

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR**

Thursday, the 30th day of April 2026 / 10th Vaisakha, 1948
WP(C) NO. 15761 OF 2026(U)

PETITIONERS:

1. ABINS KARIM AGED 45 YEARS RESIDING AT 585(5/506) CHRLIKKUZHIYIL 8, MULAVOOR, MUVATTUPUZHA, ERNAKULAM PRESENT ADDRESS C/O MUHAMMED KHADER KAREEM, MULATTU HOUSE, MULAVOOR, MUVATTUPUZHA, ERNAKULAM , PIN - 686673
2. ANVAR SADATH K.M AGED 50 YEARS RESIDING AT 31/267, ABHILASH, KOYILANDY KOZHIKODE, PIN - 673305.

RESPONDENTS:

1. THE ELECTION COMMISSION OF INDIA NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI REPRESENTED BY CHIEF ELECTION COMMISSIONER OF INDIA,, PIN - 110001
2. THE CHIEF ELECTION COMMISSIONER OF INDIA ELECTION COMMISSION OF INDIA, NIRVACHAN SADAN, ASHOKA ROAD, NEW DELHI, PIN - , PIN - 110001
3. THE CHIEF ELECTORAL OFFICER ELECTION DEPARTMENT, KERALA LEGISLATIVE COMPLEX, VIKAS BHAVAN P.O., THIRUVANANTHAPURAM DISTRICT , PIN - 695033
4. THE STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY ELECTION DEPARTMENT, KERALA LEGISLATIVE COMPLEX, VIKAS BHAVAN P.O., THIRUVANANTHAPURAM , PIN - 695033
5. THE STATE ELECTION COMMISSION JANAHITHAM, TC-27/6(2), VIKAS BHAVAN P.O., THIRUVANANTHAPURAM, KERALA, REPRESENTED BY ITS STATE ELECTION COMMISSIONER, PIN - 695033
6. THE DISTRICT ELECTION OFFICER COLLECTORATE, KAKKANAD, ERNAKULAM - , PIN - 682030
7. THE DISTRICT ELECTION OFFICER KOZHIKODE COLLECTORATE, CIVIL STATION P.O, KOZHIKODE, PIN - 673020

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to direct the respondents to issue a ballot papers on or before 30.04.2026 and permit the petitioners to cast their respective votes at a place fixed by the 1st and 5th respondents and the distribute the same for the same for counting the votes on 04.05.2026 and also include the petitioners votes in the counting and for declaration of result, in accordance with law, pending disposal of this writ petition.

This petition coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 24/04/2026 and upon hearing the arguments of M/S. ANOOP V.NAIR, SHARANNYA P., ATHUL P., C.A.BEEMA BEEVI and FERRA A THANKAM, Advocates for the petitioners, SHRI. DEEPU LAL MOHAN, STANDING COUNSEL for Election Commission for respondents(By order), the court passed the following:



THURSDAY, THE 30TH DAY OF APRIL 2026

WP(C) No. 14379 of 2026

KERALA N.G.O. UNION

VS

ELECTION COMMISSION OF INDIA & OTHERS

ADVS FOR PETITIONER/S:

SRI.DINESH MATHEW J.MURICKEN, SRI.VINOD S. PILLAI,
SMT.NAYANA VARGHESE, SHRI.JERRY PETER, SHRI.GOUTHAM
CHANDRASEKHAR

ADVS FOR RESPONDENT/S:

SHRI.DEEPU LAL MOHAN, SC, ELECTION COMMISSION OF INDIA,
SRI.AADITHYAN S.MANNALI, SHRI.ANOOP V.NAIR, KUM.PARVATHY
VIJAYAN, SMT.SHARANNYA P., SHRI.ATHUL P., SMT.C.A.BEEMA
BEEVI, SMT.FERRA A THANKAM



THURSDAY, THE 30TH DAY OF APRIL 2026

WP(C) No. 15283 of 2026

SANDEEP C. P. & OTHERS

VS

ELECTION COMMISSION OF INDIA & OTHERS

ADVS FOR PETITIONER/S:

SRI.DINESH MATHEW J.MURICKEN, SHRI.K.A.ABHILASH, SRI.VINOD S. PILLAI, SHRI.MOHAMMED THAYIB N.M., SMT.NAYANA VARGHESE, SHRI.JERRY PETER, SMT.RIA VARGHESE, SHRI.GOUTHAM CHANDRASEKHAR

ADVS FOR RESPONDENT/S:

SHRI.DEEPU LAL MOHAN, SC, ELECTION COMMISSION OF INDIA



THURSDAY, THE 30TH DAY OF APRIL 2026

WP(C) No. 15315 of 2026

MUHAMMAD SINAN VP & OTHERS

VS

ELECTION COMMISSION OF INDIA & OTHERS

ADVS FOR PETITIONER/S:

SHRI.MAAROOF, SMT.NAFIYA SHAHALA C.K.

ADVS FOR RESPONDENT/S:

SHRI.DEEPU LAL MOHAN, SC, ELECTION COMMISSION OF INDIA



THURSDAY, THE 30TH DAY OF APRIL 2026

WP(C) No. 15377 of 2026

ANILKUMAR M.G., & ANOTHER

VS

ELECTION COMMISSION OF INDIA, & OTHERS

ADVS FOR PETITIONER/S:

SRI.T.B.HOOD, SMT.M.ISHA

ADVS FOR RESPONDENT/S:

SHRI.DEEPU LAL MOHAN, SC, ELECTION COMMISSION OF INDIA, No
Advocate



THURSDAY, THE 30TH DAY OF APRIL 2026

WP(C) No. 15681 of 2026

JOINT COUNCIL OF STATE SERVICE ORGANISATION & ANOTHER

VS

ELECTION COMMISSION OF INDIA & OTHERS

ADVS FOR PETITIONER/S:

SRI.AADITHYAN S.MANNALI, SMT.NAYANPALLY RAMOLA

ADVS FOR RESPONDENT/S:

SHRI.DEEPULAL MOHAN, SC, ELECTION COMMISSION OF INDIA



THURSDAY, THE 30TH DAY OF APRIL 2026

WP(C) No. 15761 of 2026

ABINS KARIM & ANOTHER

VS

THE ELECTION COMMISSION OF INDIA & OTHERS

ADVS FOR PETITIONER/S:

SHRI.ANOOP V.NAIR, SMT.SHARANNYA P., SHRI.ATHUL P.,
SMT.C.A.BEEMA BEEVI, SMT.FERRA A THANKAM

ADVS FOR RESPONDENT/S:

SHRI.DEEPULAL MOHAN, SC, ELECTION COMMISSION OF INDIA,
SHRI.DEEPULAL MOHAN, SC, STATE ELECTION COMMISSION, KERALA

K. V. JAYAKUMAR, J.

W.P(C) Nos. 14379/2026, 15283/2026, 15377/2026, 15761/2026,
15681/2026 and 15315/2026

Dated this 30th day of April, 2026

COMMON ORDER

All these Writ Petitions are preferred alleging that the officers deputed for election duty who are entitled to cast their votes through postal ballot could not exercise their franchise due to the non supply/delayed supply of postal ballots by the Election Commission and its officers.

2. W.P(C) No.14379/2026 and W.P(C) No.15681/2026 are preferred by the Associations of the Government employees of the State, namely, Kerala N.G.O. Union and Joint Council of State Service Organization. The 1st respondent, Election Commission of India, has notified the 2026 General Election to the Legislative Assembly constituencies in Kerala on 16.03.2026. As per the said notification, the

date fixed for polling was on 09.04.2026 and the counting of votes is scheduled on 04.05.2026.

3. The principal grievance highlighted by the petitioners is that the officers deputed for election duty who are entitled to cast their votes were not supplied with the postal ballots in time and so that, they could not cast their postal votes.

4. The learned counsels for the petitioners submitted that the time fixed for the officers to receive postal ballots and to cast their votes was from 01.04.2026 to 08.04.2026. The learned counsels pointed out that even on 06.04.2026 and thereafter, the postal ballots were not supplied to many officers. The officers on election duty were directed to attend for election duty on 08.04.2026 to collect ballot boxes and other election materials. The learned counsels have further pointed out that due to the delay on the part of the Election Commission of India and its officers, the officers deputed for 2026 Assembly Elections in the State of Kerala could not cast their votes.

