

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

WP(C).No. 23505 of 2014 (K)

PETITIONER(S):

**R.VINAYAKUMAR
S/O.RAGHAVAN PILLAI, KOVILAKAM, JANRDANAPURAM
VARKALA, THIRUVANANTHAPURAM DIST**

**BY ADVS.SRI.M.R.RAJESH
SMT.E.S.SANDHYA**

RESPONDENT(S):

- 1. A.A.RAOUF
S/O.ALIYARUKUNJU, ANIL BHAVAN, MAITHANAM
VARKALAP.O, THIRUVANANTHAPURAM DISTRICT, COUNCILOR
WARD NO 20(PANAYIL) VARKALA MUNICIPALITY 695 141**
- 2. KERALA STATE ELECTION COMMISSION,REP BY
ITS SECRETARY,THIRUVANANTHAPURAM 695 001**

**R1 BY ADV. SRI.G.S.REGHUNATH
R BY SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 4-03-2015,
ALONG WITH CONNECTED CASES, THE COURT ON 24.03.2015 DELIVERED THE
FOLLOWING:**

kkj

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APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1 A TRUE COPY OF THE DELAY CONDONATION PETITION I.A NO 83/2014 IN UNNUMBERED O.P .../2014 ON THE FILE OF THE KERALA STATE ELECTION COMMISSION

EXHIBIT P2 A TRUE COPY OF THE COUNTER AFFIDAVIT FILED BY THE RESPONDENT TO EXT.P1

EXHIBIT P3 A TRUE COPY OF THE ORDER DATED 08-07-2014 OF THE KERALA STATE ELECTION COMMISSION DISMISSING EXT.P1 PETITION

RESPONDENT(S)' EXHIBITS

// TRUE COPY //

PA TO JUDGE

'CR'

K.SURENDRA MOHAN, J.

**W.P.(C) Nos.23505,23056, 23507,
23508,23514,23547,23548,23549,23550,
23551 & 23552 of 2014**

Dated this the 24th day of March, 2015

J U D G M E N T

These writ petitions are all filed challenging separate orders passed by the Kerala State Election Commission dismissing petitions for condonation of the delay in filing petitions for disqualification of the respective respondents in each of these cases. The delay in filing these cases is 41 days. The State Election Commission has held that the delay has not been satisfactorily explained.

2. The common petitioner in these writ petitions is a Councillor of the Varkala Municipality representing Ward No.22. He filed separate petitions against each of the respondents in these writ petitions alleging that, they had become subject to disqualification for the reason that, they had voluntarily given up their memberships in their political

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party. In the Varkala Municipality, the United Democratic Front (UDF) had secured majority and one Sri. Surya Prakash was elected as the Municipal Chairman on 08.11.2010. The respondents who are members of the Congress Party had moved a No Confidence Motion against the Chairman who was also a member of their own party. The No Confidence Motion was moved alleging that though the DCC President had directed Sri.Surya Prakash to resign from the post of Chairman, he had refused to do so. However, it is stated that, no such direction has been issued by the party. The No Confidence Motion was carried with the support of the Left Democratic Front (LDF for short) councilors. In the subsequent election that followed, Sri Surya Prakash was again elected as the Municipal Chairman.

3. The case of the petitioner in these writ petitions is that, he had come to know that a No Confidence Motion had been moved against the decision of the Congress Party, only

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on 17.05.2014, on which date he was informed by Sri. Surya Prakash of the said fact. Since there was no decision of the Congress Party to move the No Confidence Motion against Sri. Surya Prakash, the respondents in these writ petitions had, according to the petitioner, committed defection by voluntarily abandoning their respective memberships in the party. It was to declare that, they were disqualified from continuing as councilors of the Varkala Municipality that, eleven petitions were moved before the second respondent-Election Commission. However, since the petitions were not filed within the time stipulated by Rule 4A of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000, separate petitions were filed for condonation of the delay. The said petitions were considered by the second respondent and dismissed, declining to condone the delay. The separate orders by which, delay condonation petitions have been dismissed are under challenge in these writ petitions.

