
(2010) 08 KL CK 0162

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21166 of 2010 (U)

Saji Joseph @ Sebastian M.J.

APPELLANT

Vs

State of Kerala and State De-Limitation Commission

RESPONDENT

Date of Decision : 04-08-2010

Acts Referred:

Constitution of India, 1950 — Article 124(2), 217(1), 221(1), 243, 243B(2)
Kerala Panchayat Raj Act, 1994 — Section 2, 3, 4, 4(1), 4(2)

Citation : (2010) 08 KL CK 0162

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

Bench : Single Bench

Advocate : P.V. Baby, for the Appellant; Murali Purushothaman, SC, Delimitation, for the Respondent

Final Decision : Allowed

Judgement

T.R. Ramachandran Nair, J.—In these writ petitions, the challenge is against the preliminary and final notifications dated 5.6.2010 2.7.2010, whereby certain Village Panchayats forming the area of Block Panchayats have been excluded and added to other Block Panchayats.

2. In W.P.(C) No. 21166/2010, the challenge is against the exclusion of Thalappalam Grama Panchayat from the existing Erattupetta Block Panchayat, in W.P.(C) No. 21382/2010 the exclusion of Thidanadu Grama Panchayat from the existing Erattupetta Block Panchayat, is under challenge. The above two Grama Panchayats are sought to be included in Lalam Block Panchayat. W.P.(C) No. 21254/2010 concerns the challenge against the delinking of Kottappady Grama Panchayat from Kothamangalam Block Panchayat and inclusion of the same in Koovappady Block Panchayat and W.P.(C) No. 21437/2010 concerns the challenge against deletion of Thirunavaya Grama Panchayat from Thirur Block Panchayat and the inclusion of the same in Kuttippuram Block Panchayat.

3. The preliminary notification issued by the Government is common to all Districts, which is produced as Ext.P1 in W.P.(C) No. 21166/2010. The same is

dated 5.6.2010. The notification concerns reorganisation of certain Block Panchayats in different districts. The objections of individuals, Local Self Government Institutions, etc. have been sought for, which had to be submitted within 15 days from the date of notification. The final notification is produced as Ext.P5 therein, which is dated 2.7.2010 which is also common one. The reconstitution of the Block Panchayats will be effective from 1.10.2010.

4. Heard Shri K. Ramakumar, learned Senior Counsel, Shri P.V. Baby, Shri Shaji Thomas and Shri Kaleeswaram Raj, learned Counsel appearing for the petitioners, Shri C.M. Suresh Babu, learned Govt. Pleader, Shri Murali Purushothaman, learned Standing Counsel for the Election Commission and Shri K. Jaju Babu, Shri M.R. Nandakumar and Shri P. Babu Kumar, learned Counsel appearing for the respective Panchayats.

5. One of the main grounds of attack about the proposal is want of consultation and its sufficiency with the Panchayats concerned, as provided u/s 4(2) of the Kerala Panchayat Raj Act, 1994 (for short "the Act"). Further, it is pointed out that the opportunity given to submit objections was not at all a sufficient one and none of the objections have been considered by the Government while issuing the final notification, in their correct perspective. It is also pointed out that in directing exclusion of certain Village Panchayats from the existing Block Panchayats and including them in other Block Panchayats, the Government has not adopted any rational basis and the geographical as well as other relevant criteria including lack of transport facility to reach the headquarters of the new Block Panchayats and the difficulties of the people to avail the benefits, have not at all been considered. It is also pointed out that no scientific study has been conducted by the Government in the whole exercise especially with regard to the geographical factors, the facilities available for the existing Block Panchayats and the administrative difficulties. It is also pointed out that the blatant disregard has been shown to the opinions of the respective Village Panchayats and Block Panchayats in taking such a drastic step and the objections have not been considered on its merits. It is further pointed out that the resultant actions are unreasonable, arbitrary and illegal and without any application of mind to the relevant aspects including population, geographical criteria and other important aspects.

6. Before going into the respective contentions of the parties, it is necessary to consider the provisions of the Constitution and the statutory provisions. In Part IX of the Constitution, Article 243(c) defines "intermediate level". It means a level between the village and district levels specified by the Governor of a State by public notification to be the intermediate level for the purpose of that Part. Section 4 of the Act gives power to the Government to constitute and specify the name and headquarters of Panchayats which is reproduced below:

4. Power of the Government to constitute and specify the name and headquarters of Panchayat.- (1) The Government shall, by notification in the Gazette, constitute with effect from such date as may be specified in the

notification,-

- (a) a Village Panchayat for each village or for group of villages;
- (b) a Block Panchayat at intermediate level; and
- (c) a District Panchayat for each District Panchayat area and specify the names and headquarters of such Panchayats.

(2) 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 or Block 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;
- (c) alter the headquarters of a Panchayat at any level; or
- (d) alter the name of a panchayat at "any level;

Provided that any alteration" extending or reducing the area of a Village Panchayat or Block Panchayat under Clause (a) or Clause (b) shall not be brought into force before the expiry of the term of the existing committee of that Panchayat.

