

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.BHAVADASAN

FRIDAY, THE 30TH DAY OF OCTOBER 2015/8TH KARTHIKA, 1937

WP(C).No. 33020 of 2015 (B)

PETITIONER(S):

**ABOOBACKER K.H. AGED 36 YEARS,
SON OF HUSSAIN, KATTAKAL HOUSE,
KALLANADU P.O., KASARAGOD.**

**BY ADVS.SRI.R.D.SHENOY (SR.)
SRI.S.VINOD BHAT
SRI.LEGITH T.KOTTAKKAL
SRI.M.S.IMTHIYAZ AHAMMED**

RESPONDENT(S):

- 1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY, DEPARTMENT FOR LOCAL SELF
GOVERNMENT INSTITUTIONS, SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.**
- 2. STATE ELECTION COMMISSION, KERALA,
CORPORATION OFFICE COMPLEX, L.M.S. JUNCTION,
PALAYAM, THIRUVANATHAPURAM 695033.**
- 3. DISTRICT ELECTION OFFICER AND DISTRICT COLLECTOR,
COLLECTORATE, KASARAGOD 671 121.**

**R2 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM
BY GOVERNMENT PLEADER SRI. BOBBY JOHN**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
30-10-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

ds

WP(C).No. 33020 of 2015 (B)

APPENDIX

PETITIONERS EXHIBITS:

- EXT.P1: COPY OF THE ORDER NO. 1003/2015 S.D.C. DATED 30.09.2015
- EXT.P2: COPY OF THE LIST OF CANDIDATES CONTESTING FROM UDUMA
WARD FOR THE ELECTIONS IN 2010.
- EXT.P3: COPY OF THE LIST OF CANDIDATES CONTESTING FROM CHENGALA
WARD FOR THE ELECTIONS IN 2010.
- EXT.P4: COPY OF THE ORDER NO.E2-51720/15 DATED 4.10.2015 OF THE 3RD
RESPONDENT.

RESPONDENTS EXHIBITS: NIL

//True copy//

P.A. to Judge

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P.BHAVADASAN, J.

W.P.(C) No. 33020 of 2015

Dated this the 30th day of October, 2015

J U D G M E N T

In this writ petition, the following reliefs are sought for:

“i. To issue a writ of certiorari or such other writ quashing Ext.P4 order inasmuch as it declares Chengala Ward as a constituency reserved for women;

ii) To issue a writ of mandamus or such other writ directing the respondents to include in Ext.P4 Uduma Ward (no.13) in Kasargod District Panchayat as a reserved ward for women.”

2. The facts absolutely necessary for the disposal of this petition are as follows:

The petitioner pointed out that he is much aggrieved by the continuance of two constituencies i.e. Uduma and Chengala as general and reserved constituencies respectively for the ensuing local body election to be held in 2015. The grievance is that they continued to occupy the

same status as they did it in the previous election i.e. in 2010. Uduma and Chengala are the two constituencies out of the 17 in Kasargod District. Uduma is in Ward No.13 and Chengala is in Ward No.14. In the election held in 2010, Ward No.13 (Uduma) was a general ward and Ward No.14 (Chengala) was a reserved ward for women in the local body election of that year.

3. The petitioner draws the attention of this Court to Section 6 of the Kerala Panchayath Raj Act which reads as follows:

“6. Strength of Panchayats.-- (1)

The total number of seats in a Village Panchayat, a Block Panchayat and a District Panchayat to be filled by direct election shall be notified by the Government in accordance with the scale specified in sub-section (3) with reference to the population of the territorial area of the Panchayat concerned.

(2) The Government may after, publication of the relevant figures of each census, by notification alter the total number of seats in a Panchayat notified under sub-

section (1) subject to the scale specified in sub-section (3).

(3) The number of seats to be notified under sub-section (1) or sub-section (2) shall not,-

(a) in these case of Village Panchayat, be less than thirteen or more than twenty three;

(b) in these case of a Block Panchayat, be less than thirteen or more than twenty three;

(c) in these case of a District Panchayat, be less than sixteen or more than thirty-two;

Provided that the ratio between the population of the territorial area of a panchayat at any level and the number of seats in such Panchayats to be filled by election shall, so far as practicable, be the same throughout State.

(4) The procedure of fixing the strength of a Panchayat shall be such as may be prescribed."

4. It is therefore contended that if applying the rules of rotation, the position should have been that Uduma ought to have been a reserved ward and Chengala ought to have been a general ward in view of the above rule.

5. A doubt was entertained by this Court regarding the maintainability of the petition. The learned counsel then

relied on the decisions reported in **Amaravila Krishnan Nair v. The Election Commissioner of India, New Delhi and Others** (AIR 1972 Kerala 5), wherein, it was held that a settlement of an electoral roll being a pre-election step could be challenged if it violates any of the rules or regulations. It does not form a part of the election process at all. Relying on that principles, it is contended that the present nomination of the constituencies as general and reserved can be challenged.

6. The learned counsel appearing for the 2nd respondent pointed out that possibly the contention could stand had it been before the notification for election. Once the notification of election is issued, the process of election begins and then only remedy available to the petitioner is to challenge the election of the candidate concerned after the election is conducted by an election petition as per the grounds available for challenging an election.

7. It is true that in the decision cited by the learned

counsel for the petitioner, it has been stated that settling of electoral roll is a pre-election process and a challenge under Article 226 of the Constitution of the India to the election process may be possible. But, it has to be noticed that the challenge involved in that case was much prior to the notification of election had been published. So that it could not be said that the time when the challenge was made, the election process had commenced.

8. In the case on hand, the election notification was issued on 07.10.2015. That means, with the issuance of election notification, the election process has started. If that be so, any tampering with the electoral rolls will form a part of the election process also.

It is not as if the petitioner has no remedy in case his contention is to be upheld at a later stage. This is clear from Section 100 (1) (d) (iv) of the Panchayat Raj Act. It is clear from a reading of the above provision that it is a residuary clause encompassing all ills regarding an election. There is

no reason as to why the claim now made by the petitioner cannot fall under that provision. If that be so, the remedy of the petitioner is to challenge the election after the election process is completed.

Reserving the liberty of the petitioner to challenge the election on the ground now urged by him after the election, this petition is disposed of.

Sd/-
P.BHAVADASAN
JUDGE

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//True copy//

P.A. to Judge