
(2012) 01 KL CK 0075

In the High Court Of Kerala

Case No : Writ Petition (C) No. 34854 of 2010

Beena Kaniyankunnel and Another

APPELLANT

Vs

Kerala State Election Commission and Others

RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 21, 30

Citation : (2012) 2 KarLJ 130 : (2012) 2 KLJ 130

Hon'ble Judges : C.T. Ravikumar, J

Bench : Single Bench

Advocate : K. Siju and S. Sudheeshkar, for the Appellant; Murali Purushothaman (SC); S. Abdul Salam (GP); A.N. Rajan Babu ; P.J. Mathew ; Ram Prasad Unni (GP); Thomas John Ambooken and P. Gopalakrishnan, for the Respondent

Final Decision : Allowed

Judgement

C.T. Ravikumar, J.—The petitioners in these writ petitions are members elected to different Local Self Government Institutions who contested/proposed to contest the election to the different Standing Committees in different Grama Panchayats. Whether a Returning Officer can refuse to treat the candidature of a woman member of a Local Self Government Institution, who failed to mark her intention to contest the election to a particular Standing Committee in the woman reserved seat, against the woman reserved seat in the said Standing Committee and then, treat her candidature against the unreserved seats to the said Standing Committee and the legality of such actions are the issues to be resolved in W.P.(C)Nos. 34854, 35131, 35557 of 2010 and 119 of 2011. Whether the State Election Commission is having the power to extend the time or date fixed for receipt of nominations when once a notice has been issued by the Returning Officer under Rule 4(1) in terms of Rule 4(4), of the Kerala Panchayat Raj (Standing Committee) Rules, 2000 and whether anyone other than the Returning Officer, designated/nominated by the State Election Commission in respect of election to the Standing Committees to a particular Local Self Government

Institution, can receive nomination papers for the said election, under any circumstance, are the questions crop up for consideration in the rest of the writ petitions. Since the aforesaid issues are pertaining to election to Standing Committees of Panchayats and the powers of the Returning Officers appointed for such purposes and the State Election Commission in respect of the aforesaid issues are to be decided with reference to certain common provisions, all these matters were jointly heard. A short prelude is profitable and hence, preferable, to decide the aforesaid issues of legal importance involved in these writ petitions. In view of the provisions u/s 162(4a) of the Kerala Panchayat Raj Act, 1994 (for short "the Act") and Rule 5(2) of the Kerala Panchayat Raj (Standing Committee) Rules, 2000 (for short "the Rules") the members to be elected to each Standing Committee shall be elected under the guidance, supervision and control of the Kerala State Election Commission and the Commission shall, by virtue of the power u/s 162(4a), designate or nominate thereto an officer of the Government or Local Self Government Institution as Returning Officer for conducting such election. In terms of section 162(1) of the Act, in Grama Panchayats and Block Panchayats four Standing Committees viz., for Finance, for Development, for Welfare and for Health and Education shall be constituted. Section 162(2) of the Act enjoins that one of the seats of members to be elected in every Standing Committee shall be reserved for women as per sub-section (4) and all elected members of the Panchayat except the President and the Vice-President shall be elected as members of any of the Standing Committees. As per section 162(6) of the Act, the Vice-President shall be an ex-officio member and Chairman of the Standing Committee for Finance and the President shall be an ex-officio member of all Standing Committees without the right to vote. Section 162(4) of the Act provides that in every Standing Committee there shall be members elected by the elected members of the Panchayat from among themselves under the proportional representation system by single transferable vote and a member shall not be a member of more than one Standing Committee at a time. In terms of Rule 5 of the Rules, the election to the Standing Committees to be constituted under subsection (1) of section 162 shall be held in a meeting of the elected members of the concerned Panchayat convened by the Returning Officer for the said purpose, in the given order of the Standing Committees in the said sub-section viz., Standing Committee for Finance, Standing Committee for Development, Standing Committee for Welfare and Standing Committee for Health and Education. The manner of election of members has been provided under Rule 7 of the Rules and the manner of recording votes, counting of votes and declaration of result have been provided under Rule 8 thereunder. Rule 4 of the Rules empowers the Returning Officer to give notice for convening the meeting for the election to the Standing Committees, to all the elected members of the Panchayat, five days prior to the date of the meeting. Rule 4(4) of the Rules reads thus:-

4. (4) If a member intends to contest as a member of the Standing Committee or the Chairman thereof, as the case may be, he shall be required in the notice

under sub-rule (1), to duly file the nomination in writing, showing the last date and time for making such nomination to the Returning Officer.

(emphasis supplied)

In view of the provisions under Rule 7(1) of the Rules, a member of a Panchayat who intends to contest the election to a Standing Committee shall file nomination, in writing, before the last date and time mentioned in the notice under Rule 4(1) in terms of Rule 4(4) of the Rules to the Returning Officer. Admittedly, there is no prescribed format for filing the nomination for contesting the election to the Standing Committees. The cumulative effect of Section 162(4) of the Act and Rule 4(4) of the Rules is that while filing nomination, in writing, the concerned member shall indicate the Standing Committee to which he/she is intending to contest. Rule 3A(1) of the Rules provides that election to the reserved seats for women to the various Standing Committees, in the serial order of the Standing Committees as given in sub-section (1) of section 162, shall be conducted first and the election to the unreserved seats viz., general seats, shall be conducted only after conducting such election to the woman reserved seats.

2. Bearing in mind the various provisions referred to hereinbefore, I may, firstly, deal, with the issues involved in the first batch of writ petitions. Obviously, after the issuance of notice under Rule 4(1), in terms of Rule 4(4) of the Rules prospective candidates among the members of the concerned Panchayat have to file nomination, in writing, in view of Rule 7(1). By virtue of the bar for being a member of more than one Standing Committee at a time necessarily such candidates have to specify the name of the Standing Committee to which they intend to contest in the nomination. Admittedly, there is no prescribed form of nomination for election to the Standing Committees. Therefore, in view of the admitted absence of any provision mandating for marking the intent in the nomination to be filed, in writing, as to whether the candidature is against the reserved seat for women or against the unreserved seats as regards a particular Standing Committee, the question is whether the concerned Returning Officer could refuse to treat the candidature of a lady member of the concerned Panchayat who specified the name of the Standing Committee, but had not revealed the intention to contest in the reserved seat for women in the nomination against the reserved seat for women and could treat the nomination as one for contesting in the unreserved seats to that Standing Committee.

3. In some cases, the woman members in certain Panchayats did not specifically state in their nominations filed, in writing, before the concerned Returning Officer, regarding their intention to contest the election to a particular Standing Committee against the reserved seat for women. At the same time, it is an admitted position that some lady members did mark such an intention specifically in their nominations filed, in writing. The Returning Officers in most of the cases refused to permit such failing woman candidates to contest the election against the woman reserved seats and permitted only those woman members

who specifically stated such intention, in their nominations to contest the election against woman reserved seat in the concerned Standing Committee. The said action on the part of the Returning Officers is under challenge in these cases.

4. The Kerala State Election Commission appointed Returning Officers for conducting elections to the Standing Committees of different Panchayats and the concerned Returning officers in turn, issued notice, convening the meeting of elected members of the concerned Panchayat for election to the different Standing Committees mentioned in Section 162(1) of the Act, under Rule 4(1) and in terms of Rule 4(4) of the Rules, specifying date of the election and also the last date and time for making nominations, in writing. The disputes involved in these writ petitions occur pursuant to and/or in relation to such elections.

5. As already stated hereinbefore, some lady members mentioned in their nominations filed, in writing, their intention to contest election to a particular Standing Committee against the reserved seats for women while some others had failed to do so. Going by the provisions under Rule 3.A(1) of the Rules, the concerned Returning Officers conducted election to the reserved seats for women in each of the Standing Committees in the serial order specified in Section 162(1) of the Act. The grievance is that those who did not specifically mark the intention to contest the election against the reserved seats for women in a particular Standing Committee were not permitted to contest the election to the concerned Standing Committees against the women reserved seats and in such cases, the concerned Returning Officers without rejecting such nomination papers of such women members treated them as contestants in unreserved seats to the very same Standing Committee specified by them in their nominations filed, in writing. Admittedly, in case of failure of such woman members to get elected they were nominated in any other Standing Committee to honour the mandate under the Rules for women representation in all Standing Committees. The petitioners in W.P.(C)No. 119 of 2011 and similarly situated petitioners raised their challenge against the said action on the part of the Returning Officers describing it as arbitrary and illegal. According to them, when the Act, the Rules as also the guidelines are silent on the said aspect, the Returning Officers should not have assumed the power to reject their candidature against women reserved seats to the concerned Standing Committee attributing such a failure. According to them, all the woman members of the Panchayats who filed nominations, in writing, to contest the election to any particular Standing Committee should have been permitted to contest the election against the reserved seat for women in respect of that Standing Committee despite non-mentioning of such an intention in the nomination unless they specifically expressed their contra-intention to the Returning Officer concerned, at the time of election.

6. In W.P.(C)No. 119 of 2011 a counter affidavit has been filed by the second respondent Returning Officer. The learned Standing Counsel appearing for the Kerala State Election Commission and also the Returning Officer submitted that the procedures followed therein are, virtually, the procedures adopted by all the

Returning Officers throughout the State. However, it is conceded that in W.P. (C)No. 35557 of 2010 the Returning Officer has, in fact, rejected the nomination submitted by the petitioner therein on the aforesaid ground. Therefore, I will deal with the said case separately. As stated by the learned Standing Counsel, except in the said case, in all other cases the Returning Officers did not reject the nomination papers attributing such a failure on the concerned woman members of Panchayat. They have only disallowed such members to contest the election in the reserved seats for women and considered their candidature against the unreserved seats to the Standing Committee mentioned by them in their nominations, it is further submitted that in all cases where such woman members failed to get elected in the unreserved seat to the concerned Standing Committee such woman members were nominated and inducted into any other Standing Committee in terms of the statutory mandate. Ext.R2(a) is the nomination filed by the petitioner in W.P.(C)No. 119 of 2011. Ext.R2(b) therein is the nomination submitted by the 4th respondent therein. A perusal of Ext.R2(a) would reveal that the petitioner did not specifically state in her nomination paper, filed in writing, that her candidature is for election to the Standing Committee for Development against the reserved seat for women. At the same time, Ext.R2(b), reflects the intention of the 4th respondent to contest the election to the Standing Committee for Development against the reserved seat for women. In the circumstances, the Returning Officer treated the candidature of the 4th respondent against the reserved seat and refused to accept the candidature of the petitioner against the reserved seat for women to the Standing committee for Development. Consequently, the 4th respondent being the sole contesting candidate in the reserved seat for women was declared elected to the Standing Committee for Development. The learned counsel appearing for the petitioners contend that so long as there is no specific provision under the Act, the Rules as also in the guidelines issued by the Commission, the said action on the part of the Returning Officer could only be construed as an action beyond jurisdiction and, therefore, it is illegal and liable to be interfered with. The right to contest in an election to a Standing Committee is an invaluable right of a member of a Panchayat and that right cannot be deprived of at the sweet will of the concerned Returning Officer. The mere fact that such a method was adopted uniformly throughout the State would not justify such an action without competence, it is contended. It is also contended that when once a lady member of a Panchayat files a nomination, in writing, to contest the election to a particular Standing Committee, irrespective of her failure to expressly make the intention to contest the election against the reserved seat for women, her candidature should be considered against the reserved seat for women. The learned Standing Counsel for the contesting respondents as also the learned Standing Counsel for the Kerala State Election Commission and Returning Officers contended that the said contention of the petitioners is absolutely bereft of any merit or justification. They contend that after refusing to acknowledge the candidature of such woman members against the reserved seats for women the Returning Officers considered their candidature against the unreserved seats in respect of the same

