

(1998) 12 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 17344/98

Jacob Abraham and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 21-12-1998

Acts Referred:

Constitution of India, 1950 — Article 234G, 40
Kerala Municipalities Act, 1994 — Section 19(5), 53, 53(4), 53(5), 53(6)
Kerala Panchayat (Proceedings of Panchayat Meetings and Committees) Rules, 1962 — Rule 3
Kerala Panchayat Act, 1960 — Section 53, 54, 54(14), 54(5)
Kerala Panchayat Raj Act, 1994 — Section 157, 157(1), 157(12), 157(13), 157(2)

Citation : (1999) 1 KLJ 1

Hon'ble Judges : K.K. Usha, J;G. Sivarajan, J

Bench : Division Bench

Advocate : T.R.G. Wariyar and R. Ramadas, for the Appellant; M.K. Damodaran, General for Respondents 1, 2, 8 and 9, P.C. Chacko Roy Chacko, for Respondent 3, T.P.K. Nambiar P.C. Sasidharan, for Respondent 4 to 6 and Vizzy George, for Respondent 7, for the Respondent

Final Decision : Allowed

Judgement

K.K. Usha, J.—Payyavoor Grama Panchayat has 10 elected members, the six Petitioners and Respondents 4 to 7 in this Original Petition. Petitioners gave notice on 18th August 1998 for no confidence motion against the 4th Respondent, the President of the Panchayat. The 2nd Respondent, Deputy Director of Panchayat, issued notice for convening a meeting of elected Panchayat members on 1st September 1998 at 11 a.m. at the Payyavoor Grama Panchayat Office. The Petitioners could not attend the meeting in view of the obstruction created by supporters of the 4th Respondent in front of the Panchayat Office. Respondents 4 to 7 were present. 2nd Respondent dissolved the meeting on the ground of lack of quorum, thus, barring a fresh no confidence motion for a period of six months. The question that arises for consideration is whether, under the provisions of Sub-section (6) of Section 157 of the Kerala

Panchayat Raj Act, 1994, the 2nd Respondent was obliged to adjourn the meeting in the circumstances under which the Petitioners were disabled from attending the meeting. A learned Single Judge of this Court, who heard the Original Petition, took the view that interpretation of the provisions of Sub-section (6) of Section 157 of the Kerala Panchayat Raj Act, 1994 arising in this case, is a question of substantial importance which requires consideration by a Larger Bench. Thus the matter is before us.

2. According to the Petitioners, they had given notice for no confidence motion against the 4th Respondent on 18th August 1998 and the 2nd Respondent issued Ext. P-1 notice dated 19th August 1998 for convening a meeting of elected members on 1st September 1998 at 11 a.m. at the Payyavoor Grama Panchayat Office. Respondents 4 to 6 are members of Communist Party of India (Marxist). 7th Respondent is an independent member and supports C.P.I. (M). It is alleged that pursuant to the motion for no confidence, the Petitioners had threat to their life and they apprehended that 4th Respondent, who is a local leader of C.P.I. (M) and is having much political influence, would obstruct them from attending the meeting on 1st September 1998. They, therefore, filed O.P. No. 16716/98 before this Court for Police protection for their life and also for attending the meeting of the Panchayat to be held on 1st September 1998. This Court, by Ext. P-2 order dated 27th August 1998, directed Respondents 1, 8 and 9 in this Original Petition, who were Respondents 1 to 3 therein, to afford necessary and adequate protection to the life of the Petitioners and also for attending the Panchayat meeting to be convened on 1st September 1998. In spite of the above order, Petitioners could not attend the meeting on 1st September 1998 in view of the obstruction created by the C.P.I. (M) workers in front of the Panchayat Office.

