

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT  
THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR  
&  
THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

Wednesday, the 2<sup>nd</sup> day of March 2022 / 11th Phalguna, 1943  
WP(C) NO. 13725 OF 2019(S)

**PETITIONER**

RAMESH CHENNITHALA, AGED 61 YEARS,  
S/O. LATE V. RAMAKRISHNAN NAIR,  
MEMBER, KERALA LEGISLATIVE ASSEMBLY,  
RESIDING AT CANTONMENT HOUSE,  
THIRUVANANTHAPURAM, PIN-695 033.

**RESPONDENTS**

1. THE ELECTION COMMISSION OF INDIA,  
REP. BY ITS SECRETARY GENERAL, NEW DELHI.
2. THE CHIEF ELECTORAL OFFICER,  
LEGISLATIVE COMPLEX, THIRUVANANTHAPURAM-695 001.
3. STATE POLICE CHIEF,  
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.
4. THE ADDITIONAL DIRECTOR GENERAL OF POLICE (INTELLIGENCE),  
GOVT. OF KERALA, THIRUVANANTHAPURAM-695 001.
5. STATE OF KERALA,  
REP. BY CHIEF SECRETARY, SECRETARIAT,  
THIRUVANANTHAPURAM-695 001.

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 2<sup>nd</sup> respondent to withdraw the ballot papers issued to Police Officers on election duty and which are yet to be tendered to the returning officer or deposited in the box by exercising vote, on the ground of reported fraud and in lieu of which to issue fresh postal ballots to those police officers on election duty in accordance with law and also to direct the 4<sup>th</sup> respondent to produce a copy of the enquiry report regarding the postal ballot fraud before this Honourable High Court.

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 04/09/2019 and upon hearing the arguments of M/S T.ASAF ALI & LALIZA. T.Y., Advocates for the petitioner, STANDING COUNSEL for R1, SRI.DEEPULAL MOHAN, STANDING COUNSEL for R2 and of STATE ATTORNEY & SENIOR GOVERNMENT PLEADER for R3 to R5, the court passed the following:

P.T.O.

**S. MANIKUMAR, CJ  
&  
SHAJI P. CHALY, J**

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W.P.(C). No. 13725 of 2019 (S)  
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Dated this the 2<sup>nd</sup> day of March, 2022

O R D E R

S. Manikumar, CJ.

Referring to Exhibit R2(d), a letter dated 8.5.2019, written by the Chief Electoral Officer/respondent No.2 to the Director General of Police & State Police Chief, Kerala, Thiruvananthapuram/respondent No.3, requesting him to conduct a detailed enquiry into the allegation regarding postal ballots of police personnel and also of the letter dated 14.5.2019 of the Inspector General of Police, Crime Branch, Thiruvananthapuram Range, Exhibit R2(f) addressed to the State Police Chief, Kerala, wherein the former has observed that various issues raised therein have to be enquired into, Mr. T. Asaf Ali, learned counsel for the petitioner submitted that it is the duty of the Election Commission of India, New Delhi and the Chief Electoral Officer, Thiruvananthapuram/respondents 1 and 2 to conduct an enquiry into the alleged postal ballot fraud.

2. However, going through the record of proceedings, we find that when the matter came up for hearing on 20.5.2019, representation

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seemed to have been made that in respect of allegations relating to bulk issuance of Form 13 to a specific address by one single Officer, and the further action taken, a case in Crime No.355/CB/TSR/D/2019 has been registered under Sections 136 (d) (f) and (g) of Representation of People Act, 1951, which Division Bench of this Court has observed that the same would also have a direct hearing on the enquiry process. The Division Bench has requested the Chief Electoral Officer to furnish directions to the Returning Officer to co-operate with the ongoing enquiry.

3. Record of proceedings further shows that contention has been made by the Commission that election records cannot be furnished to anybody except on the basis of an order issued by a competent court. Thus, taking note of the above, on 10.7.2019, a Division Bench of this Court has ordered thus:

“3. On the above projection, it is difficult to accept that the Investigating Officer in course of investigation of a crime, would have to approach the Election Court to access records in the custody of election officers. The I.O. would be a stranger to the proceeding in an Election Petition and therefore such course of action may not be available to him.

4. If, on the other hand, the word *competent* court in *Rules 93(e)* and *94* if interpreted as referring to a court of competent

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jurisdiction, the I.O. can certainly secure permission from such *competent* court to access the required records. In the present case, the petitioner has alleged delay in investigation of the Crime No.355/CB/TSR/D/2019 and we are quite sure that this court in exercise of powers under Article 226 of the Constitution of India, can issue directions to permit access to the records, in the custody of the Election Officer.

5. Having concluded thus, in order to protect the sanctity of the postal ballot records which may be needed in connection with the Election Petitions filed in the High Court, we deem it appropriate to direct the concerned Returning Officer/District Election Officer to provide access to the I.O. with the required postal ballot records including the *Form 13A* declaration, for the purpose of investigation. Nothing in this order shall however be construed as enabling the I.O. to take the records into his custody. It is further made clear that even while providing access to the I.O., the custody of the records shall be with the respective Returning Officer/District Election Officers.”

4. When the matter came on 4.9.2019, taking note of the fact that a special police team has been constituted to investigate the crime pertaining to alleged wrongful casting of postal ballots by the police personnel deployed for duty, the court has recorded thus “The learned State Attorney Sri. K.V. Sohan submits that the police team were given access to the required postal ballot records by the respective Returning

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Officer/District Election Officers and the investigation is completed in Trivandrum, Kottayam, Idukki, Thrissur and Malappuram Districts.”

5. Record of proceedings further shows that submission has been made that investigation will be completed in respect of remaining areas within eight weeks time. Thus the matter has been adjourned and listed before this Court.

6. Though a statement has been made as early as on 4.9.2019 that investigation in respect of other districts would be completed in eight weeks time, even after 2<sup>1</sup>/<sub>2</sub> years, investigation is stated to be pending on the files of the special police team.

7. The State Police Chief/respondent No.3 is directed to explain as to why there is inordinate delay in the matter of completion of investigation.

8. At this juncture, we deem it fit to observe that once a statement is made across the Bar as to the time likely to be taken up for the completion of investigation or enquiry, as the case may be, the same should be done as submitted, or else if for any reason, investigation or enquiry could not be completed, respondents 3 and 4 ought to have approached this court, for extension of time, by

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adducing Acceptable reasons. In the case on hand, it has not been done. Therefore, we direct the State Police Chief, Thiruvananthapuram to explain the reasons for the inordinate delay. Details regarding the investigation in respect of other districts and the current stage of investigation, be submitted in the form of an affidavit, with supporting documents.

Post on 17.3.2022.

Sd/-  
S. Manikumar,  
Chief Justice



Sd/-  
Shaji P. Chaly,  
Judge

sou.

**APPENDIX OF WP(C) 13725/2019**

**EXHIBIT R2(d)**

**THE PHOTOCOPY OF LETTER NO.4826/EL2/2019/ELEC DATED 08/05/2019 ISSUED BY THE 2ND RESPONDENT OT THE 3RD RESPONDENT.**

**EXHIBIT R2(f)**

**THE PHOTOCOPY OF LETTER NO.G1/2793/CB-TR/2019 DATED 14/05/2019 SUBMITTED BY THE INSPECTOR GENERAL OF POLICE, CRIME BRANCH, THIRUVANANTHAPURAM BEFORE THE 3RD RESPONDENT AND FORWARDED TO THE 2ND RESPONDENT ALONG WITH ANNEXURE R2(E).**