(3) The Government may, after consultation with the Panchayat pass such orders as they deem fit as tot he disposal of any part of the property vested in a Village Panchayat or Block Panchayat which has ceased to exercise jurisdiction over any village or group of villages and the discharge of the liabilities of the Village Panchayat or Block Panchayat relating to such property or arising from such village including all matters connected therewith or incidental thereto.

There was no enabling provision to increase the area of a Block Panchayat or diminish its area and the like and an amendment was introduced as per the Kerala Panchayat Raj (Amendment) Ordinance 2010 which was published in the Kerala Gazette Extra-ordinary dated 17.5.2010. The words "or Block Panchayat" are thus introduced in Sections 4(2)(a) and 4(2)(b), its proviso and in Section 3 of the Act.

7. The first question that is to be considered is whether, for lack of consultation, the notifications Exts.P1 and P5 are invalid in law. Learned Counsel for the petitioners argued that Section 4(2) is mandatory and the proposal itself can be made by the Government only after consultation with the Panchayats. It is submitted that the exercises under Sub-sections (2)(a) and (2)(b) can be made by the Government at the request of the Panchayats concerned and in that case consultation and previous publication are not envisaged. When the Government initiates the proposal itself, it can be only after consultation with the Panchayats and after previous publication of the proposal by a notification and herein, even

without consulting any of the Panchayats, the Government issued Ext.P1 notification proposing to alter the areas and to amend the earlier notification of the year 1994 constituting the existing Block Panchayats. The decision of a learned Single Judge of this Court in Anil Kumar Vs. State of Kerala, , with regard to the requirement of mandatory nature of the consultation, is relied upon in this context. It is submitted that for consultation to be meaningful the views of the Panchayats and Block Panchayats are relevant.

8. Learned Govt. Pleader submitted that there is no mandatory requirement to consult the Panchayats and the provision is only directory. Herein, the proposals have been communicated to the respective Panchayats to inform their objections, if any, and therefore there was a proper consultation also.

9. The argument of the learned Counsel for the petitioners were supported by Shri K. Jaju Babu and Shri P. Babu Kumar, learned Counsel appearing for the Panchayats in W.P.(C) No. 21382/2010 and Shri M.R. Nandakumar appearing for the fourth respondent in W.P.(C) 21437/2010.

10. In Anil Kumar Vs. State of Kerala, , the scope of the very same provision was considered. Therein, the communications of the Government to bifurcate the Panchayats were addressed to the Presidents of different Panchayats and the final notification was under challenge, whereby the proposals were finalised. It was held that the Section insists for consultation with the Panchayats and the communications addressed to the Presidents of the Panchayats will not satisfy the method provided u/s 4(2)(b). It was held thus in para 6:

Section 4(2)(b) of the Act provides, inter alia, that the Government may, after consultation with the Panchayat and after previous publication of the proposal by notification, diminish the area of any village panchayat or Block Panchayat by excluding from such Panchayat area any village or group of villages. This means that the Panchayat has to be consulted before the area of the Village Panchayat is diminished. Panchayat, in so far as it is relevant in this case, means a Village Panchayat as defined in Section 2(xxv) of the Act and it shall have perpetual succession and a common seal and has the other necessary incidents. This is the effect of Section 5 of the Act. Section 7 provides for composition of a Village Panchayat. Having regard to the concept of "Panchayat" and the nature of its composition, the consultation that is required u/s 4 of the Act is a consultation with the Panchayat, thereby meaning that any proposal in the form of Ext.P1 ought to have been placed before the Panchayat, in its Committee, for consideration.

Further, in para 7 it was also laid down 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." In the light of the above, the argument of the learned Counsel for the petitioners will now be considered.

11. It is clear from Sub-sections (2)(a) to 2(d) of Section 4 that those indicate the final decision to be taken by the Government by increasing the area, diminishing the area, altering the headquarters of a Panchayat or altering the name of a Panchayat. The Block Panchayats have already been constituted u/s 4(1) at intermediate level by a notification dated 22.4.1994, which is now sought to be amended by the present notification dated 5.6.2010. Therefore, the same (Ext.P1) is the proposal. Does Section 4(2) of the Act requires a previous consultation for making the proposal itself? Since Section 4(2) evidently refers to the steps to be taken by the Government before taking a final decision and issuing a consequential notification, the argument that even before a proposal is made, there should be consultation, is beyond the scope of the section itself. What is mentioned in Section 4(2) is that in a case where action is not being taken at the request of the Panchayat, the Government may, after consultation with the Panchayat and after previous publication of the proposal, issue the final notification. Therefore, two elements are to be satisfied, ie. "consultation with the Panchayat and previous publication of the proposal." Herein, Ext.P1 is the proposal. Consultation and previous publication being two elements of the statutory mode to be complied with, before a final notification is issued, it cannot be said that consultation should precede even the publication of the proposal.

12. Even though learned Counsel for the petitioners relied upon paragraphs 6 and 7 of the judgment in Anil Kumar's case 2005 (3) KLT 355, in support of the plea, I am afraid, a close reading of the dictum shows that it is not to the effect that even before a proposal is published, there should be consultation. This is clear from the finding in para 7 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." The word "decision" therein indicates the final decision leading to the notification and not the notification indicating the proposal. The ultimate decision to be taken by the Government is on its proposal, before which consultation has to be made with the Panchayats.