3. Detailed averments are made in the Original Petition as to the incidents which lead to the non-confidence motion against the President of the Panchayat. These averments are controverted by Respondents 4 to 9 in their counter-affidavits. We are not referring to these averments, since they are not strictly relevant for consideration of the prayers in this Original Petition and also for the reason that other proceedings are pending before this Court in that respect. So also, we do not propose to go into the allegation in this Original Petition that Respondents 1, 8 and 9 had wilfully failed to implement Ext. P-2 order passed by this Court, for more than one reason. Firstly, in this Original Petition, we are not concerned with the circumstances under which a group of C.P.I. (M) workers and their supporters could effectively obstruct the Petitioners from entering the Panchayat Office to attend the meeting on 1st September 1998. We are concerned only with the effect of such obstruction on the provisions of Sub-sections (6) and (13) of Section 157 of the Kerala Panchayat Raj Act, 1994. Secondly, a contempt of court proceeding is already pending before this Court, seeking action against Respondents 1, 2, 8 and 9 for non-implementation of Ext. P-2. We would therefore refer to only those portions in the pleadings in this case, which are necessary for interpreting the provisions contained under Sub-sections (6) and (13) of Section 157 of the Kerala Panchayat Raj Act, 1994 and to examine

whether Petitioners are entitled to the reliefs sought under this Original Petition.

4. Section 157 of the Kerala Panchayat Raj Act, 1994 deals with the procedure to be followed in the matter of motion of non-confidence. Section 157 reads as follows:

157. Motion of no confidence.-(1) Subject to the provisions of this section, a motion expressing want of confidence in the President or the Vice-President or the Chairman of a Standing Committee of a Panchayat may be moved in accordance with the procedure laid down herein.

(2) Written notice in such form as may be prescribed of the intention to move any motion referred to in Sub-section (1) signed by such number of elected members of the Panchayat concerned as shall constitute not less than one third of the sanctioned strength of elected members of that Panchayat, together with a copy of the motion which is proposed to be moved shall be delivered in person by any of elected members of the Panchayat signing the notice, to the officer as may be authorised by the Government in this behalf.

(3) The officer referred to in Sub-section (2) shall convene a meeting of the elected members of the Panchayat for the consideration of the motion, to be held at the office of the Panchayat at a time appointed by him which shall not be later than fifteen working days from the date on which the notice under Sub-section (2) is delivered to him.

(4) The officer referred to in Sub-section (2) shall send by registered post to the elected members of the Panchayat concerned notice of not less than seven clear days of any meeting held under this section and the time appointed therefor. Notice regarding this shall be affixed in the office of the Panchayat.

(5) A meeting convened under this section shall be presided over by an officer authorised by the Government in this behalf.

(6) A meeting convened for the purpose of considering the motion under this section shall not be adjourned except for reasons beyond human control. The quorum required for such meeting shall be one half of the elected members of that Panchayat.

(7) As soon as the meeting convened under this section has commenced the person presiding shall read at the meeting the motion for the consideration of which it has been convened and declare it to be open for debate.

(8) No debate on any motion under this section shall be adjourned except for reasons beyond human control.

(9) A debate on any no confidence motion shall automatically terminate on the expiry of three hours from the time appointed for the commencement of the meeting if it is not concluded earlier and upon the conclusion of the debate or upon the expiry of such period of three hours as the case may be, the motion, shall be put to vote.

(10) The person presiding shall not speak on the merit of the motion, and shall not be entitled to vote thereon.

(11) The copy of the minutes of the meeting together with the copy of the motion and the result of the voting therein shall forthwith, on the termination of the meeting, be forwarded to the Government by the Officer referred in Sub-section (2).

(12) If the motion is carried with the support of more than one-half of the sanctioned strength of that Panchayat the Government shall, by notification in the Gazette, remove the President, Vice President or the Chairman of the Standing Committee, as the case may be:

Provided that after a no confidence motion is so passed the President or Vice President or the Chairman of the Standing Committee shall have the right to resign himself within 48 hours and if he has not vacated by tendering resignation within the said time he may be removed by a notification under Sub-section (12).

The President or Vice President or the Chairman of the Standing Committee shall not exercise any official duty in such capacity in the intervening period between passing of the motion and issuing of Gazette notification.

(13) If the motion is not carried by such majority as aforesaid or the meeting cannot be held for want of quorum, under Sub-section (6), no notice of any subsequent motion expressing want of confidence in the same President or Vice President or Chairman of a Standing Committee shall be received until after the expiry of six months from the date of meeting, or the date fixed for the motion, as the case may be.

(14) No notice of a motion under this section shall be accepted within six months of the assumption of office by a President, a Vice President or Chairman of a Standing Committee.