Standing Committee specified in their nomination papers. That apart, it is contended that, in the case of defeated woman candidates, they were again considered for nomination to one or the other Standing Committee. Therefore, according to them, it is absolutely incorrect to say that nomination papers of such woman members were rejected as such. As already noticed, the contention is that, in such cases, though the candidature was not accepted against the reserved seat for women, the concerned woman candidate was allowed to contest in the unreserved seats in the election to the very Standing Committee specified in her nomination paper. Therefore, it is submitted that it cannot be said that the Returning Officers have arbitrarily exercised their power while conducting the election to the different Standing Committees. The learned counsel appearing for the petitioners, in the said context, submitted that there is no provision in the Act or in the Rules or in the guidelines empowering the Returning Officer even to scrutinize the nomination papers, in respect of elections to the Standing Committees in Panchayats. It is submitted that when the Returning Officer for an election to Standing Committees in a Panchayat is not statutorily empowered to conduct scrutiny of the nomination papers, the concerned Returning Officers should not have even conducted scrutiny of nomination papers. Based on such contentions, as also the contention mentioned earlier, it is submitted that the action in refusing to acknowledge the candidature of the petitioners who failed specifically to state the intention to contest the election in the reserved seat for women, but revealed only their intention to contest to a particular Standing Committee against reserved seats for women is illegal.

7. Indisputably, there is no provision in the Act, in the Rules and also in the guidelines prescribing a scrutiny of the nomination papers filed, in writing, in respect of elections to the Standing Committees of Panchayats. The question is whether, in such circumstances, one can say that the Returning Officer is absolutely powerless to conduct a scrutiny of nomination papers. I am of the considered view that even though there is no express provision in the Act and in the Rules as also in the guidelines in that regard no one can say that a Returning Officer is not having the general duty to do all such acts and things as may be necessary for effectually conducting the election to the Standing Committees in the manner provided by the Act, the Rules and in the guidelines issued by the Commission. The question is whether such a stand adopted by the concerned Returning Officer would be inconsistent with the provisions under the Act and the Rules or orders made thereunder and whether it was an act or thing necessary for effectually conducting election to the Standing Committees. As already noticed hereinbefore, Section 162(2) of the Act and Rule 3A(1) of the Rules mandate reservation of one seat each for woman in every Standing Committee in all Panchayats. Therefore, it is the bounden duty of the concerned Returning Officer to ensure the representation of woman member of a Panchayat in each and every Standing Committee. In this context, it is to be seen that Section 162(4) of the Act enjoins that a member shall not be a member of more than

one Standing Committee at a time. Virtually a uniform method was adopted by the Returning Officers throughout the State in the aforesaid situations. They acknowledged the candidature of those woman members of Panchayat who filed nominations, in writing, against reserved seat for women, in respect of a particular Standing Committee, only if the concerned member specifically made such an intention in the nomination paper. In respect of all the others, without rejecting their nominations, their candidature were accepted only against unreserved seats in respect of the very same Standing Committee specified by them in the nomination papers. According to the petitioners, in the absence of enabling or empowering provisions the Returning Officers should not have acted in the manner as has been mentioned earlier. I am at a loss to understand as to how the concerned Returning Officer could conduct the election to the Standing Committees in the order given in Section 162(1) of the Act, without conducting a scrutiny to find out who are all the members who expressed the intention to contest election to a particular Standing Committee. A sorting out of the nominations filed, in writing, with reference to the Standing Committees to be constituted is invariably required and it could be possible only on a scrutiny.

8. In W.P.(C)No. 35131 of 2010 a prayer for issuance of a declaration that the election conducted to the Standing Committees of Kannur Block Panchayat is null and void, is also sought for based on similar contentions raised in W.P.(C) No. 119 of 2011 which were adverted to hereinbefore. As already noticed, the contention of the Commission as also the contesting respondents is that throughout the State the same procedure was adopted by the concerned Returning Officers when faced with the same situation. If an act or order is held to be ultra vires and void, it is natural to assume that, being a nullity, it is to be treated as non-existent by all who would otherwise be concerned. Though a decision in a judgment of a court directly binds only as between the parties to the proceedings in which it was made, the impact of the doctrine of precedent may entail the consequence of, either to accrue the benefits or to affect by its application, in regard to others whose legal rights may be interfered with relying on the law laid down thereunder. In short, a court's judgment of nullity may operate erga omnes, i.e. for and against everyone concerned. I may therefore, consider the tenability of the contentions on all possible angles.

9. If the concerned Returning Officer had accepted the nomination of a woman member for contesting the election to a particular Standing Committee, despite the non-mentioning of the intention to contest in the reserved seat for women, as one filed for contesting the election against the reserved seat for women in respect of that Standing Committee, in case of defeat at the election the same candidate might turn around and challenge the said action contending that since she had not specifically stated in her nomination regarding such an intention to contest the election against the reserved seat she should have been considered only as a candidate against the unreserved seat. In other words, the said contentions double edged and can be relied on both ways depending upon the contingency. The petitioners would submit that a query to the concerned woman

members could have averted such a situation. But, when it is mandatory to file a nomination in writing, for contesting election to Standing Committees the Returning Officers would not be justified in making such queries to identify the contestants. Merely because there appears to have some uncertainty in respect of certain aspects in the Act and the Rules as also in the guidelines, that cannot be a reason for not conducting the election to the different Standing Committees in Panchayats in terms of the provisions in the Act, the Rules and also in the guidelines issued by the State Election Commission. At any rate, the Returning Officers could not have postponed the elections on such grounds. Nobody can contend that election should have been conducted to the various Standing Committees only after making appropriate amendments in the Act or in the Rules or only after incorporating necessary provisions in the guidelines for curing or clearing any such ambiguity. Any delay in conducting elections to the various Standing Committees citing any such reason would definitely be detrimental to the various developmental activities which are to be undertaken through the Local Self Government Institutions. I am persuaded to consider the validity of the elections involved in these writ petitions, bearing in mind the intention of the Legislature, that is, to ensure representation of a woman Panchayat member in each and every Standing Committee of Panchayats. According to me, when once it is found that the Returning Officers have not acted arbitrarily and their actions had not defeated the purport and intent of any of the relevant provisions under the Act or the Rules and also the guidelines issued by the Commission, the action impugned have to be approached with further care, caution and circumspection. As already noticed hereinbefore, even while refusing to accept the candidature of those woman members of Panchayats who failed to specifically mention in their nomination papers regarding their intention to contest the election to a particular Standing Committee against the reserved seat for women the concerned Returning Officers have ensured that candidature of such members are accepted for election to very same Standing Committee specified by them in their nomination papers against the unreserved seats. In that context, it is to be noted that the number of unreserved seats are more than the reserved seats for women in each and every Standing Committee. Therefore, the chance of raising objections and grievances is much more for an action of accepting and treating such woman candidates only against reserved seats for women. The woman members of Panchayats cannot contend that they are unaware of the reservation of one seat each in every Standing Committee for women. So also, they cannot say that they are unaware of the fact that the number of unreserved seats in Standing Committees are more than the reserved seats for women in such committees. There is no embargo for a woman member of Panchayat to prefer to contest the election to a particular Standing Committee against the unreserved seats. There can be no doubt that when reservation is made in favour of a particular category, persons belonging to that reserved category have to claim the benefit of such reservation, in order to get the benefit of reservation, especially when there is no embargo for a person belonging to such reserved category to compete/contest in the unreserved category. It cannot be heard to

contend that the legislature had intended to confer double opportunity to woman members of Panchayat in the matter of election to Standing Committees. There is nothing in the Act or in the Rules which would suggest that after permitting woman members of Panchayats to contest in the reserved seat for women even without such nomination and the defeated woman members should be permitted to contest the election to the same Standing Committee in the unreserved seats. What is provided in the Act and also in the Rules is only reservation of a seat in each and every Standing Committee for women and not a double opportunity as claimed. There is yet another aspect as well. Even if a woman member who contested in the seat reserved for women is defeated in the election in view of the provisions u/s 162(2) of the Act and Rules 6 and 7 of the Rules such a defeated woman member would also be ultimately inducted by election/nomination in any of the Standing Committees. I am also persuaded to consider another contention raised by the petitioner in W.P.(C)No. 119 of 2011. The learned counsel for the petitioner submitted that in a case where none of the women elected members of a particular Panchayat expressed their intention to contest the election to a particular Standing Committee against the reserved seat in their nominations, going by the stand taken by the Returning Officers, there could not be any election against the reserved seat for women in respect of that Standing Committee. It is contended that, in such" circumstances, it may lead to a situation wherein there would not be any election in the reserved seat and consequently, there would not be a woman member in that Standing Committee elected against the woman reserved seat. It is further contended that, in case those woman candidates, despite consideration of their nominations against the unreserved seats, failed to get elected that would result in non representation of a woman member in the concerned Standing Committee. At the first blush the said contentions would appear attractive and having substratum. The learned Standing Counsel for the Kerala State Election Commission submitted that such a contingency would not arise under any circumstance, in view of the guidelines issued by the State Election Commission which is produced in W.P.(C)No. 34708 of 2010 as Annexure-A. Annexure-A is the guidelines issued by the Commission on 16.11.2010. The said guidelines to the extent it is relevant for the purpose of these cases read thus:-

A scanning of the same would reveal that strict adherence to Annexure-A guidelines would ensure representation of woman Panchayat member of a Panchayat in each and every Standing Committee that too, through woman reserved seat.

10. The rival contentions adverted to hereinbefore, have to be appreciated in the light of the "doctrine of implied power". The principle on which the same doctrine is based is contained in the legal maxims, "Quando lex aliquid alicui camadit, concedere videtur id sine quo ipsaesset" and "Quando lex aliquid alicui, concedit, concedere videtur id sine quo res ipsaesset non potest". The former maxim means" when law gives anything to anyone, it gives also all those things without which the thing itself could not exist" and the latter maxim means "whoever

grants a thing is deemed also to grant that without which the grant itself would be of no effect. The "doctrine of implied power" virtually contained in the above maxims have been elaborately dealt with by the Hon"ble Apex Court in the decision in *Bidi, Bidi Leave & Tobacco Merchants Association v. State of Bombay*, (1961) (ii) 1 LJ 663 and in *Dinesh Dutt Joshi Vs. The State of Rajasthan and Another*, Going by the decisions of the Hon"ble Apex Court the doctrine of implied power" can be legitimately invoked when it is found that a duty, has been imposed or a power conferred on an authority by a statute and it is further found that the duty cannot be discharged or the power cannot be exercised at all unless some auxiliary or incidental power is assumed to exist. It means that the statutory provision would become a dead-letter and cannot be enforced unless a subsidiary power is implied. On this latter maxim is based the doctrine that if a legislature enables something to be done, it gives powers at the same time by necessary implication to do everything which is indispensable for the purpose of carrying out the purposes in view.