13. Evidently, consultation u/s 4(2) is a procedural requirement which is a pre condition for the validity of the subsequent decision. It is well settled that if the statute requires a particular thing to be done in a particular manner, then it shall be done in that manner or not at all. This also indicates that the provision is mandatory.

14. Even though learned Govt. Pleader submitted that the consultation with the Panchayat is not mandatory, evidently, the said contention cannot be accepted in the light of the dictum laid down in the above decision itself. It was specifically held in para 6 that "the Panchayat has to be consulted before the area of the Village Panchayat is diminished." When the words "or Block Panchayat" are introduced in the amendment, the same yardstick will apply to a Block Panchayat also. Further, the said aspect is covered by a decision of the Apex Court in The

State of Maharashtra and Another Vs. The Jalgaon Municipal Council and Others, , wherein, considering a similar provision of Section 6 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965, it was held in para 38 that "consultation with the Municipal Council is mandatory." Therein, the conversion was of a Municipal Council to a Municipal Corporation. It was held in para 39 further that, "however, no provision of law has been brought to our notice which requires that even a proposal for constitution of a Municipal Corporation cannot be published without consultation. Consultation must take place at any one stage before finalisation of the proposal." Therefore, consultation with the Panchayat is mandatory.

15. Herein, a dispute was also raised whether actually the Panchayats were consulted. What is communicated to the respective Village Panchayats and Block Panchayats is the copy of Ext.P1. The averments in the additional counter affidavit show that Ext.P1 was published in the Kerala Gazette Extra-ordinary No. 1282 dated 5.6.2010. The Government gave directions to the Commissioner for Rural Development to take immediate steps to make available the copies of the Government Notification to all Block Panchayats wherein a change is proposed in the constituent Grama Panchayats in their jurisdiction and to all Grama Panchayats concerned and get the decisions of the concerned local bodies conveyed to the Government within the stipulated time. By letter No. 5060/DP4/09/CRD dated 9.6.2010 of the Commissioner for Rural Development, copies of the notification were e-mailed to the Secretaries of all Block Panchayats and instructed to bring the notification to the notice of the Block Panchayats and the Grama Panchayats in the Block Panchayat area where change is proposed in the constituent Grama Panchayat of the Block Panchayat and to give the objections/suggestions of the Panchayat to Local Self Government (EM) Department by 15.6.2010. Copy of the letter dated 9.6.2010 and the notification were also sent by post to all Block Panchayat Secretaries on 10.6.2010 and the same were published in the website also. It is further contended that for the last 3 - 4 years communications are being made by the Government/Head of the Departments and the Local Self Government Institutions through e-mail which is effective. It is further pointed out that all decisions/opinions conveyed by the Local Self Government Institutions concerned upto the date of hearing (25.6.2010) were taken into consideration by the Government also. The objections were disposed of as per G.O.(Ms) No. 1382010/LSGD dated 1.7.2010 and the final notification was issued on 2.7.2010 which was notified as S.R.O. No. 659/2010. It is evident from the same that the Government has forwarded the proposal to the Panchayats concerned for their opinions and suggestions and many of the Panchayats have forwarded their resolutions, of course, objecting to the same. Personal hearing was also extended, not individually but collectively on 25.6.2010.

16. In the light of the above steps taken by the Government, the argument that there was no consultation cannot be accepted. Of course, the further question is whether there was a meaningful or effective consultation, since the term

"consultation" in Section 4(2) is a pre requirement for a final notification. It is well settled that the Court can examine whether there was sufficient consultation.

17. The ambit and scope of the word "consultation" has been the subject matter of interpretation by the Apex Court in various decisions. My attention was also invited to a decision of this Court in *Ajith v. State of Kerala* 2007 (2) KLT 1044.

18. The question was elaborately considered by the Supreme Court in *Supreme Court Advocates-on-Record Association and another Vs. Union of India*, , while interpreting Articles 124(2), 217(1), and 221(1) of the Constitution of India. The question arose in connection with the various principles governing the appointment of Judges in the Supreme Court and High Court and transfer of Judges/Chief Justices of High Courts. The dictum laid down by the Madras High Court in *R. Pushpam and Anr. v. State of Madras* AIR 1953 Mad 392 while considering the scope of the term "after consulting the Municipal Council" under the Madras District Municipalities Act, 1920, was approvingly referred to in para 124 of the judgment, which is reproduced below:

124. In Madras District Municipalities Act, 1920, Section 3 read that "for the purpose of election of Councillors to a Municipal Council, the Local Government "after consulting the Municipal Council" may by notification divide the Municipality into wards...." K. Subha Rao, J. (as the learned Chief Justice of this Court then was) who then adorned the Bench of the Madras High Court interpreted the word "consult" in *R. Pushpam v. State of Madras* as under:

It is clear from the aforesaid observations that the Court will have to scrutinise in each case whether the requisite consultation has taken place, having regard to the substance of the events. The word "consult" implies a conference of two or more persons or an impact of two or more minds in respect of a topic in order to enable them to evolve a correct, or at least, a satisfactory solution. Such a consultation may take place at a conference table or through correspondence. The form is not material but the substance is important. It is necessary that the consultation shall be directed to the essential points and to the core of the subject involved in the discussions. The consultation must enable the consulter to consider the pros and cons of the question before coming to a decision. A person consults another to be elucidated on the subject-matter of the consultation. A consultation may be between an uninformed person and an expert or between two experts. A patient consults a doctor; a client consults his lawyer; two lawyers or two doctors may hold consultations between themselves. In either case the final decision is with the consultor, but he will not generally ignore the advice except for good reasons. So too in the case of a public authority. Many instances may be found in statutes when an authority entrusted with a duty is directed to perform the same in consultation with another authority which is qualified to give advice in respect of that duty. It is true that the final order is made and the ultimate responsibility rests with the former authority. But it will not, and cannot be, a performance of duty if no consultation is made, and even if made, is only in formal compliance with the provisions. In either case the order

is not made in compliance with the provisions of the Act.

It is evident that a formal compliance of the provision regarding consultation is not that is indicated in the provision. It was held that "the form is not material but the substance is important. It is necessary that the consultation shall be directed to the essential points and to the core of the subject involved in the discussions." These are important principles to be applied while considering the sufficiency of the consultation initiated by the Government herein also. Keeping in mind the above principles, the question whether the Government has properly consulted the Panchayats and has considered the relevant materials projected by them in effecting diminution of the area of certain Block Panchayats, arises for consideration.

19. The facts of the cases point out the following scenario. In W.P.(C) No. 21166/2010, the Grama Panchayat concerned is Thalappalam Grama Panchayat which was included in Erattupetta Block Panchayat from 1994, with its Head Office at Aruvithara. By Ext.P1, Thalappalam Grama Panchayat is sought to be excluded from Erattupetta Block Panchayat and to be included in Lalam Block Panchayat. It is pointed out that the population figure in Erattupetta Block panchayat, will come down to 94632 and the same will increase in Lalam Block Panchayat to 136291. Erattupetta Block Panchayat has passed a resolution as per Ext.P2 opposing the same. Apart from Thalappalam Grama Panchayat, another Panchayat, viz. Thidanadu Grama Panchayat is also sought to be excluded from Erattupetta Block Panchayat, which is the subject matter of W.P. (C) No. 21382/2010. Ext.P3 is the resolution passed by the Thalappalam Grama Panchayat opposing the move. The headquarters of Erattupetta Block Panchayat is at Aruvithara and the distance from Thalappalam to Aruvithara is only 4 kms. The headquarters of Lalam Block Panchayat is Anthinadu which will be more than 15 kms. from Thalappalam. From certain areas, viz. Kalathukadavu, the distance will be 25 kms., whereas the distance to Erattupetta from there is only 3 kms. Ext.P4 is the representation submitted by the Thalappalam Grama Panchayat, wherein the distance from the various wards of the Thalappalam Grama Panchayat to Erattupetta Block Panchayat and to Lalam Block Panchayat, have been given in a table. The shortest will be 8 kms. from certain wards, if it is added to Lalam Block Panchayat and the maximum distance from certain wards will be 25 kms. If it is retained in Erattupetta Block Panchayat, the shortest will be 1 = kms. and the maximum will be 7 kms. It is pointed out further that the people from Thalappalam will have to travel through Erattupetta and Pala to reach Anthinadu which is the Pala - Thodupuzha road, by catching different buses. The areas are really of rural character and it will create lot of difficulties to the people who want to get the benefits from the Block Panchayat. In the counter affidavit filed by the Secretary of the Erattupetta Block Panchayat, these averments have been affirmed. It is pointed out that the boundary of Thalappalam Panchayat is just 3kms. from the headquarters of Erattupetta Block Panchayat and they will have to travel more than 24 kms. to reach the headquarters of Lalam Block Panchayat and there is no direct bus from

Thalappalam to Anthinadu where the headquarters of Lalam Block Panchayat is situated and people will have to change three buses to reach Anthinadu.

20. In W.P.(C) No. 21382/2010, the advantages of retaining Thidanadu Grama Panchayat in Erattupetta Block Panchayat and the disadvantages, if it is included in Lalam Block Panchayat, have been stated in detail, which is supported by the respective Panchayats in the counter affidavits filed by them. It is stated that the said Grama Panchayat is lying just adjacent to the Erattupetta Block Panchayat and the distance between the boundary of Thidanadu Grama Panchayat and Erattupetta Block Panchayat office is less than 1 km. Even before the formation of the Block Panchayats, Thidanadu Panchayat was included in the Erattupetta Block Development Council. It is pointed out that the head office of Lalam Block Panchayat will be of a distance of more than 22 kms., whereas the distance from certain wards of Thidanadu Grama Panchayat to the head office of Erattupetta Block Panchayat is less than 1 km. These two Block Panchayats are in different Assembly Constituencies also. The longest distance from Thidanadu Grama Panchayat to reach the headquarters of Lalam Block Panchayat will be 30 - 35 kms. and even the longest distance from certain wards of the Panchayat to Erattupetta will be only 10 kms. The people will have to go to Erattupetta and then to Pala to go to the office of Lalam Block Panchayat which is situated in Pala - Thodupuzha road.