5. The contention of the Petitioners is that the effective obstruction created by the supporters of the opposite side disabling the Petitioners from attending the meeting was a reason beyond human control obliging the 2nd Respondent to adjourn the meeting. Learned Counsel referred to the meaning of the term "beyond human control" in Words and Phrases, Vol. V, Permanent Edition as follows:

The term "beyond human control" in employer and union contract providing that employees should suffer no loss of pay for interruption of work except when caused by conditions beyond human control" meant beyond control of employer rather than beyond control of any human being.

Reference was also made to the meaning of the word "beyond control" in the same publication which reads as follows:

Under a railroad's contract to construct and put in operation a road from a timber tract to a main line junction, the provision unless prevented by other

"cause beyond its control", did not refer only to a cause which was an "act of God", that term meaning a happening due directly and exclusively to a natural cause or causes in no sense attributable to human agencies, which could not be resisted or prevented by the exercise of such foresight, prudence, and care as the situation might have called into exercise; but the provision was synonymous with "unavoidably prevented", the words "beyond control" implying a pledge to exercise human agency to the point of excluding negligence, so that unanticipated trouble and delay encountered in a cut by reason of a peculiar mud or clay called gumbo" much harder to remove than rock entitled the railroad to 30 days" additional time to finish construction.

It was then contended that the term "except for reasons beyond human control" used in Sub-section (6) cannot be understood as an "Act of God". Referring to the meaning of the term "Act of God" as given in Black's Law Dictionary, V Edition, page 31, learned Counsel submits that "Act of God" excludes the concept of human control. The term "convened" has the meaning as per Shorter Oxford Dictionary, "to cause to come together". The Petitioners could not come together at the appointed time, at the appointed venue of the meeting due to the obstruction created by the opposite side in front of the Panchayat Office. The 2nd Respondent was aware of the tense situation prevailing in the locality. He has been intimated by representations by the Petitioners as well as by Shri K.C. Joseph, M.L.A. that efforts are being made to frustrate the meeting proposed to be held on 1st September 1998 by obstructing the Deputy Director and other officers and members of the Panchayat from attending the meeting and therefore, necessary steps should be taken for police protection. According to the Petitioners, the 2nd Respondent himself came to the venue of the meeting with police protection. Learned Counsel for the Petitioners would contend that under these circumstances, the 2nd Respondent cannot be heard to contend that since the Petitioners were disabled to attend the meeting not due to any Act of God, there is no obligation on his part to adjourn the meeting in view of the provisions contained under Sub-section (6). The situation was such that neither the Petitioners nor the 2nd Respondent could do anything by which the Petitioners were enabled to attend the meeting at 11 O' clock. Such situation, according to learned Counsel, would come within the term "reasons beyond human control" mentioned in Sub-section (6).

6. Learned Counsel placed reliance on a decision of this Court in Narendran v. State of Kerala 1992 (2) K.L.T 213, which arose u/s 54 of the Kerala Panchayats Act, 1960. In that case, the authorised officer adjourned the meeting proposed to be held to consider non-confidence motion against President and Vice President of the Panchayat as that day was declared a holiday by the Government. Proviso to Rule 3 of Kerala Panchayats (Proceedings of Panchayat Meetings and Committees) Rules, 1962 prohibited meeting on a public holiday. A notice for fresh meeting was challenged on the ground that once the meeting was adjourned, even though against the provisions of Sub-section 5 of Section 54, no fresh notice for no confidence motion shall be received within six months

in view of Sub-section (14) of Section 54. Learned Single Judge rejected the contention and held that the provisions contained under Sub-section (5) of Section 54 that a meeting convened for the purpose of considering no confidence motion, shall not, for any reason, be adjourned, is intended to safeguard the interest of the movers of the resolution, to see that no-confidence motion is not adjourned flippantly or for extraneous reasons. That is why absolute bar is imposed on the adjournment of such motion. It was also held that if the meeting was adjourned unjustifiably or illegally, Sub-section (14) would not bar a fresh meeting for another six months. Learned Counsel for the Petitioners would contend that the principle evolved in this decision should be applied to the present case also. He further contends that the 2nd Respondent should not have dissolved the meeting for want of quorum, but, should have adjourned the meeting as it could not be convened. He further submits that, at any rate, in the facts and circumstances of the case where the Petitioners were disabled from attending the meeting due to a successful obstruction created by the opposite side and thereby the meeting had to be dissolved for want of quorum, there could be no application of the provisions contained under Sub-section (13) of Section 157 which would stand in the way of the Petitioners moving the no confidence motion for a period of six months.