4. According to Shri.M.R.Rajesh, who appears for the petitioner in all these writ petitions, the petitioner is not a member of the Congress Party. The No Confidence Motion was moved and was carried on 26.03.2014. Thereafter, an election to the post of Chairman of the Municipality was conducted. Sri. Surya Prakash contested and was again elected, with the support of the opposition. The petitioner is one of the persons who supported him. Alleging that six councillors who had supported him had incurred disqualification, six original petitions O.P.Nos.31 of 2014 to 36 of 2014 have been filed and are pending.

5. It is contended by the counsel for the petitioner that, the 11 respondents in these writ petitions are councillors who have become disqualified by virtue of the defection committed by them. By dismissing the petitions for condonation of delay, a genuine cause has been thrown out by the second respondent. Even if, the delay is condoned, the respondent councillors would get sufficient

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opportunity to contest the petitions and to prove their case. Therefore, it is contended that, absolutely no prejudice would be caused to the respondents by condoning the delay and entertaining the petitions. At the same time, refusal to condone the delay would leave the respondents who have incurred disqualification free to continue as councillors of the Municipality, which is against law. The petitioner not being a member of the Congress Party cannot be attributed with knowledge of the internal affairs of the Congress Party. He came to know of the defection of the respondent councillors only on 17.05.2014 when Sri.Surya Prakash told him about the said fact. The said explanation is sufficient, according to the counsel, for the purpose of condoning the delay in filing the petitions. According to the learned counsel, the reasoning of the second respondent is defective, unsustainable and liable to be set aside. The counsel places reliance on the decisions of the Hon'ble Supreme Court as well as this Court to contend that, the

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expression 'Sufficient Cause" is to be construed liberally and in a manner subservient to the ends of justice. A strict adherence to the principle that delay should be explained in detail, would only result in a meritorious matter being thrown out on a technical infirmity. Therefore, the counsel for the petitioner seeks the issue of appropriate orders setting aside the impugned orders and directing consideration of the petitions on the merits.

6. Advocate G.S.Reghunath appears for the respective respondents. According to the counsel, a No Confidence Motion was moved against Sri Surya Prakash on 26.03.2014. The motion was passed. A fresh election was thereafter conducted. Sri Surya Prakash contested and was elected with the support of the opposition councillors. The petitioner in these writ petitions is one of the Councillors who supported him. Thereupon, alleging that the councillors who supported Sri.Surya Prakash had incurred disqualification, six petitions O.P.Nos.31 of 2014 to 36 of

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2014 have been filed and are pending before the second respondent.

7. The eleven persons who have filed the said petitions are the respondents in these writ petitions. It is the contention of the counsel for the respondent that, the present petitions have been filed at the instance of Sri Surya Prakash, as a counterblast to the petitions that are pending. The petitioner herein is a supporter of Sri.Surya Prakash, who has been set up by him. Therefore, according to the counsel, the explanation for the delay has to be considered in the background of the above factual scenario.

8. The learned Counsel refers to Rule 4A of the Rules to submit that in the matter of the condonation of the delay that has occurred, what matters is 'satisfaction' of the second respondent Election Commission. In these cases, the second respondent has held that he was not satisfied. According to the counsel, the question as to whether the second respondent was satisfied or not cannot be the

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subject matter of a writ petition under Article 226 of the Constitution. Since the wording in Rule 4A is in pari materia with the wordings of Section 5 of the Limitation Act, 1963, the decisions under the said provision are applicable for condonation of delay under Rule 4A of the Rules. Reference is made to the statements made in the affidavit of the petitioner filed in support of the petition for condonation of delay to point out that the explanation is grossly insufficient. Therefore, the counsel seeks the issue of appropriate orders dismissing these writ petitions. The learned Counsel has also referred to and relied upon a number of decisions of the Supreme Court as well as this Court in support of his contentions.

9. Advocate Murali Purshothaman who appears for the second respondent also supports the order of the second respondent contending that, the petitioner had not sufficiently explained the delay in the present case.

