

**(2010) 08 KL CK 0226**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) . No. 22452 of 2010 (F)**

M. Muhammed Basheer

APPELLANT

Vs

The Secretary to Government and Others

RESPONDENT

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**Date of Decision : 02-08-2010**

**Acts Referred:**

**Citation : (2010) 08 KL CK 0226**

**Hon'ble Judges : T.R. Ramachandran Nair, J**

**Bench : Single Bench**

**Advocate : M. Muhammed Shafi, for the Appellant; Murali Purushothaman, S.C., for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

T.R. Ramachandran Nair, J.—This Writ Petition is filed by the petitioner challenging the exclusion of Padinjarethara Grama Panchayat from Kalpetta Block Panchayat. As part of reorganisation of Block Panchayats, the Government published Exhibit P1 notification dated 5.6.2010. So far as the Wayanad District is concerned, Mananthavady, Sulthan Bathery, and Kalpetta were the three existing Block Panchayats and Padinjarethara Grama Panchayat was included in Kalpetta from 1994 onwards. The proposal in Exhibit P1 is to form a new Block Panchayat by name Meenangadi including Panamaram, Kaniyampatta, Kottathara, Muttill, Meenangadi and Poothadi Grama Panchayats. The Padinjarethara Grama Panchayat was not there in the proposal.

2. It is pointed out that Exhibit P1 was not circulated among the Block Panchayats and therefore none of the Local Self Government Institutions could express their views and members of the public also did not get any opportunity in the matter. The Kalpetta Block Panchayat on coming to know about the proposal passed a resolution dated 30.6.2010 making their suggestions in the matter. Exhibit P3 is the notification issued by the Director of Panchayats with regard to the fixing of the number of Wards in respect of various Block Panchayats wherein item No. 133 is Panamaram. In Exhibit P3, one of the

Panchayat included in Item No. 133 of Panamaram Block Panchayat is Padinjarethara Grama Panchayat. Exhibit P4 is the notice inviting objections and suggestions of delimitation of Wards in the Block Panchayats. It is only at that stage people came to know that Padinjarethara Grama Panchayat has been included in Panamaram Block Panchayat. Exhibit P5 is a press report containing the map of the proposed Panamaram Block Panchayat. It is produced to show that the new Block Panchayat is carved out from three other Block Panchayats. But, as far as Padinjarethara Grama Panchayat is concerned, it is not geographically closer to the new Panamaram Block Panchayat and is lying separately and is divided by a river called Cheriampuzha.

3. It is in these circumstances that the petitioner has filed this Writ Petition. The petitioner has also produced a communication from the Padinjarethara Grama Panchayat as Exhibit P7 showing that between 5.6.2010 to 30.6.2010 they have not received any notification inviting their objections and suggestions in the matter. Similarly, Exhibit P8 reply given by the Kalpetta Block Panchayat also shows that they have not received any communication from the Government or from the Directorate of Panchayats between 5.6.2010 and 30.6.2010.

4. It is mainly contended that in the absence of communication of the proposal and consultation with the Panchayats concerned, the final notification cannot be supported. It is pointed out that even though there was a proposal as per Exhibit P1, there should have been a fresh notification in the light of Section 4(2) of the Panchayat Raj Act, as the earlier proposal was changed.

5. Apart from the above, the grievances on merits of the matter raised by the petitioner is that the distance between the new Block Panchayat, Panamaram is 35 Kms from various parts of the Padinjarethara Grama Panchayat, whereas the distance between Padinjarethara Grama Panchayat and Kalapetta Block Panchayat is only 13 Kms. It is pointed out that so far as the people of Padinjarethara Grama Panchayat is concerned, they should have been retained in Kalpetta Block Panchayat alone and that will do justice to them, as otherwise in a district like Wayanad, it may not be easy for the people to reach the head office of the Block Panchayat by availing the limited transport facilities. It is pointed out that issuance of BPL certificates, housing projects like Indira Avas Yojana, EMS Housing Scheme, Projects for the welfare of SC and ST communities, Kudumbasree projects are the main welfare activities being carried out by the Block Panchayat apart from the routine duties like secondary education and administration of Taluk Hospitals.