5. According to the learned counsel for the petitioners, the respondents have failed to discharge their statutory duty under Rule 18A and Rule 20 of Conduct of Election Rules, 1961 by not ensuring the timely issuance and availability of postal ballot papers to the officers on election duty and thereby, infringed the constitutional rights of the officers to exercise their franchise under Article 326 of the Constitution of India.

6. According to the learned counsels, respondents ought to have anticipated the practical impossibility of the officers on election duty to cast their votes on 08.04.2026, due to their mandatory and continuous

engagement in the preparatory activities of election. The non supply/delayed supply of postal ballots by the officers of the Election Commission of India is a serious systemic lapse. The Election Commission of India under Article 324 of the Constitution of India has a bounden duty to superintend, direct and control election process. The respondents are duty bound to take all necessary measures to ensure that no eligible voter, particularly those engaged in elections duties, is disenfranchised.

7. It is further pointed out that the denial of right to vote to a significant section of government officers, who are themselves instrumental in conducting the elections, undermines the very spirit of free and fair elections and erodes public trust in the electoral process.

8. The petitioners sought an interim direction, directing the respondents to make available postal ballot papers to the officers on election duty at all designated election facilitation centers and permit them to cast their votes.

9. Sri. Deepu Lal Mohan, the learned Standing Counsel for the respondents 1 to 3, vehemently opposed the grant of interim relief mainly on three grounds;

Firstly, a Writ Petition against the Election Commission of India is not maintainable in view of Section 329(b) of the Constitution of India. He asserted that, the remedy available to the petitioners is to file an election petition after the election process is over. The second objection raised by the learned Standing Counsel is that the entire election process is nearing completion as the counting of votes is scheduled to be held on 04.05.2026. At this advanced stage of election process, if an interim order is passed

permitting the petitioners to cast their votes would upset the entire schedule of the Election Commission and would cause impediments in the democratic process for electing the new Government. The learned counsel would also point out that the allegation of the non supply/delayed supply of postal ballot papers is false and incorrect. The next submission by the learned counsel for the petitioners is that the Writ Petitions are filed with malafides to protract and hinder the smooth progress of the election schedule and therefore, interference from this Court at this stage is not warranted.

10. Before we proceed further, it would be useful to extract the relevant provisions of the Constitution of India for easy reference.

Article 324:

“324. Superintendence, direction and control of elections to be vested in an Election Commission.—

(1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election

Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).”

Article 325

“325. No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex.—

There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.”

Article 326

“326. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage.—

The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than [eighteen years] of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the

appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.”

Article 329

“329. Bar to interference by courts in electoral matters.—

1 [Notwithstanding anything in this Constitution]

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.”

(emphasis supplied)

11. Part XV of the Constitution of India deals with elections. Article 324 of the Constitution speaks about the powers vested on Election Commission for the superintendence and control of the election such as the preparation of electoral rolls, the conduct of elections to the Parliament and the State Legislatures and to the offices of the President and the Vice President. Article 325 enjoins that no person shall be discriminated on the ground of his religion, caste, race or sex for their inclusion in the electoral rolls.

12. Article 326 declares that the election to the houses of Legislative Assembly of every State shall be on the basis of adult suffrage. That is, every person who is a citizen of India who has completed the age of 18 years shall be entitled to be registered as a voter, unless he/she is disqualified otherwise on the grounds of unsoundness of mind, crime or

corrupt practices. Article 329(b) imposes a bar on the courts to interfere in electoral matters.

13. The learned counsels for the petitioners have placed reliance on the judgment in **Election Commission of India vs. Ashok Kumar and Others ((2000) 8 SCC 216)** and submitted that there is no complete ouster of the jurisdiction of the Constitutional Courts. The learned counsel argued bar under Section 329(b) is not applicable to the facts of the instant case.

14. A Bench of three Honourable Bench of the Apex Court in **Ashok Kumar (supra)** had occasion to consider the various provisions of Chapter XV of the Constitution of India. It would be useful to extract the relevant paragraphs of **Ashok Kumar (supra)**.