10. Heard. The petitioner in these cases had moved

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the second respondent Election Commission, invoking Rule 4A of the Rules. Rule 4A reads as under:-

4A.Petition regarding disqualification:-(1)

If any subject arises as to whether a member of a local authority has become subject to disqualification by the act, a member of that local authority or a member authorised to give directions to that member as per sub-rule (1) of Rule 4 may file a petition before the State Election commission to decide the matter.

(2)The petition as per sub-rule (1) shall be filed within 15days from the date of deemed disqualification of the Member.

Provided that if the petitioner proves that there exist sufficient reason for not filing the petition within the time limit specified, the State Election commission may accept the petition.

As per the above provision where a member of the local authority becomes subject to disqualification either a member of that Local Authority or a member authorised to give directions to that member as per sub-rule (1) of Rule 4 may file a petition to decide the matter. The petitioner herein being a member of the local authority is entitled to file a petition. However, as per sub Rule 2, the petition has

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to be filed within 15days of the date of deemed disqualification of the member. The proviso confers power on the second respondent to accept the petition, 'if the petitioner proves that there exist sufficient reason for not filing the petition within the time limit specified'. Therefore, the power of the second respondent to accept a petition filed beyond the stipulated time is limited to cases where the petitioner proves the existence of "sufficient reason". The question that has to be considered in these cases is whether the petitioner herein has proved that there was sufficient reason for not filing the petition within time. The word 'proves' is indicative of the fact that proof regarding the sufficient reason is necessary. However, proof to the standard stipulated by the Evidence Act may not be necessary. Nevertheless, there must be some material or evidence supporting the 'sufficient reason' pleaded by the petitioner.

11. A copy of the petition for condonation of delay as

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well as the affidavit filed in support thereof are produced as Exhibit P1 in each writ petition. The only explanation of the petitioner in respect of the delay is contained in paragraph 6 of his affidavit. His explanation is that, he came to know of the defection committed by the respective respondents only on 07.10.2014, that is the date on which he gathered such information from Mr.Surya Prakash. He has also stated that, had he got the information within the time limit he would have filed the petition within the stipulated time. The question as to whether the above explanation is sufficient or not, would have to be tested with respect to the dicta laid down by the Courts in various decisions.

12. It has been held by a Division Bench of this Court in **Balakrishnan v. Mohammed Basheer** [1999(2) KLJ 758] that, it is the acceptability of the explanation for the delay that has to be examined by a Court and not the length of the delay. This is for the reason that, if the explanation is

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sufficient and convincing, the length of delay is immaterial. P.K.Balasubramanyan (J) (as he then was) has held as follows, after discussing the various authorities on the point.

The appellant is therefore bound to put forward an acceptable explanation for the delay. The liberal construction can only be of the expression 'sufficient cause' occurring in Sec.5 of the Limitation Act and not the adoption of a course of condoning the delay in all cases even if no cause is shown and whatever be the extent of the delay.

13. The counsel for the petitioner has relied on the decision in **Pokku v. Ammini** [1987(2) KLT 308] to contend that, 'sufficient cause' is an elastic expression, the content of which would have to depend on the facts and circumstances of each case. It is also pointed out that, there is no hard and fast rule regarding condonation of delay. The learned counsel has also placed reliance on **Poonam v. Harishkumar** [(2012)12 SCC 527] as well as **State of Karnataka v. Kuppuswamy** [AIR 1987 SC 1354] in support of his contention that refusal to condone the delay can result in a meritorious matter being thrown out

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and the course of justice being defeated. According to the dictum of the Supreme Court, when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred.

14. The counsel for the first respondent has on the other hand placed reliance on the decision in **Balwant Singh v. Jagdish Singh** [2010 KHC 4451] to contend that where the averments made are not correct and ex facie lacking in bonafides, the delay cannot be condoned. According to the counsel, the satisfaction of the second respondent cannot be gone into, in exercise of the power of judicial review under Article 226 of the Constitution.