7. The fact that the 2nd Respondent had issued notice to convene a meeting of the elected members of the Payyavoor Grama Panchayat on 1st September 1998 at 11 a.m. at the Payyavoor Grama Panchayat Office for considering the no confidence motion against the President of the Grama Panchayat, is admitted. It is also not, disputed that the Petitioners could not attend the above-mentioned meeting as they were effectively prevented by a mass of people collected in front of the Panchayat Office who are supporters of the opposite party. We will presently refer to the averments in this regard in the counter-affidavits filed by Respondents 8 and 9, the police officers. The affidavit is sworn to by the 9th Respondent, the Sub Inspector of Police, Payyavoor Police Station on his behalf as also on behalf of the 8th Respondent, the District Superintendent of Police, Kannur. In paragraph 5, he states as follows:

From the Kannur Guest House, the police escorted the Petitioners to Payyavoor Grama Panchayat on the morning of 1st September 1998. When the Petitioners who were inside the police vehicle reached about 20 metres near to Payyavoor Police Station, around 500 supporters of the Petitioners along with their leaders like Sri Umman Chandy M.L.A. (Kottayam), Sri K. Sudhakaran, M.L.A. (Kannur), and local M.L.A. K.C. Joseph stopped the police vehicle and wanted to take the Petitioners in a march to the Panchayat Office, about 250 metres away from the police station. Thereupon, the Dy. S.P. Taliparamba and party blocked the march with intend to avoid a law and order situation since, at that time, there was a gathering consisting of 2500-3000 persons belonging to the opposite group in front of the Panchayat Office. In such a situation, police informed the Petitioners that there is a blockade by the agitators of the opposite group and that they can proceed further only after removing the same. On being informed so, the

Petitioners requested the police officials to take steps to remove the blockade and in the meantime also to take them to a safe place. Since safest place available there was only the police station, the Petitioners chose to remain in the police station and waited at the first floor of the building for removal of the blockade by the police. It is submitted that the allegations contained in para 5 of the O.P. that the police party had not done anything to remove the blockade, is bereft of any truth.

In paragraph 6, he has further stated as follows:

The allegation that if the police really wanted to remove the agitators, they could have done that within a half an hour is not correct. The further allegation that the police did not do anything till 10.50 a.m. is also false. Police started the arrest and removal of the agitators from 10 a.m.

Yet another relevant portion in his affidavit in paragraph 7 is as follows:

It is submitted that despite all the constraints, the police had arrested and removed large number of persons. At 10.45 a.m. as per the instructions issued by the R.D.O., a Police Constable was sent to the Panchayat Office for informing the Deputy Director of Panchayats that the Petitioners will be reaching the Payyovoor Grama Panchayat Office immediately after the removal of agitators and requested to wait till the members reach the Panchayat Office for conducting the meeting. While arrest and removal of agitators was going on, at about 11.15 a.m., the Deputy Superintendent of Police, Taliparamba made an attempt to take the Petitioners to the Panchayat Office even in spite of their diffidence to go to the Panchayat Office. It was in the meanwhile that Sri K.C. Joseph M.L.A. informed the Dy. S.P. that the Petitioners need not be taken to the Panchayat Office as no confidence motion has been rejected and asked the Petitioners to sit in the police station itself.

8. The 2nd Respondent, namely, the Deputy Director of Panchayats admits that by letter dated 21st August 1998, he had made a request to the Superintendent of Police, Kannur and the Circle Inspector of Police, Sreekandapuram for protection to conduct the meeting on 1st September 1998. He also admits that he had received Ext. P-5 representation dated 31st August 1998 from Sri K.C. Joseph, M.L.A., requesting to ensure police protection and that he had taken prompt action by forwarding the same to the District Superintendent of Police. He states that he had also made a request on that day to the District Superintendent of Police for affording sufficient protection for the conduct of the meeting on 1st September 1998. He does not deny the averment in the Original Petition that he came to the Panchayat Office on 1st September 1998 under police protection. The denial is only against the statement in the petition that before coming to the Panchayat Office, he had been to the police station and when he was being escorted to the Panchayat Office by the police, from the police station, the Petitioners also wanted to be taken with them. He further admits that on 1st September 1998, when he reached the Panchayat Office at

about 9.45 a.m., there was a gathering in front of the Panchayat Office. He could also see that people gathered at some distance on the western side of the Police Station.