21. In the counter affidavit filed in W.P.(C) No. 21382/2010 by the 4th respondent Panchayat, the above facts have been affirmed. It is pointed out that Thidanadu Grama Panchayat is not geographically near to or related to the other seven Grama Panchayats included Lalam Block Panchayat. The counter affidavit filed on behalf of Erattupetta Block Panchayat also affirms the averments made by the petitioner in the writ petition. It is stated that the people from Thidanadu Grama Panchayat need only travel 1 km. to reach the headquarters of Erattupetta Grama Panchayat and now they will have to travel more than 25 kms. to reach the headquarters of Lalam Block Panchayat and there is no direct bus from Thidanadu to Anthinadu where the headquarters of Lalam Block Panchayat is situated. People will have to change three buses to reach Anthinadu and the only alternative is to reach Pala town by travelling through various places and then catch a bus from there to Anthinadu.

22. In W.P.(C) No. 21437/2010, the exclusion of Thirunavaya Grama Panchayat from Thirur Block Panchayat is opposed on similar grounds, it is pointed out that Thirunavaya Block Panchayat has passed a resolution Ext.P3, opposing the move and the Kuttippuram Block Panchayat has also passed a resolution as per Ext.P4 opposing the same. Ext.P5 is a further representation submitted by the President of Kuttippuram Block Panchayat opposing the move. It is pointed out that from Thirunavaya to Tirur Block Panchayat office, people need cover only 4 kms., but they will have to travel at least 20 kms. to reach the headquarters of Kuttippuram Block Panchayat. The average distance from any part of Thirunavaya to the headquarters of Tirur will be 10 kms. People will have to

change at least three buses to reach the head office of Kuttippuram Block Panchayat. None of the organisations within Thirunavaya Grama Panchayat have requested for any such deletion also. The number of Grama Panchayats in Tirur Block Panchayat will be reduced to 5 and that of the Kuttippuram Block Panchayat will increase to 8. Various important Government offices are in Tirur town and the people living below poverty line will have to face acute hardship also. These averments are supported by the resolution passed by the Kuttippuram Block Panchayat also which is produced as Ext.P4 and Ext.P2 forwarded by the President of the Thirunavaya Grama Panchayat. The 4th respondent, Thirunavaya Grama Panchayat in its counter affidavit, has produced the resolution of the Committee as Ext.R4(a), opposing the unscientific move to delete it from Tirur Block Panchayat and include in Kuttippuram Block Panchayat.

23. In W.P.(C) No. 21254/2010, the panchayat concerned is Kottappady Grama Panchayat which is included in Kothamangalam Block Panchayat already and now it is sought to be added to Koovappady Block Panchayat. It is pointed out that the headquarters of Kothamangalam Block Panchayat is convenient to the people of the Panchayat as it is so near, by about 5 kms. and various offices, hospitals, banks, etc. are situated in Kothamangalam. The resolution passed by Kottappady Grama Panchayat has been produced as Ext.P5, whereby they have opposed the move. It is pointed out therein that geographically and due to other factors it has to be retained in Kothamangalam Block Panchayat and its proposed inclusion in Koovappady Block Panchayat will create acute hardships to the Panchayat and the people. In Ext.P7 resolution by the Kothamangalam Block Panchayat, they have opposed the move to exclude the Kottappady Grama Panchayat. The Koovappady Block Panchayat to which Kottappady Grama Panchayat is sought to be added, also passed a resolution as per Ext.P8 opposing the move. It is pointed out that for administrative convenience and for the convenience of the public, Kottappady Grama Panchayat will have to be retained in Kothamangalam Block Panchayat itself, as otherwise it will cause acute hardship to the people.

24. The notification Ext.P1 does not give any details with regard to the basis which was adopted by the Government in the matter. In the counter affidavit, it is pointed out that the move was initiated based on a report submitted by the Commissioner for Rural Development who submitted a detailed proposal in regard to the various Block Panchayats wherein the reorganisation of the Block Panchayats herein were also suggested. Learned Govt. Pleader placed before me for perusal copy of the report submitted to the Government along with a letter dated 16.7.2009. It is mentioned therein that since certain Grama Panchayats have been converted as Municipalities and certain Grama Panchayats have been added to some Municipalities, it necessitated the reconstitution of certain Block Panchayats and therefore reorganisation of certain other Grama Panchayats also were considered. Certain reasons have been pointed out for not initiating any proposal for reorganising all the Block Panchayats, based on population, area and number of Grama Panchayats. Importantly, it is mentioned in para 2 that based on the area, population and number of Grama Panchayats, it may not be possible

to refix the geographical boundary of the Block Panchayats wherein the Block Panchayats have got office buildings and other infrastructural facilities. It is also mentioned that "there will be complaints if the reorganisation will cause difficulties for the people of the Grama Panchayats to reach the headquarters of the Block Panchayats." Even though the report contains the proposal in the draft form as now published as Ext.P1, the basic datas collected to justify the exclusion from the existing Block Panchayats and inclusion in different Block Panchayats, are not detailed in the report. It is not clear whether the difficulties of the people of the existing Grama Panchayats to reach the headquarters of the new Block Panchayat were considered at all while making this proposal. A reference to the notification Ext.P1 also shows that such informations as to why certain Panchayats are being excluded and added to other Block Panchayats, have not been detailed therein. The names of Block Panchayats in each district, names of Grama Panchayats to be added to them and the headquarters alone are mentioned in Ext.P1 also.

