



2026:KER:17500

"CR"

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 23<sup>RD</sup> DAY OF FEBRUARY 2026 / 4TH PHALGUNA, 1947

WP(C) NO. 2131 OF 2026

PETITIONER:

HARIKUMAR K.K  
AGED 39 YEARS  
S/O KRISHNA PILLAI, KOCHUPUTHUPARAMBIL HOUSE,  
KULATHOOR P.O, VAIPUR, KOTTANGAL, PATHANAMTHITTA,  
PIN - 689588

BY ADVS.  
SRI.NAVANEETH.N.NATH  
SMT.ABHIRAMI S.  
SHRI.ABDUL LATHEEF P.M.

RESPONDENTS:

- 1 STATE ELECTION COMMISSION  
REPRESENTED BY AUTHORIZED OFFICER, KERALA  
JANAHITHAM TC-27/6(2) VIKAS BHAVAN P.O.  
THIRUVANANTHAPURAM -, PIN - 695033
- 2 DISTRICT ELECTION OFFICER  
DISTRICT COLLECTORATE, PATHANAMTHITTA, KERALA,  
PIN - 689645
- 3 DISTRICT COLLECTOR  
DISTRICT COLLECTORATE, PATHANAMTHITTA, KERALA,  
PIN - 689645
- 4 RETURNING OFFICER  
KOTTANGAL GRAMA PANCHAYAT, PANCHAYAT OFFICE,



2026:KER:17500

CHENNIKKARA-MARANKULAM ROAD, KOTTANGAL,  
PATHANAMTHITTA -, PIN - 686547

- 5 SUB REGISTRAR  
SUB REGISTRAR OFFICE MALLAPPALLY WEST  
PATHANAMTHITTA KERALA, PIN - 689585
- 6 SECRETARY  
KOTTANGAL GRAMA PANCHAYAT, PANCHAYAT OFFICE,  
CHENNIKKARA-MARANKULAM ROAD, KOTTANGAL,  
PATHANAMTHITTA -, PIN - 686547
- 7 JOSEPH @ SUJITH  
PUTHANPURAKKAL HOUSE, WARD MEMBER,  
KOTTUNGAL GRAMA PANCHAYAT, CHUNGAPARA P.O,  
KOTTUNGAL, PATHANAMTHITTA, PIN - 686547
- 8 ANAS THOUFEEQ  
S/O ISMAIL, MATTAPPALLIL HOUSE,  
WARD MEMBER KOTTUNGAL GRAMA PANCHAYAT,  
KULATHUR P.O, PATHANAMTHITTA,, PIN - 689588

BY ADVS.

SHRI.DEEPULAL MOHAN, SC, STATE ELECTION  
COMMISSION, KERALA  
SHRI.JESTIN MATHEW, SC, KOTTANGAL GRAMA  
PANCHAYAT, PATHANAMTHITTA  
SRI.VISHAK.K.JOHNSON  
SMT.MARILIN ROMEO  
SMT.PARVATHY S.  
SHRI.VISHNU MOHAN  
SPL GP SMT DEEPA K R  
SRI.DEEPULAL MOHAN, SC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
23.02.2026, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:



**"CR"**

**P.V.KUNHIKRISHNAN, J**

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**W.P (C) No.2131 of 2026**  
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**Dated this the 23<sup>rd</sup> day of February, 2026**

**JUDGMENT**

This Writ Petition (C) is filed seeking the following reliefs:

- i. Issue a writ of certiorari or any other appropriate writ, order, or direction, to quash and set aside the said Exhibit P5 order issued by the 1<sup>st</sup> respondent, as being illegal, arbitrary, and contrary to law.
- ii. To grant such other and incidental reliefs as this Hon'ble court may deem fit, just and necessary in the peculiar facts and circumstances of this case." [SIC]

2. The petitioner was successfully contested as a candidate of the Bharatiya Janata Party (BJP) and was duly elected as a member of Kottungal Grama Panchayat (hereinafter mentioned as Panchayat), representing Ward No.5 of Malambara constituency. There are 14 wards in the above Panchayat. As per the officially declared final results of the Panchayat elections, the BJP secured victory in five (5) wards, while the United Democratic



Front (UDF) alliance also won five (5) wards. The Social Democratic Party of India (SDPI) emerged victorious in three (3) wards, and the Left Democratic Front (LDF) alliance secured one (1) seat.