9. It was in the light of these averments of Respondents 2, 8 and 9, learned Advocate General, who is appearing for Respondents 1, 2, 8 and 9, submitted before us that a section of the people of the electorate could not approve of Petitioners' action in bringing no confidence motion against the President of the Panchayat and therefore they collected in front of the office of the Grama Panchayat to express their disapproval. It is not disputed before us by the learned Advocate General that the Petitioners could not reach the Panchayat Office in time, to attend the meeting for any reason other than the obstruction created in front of the Panchayat Office by a mass of people. According to the learned Advocate General, such an obstruction created by a human agency would not satisfy the conditions contained under Sub-section (6) of Section 157 obliging the 2nd Respondent to adjourn the meeting and that by applying Sub-section (13), no no confidence motion can be brought against the President of the Panchayat for a period of six months.

10. The contention of the learned Advocate General is that the expression "beyond human control" would mean "Act of God". It is also his contention that the disability must be that of the authorised officer to convene the meeting and not that of the members to attend the meeting for reasons beyond human control. Reference was made to the original of the Act enacted in Malayalam where the words used are,

Our attention was invited to the provisions contained in the earlier enactment, the Kerala Panchayat Act, 1960. Section 54 deals with the provisions regarding motion of non-confidence in President or Vice President. Sub-section (5) provided that a meeting convened for the purpose of considering a motion under this section shall not, for any reason, be adjourned. It is submitted that the provisions under Sub-section (6) of Section 157 is an improvement on the provisions in the earlier enactment enabling the authorised officer to adjourn the meeting for reason of an Act of God. We were taken through the dictionaries as well as other publications to elucidate the meaning of the term "Act of God". Reference was thus made to Black's Law Dictionary, V Edition, page 31, Stroud's Judicial Dictionary of Words and Phrases, 4th Edition, Vol. I, Page 43, Law Lexicon by Ramanatha Aiyar, Page 22, Broom's Legal Maxim, 10th Edition, Law Dictionary by Dr. A.R. Biswas, Corpus Juris Secundum and Wharton's Law Lexicon 11th Edition, Page 17.

11. Learned Advocate General, referring to Shakeltan on the Law and Practice of Meetings, VII Edition, Page 53, submitted that keeping time of a meeting is very important. The provision which was there in the earlier enactment for waiting for half an hour had been taken away in Section 157. The learned Advocate General then submitted that the place of meeting is equally important as the time of meeting. Therefore, according to learned Advocate General, even if all the

members were obstructed by a crowd of people from entering the Panchayat Office, at 11 a.m., the 2nd Respondent could not have adjourned the meeting, since the obstruction was not by an Act of God or force majeure or vis major, but only by an Act of human agency. Learned Advocate General would further contend that it is not the look out of the 2nd Respondent as to what happens outside his office. It is not permissible for him to examine the reason as to why quorum is not satisfied. His duty is only to adjourn the meeting if there is no quorum. Once the meeting is thus adjourned, there is no escape from the provisions contained under Sub-section (13) and the Petitioners cannot be permitted to move a non-confidence motion within six months.

