

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT:**

**THE HONOURABLE MR.JUSTICE V.CHITAMBARESH**

**MONDAY, THE 16TH DAY OF NOVEMBER 2015/25TH KARTHIKA, 1937**

**WP(C).No. 32073 of 2015 (H)**  
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**PETITIONER:**  
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**SANTHOSH A.P., AGED 45 YEARS  
S/O.N.PONNAPPAN,  
AALIMVILAYIL HOUSE  
MELOOED P.O,  
ADOOR  
PATHANAMTHITTA DISTRICT**

**BY ADVS.SRI.K.SHAJ  
SRI.SAJJU.S**

**RESPONDENTS:**  
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- 1. THE STATE ELECTION COMMISSION  
KERALA, CORPORATION OFFICE COMPLEX, LMS JUNCTION  
PALAYAM, THIRUVANANTHAPURAM 695 033.**
- 2. THE RETURNING OFFICER  
G 54, PALLICKAL GRAMA PANCHAYATH, VAZHAKULAM P.O  
PATHANAMTHITTA 686 670  
(THE ASSISTANT REGISTRAR  
OF CO-OPERATIVE SOCIETIES  
ADOOR, ADOOR P.O, PATHANAMTHITTA)**
- 3. ANEESH.T  
THANKAPPAN VILASOM,  
MELOODU P.O, ADOOR  
PATHANAMTHITTA DISTRICT,  
PIN 691 523.**
- 4. RAJESH.K.R, AGED 39 YEARS  
S/O.RAMAKRISHNAN, KALLELUVILLA PUTHEN VEEDU  
PARANTHAL.P.O, MITHRAPURAM, ADOOR  
PATHANAMTHITTA DISTRICT  
PIN - 689 645**

**WP(C).No. 32073 of 2015 (H)**

**5. RAJEEV.K.NAIR,  
AGED 36 YEARS  
S/O.RAMAKRISHNAN,  
KALLELUVILLA PUTHEN VEEDU  
PARANTHAL.P.O,  
MITHRAPURAM, ADOOR  
PATHANAMTHITTA DISTRICT  
PIN - 689 645**

**R1 & R2 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,  
KERALA STATE ELECTION COMMISSION  
R4 BY ADVS. SRI.K.SASIKUMAR  
SRI.S.ARAVIND  
SRI.R.ROHITH  
SRI.P.S.RAGHUKUMAR**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
09-11-2015, THE COURT ON 16.11.2015 DELIVERED THE FOLLOWING:**

**WP(C).No. 32073 of 2015 (H)**  
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**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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**EXHIBIT P1    COPY OF THE LIST OF NOMINATED CANDIDATES PUBLISHED BY  
                  THE 2ND RESPONDENT**

**EXHIBIT P2    COPY OF THE LIST OF CANDIDATES FOUND TO BE LEGALLY  
                  NOMINATED DATED 15/10/2015, PUBLISHED BY THE 2ND  
                  RESPONDENT**

**EXHIBIT P3    COPY OF THE ORDER OF THE 2ND RESPONDENT DATED 16/10/2015**

**EXHIBIT P4    COPY OF THE REPRESENTATION DATED 16/10/2015**

**RESPONDENT(S)' EXHIBITS:- NIL**  
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**/TRUE COPY/**

**P.A. TO JUDGE**

**DCS**

**“C.R.”**

**V.CHITAMBARESH,J.**

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**W.P.(C) No. 32073 of 2015**  
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Dated this the 16<sup>th</sup> day of November, 2015

**JUDGMENT**

This judgment might strike a discordant note in the realm of election law as far as this Court is concerned even though the peculiar facts unfolded in the case warrant the present conclusion.

2. The first respondent Returning Officer published Ext. P1 list of nominations under Rule 9 of the Kerala Panchayat Raj (Conduct of Election) Rules, 1995 (hereinafter referred to as 'the Rules' only). The list contained the names of the petitioner and respondent Nos. 3 to 5 who had submitted nominations in the election to Ward No. IX of the Pallickal Grama Panchayat. The nomination papers underwent a scrutiny and the Returning

Officer on 15.10.2015 published Ext. P2 list of candidates found legally nominated under Rule 10 of the Rules. Only the names of the petitioner and the third respondent found a place in the list and the nominations put in by respondent Nos. 4 and 5 were rejected in the scrutiny. The petitioner was surprised when he came across Ext. P3 order issued by the Returning Officer on 16.10.2015 styled as an erratum to Ext. P2 list of candidates found legally nominated. The erratum order roped in respondent Nos. 4 and 5 also in the poll fray after suo-motu reviewing the earlier proceedings rejecting their nominations during scrutiny. The order reflected that the Returning Officer realised the rejection to be bad in the wake of the legal advice and the handbook of the first respondent State Election Commission.