3. The 4<sup>th</sup> respondent had conducted the election to the Offices of President and Vice President of the Panchayat on 27.12.2025. The said election was held in accordance with the prescribed statutory procedures and guidelines governing Local Self Government Institutions is the submission. Ext.P2 is the circular issued by the 1<sup>st</sup> respondent. Pursuant to the aforesaid election process, the petitioner contested for the post of Vice President of the Panchayat. For the post of Vice President, there were three contestants, including the petitioner, who represented the Bharatiya Janata Party (BJP). The 7<sup>th</sup> respondent, representing UDF, and the 8<sup>th</sup> respondent, representing SDPI, submitted nomination papers along with the petitioner.

4. According to the petitioner, the election was conducted strictly in accordance with Ext.P2 circular. When the total votes were counted, the petitioner obtained five (5) votes, the 7<sup>th</sup> respondent secured five (5) votes, and the 8<sup>th</sup> respondent



obtained three (3) votes. It is submitted that, since the 8<sup>th</sup> respondent secured the lowest number of votes, he was eliminated from the contest for the post of Vice President. Thereafter, the 4<sup>th</sup> respondent proceeded with the election process in accordance with the guidelines contained in Ext.P2 is the submission. In the second stage of the election, the petitioner and the 7<sup>th</sup> respondent secured an equal number of votes, resulting in a tie. Thereafter, according to the petitioner, as per clause VI. 16(D) of Ext.P2, the procedure of selection by draw of lots was adopted. Pursuant to the said procedure, the name of the 7<sup>th</sup> respondent was drawn. Consequently, in accordance with the said guideline, the 7<sup>th</sup> respondent was eliminated from the election process for the post of Vice President and the petitioner was declared elected as Vice President of the Panchayat. Ext.P3 is the election proceedings of the Panchayat dated 27.12.2025. Pursuant thereto, the 4<sup>th</sup> respondent, vide Ext.P3, issued an official notice formally declaring the petitioner as having been elected to the post of Vice President of the Panchayat. In compliance with the statutory requirements, the petitioner thereafter took the prescribed oath of office and formally assumed



charge as Vice President of the Panchayat with effect from 27.12.2025, is the submission. Ext.P4 is produced, evidencing the assumption of charge by the petitioner as Vice President.

5. Subsequently, the 1<sup>st</sup> respondent issued Ext.P5, cancelling the election of the Vice President of the Panchayat, stating that the procedure adopted by the 4<sup>th</sup> respondent is not correct. The 4<sup>th</sup> respondent is directed to conduct a fresh election to the post of Vice President, as evident by Ext.P5 order. Aggrieved by the same, this writ petition is filed.

6. Heard Adv.Navaneeth N Nath, the counsel appearing for the petitioner; the Standing counsel appearing for the Election Commission; the counsel appearing for the Panchayat; and the Government Pleader. I also heard the counsel appearing for the 7<sup>th</sup> respondent.

7. The first point raised by Adv Navaneeth is that Ext.P5 order is unsustainable for a simple reason that it is an order passed without giving an opportunity of hearing to the petitioner. Secondly, the counsel also submitted that the 1<sup>st</sup> respondent is *functus officio* after the election process is completed, and therefore, the 1<sup>st</sup> respondent has no authority to issue an order



like Ext.P5, and if anybody is aggrieved by the election, they have to approach the competent civil court in accordance with Section 153(14) of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as 'Act, 1994'). The counsel for the petitioner also submitted that a dispute arises in this case, and therefore, the 1<sup>st</sup> respondent has no authority to issue Ext.P5.