25. When we consider the sufficiency of the consultation initiated by the Government herein, in the light of the principles evolved by the Apex Court with regard to the process of consultation, it is evident that the details are lacking in Ext.P1 to initiate a meaningful consultation with the Panchayats concerned. They are not told as to the reasons which prompted the Government to exclude them from the existing Block Panchayats and include in other Block Panchayats. Thus, even though in the counter affidavit it is mentioned that there was a report, the same obviously also lacks in the essential details. Nothing further is communicated to the Panchayats to engage them in a meaningful consultation. The time schedule is also worthy to be noticed. The preliminary notification is dated 5.6.2010; it was forwarded by letter dated 9.6.2010, inviting suggestions/opinions to reach the Government by 15.6.2010 and hearing was conducted on 25.6.2010 on the entire proposals. On 1.7.2010 an order was passed on the objections received and the final notification was issued on 2.7.2010. It was really done in a hasty manner. It is explained by the Government in the counter affidavit that the elections will have to be conducted immediately to constitute new Block Panchayats by 1.10.2010 and therefore the above time schedule was followed.

26. The counter affidavit in para 3, while adverting to the reasons for reorganisation of Block Panchayats, states as follows:

The Block Panchayats in the State were organised long time back and their size is uneven with varying number of Village Panchayats in each jurisdiction. Therefore, Government decided to reorganise them more rationally. In this context Government gave directions to the Commissioner for Rural Development to submit a detailed proposal for the geographic and administrative reorganisation of the Block Panchayats in the State in such a manner that the total number of Block Panchayats will remain at 152. Therefore, the essential question is whether the reorganisation is on a rational basis and whether the

same has resulted in geographic and administrative reorganisation, even going by the basis mentioned as above. There cannot be any dispute that the Village Panchayats are the Local Self Government Institutions at the lowest level catering to the needs of villagers who are living in rural areas and who have got different avocations for their life. The objections raised by the respective Panchayats in this regard with regard to the difficulties which may have to be experienced by the people to reach the headquarters of the Block Panchayats to which they are sought to be included, cannot be said to be irrelevant at all. They are the most important and relevant factors in the light of the fact that the village Panchayats and Block Panchayats are to operate at the intermediate as well as village level.

27. In fact, these units are organised in the light of the Directive principle contained in Article 40 of the Constitution which is reproduced below:

40. Organisation of village panchayats.- The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

The object and reasons for the 74th amendment of the Constitution also points out to the above aspect. The Panchayats at intermediate level have been organised in terms of Articles 243(c) and 243C. In fact, going by Article 243B(2), Panchayats at the intermediate level will not be constituted in a State having a population not exceeding twenty lakhs. Therefore, there cannot be any doubt that the Village Panchayats, Block Panchayats and District Panchayats cater to the needs of the people as different units which will have to function effectively and to their satisfaction. The organisation of Village Panchayats and Block Panchayats therefore should be done in a rational basis which will have an administrative set up considering the geographical and administrative convenience also. That alone will suit the needs of the public. The Apex Court has laid emphasis on this aspect while considering a similar issue in *P. Ram Reddy and Others Vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others*, . Of course, the challenge against the U.P. Panchayat Raj Act, 1947 and the various provisions therein and the delimitation process initiated was the subject matter of consideration. But while considering the importance of forming Village Panchayats on a rational basis and on various other aspects, it was held thus in para 33:

The need is to organise viable social, political, economic and administrative units of optimum size at the lowest level on a rational basis keeping in mind the size of population, the needs of social and economic development, availability of resources, transport and communication facilities, convenience of administration and other relevant factors.

Again, in para 52, various principles were reiterated to remind the State Government of its responsibilities which is in the following terms:

The State Government should bear it in mind that if and when the next

regrouping of the villages and redetermination of the panchayat areas is undertaken, the authorities will have to give sufficient opportunity to the people of the areas concerned for raising the objections. This is with a view to remove their grievances, if any, with regard to the difficulties, inconveniences and hardships, likely neglect of their interests, domination of certain sections and forces, remoteness of the seat of administration, want of proper transport and communication facilities, etc.

Importantly, the Apex Court emphasised the various relevant factors including the remoteness of the seat of administration, want of proper transport and communication facilities, etc. in the said paragraph. This principle is of general application, evidently. Therefore, it is the responsibility of the Government to have a rational basis for forming the village panchayats and block panchayats considering these factors. The convenience of the administration and transport and communication facilities and the remoteness of the seat of administration are therefore, quite important for the people who are beneficiaries of the system of village and block panchayats. Mere formation of a Block Panchayat alone is not sufficient. There should be an integrated unit consisting of different Village Panchayats which can effectively communicate with the Block Panchayat in its headquarters and in turn people of such Village Panchayats also will have to get maximum opportunity to reach the seat of administration and remoteness of the seat of administration thus will lead to an irrational exercise. The re-organisation, if done ignoring these factors will result in an arbitrary exercise and without any application of mind to the relevant aspects.

