
(2015) 05 KL CK 0139
In the High Court Of Kerala
Case No : WP(C). No. 14335 of 2015 (N)

K.K. Suresh Babu

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Constitution of India, 1950 — Article 243, 243E
Kerala Panchayat Raj Act, 1994 — Section 149

Citation : (2015) 05 KL CK 0139

Hon'ble Judges : A.V. Ramakrishna Pillai, J

Bench : Single Bench

Advocate : Dinesh Mathew J. Muricken, for the Appellant; K.A. Sanjeetha, Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

A.V. Ramakrishna Pillai, J—Alleging that the election notified by the second respondent in Ward No. 10 of Kadungallur Grama Panchayat to be held on 26.5.2015 is against Article 243E of the Constitution of India and Section 149 of the Kerala Panchayat Raj Act, the petitioner has come up before this Court.

2. The petitioner who is a voter of the aforesaid ward of Kadungallur Grama Panchayat alleges that the general election to the Panchayats in Kerala including Kadungallur Grama Panchayat was held on 25.10.2010 and the first meeting of the members of the Kadungallur Grama Panchayat was held on 1.11.2010. A casual vacancy of panchayat member arose on 26.2.2015 due to the death of a sitting member who was declared elected from Ward No. 10. According to the petitioner, as per Article 243E of the Constitution of India and Section 149 of the Kerala Panchayat Raj Act, if a casual vacancy of the panchayat member arises, to fill the said casual vacancy, election need be conducted only if there is a period of more than 6 months period for the existing panchayat committee. According to the petitioner, if Article 243 of the Constitution of India and Section 149 of the Act is read together, the only interpretation which can be given to Section 149 of

the Act is that there must be six months time remaining for the elected panchayat member to discharge his duty as a panchayat member during the currency of existing panchayat committee. It is alleged that in this case, election is scheduled to be held on 26.5.2015 and the term of the present panchayat committee will expire on 31.10.2015 and hence, there is only five months period for the elected member for discharging his duties as panchayat member.

3. I have heard the learned counsel for the petitioner, the learned standing counsel for the Election Commission and the learned Government Pleader in the matter.

4. Mr. Murali Purushothaman, the learned standing counsel for the Election Commission invited my attention to a decision of this Court in Mohanan N.K. Vs. Kerala State Election Commission(2015) 2 KHC 829 : (2015) 2 KLJ 727 wherein the notification issued by the Election Commission for by-elections while little more than six months left for general elections was challenged. The learned Single Judge who disposed of the writ petition held that the statutory prescription of upper time limit of six months to have by-elections before general elections are to be given due weightage and though it may sound illogical in notifying the elections when little more than six months only are left for general elections, the commission was fully justified in issuing notification for election as there was a clear period of six months for general election. Therefore, if there is time gap of six months between the date of arising of casual vacancy and expiry of the date of the panchayat committee, the election can be held to fill the casual vacancy of the panchayat member. Therefore, this Court is of the view that there is little scope for interference in the impugned notification.

In the result, this writ petition fails and accordingly, dismissed.