8. The counsel for the petitioner again submitted that the procedure adopted by the 4<sup>th</sup> respondent is strictly in accordance with the Kerala Panchayat Raj (Election of President and Vice-President) Rules, 1995 (hereinafter referred to as 'Rules, 1995'). Therefore, it is submitted that if any dispute arises regarding the same, the parties should approach the Civil Court, and the 1<sup>st</sup> respondent has no jurisdiction to pass an order like Ext.P5. The counsel for the petitioner also relied on the Division Bench judgment of this Court in **Shailamma Issac v. Returning Officer, Anicadu Grama Panchayat, Mallappally and Others [2014 (2) KHC 17]**.

9. The learned Standing Counsel appearing for the 1<sup>st</sup> respondent submitted that the procedure adopted by the 4<sup>th</sup> respondent is not correct and it is not in accordance with the



Rules, 1995. There is no dispute on that fact. The fourth respondent himself reported the same. Therefore, the 1<sup>st</sup> respondent passed Ext.P5, which is within his power, in the light of the principle laid down by this Court in **Shailamma Issac v. Returning Officer and Others [2014 KHC 2519]**, is the submission. The learned Standing Counsel also submitted that no 'dispute arises', relying on the principle laid down by this Court in **Julie Sabu v. State Election Commission, Tvm. [2024 (2) KHC 106]**, and thus the order passed by the 1<sup>st</sup> respondent, as evident by Ext.P5, is sustainable.

10. The learned Standing Counsel appearing for the Panchayat submitted that there is no Vice President in the Panchayat, because of the pendency of this case, and the Panchayat needs a Vice President for the smooth functioning of the day-to-day administration.

11. This Court considered the contention of the petitioner and the respondents. The following three points are to be decided in this case:

- 1) In which situations can this Court interfere with the election conducted to the post of Vice President as per the



Rules, 1995, when an effective alternative remedy is available under Section 153(14) of the Act, 1994.

2) Whether the State Election Commission can interfere with the election conducted for the post of Vice President, invoking the powers under Article 243K of the Constitution of India, when an alternative remedy is available to the parties as per Section 153(14) of the Act, 1994.

3) In the facts and circumstances of the case, whether this Court can invoke the jurisdiction under Article 226 of the Constitution of India, in respect of the election conducted to the post of Vice President of the Panchayat.

### **Point No.1**

12. Section 153(14) of the Act, 1994 is extracted hereunder:

**"153. Election of President and Vice-President.**

xxxxxx

xxxxxx

(14) Where a dispute arises as to the validity of an election of President or Vice-President of a Panchayat, any member of that Panchayat may file a petition.

(a) In the case of Village Panchayat before the Munsiff Court having jurisdiction over the area in which its headquarters is situated.

(b) In the case of Block Panchayat or District Panchayat, before the District Court having jurisdiction



over the area in which its headquarters is situated for decision and such decision shall be final.

(14a) The validity of the election of the President or the Vice-President of a Panchayat shall not be called in question for the reason of any vacancy in the place of the members or who shall elect President or Vice-President for the reason of the absence of any member."

13. A bare reading of Section 153(14) of the Act, 1994, it is clear that, when a dispute arises as to the validity of the election of the President or the Vice-President of a Panchayat, any member of that Panchayat may file a petition, in the case of Village Panchayat, before the jurisdictional Munsiff Court and in the case of Block Panchayat or District Panchayat, before the jurisdictional District Court, and such decisions will be final. But, it is to be noted that the words used in Section 153(14) are that, if a "dispute arises", and then only the validity of the election of the president or vice president needs to be challenged before the jurisdictional civil courts. If no dispute arises, this Court can intervene in the election without relegating the parties to the ordinary civil court, which would be a time-consuming exercise. This point is considered by this Court in detail in **Julie Sabu's**



**case** (supra). It would be better to extract the relevant portion of the above judgment:

“11. Section 12(6) says that, if any dispute arises as to the validity of the election of the Chairperson or Deputy Chairperson of a Municipality any councilor of that municipality may file a petition before the District Court having jurisdiction over the area of the headquarters of that Municipality for decision and such decision shall be final. The question to be decided is whether a “dispute arises” as to the validity of the election of the Chairperson. What is the meaning of “dispute arises?”. This Court in **Kaprat Family Trust vs. Union of India (2024 KHC Online 64)** considered the meaning of “dispute arises” mentioned in Section 3H(4) of the National Highway Act, 1956. It will be better to extract paragraph 16 of the above judgment.

