

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.V.RAMAKRISHNA PILLAI

TUESDAY, THE 21ST DAY OF JULY 2015/30TH ASHADHA, 1937

WP(C).No. 27774 of 2014 (V)

PETITIONERS:-:

1. T.A.ANTONY @ JAYAN THIRUNILATH, AGED 63 YEARS,
S/O.ANTONY, THIRUNILATH, CHILAVANNOOR,
KADAVANTHRA P.O., ERNAKULAM.
2. P.R.RAGESH, AGED 36 YEARS,
S/O.P.K.RAJAGOPAL, NANDANAM, PONNATH SOUTH ROAD,
CHILAVANNOOR, KADAVANTHRA P.O., ERNAKULAM DISTRICT.

BY ADVS.SRI.C.S.AJITH PRAKASH
SRI.FRANKLIN ARACKAL
SRI.C.S.YESUDAS
SRI.P.S.SYAMKUTTAN
SRI.PAUL C THOMAS

RESPONDENTS:-:

1. STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO GOVERNMENT,
LOCAL SELF GOVERNMENT DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
2. KERALA STATE ELECTION COMMISSION,
CORPORATION OFFICE COMPLEX, LMS JUNCTION, PALAYAM,
THIRUVANANTHAPURAM - 695 033,
REPRESENTED BY ITS SECRETARY.
3. DISTRICT COLLECTOR,
COLLECTORATE, KAKKANAD, ERNAKULAM - 31.
4. CORPORATION OF COCHIN,
KOCHI, ERNAKULAM - 11, REPRESENTED BY ITS SECRETARY.

* ADDL.R5 IMPEADED

5. THE KERALA STATE DELIMITATION COMMISSION, 3RD FLOOR, CWC
BUILDING, LMS COMPOUND, PALAYAM, THIRUVANANTHAPURAM-695033,
REPRESENTED BY ITS SECRETARY.
ADDL.R5 IMPEADED AS PER ORDER DATED 21/7/2015 IN IA.9329/2015

R1 & 3 BY GOVERNMENT PLEADER SRI.JOE KALLIATH
R2 & 5 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC
R4 BY ADV. SRI.MILLU DANDAPANI,SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21-07-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1. TRUE COPY OF THE LIST SHOWING THE POPULATION IN 74 EXISTING WARDS OF THE 4TH RESPONDENT CORPORATION OF COCHIN PURSUANT TO THE DELIMITATION OF WARDS CONDUCTED IN THE YEAR 2010.**
- EXHIBIT P2. TRUE COPY OF THE LIST SHOWING THE POPULATION IN THE WARD OF THE 4TH RESPONDENT CORPORATION OF COCHIN PURSUANT TO THE DELIMITATION OF WARDS CONDUCTED IN THE YEAR 2005.**
- EXHIBIT P3. TRUE COPY OF THE LIST PREPARED BY THE PETITIONERS ON THE BASIS OF THE INFORMATION AVAILABLE IN WEBSITE OF THE REGISTRAR GENERAL & CENSUS COMMISSIONER, INDIA SHOWING THE POPULATION IN EACH EXISTING WARD OF THE CORPORATION OF COCHIN AS PER THE POPULATION CENSUS OF THE YEAR 2011.**
- EXHIBIT P4. TRUE COPY OF THE REPRESENTATION DATED 29.09.2014 SENT THROUGH REGISTERED POST.**
- EXHIBIT P5. TRUE COPY OF THE POSTAL RECEIPTS DATED 04.10.2014 AND 08.10.2014.**

RESPONDENT(S)' EXHIBITS

- EXHIBIT R2(A): TRUE COPY OF G.O.(P) NO.4/2015/LSGD DATED 5/1/15 AND ITS ENGLISH TRANSLATION.**

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.V. RAMAKRISHNA PILLAI, J.

W.P.(C) No. 27774 of 2014

Dated this the 21st day of July, 2015

J U D G M E N T

The petitioners, who are the registered voters residing within the local limits of the Corporation of Kochi, have come up before this Court alleging that the corporation is making divisional allotment of funds for development activities to each ward in equal proportion without considering the population in each ward.

2. According to the petitioners, they are social workers and public spirited persons. The 1st petitioner is also holding the post of the President of the Chilvannoor Residents Welfare Association. The petitioners point out that the Corporation of Kochi is a Municipal Corporation coming under Section 4 of the Kerala Municipalities Act, 1994. The 4th respondent corporation has a council consisting of 74 elected councilors. The total number of wards/divisions existing in the corporation is 74 wards/divisions. The latest delimitation of the

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wards/divisions of the Corporation of Kochi was conducted in the year 2010 prior to the local body elections conducted in October, 2010; and in the year 2011, new population census was conducted, as per which, some of the wards in the corporation contain population more than 10000 persons; and some of them contain less than 5000 persons. Even then, the corporation is making divisional allotment of funds for development activities to each ward in equal proportion without considering the population in each ward; it is alleged. According to the petitioners, the same is discriminatory, arbitrary, adversely affects the residents of the corporation and, hence, violative of Article 14 of the Constitution of India. The upcoming general election to the corporation has to be conducted on or before October, 2015. In such circumstances, if any local body election is conducted without delimiting the wards, the same would be violative of the principles of 'one man-one vote' and the entire election process would become void. Pointing out the same, Ext.P4 representation was submitted by the petitioners before the respondents.

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As per Section 10 of the Kerala Panchayath Raj Act, 1994, and Section 69 of the Kerala Municipality Act, 1994, the State Government is duty bound to constitute Delimitation Commission before every general election to local bodies for the purpose of delimiting the wards of the local bodies based on the latest population census. However, the respondents have not taken any step to delimit the wards of the corporation; it is alleged. Hence, this writ petition.

3. Separate statements have been filed by respondent 1 and 2. An additional statement also has been filed by the 2nd respondent.

4. The petitioners have filed separate reply affidavits to the statements filed by respondents 1 & 2.

5. Heard the learned counsel for the petitioners, the learned Government Pleader, the learned Standing Counsel for the Kerala State Election Commission and the learned Standing Counsel for the Kerala State Delimitation Commission.

6. The learned Standing Counsel for the Kerala State Election Commission, inviting my attention to para 3

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of the statement, submitted that the task of delimitation can be commenced by the Delimitation Commission only after the Government fixes the strength of panchayaths and municipalities under Section 6 of the Kerala Panchayath Raj Act/Kerala Municipality Act. It is further submitted that the said exercise is yet to be initiated; and only thereafter, the Delimitation Commission can commence the task of delimitation of constituencies.

7. The learned senior Government Pleader submitted that in the light of Section 6(2) of the Kerala Municipality Act, it is not mandatory on the part of the Government to vary the number of seats of councilors. As the Government has not undertaken the exercise of varying till date and the forthcoming elections are to be held during October, 2015, it is practically impossible to effect any delimitation at present as prayed for by the learned counsel for the petitioners.

8. The learned counsel for the petitioners, in support of the arguments, referred to a decision of the High Court of Gujarat reported in Laws (GJH)-1978-1-2.

However, on a perusal of the said decision, it can be seen that the same was pronounced before the commencement of 47th Amendment of the Constitution. Therefore, the same cannot be relied on for the purpose of this case.

In the result, the writ petition is disposed of directing the respondents to consider Ext.P4 representation submitted by the petitioners and pass orders in accordance with law after affording the petitioners an opportunity of being heard, expeditiously, at any rate, before 2020 election starts on the basis of the population census, 2011.

It shall be open to the petitioners to bring this judgment to the notice of the Government in advance.

Sd/-
A.V. RAMAKRISHNA PILLAI
JUDGE

bka/-