15. It is true that, it is the satisfaction of the second respondent that is material, in deciding whether to condone the delay or not. It is within the powers of the second respondent to decide whether to accept a petition filed, in spite of the delay, where there exists sufficient reason for not filing the petition within time. In the present case,

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apart from the statements of the petitioner in his affidavit that he had come to know of the defection only on 17.05.2014 from Sri.Surya Prakash, there is nothing on record to support his bonafides. It is worth noticing that, the petitioner is a councillor of the Municipality. The No Confidence Motion was moved on 26.03.2014. It was passed on the said date. Therefore, the act of which the petitioner complains took place on the said date. The alleged disqualification also was on the said date. Sri. Surya Prakash was elected as the Chairman again at a fresh election that was conducted later. The petitioner being a Councillor of the very same Municipality ought to have been aware of the said developments. If the petitioner had no knowledge of the above facts, he should at least have pleaded such lack of knowledge and the circumstances under which he was prevented from coming to know of the said developments. In normal course of events, the petitioner must have attended the meeting convened for

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discussing the No Confidence Motion as well as the fresh election that followed. He is admittedly a supporter of Sri Surya Prakash. It is not in dispute that, petitions seeking disqualification of Sri.Surya Prakash and the councillors who support him are pending. Therefore, the likelihood of these petitions having been filed at his instance cannot be ruled out. Had the petitioner been serious in pursuing the matter, he would have preferred the present petitions within the stipulated time. Therefore, in the present context, the allegation that the petitioner is only a name lender of Sri.Surya Prakash and that these petitions are filed as a counterblast to the petitions filed by the respondents herein assumes significance. The second respondent has taken note of the above aspects. It is very easy for a person to give a date and to say that, he came to know of the defection only on that date. That is not sufficient to lend credence to the statement. He should have explained the special circumstances that prevented

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him from acquiring knowledge of the said fact, despite being a Councillor of the Municipality who had participated in the entire proceedings. He was also a party to the entire sequence of events from the time the No Confidence Motion was moved, right up to the re-election of Sri. Surya Prakash as the Chairman. Therefore, the conclusion of the second respondent that, the statements made by the petitioner could not be accepted, cannot be found fault with.

16. It is also worth noticing that, the petitioner who is not a member of the Congress Party is espousing the cause of the said party alleging that the petitioners who are members of the party had incurred disqualification by voluntarily leaving the same. It is pertinent to note that, no member of the Congress Party has come forward with any such allegation. The above circumstance also, lends strength to the allegation that, the petitioner is a person who has been set up by Sri. Surya Prakash. In view of the above facts and circumstances, I am not satisfied that there

is any infirmity in the reasoning of the second respondent, holding that the explanation of the petitioner is lacking in bonafides.

17. It is true that the Hon'ble Supreme Court has held that a liberal approach is necessary in the matter of considering all petitions for condonation of delay. However, the Supreme Court has also held in **Balwant Singh v. Jagdish Singh**(Supra) that the final decision would have to depend on the facts and circumstances of each case. The Supreme Court has in the said decision explained that, condonation of delay is not a matter of right, even when sufficient cause is shown. The proof of sufficient cause is only a condition for exercising the discretionary jurisdiction vested in the Court to condone the delay. If sufficient cause has not been shown, nothing further is to be done and the application for condonation of delay has to be dismissed on that ground alone. However, if sufficient cause is shown, then the Court has to further consider whether the

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discretion to condone the delay should be exercised in favour of the petitioner or not. While considering the above aspect, the question of bonafides also arise for consideration.

18. Since condonation of delay cannot be claimed by a person as a matter of right, the petitioner cannot claim that any right of his has been infringed. As already found above, the petitioner has failed to explain the delay properly. The bare submission of the petitioner in his affidavit cannot be accepted at face value for condoning the delay. I do not find any infirmity in the reasoning of the second respondent Election Commission justifying an interference with the impugned orders in these cases.

For the foregoing reasons, these writ petitions are dismissed. No costs.

Sd/-
K.SURENDRA MOHAN,
JUDGE

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