28. Evidently, these principles, if applied to the fact situation herein, it cannot be said that the Government has kept in mind such principles in these cases thus resulting in an arbitrary and illegal exercise in finalising the proposals.

29. As already pointed out, as the principle of consultation itself indicates the communication of materials for a proper discussion between the two parties, the absence of the same herein, has really prejudiced the Panchayats and the people, evidently. Take for example, a Block Panchayat having six Village Panchayats, out of which one or two are excluded so as to include in another Block Panchayat. Why the Government has picked and chosen them for such exclusion and the reason as to why the other Grama Panchayats included in the existing Block Panchayat which may be lying nearer to the other proposed Block Panchayats, are not thought of, is an important question. The datas are absent in Ext.P1 and no reasons are forthcoming also. There is no case that such datas have been communicated to the Panchayats also.

30. Learned Govt. Pleader submitted that now-a-days transportation facilities may be available and therefore such a contention cannot be accepted. But in the light of the fact that the respective Grama Panchayats and Block Panchayats have pointed out the difficulties of the people for getting easy transport facilities and the distance of the said Grama Panchayats to reach the headquarters of the Block Panchayats, it cannot be said that the said contentions are totally

irrelevant. There is nothing to show that the Government have examined them in detail before taking a final decision. The time lag between 25.6.2010, viz. the date of hearing and 1.7.2010, viz. the order passed by the Government rejecting the objections, is only 5 days. Evidently, a detailed exercise was not undertaken by the Government in the matter and it will not justify the final notification as it can only be termed as without any application of mind.

31. It is well settled that the action of the Government should be fair, not tainted by arbitrariness, or malafides and there should be proper application of mind to arrive at such decisions. That the exclusion of such areas and inclusion of the same in other Block Panchayats results in adverse civil consequences, is a well settled principle which has been clearly stated in Pradhan Singh Kshettra Samiti's case (1995) Supp 2 SCC 305, in para 51 that "the change in the areas of the local bodies results in civil consequences." In fact the words "civil consequences" will include infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages and everything that affects a citizen in his civil life, is well settled by various decision of the Apex Court. See Canara Bank and Others Vs. Shri Debasis Das and Others, .

32. Any decision of the Government thus tainted by arbitrariness and non application of mind will be invalid in law. It is now well settled by various decisions of the Apex Court and this Court that unreasonableness, irrationality and illegality will vitiate the decisions of the Government. Thus, if this Court finds that the decision arrived at is per-se arbitrary and without application of mind, the same will fall to the ground.

33. Coming to the merits of the individual cases as disclosed during the hearing, it can be seen that in certain cases the Government has accepted the views of the Panchayats by amending and dropping the proposals, but in other cases like those considered herein, the proposals have been retained in spite of the fact that relevant materials have been pointed out in the resolutions taken by the respective Panchayats. What were the materials which led to the proposal and the final decision, except the report of the Commissioner for Rural Development, are not disclosed in the counter affidavits, while disputing the contentions of the petitioners. In fact, the Government Order dated 1.7.2010 which was produced for perusal by the learned Govt. Pleader, rejects the objections by use of general terms stating that they are not acceptable. Therein also the objections of each Panchayat have not been discussed and reasons have not been shown separately. Thus, the objections raised by the individual grama panchayats and Block Panchayats have not been dealt properly in this order also.

34. W.P.(C) No. 21382/2010 relates to Thidanadu Grama Panchayat. As already noticed, the said Grama Panchayat as well as Erattupetta Block Panchayat have raised strong objections which fact has been reiterated in the respective counter affidavits, supporting the pleas of the petitioner. In the light of the principles laid down by the Apex Court in Pradhan Singh Kshettra Samiti's case (1995) Supp 2

SCC 305, the seat of administration of the Block Panchayat, transportation and communication facilities and other things are quite important. Evidently, the area is so near to the existing Block Panchayat, viz. Erattupetta, whereas to reach Lalam Block Panchayat, people will have to travel through Erattupetta to reach Pala and then take buses passing through Pala - Thodupuzha route to reach Anthinadu which is the headquarters of Lalam Block Panchayat. The counter affidavit of the Government in para 8 admits that the headquarters of Lalam Block Panchayat is Pravithanam which is approximately 20 kms. from the boundary of Thidanadu Grama Panchayat. But it is further stated that the inhabitants of Thidanadu Grama Panchayat will not have any great difficulty to reach the headquarters of Lalam Block Panchayat and enough transportation facilities are also available. These averments cannot go together at all. Since the idea of organising Village Panchayats and Block Panchayats is to cater to the needs of the people without least difficulty and hardship to them, these are relevant considerations. The assertion in para 3 of the counter affidavit that the Government decided to reorganise the Grama Panchayats more rationally for a geographic and administrative reorganisation of the Block Panchayats, is clearly given a go-bye when the final notification is issued. Merely because Erattupetta Block Panchayat is having 9 Grama Panchayats, the same cannot be reduced without any rational basis and why the Grama Panchayats which may be lying near to Lalam Block Panchayat, have not been considered for inclusion therein, is also not explained in the counter affidavit. The objection raised by Erattupetta Block Panchayat and Thidanadu Grama Panchayat were on sound basis and a proper, effective and meaningful consultation ought to have been initiated by the Government before taking such a drastic step. It can be safely concluded that there had not been any sufficient and meaningful consultation in the matter. Thus, the final notification issued is tainted by arbitrariness and non application of mind. The relevant facts and relevant materials have not been considered and a decision has been taken without any sound basis. The same vitiates the notification Ext.P5.