12. Learned Senior Counsel Sri T.P. Kelu Nambiar, who is appearing on behalf of Respondents 4 to 7, also contended that obstruction created by human agency by which Petitioners could not reach the venue of meeting at 11 O'clock on 1st September 1998, is no reason for the 2nd Respondent to adjourn the meeting under Sub-section (6) of Section 157. Learned Counsel referred to the provisions contained under the Kerala Municipalities Act, 1994 dealing with motion of no confidence. Sub-section (5) of Section 19 provides that a meeting convened for considering a motion under this section shall not, except for "reason beyond control", be adjourned. The word "human" is omitted in this section, even though, the Kerala Municipalities Act, 1994 was enacted immediately after the enactment of Kerala Panchayat Raj Act, 1994. But, according to learned Counsel, the omission of the word "human" does not make any difference. He submits that only for reason of Act of God, the authorised officer can adjourn the meeting. Reference was made to the former enactment, Kerala Municipalities Act, 1960. Section 53 dealt with provisions for motion of no confidence in Chairman or Vice Chairman. Sub-section (6) provided that save as provided in Sub-sections (4) and (5), a meeting convened for the purpose of considering a motion under this section shall not, for any reason, be adjourned. Sub-section (4) provides that no person other than Deputy Director shall preside at the meeting. If, within half an hour after the appointed time, the Deputy Director is not present to preside at the meeting, the meeting shall stand adjourned. Sub-section (5) provides that if the Deputy Director is unable to preside at the meeting, he may, after recording his reasons in writing, adjourn the meeting to such other time as he may appoint.

13. Learned Counsel put forward an alternate contention to the effect that, as a matter of fact, 2nd Respondent was faced with a situation between Sub-section (6) and Sub-section (8). He convened a meeting. He found that there was no quorum. Therefore, the meeting could not be held. The occasion for debate did not arise. Under these circumstances, according to learned Counsel, the question of inability to convene the meeting for reasons beyond human control does not arise at all. Learned Counsel also relied on the meaning of the term "Act of God" given in the dictionaries as well as in other publications cited by the learned Advocate General. Over and above, he referred to the interpretation of the expression in Salmond on Torts, 18th Edition, Page 309, Winfield on Torts, 8th

Edition, Page 429, Merriam Webster's Dictionary of Law, Page 11 and Prem's Judicial Dictionary, Page 50.

14. While replying, learned Counsel for the Petitioners pointed out that a reading of the proceedings of the 2nd Respondent dated 1st September 1998, which was produced along with C.M.P. 33095/98 would show that he has treated the non-confidence motion as rejected without being discussed, which, according to learned Counsel, is totally unwarranted and irregular. A meeting which could not be commenced for want of quorum and where there was no discussion of the non-confidence motion, there is no question of rejection of the no confidence motion. Learned Government Pleader, who was representing learned Advocate General at that time, submitted that what the 2nd Respondent has meant was only that the meeting was adjourned for want of quorum.

15. The contention raised by the learned Advocate General and learned Senior Counsel Sri T.P. Kelu Nambiar is that the obstruction created by human agency disabling all the Petitioners from attending the meeting at 11 a.m. on 1st September 1998, is not an "act of God" in order to oblige the 2nd Respondent to adjourn the meeting under Sub-section (6) of Section 157. Thus arises the issue of interpretation of Sub-section (6) of Section 157 as observed by the learned Single Judge in his reference order.

16. Section 157 of the Kerala Panchayat Raj Act, 1994 deals with the procedure to be followed in the matter of motion of no confidence in the President or the Vice President or the Chairman of a Standing Committee of a Panchayat. Sub-section (6) of Section 157 provides that a meeting convened for the purpose of considering a motion u/s 157 shall not be adjourned except for reasons beyond human control. It is also provided that quorum required for such meeting shall be one half of the elected members of that Panchayat. Sub-section (7) provides that as soon as the meeting convened under this section has commenced, the person presiding shall read at the meeting, the motion for the consideration of which it has been convened and declare it to be open for debate. Sub-section (8) then mandates that no debate on any motion under this section shall be adjourned except for reasons beyond human control.

17. The scheme of Section 157 would make it clear that the object of incorporating a strict provision in Sub-section (6) that the meeting shall not be adjourned except for reasons beyond human control and in Sub-section (8) that no debate on no confidence motion shall be adjourned, except for reasons beyond human control, is to see that there should be no impediment in the path of the motion for no confidence. Therefore, the interpretation that has to be given to these provisions should be such that it would not defeat the very object for which the provisions are enacted. According to us, the intention of the legislature is to see that the authorised officer shall not adjourn the meeting unless a situation arises which is beyond his control so that the effort of the members to move no confidence motion shall not be defeated for frivolous or extraneous reasons. At the same time, if, for reasons beyond his control, he is

not able to convene the meeting, i.e., he is not able to cause the members to come together at the appointed time and place, he has necessarily to adjourn the meeting.