11. In this case, admittedly, as per the Rules, the guidance, supervision and control of election to the Standing Committees vest with the Kerala State Election Commission in terms of Section 162(4a) of the Act and Rule 5(2) of the Rules and Section 162(4a) empowers the Commission to designate or nominate thereto an officer of the Local Self Government Institution as Returning Officer for conducting election to the Standing Committees of Panchayats. Thus, the power and duty to conduct election to the Standing Committees to Panchayats and its guidance, supervision and control have been entrusted with the State Election Commission. The Commission designates or nominates Returning Officers and issues guidelines such as Annexure-A dated 16.11.2010, for conducting the election in discharge of its bounden duty. The said election is a democratic process of election to be conducted based on nomination papers filed before the concerned Returning Officer. Therefore, accepting the contention that the Returning Officer is lacking power to conduct scrutiny of the nomination paper and lacking power to treat a nomination from a woman member that carries no mention regarding the intention to contest election to the Standing Committee in the reserved seat for women as a nomination for contesting the said election in the unreserved seats in respect of the concerned Standing Committee in the circumstances mentioned above would virtually disable the concerned Returning Officers from effectually conducting the election to the Standing Committees to Panchayats taking into account the various provisions under the Act and the Rules in accordance with statutory mandate. Annexure-A has been issued by the Commission before the date of election and to achieve the above purpose in tune with the statutory requirements. At any rate, in so far as it deals with the manner of conducting the election, it did not contravene any statutory provision. According to me, they are acts which are absolutely necessary for effectually conducting election to the Standing Committees of Panchayats. Therefore, the guidelines issued by the Commission to the above extent and the actions of the Returning Officers taken with a view to give effect

to it and further, their actions in treating the nominations lacking intention to contest election to Standing Committee against reserved seats for women as nominations to contest the election against unreserved seats have to be justified in the light of the doctrine of implied power in view of the above maxims and in the light of the decisions of the Hon'ble Apex Court reported in (2001) 8 SCC 570 and (1961) (ii) 1 LJ 663, referred supra. The acts of and also the means employed by the Commission and by the Returning Officers were essentially necessary for the execution of the power and duty conferred on them in regard to the conduct of elections to the Standing Committees. There is no contention for the petitioners that such a method was not uniformly adopted by the Returning Officers. In the said circumstances, the impugned actions cannot be construed as illegal and they call for no interference. Of course, in certain cases, on account of some commotion elections were to be postponed. In some cases, such commotions were created only after the conclusion of elections against the reserved seats to the different Standing Committees. In the said circumstances, in case the election to the reserved seat for women in respect of a particular Standing Committee of a Panchayat was already over the concerned Returning Officer shall have to declare the result of the election, if not already declared, in accordance with law. In case the election was postponed on account of such commotion, it has to be commenced from the stage wherein it was stopped in respect of such Panchayats. In fact, no arguments were advanced on this point to resist the contention of the Commission that in such cases it is to be commenced from the stage wherein it was stopped. The learned counsel for the Commission has submitted that such a direction was issued, earlier, to the Returning Officers and elections were accordingly held. In view of the above conclusions and findings, I will deal with the first batch of cases individually, a little later.

12. In the first batch of writ petitions I was dealing with issues touching which no specific provision has been made in the Act, Rules or in the guidelines issued by the State Election Commission. In the latter batch of writ petitions the question to be dealt with is whether the action on the part of the Election Commission or on its direction by the Returning Officer designated/nominated for conducting election of members to the Standing Committees of a particular Panchayat, in extending the time and date fixed for filing of nomination in the notice issued under Rule 4(1) of the Rules in terms of Rule 4(4) is legal or not. In other words, the question is whether the State Election Commission or on its direction the Returning Officer designated/nominated for conducting election of members to the Standing Committees of a particular Panchayat is empowered to extend the time or date fixed for filing nomination in writing, beyond the time or date fixed in the notice issued earlier in terms of Rule 4(4) of the Rules. Whether anyone other than the Returning Officer designated/nominated for the said purpose is entitled to receive nomination in writing, from the members of a concerned Panchayat for and on behalf of the Returning Officer, under any circumstance or in other words, whether nomination in writing, for the said purpose, could be

filed before anybody other than the Returning Officer also crops up for consideration.

13. Going by Rule 4(1) of the Rules, a Returning Officer designated/nominated by the State Election Commission for conducting election of members to the Standing Committees of a particular Panchayat has to issue a notice, in the manner prescribed thereunder, notifying the date of meeting for the said purpose. In terms of Rule 4(4) of the Rules, the last date and time fixed for filing nomination in writing, shall also be notified in the notice issued under Rule 4(1) of the Rules. Admittedly, in all these writ petitions, such a notice has been issued by the concerned Returning Officers. The circumstances germinating the aforementioned questions occasioned on account of certain subsequent developments. To exemplify the same, it is worthy to succinctly state the rival claims and contentions in W.P.(C)No. 34708 of 2010. In that case, Ext.P1 dated 8.11.2010 is a notice issued in terms of Rule 4(1) of the Rules, wherein, in terms of Rule 4(4) the last date and time for filing nomination were also mentioned. The date of election was notified as 18.11.2010 and 2 O' clock in the afternoon of 15.11.2010 was fixed as the last date and time for filing nomination. It is contended that the members of the Panchayat who belong to the United Democratic Front (UDF) viz., respondents 5 to 8 in the said writ petition, filed nominations for contesting the election to Standing Committees only after the stipulated time on 15.11.2010 and their nominations in writing, were received by the Head Clerk of Athirappilly Grama Panchayat. It is contended that the Head Clerk was not authorized to receive the nominations and that too, after the stipulated time of 2 O' Clock on 15.11.2010. On 16.11.2010 the Returning Officer issued Ext.P3 notice extending the time and date for filing nominations for contesting the election to the Standing Committees of the said Panchayat till 11 O' clock of 18.11.2010. According to the petitioners, this has been done solely to accommodate the nominations submitted by the UDF candidates who failed to file nominations in time, on account of their internal politics. This writ petition was moved on 18.11.2010 assailing Ext.P3 and seeking for a declaration that the nominations accepted after the time stipulated in Ext.P1 notice are null and void. The further prayers are for issuance of a writ of mandamus commanding the 3rd respondent not to accept any nomination for election to the Standing Committees of Athirappilly Grama Panchayat which is filed beyond the time stipulated in Ext.P1 and for issuance of a writ of mandamus commanding the 3rd respondent not to conduct election to the Standing Committees of Athirappilly Grama Panchayat based on the nominations filed as per the extended time as stipulated in Ext.P3.

14. A statement has been filed in the said writ petition on behalf of the first respondent and a counter affidavit has been filed jointly by respondents 5 to 8. In the statement filed by the first respondent, it has been stated that the elections to the Standing Committees of Athirappilly Grama Panchayat was held on 18.11.2010. Further it is stated therein that Ext.P3 extending the time and date for filing nominations has been issued based on Annexure A guidelines

issued by the Election Commission. It is further stated therein as hereunder: -

The said guideline has been issued by the Commission for the purpose of uniformity and for providing sufficient time for every candidate who intends to contest the election to submit nominations. The date for the conduct of elections to the Standing Committees of Panchayats in the State has been fixed by the State Election Commission.

Evidently, the first respondent attempts to sustain Annexure A guidelines in the light of section 162(4a) of the Act as amended by Act 31 of 2009 with effect from 7.10.2009, which reads as follows:

162. (4a). The members to be elected to each standing committee shall be elected under the guidance, supervision and control of the State Election Commission shall designate or nominate there to an officer of the Government or Local Self Government Institution to the Returning Officer.

It is further stated in the statement that since Ext.P1 notice was issued by the concerned Returning Officer invoking the power under Rule 4 of the Rules, the power to amend the same including alteration of the date of filing nominations could be exercised by the Returning Officer u/s 21 of the General Clauses Act, 1897. To bring home the said point, the learned counsel relied on a decision of the Hon''ble Apex Court in Mohd. Yunus Saleem Vs. Shiv Kumar Shastri and Others,

15. In the counter affidavit by respondents 5 to 8 it is stated that pursuant to the election held on 18.11.2011 they were elected as members of different Standing Committees of Athirappilly Grama Panchayat. It is pertinent to note that even while admitting the fact that they had filed nominations in writing on 15.11.2010, after 2 p.m., the stipulated time as per Ext.P1, they vividly explained the circumstances that prevented them from filing nominations within the time stipulated in Ext.P1. They assign non-availability of the concerned Returning Officer in the Panchayat when they turned up for filing the nominations at 1.45. p.m. on 15.11.2010 as the reason. It is stated therein that initially the Head Clerk of the Panchayat was unwilling to accept the nominations and later they were able to get in touch with the concerned Returning Officer who gave instructions to the Head Clerk to receive the nominations. It is based on such nominations filed after the stipulated time, but on the appointed day itself, that respondents 5 to 8 were elected to the various Standing Committees of the said Panchayat. It is in this background that the petitioners raised the aforementioned questions regarding the competency of the Election Commission and also the Returning Officer to extend the date and time stipulated in the notice issued in terms of Rule 4(4), when once the time and date are fixed in the notice issued under Rule 4(1) by the Returning Officer and whether nominations could be filed before any authority other than the Returning Officer. More or less similar questions arise for consideration in the other writ petitions as well. Therefore, before dealing with the cases independently, I am proceeding to consider the

aforesaid general issues.

16. As already noticed, as per section 162(4a) of the Act, the guidance, supervision and control of elections to Standing Committees of Panchayats vest with the State Election Commission. Needless to say that the State Election Commission has to conduct the election to the Standing Committees of Panchayats and the date for such elections shall also be decided by the Commission. The State Election Commission is empowered to designate or nominate an officer of the Government or Local Self Government Institution to be the Returning Officer for conducting such an election. Rule 4(1) empowers the Returning Officer to issue notice for convening the meeting for the election of members of Standing Committees from among the elected members of the Panchayat. In other words, in terms of the said rule, the date for election has to be notified by the Returning Officer. Such a notice has to be given five days prior to the date of the meeting. Rule 4 also makes it mandatory for the Returning Officer to require the members intending to contest the election to the Standing Committee or the Chairman thereof, as the case may be, to file nominations in writing showing the time and date for filing nominations in terms of Rule 4(4) and such date and time have to be notified in the notice issued under Rule 4(1). As already noticed, in all these cases, the concerned Returning Officers have issued notices notifying the date of election as also showing the date and time for filing nominations. No specific provision has been brought to my notice in the Act, the Rules or in the orders issued thereunder empowering the Election Commission for extending the time or date fixed for filing nominations for election to the Standing Committees in respect of a Panchayat when once the time and date have been notified by the concerned Returning Officer in the manner as contemplated in law as per a notice issued under Rule 4(1), in terms of Rule 4(4) of the Rules. In this context, it is to be noted that in regard to the election to the Panchayats whether general or for filling up a seat in a constituency Section 49 of the Act empowers the State Election Commission to notify the date of election, date and time for submission of nominations etc. Section 143 of the Act empowers the State Election Commission to extend the time for the completion of any election by making necessary amendments in the notification issued by it u/s 49. At the same time, no such specific provision has been incorporated in the statute to enable either the State Election Commission or the concerned Returning Officer to extend the time and date fixed for filing nominations when once a notice has been issued notifying the date of election as also the time and date for filing nominations in respect of election to Standing Committees of Panchayats. It is also to be noted in this context that amendments were brought into Section 162(4a) entrusting the power to conduct the election to the State Election Commission only on 7.10.2009. In terms of the said amendment, certain provisions under the Rules were also amended as per G.O.(P)No. 130/2010/LSGD dated 27.6.2010. Even then, such a power available to the State Election Commission for extending the time for completion of any election by making necessary amendments in the notification issued by it u/s 49