6. The respondents have filed a counter affidavit. In paragraph 8 of the counter affidavit it is pointed out that as per the preliminary notification dated 5.6.2010, Padinjarethara Grama Panchayat was included in the Kalpetta Block Panchayat and it was on the basis of the views/opinions/objections raised during the time of hearing that the Padinjarethara Grama Panchayat was excluded from the Kalpetta Block Panchayat and included in the Panamaram Block Panchayat as per the final notification. It is further pointed out that the name of the Block

Panchayat was also changed from Meenangadi to Panamaram as per the final notification.

7. The learned Counsel for the petitioner pointed out that even from the averment in paragraph 8 of the counter affidavit, it is not discernible as to how the Government arrived at the final proposal to include Padinjarethara Grama Panchayat in the Panamaram Block Panchayat in the absence of a proposal and that too without proper publication of the same. Nobody obtained any opportunity to raise any objection in the matter also.

8. Relevant provision under the Panchayat Raj Act is Section 4(2) which provides that the Government may at the request of the Panchayat concerned or after consultation with the Panchayat and after previous publication of the proposal by notification (a) increase the area of any Village Panchayat by including within such Panchayat area any Village or group of Villages(b) diminish the area of any Village Panchayat or Block Panchayat by excluding from such Panchayat area any Village or group of Villages.

9. Therefore, the provision insists for previous publication and consultation with the Panchayat as pre-requirements, without which the Government cannot issue final notification. This Court had occasion to consider the nature of the consultation required for exercising the power u/s 4(2) in Anil Kumar Vs. State of Kerala, . The necessity for a consultation with the Panchayat by allowing them to place the matter itself in the Committee was pointed out in paragraph 6 of the judgment therein. It was held that "the use of the conjunction "and" in Section 4(2) of the Act makes it abundantly clear that consultation with the Panchayat and previous publication of the proposal are necessary before a decision to diminish the area of a Panchayat is taken by the Government on its proposal." Evidently, it was considered in the light of diminution of area of a Village Panchayat. Now the words "or Block Panchayat" have been included in Sub-sections 2(a) and 2(b). The principles laid down by this Court therein will apply to diminishing the area or increasing the area of a Block Panchayat also. Therefore, the requirement of consultation and previous publication of the proposal are mandatory before a final notification is issued.

10. The consultation with the Panchayat and Block Panchayat was therefore necessary before the final notification was issued to delete Padinjarethara Grama Panchayat from Kalpetta Block Panchayat. The same is totally absent here, resulting in violation of a mandatory requirement.

11. Herein as pointed out by the petitioner, geographically it is clear that Padinjarethara Grama Panchayat is having nearness to the Kalpetta Block Panchayat. The reorganization can only be on a rational basis and the major components required to be considered by the Government even going by the averment in the counter affidavit are the following, namely, rational basis apart from geographical and administrative reorganisation. Therefore, the matters pointed out by the petitioner are really important also. The learned Counsel for

the Panchayat also submitted that the Panchayat was never consulted and an affidavit has been filed by the 7th respondent, the Secretary of the Panchayat which confirms the argument raised by the learned Counsel for the petitioner. Apart from that the Government has no case that the proposal was communicated to the Padinjarethara Grama Panchayat and Kalpetta Block Panchayat for their views and suggestions in the matter. Evidently, a consultation as envisaged was not adhered to and as far as the changed proposal is concerned also, there is no previous publication. When a statute prescribes for particular mode of doing things, the said mode will have to be adhered to. Especially herein the publication of the proposal was made by the Government and when there was a change as such of the proposal, it could not have been dispensed with to the detriment of the Local Self Government Institutions concerned and the people of the locality who could not raise any objections in the matter.

12. In that view of the matter the Writ Petition is allowed. The inclusion of Padinjarethara Grama Panchayat in Panamaram Block Panchayat is therefore declared as illegal and the same will be retained in Kalpetta Block Panchayat. Accordingly there will be a direction to delimit the Wards also.

13. The learned Government Pleader submitted that herein a Block Panchayat is being carved out from out of the existing three Block Panchayats and therefore the Government may be given a fresh opportunity to initiate the process afresh before the elections are held. The judgment will not stand in the way of the Government initiating any proposal. But that could be done only in terms of the provisions u/s 4(2) of the Panchayat Raj Act and after making effective and meaningful consultation with the Village Panchayats concerned and the Block Panchayats concerned. No costs.