE-PRESIDENT,
KARIMANNOOR GRAMA PANCHAYAT, THODUPUZZHA,
IDUKKI-685 581.**
- 5. STATE ELECTION COMMISSION,
KERALA REPRESENTED BY THE SECRETARY,
STATE ELECTION COMMISSION, CORPORATE OFFICE COMPLEX,
MUSUEM, THIRUVANANTHAPURAM-695 033.**

WP(C).No. 22150 of 2015 (P)

*** ADDITIONAL R6 IMPEADED**

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

*** ADDITIONAL R6 IS IMPEADED AS PER ORDER DATED 17.08.2015 IN
I.A.NO.10909 OF 2015**

**R1 BY GOVERNMENT PLEADER SMT.ANITHA RAVEENDRAN
R3 & R5 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM
ADDL.R6 BY SRI.S.SREEKUMAR (SENIOR ADVOCATE)
ADVS. SRI.P.MARTIN JOSE
SRI.P.PRIJITH
SRI.THOMAS P.KURUVILLA
SRI.AJAY BEN JOSE**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17-08-2015, THE COURT ON 21-08-2015 DELIVERED THE
FOLLOWING:**

Msd.

WP(C).No. 22150 of 2015 (P)

APPENDIX

PETITIONER(S)' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE RESOLUTION NO.3 DATED 04.05.2015.

EXHIBIT P2: TRUE COPY OF THE NOTICE DATED 14.05.2015.

**EXHIBIT P3: TRUE COPY OF THE JUDGMENT DATED 26.06.2015 IN
W.P.(C).NO.15488/2015.**

EXHIBIT P4: TRUE COPY OF THE NOTICE DATED 15.07.2015.

**EXHIBIT P5: TRUE COPY OF THE POSTAL COVER TOGETHER WITH POSTAL
RECEIPT.**

RESPONDENT(S)' ANNEXURES :

**ANNEXURE R5(A): THE PHOTOCOPY OF THE MINUTES OF THE MEETING HELD
ON 23.07.2015 FOR CONSIDERATION OF THE MOTION OF
NO-CONFIDENCE AGAINST THE WRIT PETITIONER.**

//TRUE COPY//

P.S.TO JUDGE.

Msd.

A.V.RAMAKRISHNA PILLAI, J

WPC No.22150 of 2015

Dated this the 21st day of August, 2015

JUDGMENT

The petitioner, who is the elected President of Karimannoor Grama Panchayat, is aggrieved by the issue of Ext.P4 notice for no confidence motion against her.

2. The petitioner alleges that Ext.P4 notice was issued in violation of the procedure prescribed by Section 157 of the Kerala Panchayat Raj Act.

3. The petitioner is challenging Resolution No.3 dated 4.5.2015 taken by the 4th respondent committee in a meeting in which eight members participated.

4. The petitioner alleges that she met with a bike accident in 2014 which caused a serious injury to her. Consequently, she required further treatment and bed rest and she was hospitalised on account of accident and other associated ailments. She alleges that under such a situation, she was constrained to give charge to the Vice President and sought leave from the Panchayat on

account of the ailments. She further points out that the same was, however, rejected as per the aforesaid resolution (Ext.P1). The petitioner further alleges that after rejecting the application for leave, the secretary of the Block Panchayat issued a notice dated 14.5.2015 in which it is stated that a notice proposing a no confidence motion against the petitioner submitted by some members, is placed before the third respondent, the Secretary of the Block Panchayat who is the notified officer under Section 157(2) of the Kerala Panchayat Raj Act. Consequently, the Secretary of the Block Panchayat issued a notice dated 14.5.2015 of the petitioner (Ext.P2) stating that a special meeting of the member of the Karimannor Grama Panchayat would be held at 11 o' clock on 27.5.2015 in Karimannoor Grama Panchayat Conference Hall for the consideration of the said motion. The petitioner submitted an application dated 22.5.2015 requesting to defend herself by adjourning such a no confidence motion. Ext.P2 was challenged in an earlier writ petition as WPC No.15488/2015 in which she had also challenged the order issued by the Tribunal for Local Self