in respect of general election to Panchayats is conspicuously absent in the case of election to the Standing Committees to different Panchayats. The question is whether *casus omissus* occur in the said circumstances. *Casus omissus* occur either through the inadvertence of the Legislature or on the principle of "*quod semel aut vis existit lit protere*" means "the Legislature takes no notice of that which is only of occasional occurrence". Whether the maxim "*Casus Omissus pro omisso habendus est*" means "a case omitted is to be held as intentionally omitted" has to be followed in the cases on hand is also to be considered while dealing with the aforesaid questions. Going by the latter maxim, in the absence of any specific provision, it should be taken that the Legislature has purposefully omitted the same and, therefore, there cannot be a case of *casus omissus*. As already noticed hereinbefore, the Legislature thought it fit to clothe the State Election Commission with the power to extend the time for completion of any election by making necessary amendments in the notification issued by it u/s 49 of the Act. However, notification u/s 49 is issued either for general transfer or for filling up a seat in a constituency. However, there is conspicuous absence of any such provision in relation to the elections to the Standing Committees of Panchayats even after entrusting the conduct of election to the Standing Committees with the Election Commission. No one can think that the Legislature was oblivious of the existence of a specific provision u/s 143 as relates election to the Panchayats. Despite the existence of such a specific provision empowering State Election Commission to extend the time for completion of any election for which a notification u/s 49 was issued no corresponding provision was introduced while effecting amendments to entrust the guidance, supervision and control of election to Standing Committees with the State Election Commission. As already noticed hereinbefore, the learned counsel for the Election Commission placed reliance of a decision of the Hon''ble Apex Court in *Mohd. Yunus Saleem Vs. Shiv Kumar Shastri and Others*, to contend that the Commissioner and the Returning Officer are having power to extend the time and date fixed in an election notification issued under Rule 4(1) in terms of Rule 4(4) of the Rules. That was a case where the Hon''ble Apex Court was dealing with the question whether the State Election Commission has power to alter the date of poll u/s 30 of the Representations of the People Act, 1961 read with Section 21 of the General Clauses Act. Section 21 of the General Clauses Act reads thus:-

21. Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercised in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

The Election Commission in that case exercised the power u/s 30 of the Act and issued the notification appointing the various dates mentioned therein for the purposes specified. It was held:- "Once this power is conferred u/s 30 upon the Election Commission, the power to amend the same, which will include alteration of the dates of poll, can be exercised u/s 21 of the General Clauses Act." In these

cases on hand, the Act concerned is not a Central Act and the Rules concerned is also not framed under any Central Act. The learned Standing Counsel for the Election Commission fairly concedes the non-applicability of the said decision in regard to the issues involved in these writ petitions. In the said circumstances, I do not think it necessary to deal with the aforesaid contentions any further.

17. When there is no provision in the Act and the Rules which specifically or by necessary implication gives to the Election Commission or the Returning Officer concerned such rights the question to be answered is whether the court is competent to provide the said *casus omissus* by importing Mischief Rule or other principles of common law.

18. In *Banwari Dass v. Sumer Chand*, AIR 1974 SC 1032 it was held by the Hon"ble Apex Court that the maxim "*casus omissus et oblivioni latus disposition communis juris relinquitur*" will not apply to construction of Election Statutes. The relevant portion of the said judgment reads thus:-

27. In the light of these well established principles, it is clear that the court cannot bridge the gap or supply this apparent omission in the Corporation Act with regard to a returned candidate's claim to recriminate, by importing principles of common law or equity, the maxim *casus omissus et oblivioni latus disposition communis juris relinquitur* being inapplicable to the construction of election statutes.

In view of the said decision of the Hon"ble Apex Court as also in the light of the maxim "*casus omissus pro omisso habendus est*" which means "a case omitted is to be held as intentionally omitted" coupled with the fact that even after providing a specific provision empowering the Election Commission to effect such alteration even after issuance of a notification under Rule 49 as per Section 143 of the Act in respect of general elections to Panchayats or for filling up a seat in a constituency such a power has not been expressly provided in relation to the election to the Standing Committees I am persuaded to come to the conclusion that no case of *casus omissus* can occur in respect of the aforesaid provisions relating election to Standing Committees. Resultantly, I am to hold that when no specific provision has been given empowering either the Election Commission or the Returning Officer to extend the last date or time for submission of nominations for election to Standing Committees of Panchayats, when once an election notification is-issued, such a power cannot be read into the Act or in the Rules so as to confer such powers on the Election Commission or to the concerned Returning Officer even by applying the "doctrine of implied power" as it is not a case where the right conferred or the duty imposed could not be exercised/discharged unless some auxiliary or incidental power to do such things is assumed to exist. The other general question is whether anyone other than the concerned Returning Officer can receive the nominations or, in other words, whether nominations could be filed before anyone other than the Returned Officer, in respect of elections to Standing Committees to Panchayats. Rule 4(4) in unambiguous terms provides for notifying the time and date for filing

nomination in writing to the Returning Officer. Thus the time and dates have to be notified for filing nominations to the Returning Officer and the inescapable corollary can only be that nominations could be filed in writing only before the concerned Returning Officer. In this context also, it is relevant to note that in respect of general elections or election to fill up seat/seats in constituencies besides appointment of Returning Officers, Section 42 of the Act provides for appointment of Assistant Returning Officer/ Officers to assist any Returning Officer in the performance of his functions. Section 43 of the Act authorises the Assistant Returning Officer to perform any function which he is authorised to perform under sub-section (2) of Section 42. Section 162(4a) of the Act and any provisions under the Rules do not provide for appointment of Assistant Returning Officer/Officers in respect of election to Standing Committees. There is nothing on record to show in any of these cases Assistant Returning Officer/Officers were appointed in connection with election to the Standing Committees authorising to perform any function of the Returning Officer. Sections 42 and 43 of the Act act as a pointer to come to the conclusion that in the absence of specific provisions no one can be said to be authorised to perform any function of the Returning Officer. Rule 4(4) would undoubtedly reveal that it is the function of the Returning Officer concerned to receive the nomination in writing in respect of election to Standing Committees. In the absence of any provision for authorising anyone to perform any function of the Returning Officer the Returning Officer concerned alone can perform the duties and functions of a Returning Officer and no one else can perform any of the functions of the Returning Officer in respect of elections to Standing Committees.

19. In W.P.(C)No. 34708 of 2010 respondents 5 to 8 have a definite case that it is the non-availability of the concerned Returning Officer that resulted in the delayed submission of nomination papers. Though I hold that time and date shown for filing of nomination papers as per notice issued u/s 4(1), in terms of Rule 4(4), cannot be extended, still a question is to be answered as to what should be done in the case of contingencies as has been arisen in the case on hand. In this case, evidently, the official respondents also virtually acknowledged the fact that the concerned Returning Officer was not available when respondents 5 to 8 turned up for filing their nominations. There is nothing in the counter affidavit which would suggest that respondents 5 to 8 had not turned up in the Panchayat for the purpose of submitting their nominations prior to the expiry of the time on the appointed day. Even going by the contentions of the petitioners, respondents 5 to 8 had submitted their nominations on 15.11.2010 itself, but after the stipulated time. Ext.P3 would undoubtedly suggest the occurrence of a situation that made the concerned Returning Officer to approach the State Election Commission through the District Election Officer to sort out an issue relating filing of nomination in writing. Evidently, it was on instructions from the Election Commission that Ext.P3 order was issued. In fact, Ext.P3 order was passed based on Annexure A. In certain other writ petitions there is a challenge against Annexure A. Evidently, in terms of Section 162(4a) of the Act, the

guidance, supervision and control of the elections to the Standing Committees are vested with the Election Commission. Necessarily, while exercising the said power for properly conducting elections to the Standing Committees to the various Panchayats throughout the State, the State Election Commission has to issue appropriate guidelines/orders. No doubt, such instructions cannot be contrary to or inconsistent with the provisions under the Act or the Rules. The Returning Officer is being appointed by the State Election Commission for conducting elections to the Standing Committees on a particular date fixed by the Election Commission. In the statement filed on behalf of the State Election Commission it has been specifically stated that the dates for election to Standing Committees of various Panchayats were fixed by the State Election Commission. It is thereafter that the concerned Returning Officers notified the dates in terms of Rule 4(1) showing the time and date for filing nominations in terms of Rule 4(4) of the Rules. There is no challenge against the competency of the Election Commission to fix the date of election to the various Standing Committees of all Panchayats throughout the State. The Returning Officers designated/nominated by the State Election Commission may fix different time and date for the purpose of filing nominations in writing for conducting elections to the Standing Committees and, therefore, in order to have a uniformity in the said issue and also with a view to afford sufficient time for the members of the Panchayats to file their nominations for contesting the election to the Standing Committees of the concerned Panchayat State Election Commission thought it fit to issue guidelines by way of Annexure A. No provision has been brought to my notice which stood violated by the issuance of Annexure A. In other words, no provision has been brought to my notice which would suggest that the action on the part of the State Election Commission in issuing Annexure A is ultra vires. It indeed is essential for effectually and fairly conducting elections to the Standing Committees to various Panchayats and to have uniformity throughout the State in the matter of fixation of time and date for filing nominations to contest in the elections to the Standing Committees and to afford sufficient time for the members of the Panchayats to file nominations. When that be the intention and as long as it does not violate any of the provisions under the Act or the Rules, there is no reason to hold Annexure A as illegal or beyond the scope of authority. At the same time, it cannot have any impact on elections to Standing Committees of Panchayats for which date and time were already notified prior to the date of Annexure-A. I have already found that in the absence of specific provisions enabling for extension of date and time for filing nominations notified as per notice under Rule 4(1), in tune with Rule 4(4), of the Rules Annexure-A cannot have such an impact on notices already issued under Rule 4(1) of the Rules. In the cases on hand, time and date for filing nominations to contest elections to the Standing Committees to different Panchayats were already notified through notices issued in terms of Rule 4 (1), in tune with Rule 4(4) of the Rules, by the concerned Returning Officers. In view of my finding in the preceding paragraphs, Annexure A cannot be relied on for extending the time stipulated by such notices with respect to the time and date fixed for filing

nominations in respect of elections to Standing Committees of Panchayats. In short, in regard to the guideline for fixing the date and time for filing nominations for election to Standing Committees Annexure A can be acted upon, in future.