“16. From the above, it is clear that whether the “dispute arises” is something that will necessarily have to be decided. A simple dispute raised by a party without any basis cannot be treated as a “dispute arises” as per Section 3H(4) of the Act 1956. The Legislature has used the expression “arises” instead of “raised” in Section 3H(4) of the Act 1956. The same issue considered by the larger bench in the above decision. The dictionary meaning of “arises is “come into being”. Simply because a party raises a dispute, CALA need not refer the dispute to the civil court. The duty of the CALA is to find out whether a “dispute arises” in the facts and circumstances of each case. So there is no automatic reference to civil court, once a



party raises a dispute. The CALA has a duty to find out whether there is a "dispute arises" in the facts and circumstances of each case for which an enquiry is necessary. This is clear from Section 3G(3) of the Act of 1956 also where it is stated that the CALA shall determine the persons who in its opinion are entitled to receive the amount payable to each of them. If there is any dispute arising in that "determination process" mentioned in Section 3G(3) of the Act 1956, then only the CALA need to refer the matter to the civil court."

12. This Court observed that "dispute arises" is something that will necessarily have to be decided. A simple dispute raised by a party without any basis cannot be treated as a "dispute arises." The Legislature has used the expression 'arises' instead of 'raised' in Section 12(6) of the Kerala Municipality Act, just like in Section 3H(4) of the National Highway Act, 1956. Therefore, whether there is a "dispute arises" as to the validity of the election of the Chairperson or the Deputy Chairperson of a Municipality is to be decided first."

14. This Court was considering a similar provision to Section 153(14) of the Act, which is available in the Kerala Municipality Act, 1994, as Section 12(6). This Court observed that the Legislature has used the expression 'arises' instead of 'raise'. Anybody can raise a dispute, and in all those cases, the parties need not be relegated to the civil court. Only if there is a dispute



arises, the parties need to be referred to the civil court. Therefore, if no 'dispute arises', this Court can invoke the jurisdiction under Article 226 of the Constitution of India to interfere with an election to the post of President or Vice-President.

### **Point No.2**

15. Whether the State Election Commission can interfere with the election process by setting aside an election invoking the powers under Article 243K of the Constitution of India, is the next question to be decided. In this case, admittedly, after the election process is over, Ext. P5 order is passed by the State Election Commission, invoking the powers under Article 243K of the Constitution of India. Article 243K of the Constitution of India is extracted hereunder:

#### **"243K. Elections to the Panchayats**

- (1)The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
- (2)Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine:

Provided that the State Election Commissioner shall not be removed from his office except in like manner and on



the like ground as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment.

- (3) The Governor of a State shall, when so requested by the State Election Commission, make available to the State Election Commission such staff as may be necessary for the discharge of the functions conferred on the State Election Commission by clause (1).
- (4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats."

16. A reading of Article 243K, it is clear that the Election Commission is vested with powers of superintendence, directions and control of the preparation of the electoral rolls and for the conduct of elections to the panchayats. Once the election is over, the Election Commission is *functus officio*. This point is considered by a Division Bench of this Court in **Shailamma Issac's case** (supra). It would be better to extract the relevant portion of the above-mentioned judgment:

"13. There can be no quarrel with the position which has been canvassed before us by the learned counsel for the appellant that after the declaration of the election the Election Commission becomes *functus officio*. This is a case wherein the aforesaid principle is not even disputed by the learned Standing Counsel for



the Election Commission. The electoral laws invariably provides for remedy to the defeated candidate. As far as the present case is concerned remedy is provided under Section 153(14a) i.e, defeated candidate could approach the Court of the Munsiff and seek remedy therein. We would also reiterate that the Election Commission has no jurisdiction once a result is declared to interfere with the election process and what is more disturbing in this case no doubt after the returned candidate took oath. The oath was taken before the Returning Officer who in this case happened to be an officer of the Government fulfilling the requirements under Section 153(13).