18. We are not able to accept the contention raised by the Respondents that a meeting convened for the purpose of considering the motion u/s 157 can be adjourned only for the reason of an act of God. According to us, whether the incident happened as a result of human activity or by act of God is not relevant. What is relevant is how does the incident affect the convening of the meeting and whether its effect is beyond human control. Whatever be the source of the incident which created the disability to convene the meeting, the only question relevant is whether the situation or disability can be brought under control by human action. It was contended by the Respondents that if a natural calamity like flood or earthquake occurs and thereby it has become impossible to convene the meeting, it would come within the purview of Sub-section (6). The very example quoted by the Respondents would clearly show that it is not the flood or earthquake that is the reason for the disability to convene the meeting, but, it is the effect of the earthquake or the flood. For example, suppose, before the time for convening the meeting, the Panchayat Office itself is destroyed in an explosion by human agency, the venue for the meeting will not be available. According to the learned Advocate General, the venue is equally important as the time. If that be so, it will be a humanly impossible task for the authorised officer to convene the meeting at the appointed place and at the appointed time. The same effect will be there even if the Panchayat Office is destroyed in fire by lightening, which is an act of God. When we put this question to the learned Advocate General, he answered that in both cases, if the venue is not available, whether it be by explosion by human agency or by lightening, the appointed officer will be obliged to adjourn the meeting for reasons beyond human control. This would make it clear that it is not the source of the incident that is relevant, but the nature of the situation arising out of the incident that is relevant. Learned Senior Counsel who is appearing on behalf of Respondents 4 to 7 submitted that if the Panchayat building is destroyed in an explosion by a human agency, the authorised officer is not obliged to adjourn the meeting under Sub-section (6). We have no hesitation to reject that contention in the light of the wording of Sub-section (6).

19. In the present case, the meeting was sought to be convened by the 2nd Respondent on 1st September 1998 at 11 a.m. at the Panchayat Office. To convene a meeting, the persons to whom notice had been issued are to come together at the appointed place at the appointed time. It has come out from the pleadings that the Petitioners who were to move the no confidence motion were disabled from coming to the place of meeting at the appointed time, due to the deliberate and effective obstruction created by opposite party. The situation was such that it was beyond the control of the 2nd Respondent to have the presence of the Petitioners at the meeting place at the appointed time so as to convene the meeting. If that be so, it is a clear case where the 2nd Respondent should

have adjourned the meeting for reasons beyond human control. He should not have proceeded with the meeting nor dissolved the same for the reason that there was no quorum.

20. If the contentions raised by the Respondents are accepted, then the effect would be that not only the Petitioners were disabled to move no confidence motion at the meeting on 1st September 1998 due to the effective obstruction created by the supporters of the opposite side, but also they are barred from moving no confidence motion for a period of six months from 1st September 1998. We are of the view that even if the 2nd Respondent has dissolved the meeting for the reason that there was no quorum, in the facts and circumstances of this case, Sub-section (13) cannot be applied. There was no quorum for the meeting only because those who were opposing the motion obstructed the entry of the Petitioners into the venue of the meeting. The reference to "not holding the meeting due to lack of quorum" in Sub-section (13) is in respect of a meeting held under normal circumstances, not in a case where by deliberate action of one group, the other group is obstructed from attending the meeting resulting in lack of quorum. We have, therefore, no hesitation to hold that the provisions of Sub-section (13) have no application to the facts of this case.

21. We cannot accept the contention raised by the learned Advocate General that the 2nd Respondent was not expected to take into consideration what happened outside the venue of the meeting. As early as on 21st August 1998, he was aware of the tense situation which had arisen in the locality in connection with the proposal of no confidence motion and he had made a request to the Superintendent of Police and Circle Inspector of Police for protection to conduct the meeting on 1st September 1998. Even on 31st August 1998, such a request was made by him. He himself came to the Panchayat Office under police protection. At 9.45 a.m. he had observed people having gathered in front of the Panchayat Office as well as on the western side of the Police Station. From the affidavit of the 9th Respondent, it has come out that an agitation was going on in front of the Panchayat Office in which about 2500 to 3000 persons belonging to opposite group were taking part. According to the Respondents 8 and 9, the police could not, in spite of best efforts, take the Petitioners to the Panchayat Office by 11 O' Clock after removing the human blockade. If an agitation of such magnitude had been going on outside the Panchayat Office, it is too much to believe that the second Respondent was unaware of the grave situation. In the affidavit of the 9th Respondent, a specific statement is made that at 10.45 a.m. as per the instructions issued by the R.D.O., a Police Constable was sent to the Panchayat Office for informing the 2nd Respondent that the Petitioners will be reaching Payyavur Grama Panchayat Office immediately after the removal of agitation and he was requested to wait till the members reach the Panchayat Office for conducting a meeting. This statement in the affidavit sworn to by the 9th Respondent, is not denied by the 2nd Respondent and it is relevant to note that learned Advocate General is appearing both for the 2nd Respondent and 9th Respondent. No contention was raised before us that the statement in the