20. Now, I may revert to the point in issue. As already noticed hereinbefore, there is no denial of the fact regarding the non-availability of the concerned Returning Officer when respondents 5 to 8 turned up in the Panchayat office for submitting their nominations. Therefore, even after finding that no case of *casus omissus* occurred in this writ petition, I am persuaded to consider the question whether the non-availability or inclination of a Returning Officer can be a decisive factor in respect of elections to Standing Committees of Panchayats. In a particular case, the non-availability of the concerned Returning Officer, may be on account of justifiable reasons. But, it may not happen on account of any improper or dishonest intention. What can be done in a case of willful absence of the concerned Returning Officer on account of his inclination towards one faction or the other or if the absence is on account of reasons beyond human control ? There can be no doubt that various developmental activities in a State are being implemented through the Local Self Government Institutions. Therefore, Standing Committees of Panchayats have a role to play in such matters. I am stressing on the need to have a democratic way of election to Standing Committees of Panchayats and at any rate, it cannot be permitted to be defeated by the non-availability of the concerned Returning Officer disabling the intending member from filing the nomination to contest the election to the Standing Committee according to his intention or on account of the inclination of the concerned Returning Officer towards a particular side. I shall not be understood as saying that in the cases on hand such a situation, an inclination based on dishonest intention, was shown by any of the Returning Officers. In W.P.(C)No. 34708 of 2011 when the petitioners contend that respondents 5 to 8 had not filed nominations within the time stipulated on the appointed day, the definite case of respondents 5 to 8 is that they had turned up in the office for filing nominations well within the stipulated time. However, it is the non-availability of the concerned Returning Officer that made filing of nominations within the time limit an impossibility. The case of the petitioners is that none of the members belonging to UDF had submitted nominations within the time. The official respondents did not refute the case of respondents 5 to 8 in that regard, Ext.P3 coupled with the conduct of the official respondents would lead to the irresistible conclusion that respondents 5 to 8 were present in the Panchayat office well within the stipulated time lest there was no necessity for the Returning Officer concerned to take up the matter to the State Election Commission through the District Election Officer and thereafter, for issuing Ext.P3. A willful absence of the concerned Returning Officer may also create such a situation viz., making it impossible to one faction to submit nominations within the time limit. It may also happen on account of reasons beyond the control of the concerned Returning Officer. Can anyone say that even in such circumstances the aggrieved parties

are remediless. Such a stand would definitely thwart the democratic process of election. In other words, the absence, willful or otherwise, of a Returning Officer cannot be permitted to be the decisive factor in regard to the election of members to Standing Committees of Panchayats. When law permits members of Panchayats to contest in the election to any of the Standing Committees and for that purpose to file nomination in writing, that legitimate right cannot be deprived of. However, it appears that no thought has been spared on such issues and also in respect of certain other aspects dealt with in the preceding paragraphs. I am of the considered view that the State Government as also the State Election Commission have to seriously look into such matters. I have already found that none other than the Returning Officer can receive the nomination papers for and on behalf of the concerned Returning Officer or in other words, nominations could not be filed before anybody other than the Returning Officer in the absence of any specific enabling provisions in the light of Rule 4(4) of the Rules. Whatever be the reasons for the non-availability of the concerned Returning Officer at the concerned stations that shall not adversely affect the invaluable right of the members of the Panchayat to contest the election to the Standing Committees of a particular Panchayat in view of the right statutorily guaranteed to the members of Panchayats. The contention of the petitioners is that the Head Clerk attached to the Athirappilly Grama Panchayat was not authorized to receive the nomination papers. In view of my findings on the question relating to the said issue this contention is to be upheld. At the same time, the virtually admitted absence of the concerned Returning Officer at the crucial moment as in the case of W.P. (C)No. 34708 of 2010 cannot culminate in election of a particular front or members unopposed. In this context, it is to be noted that in regard to the general election to the Panchayats or in the election to fill up a seat(s) in constituency or constituencies there is provision for appointing Assistant Returning Officers/Returning Officers. May be an incident, as in the instant case, would happen only occasionally in respect of election to Standing Committees to Panchayats. Even if it is so, law cannot be uncertain on such circumstances or contingencies. Uncertainty of law means absence of law. I am of the view that this is yet another aspect which calls for due attention of the State Government and the State Election Commission. In the absence of specific provisions on the aforesaid issues, it may lead to unpleasant and unhealthy situations whereon elections were to be held only with the nominations received within the stipulated time, ignoring the unjustifiable or illegal reasons that resulted such unpleasant and unhealthy situation making filing of the nominations by certain members of a particular Panchayat despite their arrival, in time, in the concerned office where the Returning Officer was supposed to be present with a view to file their nominations, an impossibility. In such circumstances, merely giving nod to conduct election or holding such elections as valid would give space for thwarting the election process. Now, I may deal with the writ petitions, in both the batches, independently.

W.P.(C) No. 34854 of 2010

21. The petitioners filed nominations in writing for contesting the election to the Standing Committees for Development and Welfare, respectively, in the reserved seats for woman. In this writ petition, the Kerala State Election Commission, the first respondent filed a statement to the effect that elections to the Standing Committees in the Panchayat against all the reserved seats for woman had already been conducted by the Returning Officer and their results were also published. Now, what remains to be completed is only the elections to the Standing Committees against the unreserved seats, it is further stated. In paragraph 7 therein, it has been stated that the first petitioner was declared elected to the reserved seat for woman in the Standing Committee for Development and in paragraph 8 it has been stated that the 2nd petitioner was declared elected to the reserved seat for woman in the Standing Committee for Welfare. The said statements would reveal that the petitioners got elected to the Standing Committees specified by them in their respective nomination, that too, against the reserved seats for woman in the said committees. At the same time, it is obvious from the said statement that the elections against unreserved seats are yet to be completed. In view of the findings made hereinbefore in this judgment elections which were disrupted are to be conducted from the stage at which they were stopped. In the said circumstances, while recording the statements pertaining to the election of the petitioners, made in paragraphs 7 and 8, referred to earlier, it is made clear that respondents 1 and 2 are bound to take appropriate steps for completing the elections to the Standing Committees in Oachira Block Panchayat against the unreserved seats, from the stage at which it was stopped, in accordance with law. The writ petition is disposed of accordingly.

W.P.(C) No. 35131 of 2010

22. The first petitioner filed a nomination for contesting the election to the Standing Committee for Development and the 2nd petitioner filed a nomination for contesting the election to the Standing Committee for Welfare. The various contentions raised by the petitioners pertaining to the non-acceptance of their candidature for election to the aforementioned Standing Committees, on account of non-mentioning of their intention to contest the election in the seats reserved for woman are only to be repelled in the light of the findings on such issues made hereinbefore, in this judgment. Therefore, the petitioners are not entitled to relief No.(ii) made in this writ petition. Prayer No.(i) reads as follows:

i. To issue a writ of declaration or any other appropriate writ order of direction declaring that the election conducted on 19.11.2010 to the Standing Committee of Kannur Block Panchayat is null and void.

A perusal of the said prayer would reveal that the petitioners pray for issuance of a writ of declaration. Is any such writ available or issuable under Article 226 of the Constitution of India ? That apart, a perusal of the said prayer would reveal its vagueness as well. The petitioners pray for declaring the election conducted on 19.11.2010 to the Standing Committee for Kannur Block Panchayat as null

and void. Conspicuously, they did not specify the name of the Standing Committee, the election of which is liable to be declared as null and void, according to them. In this context, it is apposite to note that being a Block Panchayat four Standing Committees have been constituted based on the elections conducted on 19.11.2010 in Kannur Block Panchayat. According to the petitioners, they submitted nominations for contesting the election to the Standing Committees viz., for Development and for Welfare, respectively, on 18.11.2010, the date fixed for conducting the election to the Standing Committees in the said Panchayat. The said election could not be held on that date on account of the commotion and pandemonium created on the said day. In the counter affidavit filed by the first respondent, the Returning Officer, it has been stated that in the nominations submitted by the petitioners they had not mentioned the constituencies to which they are intending to contest viz., against the reserved seats for women or against the unreserved seats. Essentially, the contention of the first respondent is that in the nominations filed in writing the petitioners though mentioned the name of the Standing Committee to which they are intending to contest, they have failed to make a mention as to whether they are intending to contest in the seats reserved for woman or against the unreserved seats. All the members elected to all the Standing Committees are not made parties to this writ petition. In the circumstances, the petitioners are not entitled to relief No.(i) as well. Admittedly, the election, which was disrupted on 18.11.2010, was conducted on 19.11.2010. In paragraph 6 of the counter affidavit the first respondent has categorically stated that the election was resumed at the stage at which it was stopped on 18.11.2010. I have already found that in respect of elections to the Standing Committees to Panchayats in case of any disruption and consequential stoppage of the election proceedings, it is to be resumed from the stage where it was stopped on the date actually fixed for conducting the election. Therefore, no illegality can be attributed to the election conducted to the various Standing Committees of Kannur Block Panchayat on 19.11.2010. In paragraph 7 of the counter affidavit, it has been stated that elections to various Standing Committees were conducted based on the nominations received on 18.11.2010. The second petitioner had filed nomination for contesting the election to the Standing Committee for Welfare. Admittedly, the intention to contest against the reserved seat for woman was not reflected in her nomination and as such, her candidature was considered as one for contesting the election to the said Standing Committee against the unreserved seats. It is stated in the said paragraph that pursuant to such election she was elected to the Standing Committee for Welfare itself. The first petitioner could not get elected to any of the Standing Committees and since there were no nominations to the reserved constituency for woman in the Standing Committee for Finance, the first petitioner was, later, inducted to the said Standing Committee for Finance against the said vacancy. In the said circumstances and in view of the reasons mentioned above, elections to the various Standing Committees in the Panchayat invite no interference at the instance of the petitioners based on the averments made in this writ petition.

This writ petition is liable to be dismissed and accordingly, it is dismissed.