Government Institutions which refused to entertain the appeal. The said writ petition was dismissed on 26.6.2015. The petitioner alleges that there was an interim stay from 26.5.2015 to 9.6.2015 in the said writ petition. Ext.P3 is the copy of the judgment. Though the petitioner preferred an appeal against Ext.P3, the same has not been numbered. The petitioner alleges that though Ext.P2 notice dated 14.5.2015 was issued earlier, it could not take effect. According to the petitioner, the time for no confidence motion should be necessarily not less than 15 working days from the date of Ext.P2. The petitioner alleges that 13 days elapsed from the date of judgment in the previous writ petition and he is also challenging Ext.P4 notice dated 15.7.2015 issued to the petitioner which states that no confidence motion was proposed to be held on 23.7.2015. He alleges that Ext.P4 was received only on 16.7.2015 at 3 p.m. So, she alleges that Ext.P4 was issued in a haste.

5. Though the petitioner insisted for a stay of the no confidence motion scheduled to be moved on 23.7.2015, the prayer was refused by this Court by order dated

22.7.2015. Accordingly, the motion was carried and the petitioner was voted out.

6. The party respondent as well as the Election Commission has filed separate statements controverting the allegations in the writ petition.

7. I have heard the learned counsel for the petitioner, the learned senior counsel for the additional respondent, the learned standing counsel for the Kerala State Election Commission and the learned Senior Government Pleader in the matter.

8. The argument advanced by the learned counsel for the petitioner is two fold. Firstly, it was pointed out that the written notice prescribed as per section 157(2) of the Panchayat Raj Act was given on 12.5.2015 and as evident from Ext.P4, it was issued after a lapse of 15 days from 12.5.2015. Therefore, it was argued that it is against the mandate of Section 157(3) of the Panchayat Raj Act which states that the meeting for consideration of no confidence motion shall be held not less than 15 days from the date of Section 157(2) notice. Therefore, according to the petitioner, no meeting of no confidence motion can be

held on the basis of Ext.P4 notice dated 12.5.2015.

9. The second argument is that the petitioner was denied the right to have seven full days notice as mandated by Section 157(4) of the Panchayat Raj Act and she was not given minimum time to talk to the members and to defend her stand.

10. The learned counsel for the petitioner relied on the decision of this Court in **Karthikeyan v Deputy Commissioner** (2011(1) KLT 334).

11. To substantiate her argument that if the manner of doing a particular action is prescribed under any statute, the Act must be done in that manner only. The learned counsel for the petitioner also relied on **Maharaja Exports and another v Apparels Export Promotion** (1986(60) Comp. Cases 353 Delhi). To substantiate the argument that the date of the meeting should have to be excluded while counting the days prescribed by the statute.

12. It is crucial to note that the petitioner has approached this Court by filing WPC No.15488/2015 challenging Ext.P2 *inter alia* that the said notice proposed

motion and since the petitioner was bed ridden for reasons beyond her control she was not in a position to attend the meeting scheduled to be held on 27.5.2015 for consideration of the motion of no confidence against her and therefore, the meeting should not be convened. This Court passed an interim order adjourning the meeting scheduled to be convened on 27.5.2015 for a period of one week.

13. Neither the Election Commission nor the members at whose instance the no confidence motion was moved were also not parties to the said writ petition. However, the Election Commission was subsequently impleaded and filed a statement resisting the averments in the writ petition. One of the members of the Panchayat also got himself impleaded as additional respondent and filed counter affidavits.

14. When the writ petition came up for consideration on 8.6.2015, this Court did not extend the interim order and the writ petition itself was finally heard on 9.6.2015 and dismissed by Ext.P3 judgment.

15. The stand taken by the Election Commission is

that since the writ petition was finally heard on 9.6.2015 and the judgment was reserved, the Commission as well as the authorised officer was advised to wait for the judgment to convene the meeting and on receipt of the judgment, the authorised representative was instructed to convene the meeting and it was adjourned as per the interim order of this Court dated 26.5.2015. Thus, the authorised officer was directed to issue notice of 7 days of the adjourned meeting. Accordingly, Ext.P4 notice was issued to the members of the Panchayat including the writ petitioner. Ext.P4 is dated 15.7.2015 and the meeting for consideration of motion was scheduled on 23.7.2015. Admittedly, the writ petitioner was received Ext.P4 notice on 16.7.2015. The petitioner waited till 22.7.2015 and moved the present writ petition. As this Court declined to grant interim relief, no confidence motion was carried at 11 a.m. on 23.5.2015 as scheduled. Out of 13 members who attended the meeting and participated in the debate, 10 members voted when the motion was put to vote. Three members did not participate in the voting. All the ten members voted in favour of the motion and the

motion was carried with the support of the majority of the members. Ext.R5(a) is the copy of the minutes.