3. It appears that the Returning Officer had earlier rejected the nominations of respondent Nos. 4 and 5 on the premise that one candidate cannot propose another in the same election. The Returning Officer proceeded on the basis that such a conclusion was bad in law in the light of

the legal advice and handbook aforesaid and hence the necessity for Ext. P3 erratum order. The petitioner thereupon submitted Ext. P4 representation to the first respondent seeking to annul Ext. P3 erratum order and to proceed with the election on the basis of Ext. P2 list. The inaction on the part of the first respondent had compelled the petitioner to file this writ petition for the same reliefs invoking Article 226 of the Constitution of India. The first respondent contended that there is a constitutional bar to entertain the writ petition and that the remedy of the petitioner is by way of an election petition. The fourth respondent contended that the Returning Officer had only corrected his mistake on realising that one candidate could as well propose another in the election.

4. I heard Mr. K. Shaj, Advocate on behalf of the petitioner, Mr. Murali Purushothaman, Standing Counsel on behalf of the Election Commission and Mr. K.Sasikumar, Advocate on behalf of the fourth respondent.

5. The Returning Officer after the last day and time fixed for the receipt of nomination papers had published Ext. P1 list of nominations received in Form No.3 as envisaged in Rule 9 of the Rules. The Returning Officer immediately after the scrutiny of the nomination papers were over had also prepared Ext. P2 list of candidates found legally nominated in Form No. 4 as per Rule 10 of the Rules. This was in accord with Section 55(8) of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as 'the Act' only) dealing with the scrutiny of the nominations and the same is extracted hereunder:

"(8) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates and affix it on his notice board".

The next step in 'the progress of the election proceedings' was the withdrawal of candidature under Section 56 of the Act followed by the publication of list of contesting

candidates under Section 57 of the Act.

6. Surprisingly the Returning Officer retraced his steps by suo motu reviewing his earlier decision on the rejection of the nomination papers put in by respondent Nos. 4 and 5. The Act did not empower the Returning Officer to go on the reverse and repeat the exercise of scrutiny after having published the list of nominated candidates in Form No. 4. Such to and fro motion of the Returning Officer had 'the effect of interrupting, obstructing or protracting the election proceedings' which needed immediate correction. The Returning Officer by Ext. P3 order issued in the nature of erratum had included respondent Nos. 4 and 5 also in the list of candidates found legally nominated. I therefore issued an interim order in this writ petition staying the operation of Ext. P3 order and directing the Returning Officer to proceed with the election on the basis of Ext. P2 list. The interim order was confirmed in W.A. No. 2321/2015 filed by the fourth respondent by the Division Bench of this Court and the judgment therein inter

alia stated as follows:-

"The nomination being early rejected on 15.10.2015 as noticed in order dated 16.10.2015, Ext. P3 order could not be said to be an erratum to correct the mistake".

It is now reported that the election accordingly proceeded on the basis of Ext. P2 list and the petitioner having secured more votes than the third respondent had been declared as the successful candidate.

7. The Supreme Court after referring to the two constitution bench decisions in **N.P. Ponnuswami v. The Returning Officer** [AIR 1952 SC 64] and **Mohinder Singh Gill and another v. The Chief Election Commissioner** [AIR 1978 SC 851] summed up the propositions in law in **Election Commission of India v. Ashok Kumar and Others** [AIR 2000 SC 2979] as follows:-

- "1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of

declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

- 2) Any decision sought and rendered will not amount to "calling in question an election " if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.
- 3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.
- 4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the

election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

- 5) The Court must be very circumspect and act with caution while entertaining any election dispute thought not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material." (emphasis supplied)

8. It has been held even in **Mohinder Singh Gill's** case (supra) as follows:-

"But what is banned is not anything whatsoever done or directed by the Commissioner but everything he does or directs in furtherance of the election, not contrary wise. For example, after the President notifies the nation on the holding of elections under S. 15 and the Commissioner publishes the calender for the poll under Section 30, if the latter orders Returning Officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, is that order immune from immediate attack. We think not. Because the Commissioner is preventing an election, not promoting it and the court's review of that order will facilitate the flow, not stop the stream. Election, wide or narrow be its connotation, means choice from a possible plurality monolithic politics not being our genius or reality, and if that concept is crippled by the Commissioner's act, he holds no election at all." (emphasis supplied)

The Supreme Court again after referring to the above

passage in **Mohinder Singh Gill**'s case (supra) observed in **Manda Jaganath v. K.S. Rathnam and Others [(2004) 7 SC 492]** as follows:-