W.P.(C) No. 35557 of 2010

23. The petitioner herein, who is an elected member of Karulai Grama Panchayat, submitted nomination in writing responding to Ext.P1 notice revealing her intention to contest the election to the Standing Committee for Welfare. However, she had failed to specify in the nomination as to whether her intention is to contest the election to the said Standing Committee in the reserved seat for woman or against the unreserved seats. As already noticed hereinbefore, the definite stand of the Election Commission and the Retiming Officers is that in such contingencies the nominations filed by such woman members were not rejected, whilst such nominations were considered as nominations filed for contesting the election to the same Standing Committee against the unreserved seats. The learned Standing Counsel appearing for the State Election Commission and also the Retuning Officer, however, admitted that in the case of the petitioner, her nomination filed in writing for contesting the election to the Standing Committee for Welfare happened to be rejected on account of non-mentioning of the aforesaid fact. Thus, it is obvious that deviating from the uniform stand taken in such contingencies and ignoring the intention expressed by the petitioner to contest the election to the Standing Committee for Welfare in Karulai Grama Panchayat and merely on account of her failure to specify the intention to contest the election in the reserved seat to the said Standing committee, her nomination was rejected. Going by the avowed stand taken by the official respondents, the nomination filed by the petitioner should not have been "and could not have been rejected and her candidature should have been treated as one for contesting the election to the Standing Committee for Welfare against the unreserved seats. However, in view of my finding on the said issue, the prayer of the petitioner that the nomination in writing filed by her should have been treated as a nomination to the seat reserved for woman in the Standing Committee for Welfare of Karulai Grama Panchayat is liable to be rejected. In view of the admitted stand of the respondents and also in view of my finding on the aforesaid issue, the action on the part of the 2nd respondent in rejecting the nomination filed by the petitioner revealing her intention to contest the election to the Standing Committee for Welfare in Karulai Grama Panchayat was illegal. At the same time, there is no case for the petitioner that the third respondent had also failed to mention in her nomination regarding her intention to contest the election to the Standing Counsel for Welfare against the seat reserved for woman. In the absence of any such contention, the election of the 3rd respondent against the reserved seat for woman to the Standing Committee for Welfare cannot be held as illegal in view of my finding, made hereinbefore. Even according to the petitioner, as per Ext.P5, the 2nd respondent Returning Officer notified that election to the Standing Committees except to the seats reserved for woman would be held on 27.11.2010. In other words, going by Ext.P5, the 2nd respondent issued notification regarding the election to the Standing Committees against the unreserved seats, which could not be held on

18.11.2010. In view of my findings with respect to the election of the 3rd respondent against the reserved seat for woman to the Standing Committee for Welfare, the only point that remains to be considered is whether the election conducted on 27.11.2010 against the unreserved seats to the Standing Committee for Welfare without considering the candidature of the petitioner for such election is liable to be interfered with or not. The candidature of the petitioner, despite her failure to make mention in the nomination in writing, regarding her intention to contest the election to the Standing Committee for Welfare in the seat reserved for woman, should have been treated as a nomination filed for contesting the election to the same Standing Committee in the unreserved seats. Evidently, that was also not done in this case and her nomination was rejected on that ground. At the first blush, it would appear that such an illegality in rejecting the nomination should invite interference with the election inasmuch as, it pertains to the election to the said Standing Committee against the unreserved seats. However, there cannot be any doubt with respect to the aspect that the number of seats available in the unreserved constituency is more in respect of the Standing Committees. Therefore, invariably, pursuant to the election conducted on 27.11.2010, members of Karulai Grama Panchayat equivalent to the number of unreserved seats to the Standing Committees for Welfare must have been declared elected to the said Standing Committee against the unreserved seats. There is no pleading with respect to such aspects. From the pleadings in paragraph 8 of the writ petition, the irresistible conclusion which one could draw is that in terms of Ext.P5 elections to Standing Committees against unreserved seats must have been held on 27.11.2010. In fact, it was conducted as scheduled. Thus, candidates, who contested the election to the Standing Committee for Welfare against the unreserved seats and accordingly got elected are not parties to this writ petition. The petitioner has not chosen to make such persons as parties to this writ petition. Needless to say that such persons are necessary parties to this writ petition and in that sense, as regards the aforesaid issue, this writ petition is bad for non-joinder of necessary parties and, therefore, election to the Standing Committee for Welfare against the unreserved seats cannot be held as null and void. In the said circumstances, the petitioner is not entitled to any of the reliefs sought for in this writ petition.

24. In terms of Section 162(2) of the Act, all elected members of a Panchayat except the President and the Vice President of the concerned Panchayat shall be elected as members of any of the Standing Committees. True that in the absence of any election of such a member to any of the Standing Committees such a member is bound to be nominated in any of the Standing Committees in accordance with the provisions under the Act and the Rules and also in the light of Annexure-A, referred to earlier. In the said circumstances, despite the fact that the nomination filed by the petitioner was rejected, she is bound to be elected/nominated to any of the Standing Committees in accordance with the provisions under the Act and the Rules, if not already elected/nominated to any of the Standing Committees of Karulai Grama Panchayat. Subject to the said

observation, this writ petition is dismissed.

25. In view of my findings with respect to the issues involved in the first batch of writ petitions, this writ petition is liable to be dismissed. Admittedly, the petitioner herein had not expressed her intention to contest the election to the concerned Standing Committee in the seat reserved for woman in her nomination. Though the petitioner's candidature was not considered against the woman reserved seat in the Standing Committee for Development, her nomination was treated as one for contesting the election to the said Standing Committee in the unreserved seat. However, the petitioner failed to get elected to the said Standing Committee as she did not get any first preference votes. She was later inducted to the Standing Committee for Finance, as is obvious from the statements made in the counter affidavit filed by the 2nd respondent in the writ petition. In the said circumstances, this writ petition is dismissed.

26. The facts of this writ petition and the rival contentions have been elaborately discussed in the preceding paragraphs. The general issues involved in this writ petition have already been answered. The first among the said general issues as to whether the State Election Commission or on its direction the Returning Officer concerned could extend the time or date fixed for filing nomination in writing beyond the time or date fixed in the notice issued earlier under Rule 4(1) in terms of Rule 4(4) of the Rules, was answered in the negative. So also, the other question whether nominations in writing for contesting the election to the Standing Committees in respect of a Panchayat could be filed by the members of that Panchayat before anyone other than the Returning Officer designated/nominated for the said purpose was also answered in the negative. As already noticed hereinbefore, the specific case of the petitioners in this writ petition is that respondents 5 to 8 had filed nominations beyond the time fixed for filing the nomination in terms of the notice issued under Rule 4(1) in tune with Rule 4(4) of the Rules, on the appointed day. Admittedly, election to all the Standing Committees of Athirappilly Grama Panchayat was held as scheduled on 18.11.2010. The petitioners have approached this Court only on the date of election. The matter was admitted only on 22.11.2010. No interim order was passed in this writ petition. It was in the said circumstances that election was conducted as scheduled and the petitioners, respondents 5 to 8 were elected to different Standing Committees of the Panchayat. Prayers (b) and (c) read thus:-

(b) Issue a writ of mandamus or appropriate writ or direction directing the 3rd respondent not to accept any nomination for the standing committee of the Athirappilly Grama Panchayat which is filed beyond the time stipulated in Ext.P1.

(c) Issue a writ of mandamus or appropriate writ or direction directing the 3rd respondent not to conduct election for the standing committee of the Athirappilly Grama Panchayath on the basis of the nominations filed as per the extended time as stipulated in Ext. P3.

By the time this matter was admitted by the court, the election proceedings were

over. Therefore, prayers (b) and (c) do not survive for consideration. In short, the question to be decided is whether in view of the findings on the general issues referred above and in the facts and circumstances of the case, the petitioners are entitled to the other reliefs sought for in this writ petition. There is no pleading with respect to the total number of seats, reserved and unreserved, in the various Standing Committees of the Panchayat and also with respect to the total number of members of Panchayat. Going by section 162(2) of the Act, all members of a concerned Panchayat except the President and Vice President shall be elected to any of the Standing Committees. Only six elected members to the said Panchayat including the petitioners are before this Court. The remaining prayers in this writ petition are as hereunder:-

(a) Issue a writ of certiorari or appropriate writ or direction calling for entire records leading for Ext.P3 and quash the same.

(d) To declare that the nominations accepted after the time stipulated in Ext.p1 notice as null and void.

What is the impact of granting the said prayers and whether the sustainability of the aforesaid prayers could be considered without all the Standing Committee members in the party array ? As noticed hereinbefore, election to the Standing Committees of Athirappilly Grama Panchayat was held on 18.11.2010. This writ petition was filed on 18.11.2010 and it was admitted on 22.11.2010. No interim order was also passed in this writ petition. Bearing in mind the said factual position I will deal with the aforesaid questions.

27. There is no case for the parties that respondents 5 to 8 filed nominations for contesting the election to the same Standing Committees under the Athirappilly Grama Panchayat. Evidently, allowing the aforesaid prayers would definitely have an adverse impact on the very constitution of all the four Standing Committees of the said Grama Panchayat as also on the election of the Chairman of all such Standing Committees except that of Finance. True that this is not an election petition. However, that would not or could not be a reason for giving a go-bye to the salutary principles of natural justice. In this writ petition, on account of the failure on the part of the petitioners to bring in all the members of the Standing Committees as parties to this writ petition, the scope of consideration of this writ petition shall, if at all there is any, be confined only in respect of respondents 5 to 8 that too, inasmuch as it relates to their filing of nominations. But, going by the contentions of respondents 5 to 8 they have contested the election to the Standing Committees and got elected as Standing Committee members. As already noticed, the petitioners have approached this Court only on the date of election and it was admitted only on 22.11.2010. Therefore, election was held as scheduled and no interim order whatsoever was also passed by this Court in this writ petition. In the said circumstances, without any challenge against the election of respondents 5 to 8 especially when unseating them would affect the very constitution of the Standing Committees and also their Chairmen this Court would not be justified in going into the merits of the contentions of the

petitioners. This Court need not go into the sustainability or otherwise of the aforesaid reliefs sought by the petitioners solely on academic interest when it is obvious that ultimately, no relief could be granted to the petitioners which would affect the other elected members or the constitution of the other Standing Committees without such members in the party array. As already noticed, there is no challenge against the election of respondents 5 to 8 as Standing Committee members. Petitioners have not cared to amend this writ petition appropriately noting the subsequent events especially even after the receipt of the counter affidavit by respondents 5 to 8 and the statement filed by the first respondent. Election, even if it is to a Standing Committee, cannot be permitted to be challenged lightly. In view of section 162(2) of the Act all elected members of the Panchayat except the President and the Vice-president shall be elected as members of any of the Standing Committees. According to the petitioners respondents 5 to 8 are members of the United Democratic Front and they are members of Left Democratic Front. Where are the other members ? In view of the failure on the part of the petitioners to amend the writ petition appropriately in view of the admitted, subsequent developments and in the absence of any interim orders in this writ petition as also their failure to bring in the other members, who are necessary parties for further consideration of this writ petition in view of the admitted, subsequent developments, I am of the view that, despite the decision on the general issues involved, this writ petition is liable to fail. Accordingly, it is dismissed.

28. The petitioners and respondents 4 to 9 are the elected members of Panavoor Grama Panchayat. This writ petition has been filed seeking for a declaration that Exts.P1 and P2 notices and proceedings pursuant thereto are illegal, null and void in the interest of justice. Ext.P1 is a notice issued by the 2nd respondent, the Returning Officer, in respect of the election to the Standing Committees of Panavoor Grama Panchayat as per Rule 4(1) in terms of Rule 4(4) of the Rules. Rule 4(1) referred to hereinbefore would make it clear that the concerned Returning Officer is bound to issue a notice five days prior to the date of meeting for election to the Standing Committees. Going by Rule 4(4), the last date and time for filing nominations in writing and requiring the elected members of the Panchayat, who intend to contest the elections to the Standing Committees, to file nominations within such time and date shall also be notified in the said notice. Ext.P1 dated 8.11.2010 was issued showing the date of election as 18.11.2010. The petitioners assail Ext.P1 on the ground of non-compliance with the mandate under Rule 4 (4) of the Rules. As noticed hereinbefore, Rule 4(4) makes it abundantly clear that a notification issued under Rule 4(1) shall also contain a requisition to the elected members of the Panchayat who intend to file nominations for contesting the election to the Standing Committees to file nominations in writing, within the stipulated date and time. The last date and time for filing all such nominations shall also be notified in the notice under Rule 4(1) of the Rules going by Rule 4(4) of the Rules. In Ext.P1 notice neither the last date nor the time fixed for filing nominations" for contesting the elections to

the Standing Committees was specified. It is further contended that Ext.P1 did not specify whether the meeting convened was for election of members of Standing Committees. According to the petitioners, thereafter Ext.P2 notice dated 15.11.2010 was served on them only on 16.11.2010. As per Ext.P2 notice, the elected members of the Panchayat were required to file their nominations for contesting election to the Standing Committees before 5 p.m. on 16.11.2010. It is in the said circumstances that the petitioners attribute illegality in the matter of issuance of Exts.P1 and P2. In short, according to them, Exts.P1 and P2 are illegal and liable to be declared as null and void.