16. Sub Section 12 of Section 157 of the Act provides that if the motion is carried in support of the majority of the members of the Panchayat, the President shall cease to hold the office thereafter. The office shall be deemed to be vacant forthwith.

17. As rightly submitted by the learned standing counsel for the Election Commission and the learned Senior counsel for the party respondent, the meeting which was stated to be held on 27.5.2015 was adjourned as per order dated 26.5.2015 in the previous writ petition. Subsequently, the interim order was not extended. The meeting which was adjourned was convened again on 23.7.2015 as per Ext.P4. Therefore, the petitioner cannot contend that the time limit provided under Section 157(3) had lapsed or that there should be a fresh notice of intention to move the no confidence motion against the writ petitioner.

18. In **Joseph Varghese v B.D.O. Ranni** (2003(1) KLT 321), it was held by this Court that the period of 7

clear days mentioned in Section 157(4) of the Kerala Panchayat Raj Act has to be calculated from the date of despatch of the notice and not from the date of receipt of notice. Therefore, the contention raised by the petitioner in that regard will not stand.

19. In ***Chathukutty v Kalpetta Municipality and others*** (2009(4) KLT 303), this Court observed that no confidence motion is not a matter for consideration by any Court or any authority, except that democratic house before which it is moved. It was also held by this Court that motion of no confidence does not depend on anything other than the support that it may gather on being moved. If the motion does not gain the support of the required majority, that would fall on the floor.

Therefore, on a consideration of the entire materials now placed on record, this Court is of the view that the petitioner is not entitled to get the relief as prayed for. In the result, this writ petition fails and accordingly dismissed.

Sd/- A.V.RAMAKRISHNA PILLAI
JUDGE

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true copy

P.S.TO JUDGE

A.V.RAMAKRISHNA PILLAI, J

WPC No.22150 of 2015

Dated this the 22nd day of July, 2015

ORDER

I have heard the learned counsel for the petitioner and the learned standing counsel for 3rd and 5th respondent Election Commission.

2. The learned counsel for the petitioner insisted for a stay of the no confidence motion scheduled to be moved on 23.7.2015 on the ground that the motion is incompetent due to want of statutory notice.

3. In answer to the said submission, Mr.Murali Purushothaman, the learned standing counsel for the Election Commission submits that in the earlier writ petition which was disposed of as per Ext.P3, this Court has granted an interim order only postponing the no confidence motion scheduled to be held on 27.5.2015 and accordingly, it was adjourned.

Thereafter, there was no extension of stay and ultimately, the writ petition was dismissed by Ext.P3 judgment. Therefore, according to the learned counsel for the Election Commission, during the continuance of the stay in Ext.P3 case, the notice stood only eclipsed for a limited period and after the dismissal of the writ petition, it automatically came to light as the notice has not been set aside by this Court. Therefore, it was argued that the present no confidence motion is perfectly valid.

Here, I am reminded of the decision of this Court in ***Cheulumbukadathu Nazeera v State of Kerala and others*** (206(3) KLT 272) that a request for stalling a no confidence motion is totally impermissible, particularly, in view of Section 157(6) of the Act which provides that a meeting convened for consideration of a no confidence motion shall not be adjourned except for the reasons beyond human control. As no such circumstance is forthcoming, the interim relief prayed for is refused. However, it is made clear that any decision taken on the no

confidence motion scheduled to be held tomorrow shall be subject to the final outcome of this writ petition. It is also hereby made clear that I have not expressed anything on merits.

**sd/- A.V.RAMAKRISHNA PILLAI
JUDGE**

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true copy

P.S.TO JUDGE