"Of course, what is stated by this Court hereinabove is not exhaustive of a Returning Officer's possible erroneous action which are amenable to correction in the writ jurisdiction of the Courts. But the fact remains that such errors should have the effect of interfering in the free flow of the scheduled election or hinder the progress of the election which is the paramount consideration. If by an erroneous order conduct of the election is not hindered then the Courts under Article 226 of the Constitution should not interfere with the orders of the Returning Officers, remedy for which lies in an election petition only."  
(emphasis supplied)

9. The Returning Officer had acted in breach of law in suo motu reviewing his earlier decision which had become final on the rejection of the nomination papers put in by respondent Nos. 4 and 5. The Act nowhere conferred power on the Returning Officer to review his past actions in

the process of election and he could only surge ahead without retracing his steps. But the Returning Officer had gone on the reverse and repeated the exercise of scrutiny of the nomination papers after having published the list of nominated candidates in Form No. 4. Such forward and backward motion of the Returning Officer had the effect of retarding or interrupting the progress of the election necessary to be completed on schedule. The fact that the Returning Officer passed Ext. P3 erratum order by making an addition to Ext. P2 list even before the date fixed for withdrawal of nominations was of no avail. A judicial review of the erratum order passed by the Returning Officer is necessitated to facilitate the free flow and smoothen the progress of the election proceedings. Neither the bar under Article 243-O(b) of the Constitution of India nor the existence of an effective remedy under Section 87 of the Act would be an impediment. The existence of a 'catch all' clause under Section 102(1)(d)(iv) of the Act for declaring an election to be void for non-compliance with the

provisions of the Act would not also operate as a bar. I am convinced that Ext.P3 erratum order was vulnerable to immediate attack under Article 226 of the Constitution of India in order to smoothen the election process.

10. There is yet another reason as to why Ext. P3 erratum order requires to be annulled on the basis of the admitted facts leaving aside the disputed questions to be adjudicated in an election petition. Those who secured a place in the list of candidates found legally nominated had a right to be heard before any addition or deletion was made to it otherwise than by withdrawal of candidature. Neither the petitioner nor the third respondent were ever heard or atleast put on notice before Ext. P2 list of validly nominated candidates was altered by Ext. P3 erratum order. The Supreme Court had occasion to observe in this regard ofcourse in an election petition in **Ram Phal Kundu v. Kamal Sharma [(2004) 2 SCC 759]** as follows:-

“It may be noticed that the petition by Kamal Sharma was filed on 6.2.2000 and the same was

allowed by the Election Commission the very next day i.e., on 7.2.2000 by which a direction was issued to the Returning Officer to hold a fresh scrutiny. There is nothing on record to indicate nor it appears probable that before passing the order, the Election Commission issued any notice to Bachan Singh. Apparently, the order was passed behind his back. The order of the Election Commission to the effect that the Returning Officer shall take further consequential steps as may become necessary, by treating all earlier proceedings in relation to the said candidates, as void ab initio and redraw the list of validly nominated candidates, could not have been passed without giving an opportunity of hearing to Bachan Singh.”  
(emphasis supplied)

I am quite convinced that Ext. P3 erratum order was passed in breach of law and in violation of the principles of natural justice impeding the progress of election proceedings which warranted immediate correction. I should however add a note of caution that violation of the principles of natural justice alone might not suffice to sustain a writ petition in the midst of the election proceedings. I quash Ext. P3

erratum order taking due note of the fact that the process of election is complete by the declaration of results during which time the order impugned remained stayed.

11. The petitioner as well as respondent Nos. 4 and 5 were at variance as to whether one candidate who had put in his nomination could propose another candidate and that too for the same election. It appears that the fourth respondent signed as the proposer in the nomination put in by the fifth respondent resulting in the rejection of both their nomination papers earlier. I am afraid that I will be treading into an area which is essentially within the province of the Election Court if I am to hold one way or the other in this writ petition. The parties are free to call in question the election by an election petition and establish the grounds for declaring the election to be void owing to improper rejection of the nomination papers. Such a specific ground is available under Section 102(1)(c) of the Act in addition to other grounds for declaring the election to be void in an election petition. The parties are at liberty to

move the Election Court and I refrain from pronouncing anything on merits as regards the validity of the rejection of the nomination papers put in by respondent Nos. 4 and 5. The zeal and enthusiasm shown by Mr. Murali Purushothaman, Advocate to avert the election being stalled making copious reference to the various case law on the subject deserves a rich encomium.

The writ petition is allowed. No costs.

**V.CHITAMBARESH  
JUDGE**

DCS