30. A scanning of Exts.P1 and P2 notices in the light of Rules 4(1) and 4(4) of the Rules would reveal that there is substance in the contentions of the petitioners. Rule 4(1) and Rule 4(4) of the Rules read thus":-

4 (1) The Returning officer shall give the notice for convening, the meeting for the election of members of the Standing Committee to all the elected members of the Panchayat five days prior to the date of the meeting and the notice for convening the meeting for the election of the Chairman of the Standing Committee, shall be given to all the members of the Standing Committee concerned two days prior to the date of the meeting.

Provided that in the aforesaid days, declared public holidays shall include and the date of receipt of the notice and the date of the meeting shall not include.

4. (4) If a member intends to contest as a member of the Standing Committee or the Chairman thereof, as the case may be, he shall be required in the notice under sub-rule (1). to duly file the nomination in writing, showing the last date and time for making such nomination to the Returning Officer.(emphasis supplied)

A conjoint reading of Rules 4(1) and 4(4) of the Rules would make it clear that the notice contemplated under Rule 4(1) must be one satisfying the requirements and conditions under Rules 4(1) and 4(4) of the Rules. In other words, a notice under Rule 4(1) must contain the date and time fixed for convening the meeting for election as members of the Standing Committees/ Chairman of Standing Committee besides the last date and time for filing nominations before the Returning Officer and a requisition for that behalf to all the intending elected members. Conspicuously, the last date and time fixed for filing the nominations in respect of the election to the Standing Committees and a request to all the intending elected members of the Panchayat to file their nominations within such date and time fixed for such purposes are absent in Ext.P1. Ext.P1 is dated 8.11.2010. As regards Ext.P2 it is dated 15.11.2010. It is only as per Ext.P2 that the intending elected members of Panavoor Grama Panchayat were required to file nominations in writing on or before 5 p.m. on 15.11.2010 viz., on the same day. Instead of issuing a single notice satisfying the requirements and conditions under Rules 4(1) and 4 (4) of the Rules two separate notices were issued by the Returning Officers. Add to it, even their combined effect would not satisfy the purpose sought to be satisfied by such a

notice. Going by the said rules the notice under 4(1) has to be issued five clear days prior to the date of meeting for such election and that notice issued under Rule 4(1) must also contain the requirements under Rule 4(4) of the Rules viz., the last date and time fixed for filing nominations and a requisition to the intending elected members of the concerned Panchayat to file nominations before the Returning Officer within such date and time. Thus, obviously, the elected members of the Panchayat are to be informed of the date and time of such election and also the last date and time for filing nominations for that purpose within five clear days prior to the date of election. Invariably, the conjoint reading of Rules 4(1) and 4 (4) would reveal that the intention and purport is to provide ample time for the intending elected member/members before the election. No doubt a member who got elected under the banner of a coalition may have to discuss various matters before filing nomination pointing out the name of the particular Standing Committee. The 2nd respondent was bound to conduct election to the Standing Committees of the Panchayat in accordance with the provisions under the Act and the Rules. Exts.P1 and P2 would reveal that there is total non-compliance with the provisions under the Act and the Rules. It cannot be considered that a specific period in between the date of notice under Rule 4(1) and the date of election has been prescribed without any purpose. Certainly, the petitioners are perfectly justified in contending that on account of the said short notice they were incapacitated to have a fruitful deliberation with their coalition under whose banner they got elected before filing nominations, responding to Exts.P1 and P2. In short, the very purpose and the mandate in Rule 4 have been defeated by the failure to scrupulously adhere to the provisions under Rules 4(1) and 4(4) of the Rules by the 2nd respondent.

30. Despite receipt of notice, none of the respondents, the official and party respondents, had filed any counter affidavit in this writ petition. Therefore, it can only be taken that they have all virtually admitted the specific contentions of the petitioners. As already noticed hereinbefore, a scanning of Exts.P1 and P2 in the light of the provisions under Rule 4 of the Rules would undoubtedly reveal the sustainability of the contentions raised by the petitioners rather the challenge against Exts.P1 and P2. In the said circumstances, it is declared that Exts.P1 and P2 notices do not conform to the mandatory provisions under Rules 4(1) and 4(4) of the Rules and consequently all the proceedings pursuant thereto are also declared as null and void. In the said circumstances, respondents 1 and 2 shall take appropriate steps for issuing notices strictly in terms of Rule 4 of the Rules for conducting elections to the Standing Committees of Panavoor Grama Panchayat afresh and to conduct election to the various Standing Committees strictly in accordance with the relevant provisions under the Act and the Rules and also in accordance with the orders, guidelines issued by the first respondent in tune with the provisions under the Act and the Rules. This shall be done within a period of one month from the date of receipt of a copy of this judgment. This writ petition is disposed of accordingly.

31. The petitioners are elected members of Poruvazhi Grama Panchayat. The

grievance of the petitioners pertain to the action on the part of the 3rd respondent, the Returning Officer in receiving the nominations based on Ext.P4 issued by the 2nd respondent. Ext.P1 notice of election was issued by the 3rd respondent showing the date of election as 18.11.2010 and requiring the intending elected members of the Panchayat to file nominations for the election to the Standing Committees of the Panchayat on or before 4 p.m. on 16.11.2010. It is contended that the petitioners have submitted their nominations for contesting the election to the Standing Committee for Health and Education. The specific contention of the petitioners is that only three nominations were received within the above stipulated time and date viz., that of the petitioners and the 7th respondent in respect of the election to the Standing Committee for Health and Education. According to them, in the said circumstances, the petitioners and the 7th respondent ought to have been declared elected as unopposed to the Standing Committee for Health and Education. The grievance of the petitioners is that while they entertained the said bona fide belief the Returning Officer without issuing any notice revising Ext.P1 notice relied on Ext.P4 and accepted the nominations of respondents 4 to 6 on 18.11.2010, just before the commencement of the meeting, which is, beyond the appointed time and date for filing of nominations. It is in the said circumstances that this writ petition has been filed mainly with the following prayers:-

(i) declare that the guidelines issued by the 2nd respondent directing the 3rd respondent to receive nomination as directed in Ext.P4 is ultra vires to the powers of the 7th respondent and violative of the statutory provisions contained in the Kerala Panchayat Raj Act and Rules framed thereunder, illegal, void and unenforceable;

(ii) declare that since within the time limit prescribed for receipt of nomination there were only 3 candidates for election to Standing Committee on Health and Education, they entitled to be declared as elected as unopposed candidates;

(iii) issue a writ of certiorari or any other writ, order or direction quashing Ext.P4 to the extend it direct the Returning Officer to accept the nomination till the meeting for election is held so also the proceedings of the meeting held on 18.11.2010 for electing the Standing Committees;

(iv) issue a writ of mandamus or any other writ, order or direction commanding and compelling the respondents to declare the petitioner as elected as unopposed to the Standing Committees on Health and Education.

32. Ext.P4 has been produced as Annexure A in W.P.(C) No. 34708 of 2010. After advertng to the relevant provisions and considering the contentions I have already found that Annexure A viz., Ext.P4 is legal and in tune with the provisions under the Act and the Rules. At the same time, it was found that the same can be applied only in respect of future elections that is, only in respect of elections to Standing Committees of Panchayat where no previous notice under Rule 4(1) in terms of Rule 4(4) of the Rules was issued. In this case, evidently,

Ext.P1 notice was issued under Rule 4(1) in terms of Rule 4(4) of the Rules. 4 O" Clock on 16.11.2010 was fixed as the time and last date for filing nominations. Ext.P4 is a general guidelines issued by the State Election Commission. That apart, in this case, it is the specific case of the petitioners that subsequent to Ext.P1 no notice modifying the stipulation of time and date in Ext.P1 was issued in the light of Ext.P4. In one of the writ petitions, even after finding that time stipulated for filing nominations was extended in terms of Ext.P4, I have declined to interfere with the elections on account of non-joinder of necessary parties. In this case, the prayers of the petitioners as extracted above would reveal that they virtually seek for interference with the election to the Standing Committee for Health and Education in Poruvazhy Grama Panchayat, that was held on 18.11.2010. All the elected members who filed nominations for contesting election to the Standing Committee for Health and Education are made parties to this writ petition. But, the, question is whether interference with the election of respondents 4 to 6, accepting the contentions of the petitioners, would result in unseating of any other elected member from any other Standing Committee to the Poruvazhy Grama Panchayat In other words, the question is whether it will have any impact on the election or constitution of any other Standing Committee. Taking into account the total number of members in the Standing Committee for Health and Education there cannot be any doubt with respect to the fact that it cannot accommodate the petitioners and respondents 4 to 7. In other words, interference with the election and a consequential election would result in a situation whereon two of them would have to be ousted from the Standing Committee for Health and Education and left to be elected to any other Standing Committees. In this context, it is to be noted that, going by the provisions under the Act and the Rules already adverted to, elections to the Standing Committees have to be conducted in the manner provided for. Firstly, election to the reserved seats in all the Standing Committees have to be conducted. So" also, the election to the Standing Committees, against such reserved seats as also the unreserved (general seats) shall be conducted in the order of the Standing Committees specified in sub-section (i) of Section 162 of the Act Obviously, election to the Standing Committee for Health and Education is to be conducted last Evidently, elections to the Standing Committees including for Health and Education were completed in Poruvazhi Grama Panchayat. The main prayer of the petitioners is to declare them along with the 7th respondent who filed nominations within the time limit prescribed in Ext.P1, elected unopposed to the Standing Committee for Health and Education. Taking into account the number of seats in the Standing Committee for Health and Education viz., four, undoubtedly, a declaration as sought for and a consequential election would necessarily entail ouster of two among respondents 4 to 6 from the Standing Committee for Health and Education. The question of their election to any other Standing Committee cannot be decided or directed for, without all the elected members of the other Standing Committees in the party array. The petitioners cannot contend that the respondent members are to be left for getting elected /nominated against the vacancies that may occur in case of

granting of their prayers for declaration as elected unopposed to the Standing Committee for Health and Education. No persuasive circumstances existing to deviate from the view taken in respect of the like circumstances dealt with in the earlier writ petitions. In short, this writ petition is also liable to fail on account of the non-joinder of necessary parties. Accordingly, it is dismissed.