17. Therefore, it is clear that the State Election Commission has no jurisdiction to interfere with the Election conducted for the post of Vice- President once the election is over. Once the result is declared, the Election Commission becomes *functus officio*, and the Election Commission has no jurisdiction to interfere with the election. Therefore, prima facie Ext.P5 order will not stand.

**Point No.3**

18. Once, Ext.P5 is set aside, this Court has to decide whether any dispute arises for relegating the parties to the civil Court, because if there is no 'dispute arises', and a mistake is



committed by the Returning Officer, this Court can rectify the same by invoking the powers under Article 226 of the Constitution of India. But the petitioner, who is the elected person, says that the procedure adopted by the 4<sup>th</sup> respondent is perfectly legal and there is no illegality, in the light of Rule 1995. For the purpose of deciding whether a dispute arises, this Court has to consider the facts in this case. It is an admitted fact that there were three candidates for the post of Vice-President, and at the first stage of the election, two candidates obtained five votes each, and the third candidate obtained three votes. Thereafter, the person who obtained the lowest number of votes was eliminated, and the 4<sup>th</sup> respondent proceeded with the election. Subsequently, the petitioner and the 7<sup>th</sup> respondent secured an equal number of votes, resulting in a tie. Therefore, the 4<sup>th</sup> respondent adopted the procedure of selection by lot for determining the Vice-President. Accordingly, the name of the 7<sup>th</sup> respondent was drawn from the lot. He was eliminated, and the petitioner was selected. According to the 4<sup>th</sup> and 1<sup>st</sup> respondents, the procedure is incorrect. Actually, the 4<sup>th</sup> respondent reported the matter to the 1<sup>st</sup>



respondent, stating that he committed a mistake and the same should be rectified.

19. Thereafter, the 1<sup>st</sup> respondent issued Ext.P5. On the other hand, the petitioner submitted that the procedure adopted by the 4<sup>th</sup> respondent is strictly in accordance with Ext. P2 circular and Rule 9 of the Rules, 1995. To understand the provision, it will be better to extract Rule 9 of the Rules, 1995.

9. "The manner of recording of votes, conducting of votes and declaration of result.-

(1) The Returning Officer shall supply to each member wishing to vote in the election of president or vice-president, as the case may be, a ballot paper in Form I.

(2) The ballot paper shall contain the names of all contesting candidates on one side and the seal and full signature of the Returning Officer on the reverse side.

(3) Every member shall, immediately on receipt of the ballot paper put the mark 'X' on the ballot paper against the name of the candidate for whom he intends to vote and hand over the ballot paper to the Returning Officer after writing his name and signature on the reverse side of the ballot paper.

[x x x x (4) (5) (6)]

(7)After the polling is over, the Returning Officer shall, in the presence of the members, [count the ballot papers, declare as to which candidate each member has recorded his vote, then count the votes secured



by each candidate] and declare the result in the following manner namely:-

(a) If there are only two candidates then, the person who has secured more valid votes shall be declared to have been elected and in the event of both the candidates securing equal numbers of valid votes, lots shall be drawn in the meeting and the person whose name is drawn first shall be declared to have been elected.

(aa) In case where there are more than two contesting candidates and if one of the candidates has secured more votes than the aggregate votes secured by all the other candidates together the person who has got more votes shall be declared as elected.

(b) If there are more than two contesting candidates and in the first polling no candidate secures more votes than the aggregate votes secured by all the other candidates together, the candidate, who had secured the least number of votes shall be eliminated and the voting shall be continued by eliminating the candidate who secures more votes than those secured by the remaining candidate or candidates together, as the case may be, and the candidate who thus secures more vote shall be declared as elected.

(c) If two or more candidates secure equal number of votes and one of them has to be eliminated under Clause (b), then the Returning Officer shall draw lot as to which candidate among the candidates who had secured equal number of votes is to be eliminated and the person whose name is first drawn shall be eliminated.