“30. To what extent Article 329(b) has an overriding effect on Article 226 of the Constitution? The two Constitution Benches have held that Representation of the People Act, 1951 provides for only one remedy; that remedy being by an election petition to be presented after the election is over and there is no remedy provided at any intermediate stage. The non obstante clause with which Article 329 opens, pushes out Article 226 where the dispute takes the form of calling in question an election (see para 25 of Mohinder Singh Gill case³). The provisions of the Constitution and the Act read together do not totally exclude the right of a citizen to approach the court so as to have the wrong done remedied by invoking the judicial forum; nevertheless the lesson is that the election rights and remedies are statutory, ignore the trifles even if there are irregularities or illegalities, and knock the doors of the courts when the election proceedings in question are over. Two-pronged attack on anything done during the election proceedings is to be avoided- one during the course of the proceedings and the other at its a termination, for such two-pronged attack, if allowed, would unduly protract or obstruct the functioning of democracy.

31. The founding fathers of the Constitution have consciously employed use of the words "no election shall be called in question" in the body of Section 329(b) and these words provide

the determinative test for attracting applicability of Article 329(b). If the petition presented to the Court "calls in question an election" the bar of Article 329(b) is attracted. Else it is not.

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of

the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.

33. These conclusions, however, should not be construed as a summary of our judgment. These have to be read along with the earlier part of our judgment wherein the conclusions have been elaborately stated with reasons.”

(emphasis supplied)

15. On going through Article 329 and the dictum laid down by the Apex Court in **Ashok Kumar (supra)**, I am of the view that a Writ Petition is perfectly maintainable and the Writ Courts have ample jurisdiction to entertain petitions in appropriate cases.

16. The second objection of the learned Standing Counsel for the Election Commission is that the petitioners have failed to make out a strong prima facie case. Even though the petitioners would allege that more than 20,000 officers deputed for election duty could not cast their votes, they have failed to furnish the names and other details of the affected parties. At this juncture, the learned counsel for the petitioner in WP(C)15283/2026 submitted that the details are pleaded in the said Writ Petition. According to the learned counsel, in paragraph 44 of the said Writ Petition, the district wise figures are shown. It would be useful to extract the relevant paragraph for easy reference.

“44. The petitioners respectfully submit that 20,411 officers on election duty including the petitioners in the Kerala Legislative Assembly Election 2026 were unable to cast their postal ballots due to the non-availability of postal ballots on 08-04-2026 or on the preceding days, despite the third respondent having notified these dates for casting postal ballots at the Vote Facilitation Centres.

The district-wise figures of officers on election duty who could not cast their votes are as follows:

- 1.Kasargod-237
- 2.Kannur-1,630
- 3.Wayanad302
- 4.Kozhikode-2,775
- 5.Malappuram-398
- 6.Palakkad-2,090
- 7.Thrissur-773
- 8.Ernakulam-743
- 9.Idukki-413
- 10.Kottayam-1,159
- 11.Alappuzha-2,486
- 12.Pathanamthitta-1,114
- 13.Kollam-731
- 14.Thiruvananthapuram-5,560

Accordingly, a total of 20,411 officers on election duty were deprived of their right to vote due to the non-availability of postal ballots at the designated vote facilitation centres.”

17. On going through paragraph 44, it could be seen that the names and other particulars of the officers are not mentioned. What is stated therein is the total number of officers allegedly denied the right to vote in each district.

18. According to the learned Standing Counsel, the failure to mention the details of the officers, by itself, would indicate that the petitioners have approached this Court with malafides with a view to protract and delay the election process.

19. The third submission by the learned Standing Counsel is that the postal ballots are currently stored in the strong room as per the prescribed procedure. Those strong rooms will remain sealed until the commencement of counting at 8 a.m. on 04.05.2026 and hence any attempt to reopen, access or alter the status of postal ballot prior to the counting would directly compromise the sanctity, secrecy and irrevocability of the

electoral process. According to the learned Standing Counsel, an interference from this Court, by way of an interim order, at this advanced and final stage of election process would adversely affect the fairness and sanctity of the electoral process.

20. Having anxiously considered the rival submissions of the counsels for the parties, in the light of the provisions of the Constitution of India and the dictum laid down in **Ashok Kumar (supra)**, I am of the view that, interference of this Court at this advanced stage of the electoral process, by way of an interim order, is not warranted. The interim orders sought for are declined.



Sd/-

**K. V. JAYAKUMAR,
JUDGE**

Sbna/