33. The petitioner and respondents 5 to 17 are elected members of Aralam Grama Panchayat. Ext. P2 notice of election to its Standing Committees was issued under Rule 4(1) in terms of Rule 4(4) of the Rules by the 3rd respondent fixing the date of election as 18.11.2010 and requiring the intending elected members to file nominations in writing, before 10 a.m. on 18.11.2010. According to the petitioner, pursuant to the same, herself and respondents S. 7, 8 and 16 had filed nominations for contesting the election to the Standing Committee for Welfare. Respondents 6, 9, 11 and 12 had filed nominations for contesting the election to the Standing Committee for Development. Amongst them, the nomination of respondent No. 11 was to contest the election against the reserved seat for woman in the said Standing Committee. There is no nomination for woman reserved seat to the Standing Committee for Health and Education. So also, there was no nomination at all to the Standing Committee for Finance. Respondents 10, 13, 14 and 15 had filed nominations to contest the election to the Standing Committee for Health and Education. All the said nominations were accepted by the Returning Officer. In terms of Rule 5(1) of the Rules elections have to be conducted to the Standing Committees in the order of the Standing Committees specified under sub-section (1) of section 162 of the Act. As per Rule 3A of the Rules, firstly, elections against the reserved seats for woman have to be conducted in terms of the said provision. As already noticed, there was no nomination at all in respect of the Standing Committee for Finance. Thereupon, the 3rd respondent declared that respondents 11 and 7 were elected unopposed to the Standing Committee for Development and Standing Committee for Welfare, respectively. There was no nomination to contest in the reserved seat for woman to the Standing Committee for Health and Education. Thereupon, the 3rd respondent postponed the election to 20.11.2010. The petitioner and other members belonging to the United Democratic Front objected to the said action. On 18.11.2010 itself Ext.P5 was issued by the 3rd respondent requiring the intending elected members to file nominations in writing, against the seats reserved for woman to the Standing Committee for Finance and Health and Education. Respondent No. 14 responded to the same and filed another nomination for contesting the election to the Standing Committee for Health and Education against the woman reserved seat. The grievance of the petitioner is against Ext.P5 notice. The petitioner has also grievances against the action on the part of the 3rd respondent in conducting election to the Standing Committee for Finance in the woman reserved seat by lot on 20.11.2010 among the petitioner, respondent Nos. 8, 15 and 16. Thereafter, elections to all the Standing Committees in the general seats were also conducted. After conducting such elections, Ext.P6 list of elected candidates was published by the 3rd respondent

According to the petitioner, the entire proceedings pursuant to Ext.P5 is illegal and void.

34. This case came up for admission on 24.11.2010 and while admitting this writ petition an interim order was passed as hereunder: -

The election of members to the various Standing Committees to Aralam Grama Panchayat and that of Chairman of the various Standing Committees will be provisional and subject to the outcome of the writ petition.

A joint counter affidavit has been filed on behalf of respondents 8, 9 and 13 to 17 and a separate counter affidavit has been filed by the 4th respondent. Respondents 2 and 3 did not file any counter affidavit in this writ petition. In the counter affidavit of the 4th respondent, it is stated that going by the provisions under the Act and the Rules, elections to general seats could be conducted only after completing the elections against the woman reserved seats to the Standing Committees in the order of the Standing Committees specified under sub-section (1) of section 162. There was no nomination to the Standing Committee for Finance. So also there was no nomination to the woman reserved seat as regards the Standing Committee for Health and Education. In the said circumstances, after conducting election to the Standing Committees for Development and for Welfare election proceedings were postponed and Ext.P5 notice was issued by the 3rd respondent so as to enable women elected members other than respondents 7 and 11 to file fresh nominations to contest against the seats reserved for women in the Standing Committees for Finance and for Health and Education. In the joint counter affidavit filed on behalf of respondents 8, 9 and 13 to 17 they attempted to justify the issuance of Ext.P5. It is stated therein that the 14th respondent filed nomination to contest against the seat reserved for woman in the Standing Committee for Health and Education in response to Ext.P5 and since there was no other nominations against the woman reserved seat to the said Standing Committee the 14th respondent declared elected unopposed. According to them, the situation compelling conduct of election by drawing lot as regards election to the Standing Committee for Finance in the reserved seat for woman was occasioned on account of the non-submission of nominations by the other women elected members. As already noticed, even in respect of the said Standing Committee, election against the reserved seat for woman was to be conducted first. It was in the said circumstances that among the women elected members to the Panchayat who were not elected to any of the Standing Committees, election by lot was conducted. After conducting elections to the general seats as well Ext.P6 list was published by the 3rd respondent. It is further stated therein that subsequently elections of Chairman to all the Standing Committees were also conducted on 24.10.2010. In short, according to the party respondents, there was no violation of the provisions under the Rules, the Act or the guidelines warranting interference with the elections held to the various Standing Committees of Aralam Grama Panchayat.

35. Obviously, Ext.P3 would reveal that being the sole contestants against the

reserved seat for woman in the Standing Committee for Development and Standing Committee for Welfare respondents 11 and 7 were declared elected unopposed against the said reserved seats. Even according to the petitioner election up to that stage including the election of respondents 7 and 11 were effected in accordance with law. Evidently, the petitioner did not raise any challenge against their election. The challenge of the petitioner is against Ext.P5 and the further proceedings pursuant thereto. According to the petitioner, a second notice in the nature of Ext.P5 is not contemplated under Rule 4 of the Rules for the purpose of inviting fresh nominations. There can be no doubt with respect to the fact that in terms of the provisions referred hereinbefore viz., Rule 3A of the Rules elections to the reserved seats for woman are to be conducted first. Since there was no nomination at all for election to the Standing Committee for Finance, in terms of the Rules, elections against the reserved seats to the Standing Committee for Development and Standing Committee for Welfare were conducted.

36. Going by the provisions under Rule 6 of the Rules against the seats reserved for women in the Standing Committees none other than woman elected members could contest. In such circumstances, in view of the provisions under Rule 3A as also Rule 6 and also in the absence of any specific provisions under the Act and the Rules the action on the part of the 3rd respondent in postponing the election for the purpose of completing the election against the reserved seats for women cannot be said to be illegal. Rule 7(6) and 7(7) would reveal that they envisage different situations. The petitioners did not have a case that the procedures contemplated there under should have been followed to tide over the situation. None of the parties has brought to my attention any provision under the Act or the Rules applicable to deal with the situation involved in this case. As already noticed hereinbefore, Annexure-A in W.P.(C) No. 34708 of 2010 was issued only on 18.11.2010 and, therefore, no flow can be attributed on the 3rd respondent for not following Annexure-A. Then the question is whether inviting fresh nomination from the elected women members of the Panchayat for the purpose of conducting elections against the reserved seats to the Standing Committees for Finance and Health and Education, as per Ext.P5, can be said to be illegal. In this context, it is to be noted that in the preceding paragraphs I have already found that a Returning Officer appointed to conduct elections to Standing Committees in a Panchayat is bound to do all such acts and things as may be necessary for effectually conducting the election in the manner provided by the Act and the Rules or orders made thereunder." Evidently, it is the duty of the 3rd respondent, being the Returning Officer, to ensure that the provisions under Rule 3A and Rule 6 are complied with. It is to satisfy such requirements and to conduct elections against the seats reserved for women to the Standing Committees prior to the commencement of election to the general seats in the said Standing Committees that the 3rd respondent has resorted to such a course of action. Evidently, even after Ext.P5 none of the woman elected candidates, who were thus far not elected to any of the Standing Committees, had submitted

nomination to contest the election in the reserved seat for woman to the Standing Committee for Finance. At the same time, the 14th respondent responded to Ext.P5 and filed nomination to contest in the reserved seat for woman to the Standing Committee for Health and Education. Being the sole contestant in the said constituency she was liable to be declared as elected unopposed and the 3rd respondent had only done that. As regards the election against the reserved seat for woman to the Standing Committee for Finance, evidently, no election as such was conducted. In fact, the 3rd respondent declared the petitioner elected to the said Standing Committee after drawing lot amongst the petitioner and respondent Nos. 8, 15 and 16. The system of proportional representation by single transferable vote is to be followed in the matter of election to the Standing Committees. In fact, the form of ballot paper has also given in the Appendix of the Rules. When that be so, drawing lot for election to the Standing Committee for Finance has to be declared as null and void. I do so. The question is whether such a course of action should have been and could have been resorted to in the absence of any specific provision ? In this context, it is to be noted- that the sole situation wherein election by lots is contemplated in respect of an election to Standing Committee is one envisaged under Rule 8(e) of the Rules. Obviously, the situation that has arisen in this case is different from the one contemplated there under. When election alone is contemplated under the Rules there is no justification for the 3rd respondent to resort to the method which is not statutorily provided for. In such circumstances, I am of the view that election against the reserved seat for woman to the Standing Committee for Finance from among the petitioner and respondents 8, 15 and 16 cannot be sustained. In fact, the grievance of the petitioner is against the action on the part of the 3rd respondent in conducting such an election and declaring herself as elected against the said seat. In the circumstances, there will be a direction to the 3rd respondent to conduct election as against the reserved seat for woman to the Standing Committee for Finance, from among the petitioner and respondents 8, 15 and 16, in accordance with law. Needless to say, consequential vacancies in any of the Standing Committees has to be filled up, in accordance with law. Subject to the same, this writ petition is disposed of.

37. The petitioner and respondents 3 to 15 are the elected members of Chenneerkara Grama Panchayat. The petitioner and respondents 4, 11, 13 and 15 had filed nominations for contesting the election to the Standing Committee for Development. Though the petitioner had obtained more first preference votes than respondents 4, 11 and 15 the second respondent declared respondents 11 and 13 elected to the Standing Committee for Development. In fact, respondent No. 11 had not obtained any first preference votes and he got only 10 second preference votes. It is in the said circumstances that this writ petition has been filed seeking for a declaration that the petitioner has been elected to the Standing Committee for Development and to set aside the election of the 11th respondent to the said committee and for such other reliefs. In fact, it is unnecessary to deal with the rival contentions in view of the factual position

discernible from paragraph 11 of the counter affidavit filed by the 2nd respondent, the Returning Officer for election to the Standing Committee of Chenneerkara Grama Panchayat and Rule 8 of the Rules. In paragraph 11 the first and second preference votes obtained by the petitioner and respondents 4, 11, 13 and 15 have been given in a tabular column as hereunder:-

Sl.No.

Respondent No.

No. of first preference vote

No. of second preference vote

1

Vijayamma

15

1

2

K.S. Pappachan

Writ Petitioner

3

3

Renjan

13

7

4

Sarath

11

0

10

5

K.K. Sasi

4

2

Obviously, respondent No. 13 obtained the maximum number of first preference

votes and the petitioner secured more first preference votes than the others. Rule 8 of the Rules, in so far as it is relevant for the purpose of this case, reads thus:-

8. Manner of recording votes, counting of votes and declaration of result in elections.-

XX XX XX

(5) Result of the election shall be declared in accordance with the following procedure, namely:-

(a) On counting the votes, the candidates, equal in number to that of vacant seats, securing the highest number of first priority votes shall be declared elected;

Applying the said rule to the factual position obtained as above would show that prayer No. A made by the petitioner is only to be allowed. In fact, none of the respondents including respondent No. 11 disputed this position. In the circumstances, the election of the 11th respondent to the Standing Committee for Development of Chenneerkara Grama Panchayat on 18.11.2010 is set aside. Consequently, the petitioner who secured the second highest number of first preference votes has been declared elected to the said Standing Committee in the place of respondent No. 11. If consequent to the said declaration election/nomination of the 11th respondent to any other Standing Committee is required it shall be conducted by the 2nd respondent, in accordance with law. In fact, no other reliefs have been pressed into service by the petitioner. This writ petition is accordingly, allowed to the above extent.