(7a) When voting at more than one phase has become necessary as per Clause (b) of sub-rule (7) ballot papers of different colours shall be used at each phase of voting and the Returning Officer shall record on the ballot papers, the phase of voting at which they are used and the procedure specified in sub-rules (1), (2), (3) and (7) shall be followed at each phase of voting.

(8) The election to fill any casual vacancy occurring in the office of the President or Vice-President shall be held as if in the case of first election.

20. According to the petitioners, when two or more candidates are present, Rule 9 Sub-rule 7(c) of the Rules, 1995 is applicable. On the other hand, the 1<sup>st</sup> and 4th respondents are of the view that the elimination of the person whose lot was drawn is incorrect. Here, a dispute arises, and it cannot be said to be raised only by the petitioner. An interpretation of Rule 9 of the Rules, 1995, is necessary. The Standing Counsel appearing for the 1<sup>st</sup> respondent relied on the judgments of the learned Single Judge and Division Bench in **Shailamma Issac's case** (supra). I am of the opinion that, the said dictum is not applicable here, because this Court was interpreting Rule 9 (7)(a) of the Rules, 1995 in the above-mentioned case, in which only two candidates contested. Here there were



three candidates and in such situation, Rule 9(7)(aa) and (b) of the Rules, 1995 is applicable. The interpretation of the said rule is necessary and when there are two views possible, a 'dispute arises'. In such circumstances, when an alternative remedy is available to the aggrieved parties, this Court need not exercise the extraordinary jurisdiction under Article 226 of the Constitution of India. Therefore, I am of the opinion that a dispute arises in this case, and if anybody is aggrieved by the election of the petitioner as the Vice President, they have to approach the jurisdictional court in accordance with Sec.153(14) of the Act, 1994.

21. The upshot of the above discussion is that the 1<sup>st</sup> respondent has no jurisdiction to interfere with the election conducted to the post of Vice President in the light of specific bar under Sec.153(14) of the Act, 1994 and also in the light of the settled position that the Election Commission become *functus officio* and if any dispute arises about the election to the post of Vice President, the remedy of the parties, if a dispute arises, is to approach the jurisdictional court in accordance to Sec.153(14) of the Act, 1994.

Therefore, this writ petition is allowed, in the following



manner :

- 1) Ext.P5 is set aside.
- 2) If anybody is aggrieved by the election of the petitioner as Vice President of Kottangal Grama Panchayat, they are free to approach the jurisdictional court in accordance with law, and if any application is filed challenging the election, the jurisdictional court will consider the same, untrammelled by any observation in this judgment. Needless to say that, the petitioner can continue as Vice-President of the Panchayat, till the competent court decide the matter in accordance with the law.

**Sd/-**

**P.V.KUNHIKRISHNAN  
JUDGE**

SSG/AJ/SKS

Judgment reserved	NA
Date of judgment	23.02.2026
Judgment dictated	25.02.2026
Draft Judgment Placed	27.02.2026
Final Judgment Uploaded	03/03/26



APPENDIX OF WP(C) NO. 2131 OF 2026

**PETITIONER EXHIBITS**

- Exhibit P1** A TRUE COPY OF THE ELECTION CERTIFICATE ISSUED BY THE RESPONDENT 5 DATED 13.12.2025
- Exhibit P2** A TRUE COPY OF THE CIRCULAR DATED 15.12.2025 ISSUED BY THE 1ST RESPONDENT
- Exhibit P3** A TRUE COPY OF THE ELECTION PROCEEDINGS OF THE KOTTUNGAL GRAMA PANCHAYAT DATED 27.12.2025
- Exhibit P4** A TRUE COPY OF THE REGISTER EVIDENCING ASSUMPTION OF CHARGE BY THE PETITIONER DATED 27.12.2025
- Exhibit P5** A TRUE COPY OF THE VIDE ORDER ISSUED BY THE 1ST RESPONDENT DATED 14.01.2026

**RESPONDENT EXHIBITS**

- Exhibit R7(a)** A true copy of the minutes dated 27/12/2025 of the Kottungal Grama Panchayat Vice President Election