affidavit of the 9th Respondent is incorrect and that no such information was given to the 2nd Respondent by the police. Even if such an information was not received by the 2nd Respondent, we are of the view that the 2nd Respondent could have assessed the situation from what was going on outside the Panchayat Office especially in the background of his earlier information that there would be effective obstruction for the conduct of the meeting on 1st September 1998. The fact that the 2nd Respondent had taken such information seriously, is clear from his making a request to the police for necessary protection for the conduct of the meeting. Under these circumstances, we are of the view that it was beyond the control of the 2nd Respondent to convene the meeting for the purpose of moving no confidence motion.

22. If we look at the issue from the larger perspective of healthy democratic tradition also, we are inclined to come to the same conclusion. It was by the 73rd amendment of the Constitution which came into force on 24th April, 1993, the first effective step was taken towards self-government at village level in its real sense, even though, the Panchayats have been functioning as the local authorities for the last about half a century. This amendment was brought in furtherance of the Directive Principles of State Policy enshrined in Article 40 of the Constitution. Importance of this amendment is clear from the provisions added to the Constitution as Part IX. Article 243G read with 11th Schedule to the Constitution would show the powers and responsibilities cast on the Panchayats as a result of the amendment. preparation of plans for economic development and social justice, implementation of schemes for economic development and social justice in relation to matters listed in the 11th Schedule are all to vest in the Panchayats. 29 subjects to be included in the 11th Schedule which take in very many important areas of public administration which were hitherto being dealt with at higher levels at a far away place. In this background, it is very important that strict democratic traditions are to be followed in the functioning of the Panchayats. Freedom of expression is one of the most important pillars of the edifice of democracy. Any tendency to gauge such freedom of expression would undermine the very foundation of democratic functioning of the Panchayats. If, members of the Panchayat are obstructed by force from exercising their right to attend the meeting of the Panchayat and/or to exercise their right to vote in the meeting, it would cut at the root of the functioning of the Panchayat. If the provisions of law are to be interpreted to sustain such undemocratic methods, it would certainly lead to failure of rule of law. Detailed provisions are made u/s 157 of the Kerala Panchayat Raj Act, 1994 as to how a motion for no confidence in the President and Vice President could be brought by members of the Panchayat. The provisions of Sub-sections (6) and (8) are specially enacted to facilitate consideration of the no confidence motion without any impediment whatsoever. When the Statute has taken so much care to protect the freedom of the members to move no confidence motion against the President of the Panchayat etc., it cannot be, for a moment countenanced that the entire safeguard provided by the Statute can be defeated by extraneous interference.

23. We therefore quash Ext. P-18 proceedings of the 2nd Respondent dated 1st September 1993 and give the following directions. The 2nd Respondent will proceed afresh with the no confidence motion received by him along with notice dated 18th August 1998 from the Petitioners. He will take immediate steps to convene a meeting as contemplated u/s 157 of the Kerala Panchayat Raj Act, 1994 as if he has received the notice of motion today, the date of this judgment. There will be a further direction to the Chief Secretary, Government of Kerala, who is representing the 1st Respondent in this proceeding, to take all necessary and effective steps to see that the meeting to be convened by the 2nd Respondent as per the above direction, takes place in accordance with law without any obstruction or other impediment from any quarters. It is for him to give necessary instructions to police authorities and other officers of the Government to see that the meeting is held in a democratic manner and in peaceful atmosphere. The Original Petition stands allowed as above.

Photo copies of this judgment will be issued to all parties today itself.