35. The same reasons will be applicable in W.P.(C) No. 21166/2010 also with regard to the deletion of Thalappalam Grama Panchayat from Erattupetta Block Panchayat. The reasons shown by Thalappalam Grama Panchayat and Erattupetta Block Panchayat to oppose the move are germane. Those factors cannot be said to be irrelevant at all, as held already. The fact that people will have to travel more than 20 kms. to reach the headquarters of the new Block Panchayat, whereas presently they need travel only a minimum distance of 2 kms. in certain areas and a maximum of 7 kms. from certain other wards, indicates the difficulties which they may experience if it is added to Lalam Block Panchayat. As explained in the writ petition, they will have to travel through Erattupetta and Pala and travel through Pala - Thodupuzha road to reach Anthinadu. The exercise done does not satisfy the principles laid down by the Apex Court in Pradhan Singh Kshettra Samiti's case (1995) Supp 2 SCC 305, and there is total non application of mind to the relevant circumstances and total

absence of materials also in support of the proposal as well as the final notification. The consultation initiated by forwarding the proposal, cannot be said to be sufficient and meaningful and therefore the final notification is clearly vitiated.

36. From the pleadings in W.P.(C) No. 21437/2010, it is clear that Thirur Block Panchayat is most convenient for the people from Thirunavaya and the Grama Panchayat has opposed the inclusion in Kuttippuram Block Panchayat. Kuttippuram Block Panchayat has also opposed the proposed addition of Thirunavaya Grama Panchayat to the said Block Panchayat. The objection is on various grounds including the distance to be travelled, administrative inconvenience and the lack of geographical integrity. Evidently, these are considerations which are relevant. When the existing Block Panchayat is able to cater to the needs of the people and is able to render assistance in a more effective manner, and the people are deprived of the said convenient facilities, it should be supported by cogent and sound reasons which are absent here. Here also, the counter affidavit does not indicate the reasons which prompted the finalisation of the proposal. The action therefore is clearly vitiated for the reasons which have already been discussed and which are in violation of the principles stated by the Apex Court in Pradhan Singh Kshettra Samiti's case (1995) Supp 2 SCC 305. Irrelevant considerations and non application of mind to the relevant aspects will vitiate the decision itself.

37. In W.P.(C) No. 21254/2010, the exclusion of Kottappady Grama Panchayat from Kothamangalam Block Panchayat is seriously opposed by Kottappady Grama Panchayat as well as Koovappady Block Panchayat to which Kottappady Grama Panchayat is sought to be added, as well as Kothamangalam Block Panchayat. They have also stated in detail the administrative convenience of retaining it in Kothamangalam and the difficulties which may have to be faced by the people if it is added to Koovappady Block Panchayat. The consequences which will have to be suffered by the people if the exclusion is upheld, are evident. The relevant principles as discussed above, will not justify the decision. Herein also, the respective materials with regard to each of the existing Grama Panchayats in Kothamangalam Block Panchayat and the reason as to why Kottappady Grama Panchayat was picked up to be added to Koovappady Block Panchayat, are not evident from the documents and pleadings. The notification, as already noticed, is lacking in details. It is not due to any organisation of Municipalities or Municipal Corporations also that warranted a reorganisation of the Block Panchayats herein. The report of the Commissioner for Rural Development also does not throw any light on these aspects, as already noticed. Hence, the decision can only be termed as arbitrary and without any application of mind.

38. Therefore, as far as these cases are concerned, clearly it is a case of arbitrary exercise wherein certain Grama Panchayats have been picked up and chosen for exclusion from the existing Block Panchayats and sought to be

included in other Block Panchayats. The same is without considering the loss of all round facilities for the people who are residing in the Village Panchayats close to the headquarters of the existing Block Panchayats and the difficulties they may have to experience if they are included in a far distant new Block Panchayat. There is no scientific study or consideration of geographic and administrative convenience preceding the reorganisation. The facts pointed out leads only to one conclusion that the assertion that the Government wanted to reorganise them on a rational basis, is clearly unsupportable. No rational basis has been projected or shown through and the materials are lacking in support of the same. Even though Section 4(2) of the Act confers power to reorganise Block Panchayats in view of the recent amendment, evidently such power cannot be exercised arbitrarily.

39. Therefore, the writ petitions are allowed. The impugned notifications are quashed. The respective Grama Panchayats will be retained in the Block Panchayats to which they were included, by the notification dated 22.4.1994. No costs.