

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

MONDAY, THE 10TH DAY OF JUNE 2019 / 20TH JYAISHTA, 1941

WP(C).No. 13684 of 2019

PETITIONER:

A. SUBAIR,  
AGED 64 YEARS,  
T.C.39/1376, KACHERI VEEDU,  
CHALA, THIRUVANANTHAPURAM - 695 036.

BY SRI. A. SUBAIR, (PARTY IN PERSON)

RESPONDENT:

THE CHIEF ELECTION COMMISSIONER OF KERALA,  
PALAYAM,  
THIRUVANANTHAPURAM - 695 033.

BY SRI.MURALI PURUSHOTHAMAN, SC, ELE. COMMN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON  
10.06.2019, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R.

**JUDGMENT**

This writ petition is filed by the petitioner seeking direction to the respondent, i.e., the Chief Election Commissioner of Kerala, to make arrangements enabling the petitioner to cast his vote by including his name in the Voters' List, on or before 19.05.2019, and for other related reliefs. Brief material facts for the disposal of the writ petition are as follows:

2. Petitioner is a permanent resident of Ward No.39 of Thiruvananthapuram Corporation, and he holds Ext.P1 Electoral Identity Card issued by the Election Commission of India. According to the petitioner, name of the petitioner was in the voters' list ever since he had the voting right. However, in the voters' list prepared for the purpose of election to Lok Sabha scheduled on 23.04.2019, the name of the petitioner is struck off from the electoral rolls, whereas his wife's and daughter's names were in the voters list. Even though petitioner approached the statutory authorities, there was no improvement in the matter, and thereupon, petitioner has submitted an application before the respondent on 02.05.2019, requesting to interfere in the matter and restore his voting right. But, in spite

of the same, no action was initiated, which persuaded the petitioner to approach this Court by filing this writ petition.

3. A statement is filed on behalf of the respondent, contending that, by virtue of the provisions contained under Sections 22 and 23 of the Representation of the People Act, 1950, after the last date of making nominations, inclusion in the electoral roll is not possible and the last date of making nominations to the Parliamentary constituencies in Kerala was 04.04.2019, and since the petitioner's name was not in the electoral roll, petitioner is not entitled to vote.

4. Going by the relief sought for by the petitioner, it is evident that the relief sought for has become infructuous. However, since petitioner has a case that the valuable voting right of the petitioner was taken away, I was of the considered opinion that the issue is to be considered with all its seriousness. Therefore, the respondent was directed to file an additional statement before this Court.

5. In the additional statement, it is stated that, petitioner's name was in the electoral roll of the Thiruvananthapuram Legislative Assembly

Constituency as Serial No.642. However, at the time of continuous revision of electoral roll, the name of the petitioner was deleted from the electoral roll on the ground that the petitioner has ceased to be an ordinarily resident of the said constituency, since the petitioner has shifted his residence elsewhere. Ext.P3 produced by the petitioner is the report of the Booth Level Officer submitted to the Electoral Registration Officer, wherein, it is stated that petitioner has changed his place of residence. The Booth Level Officer has submitted the said report on the basis of house to house visit and not on the basis of any objection from any person. The Booth Level Officer is an officer appointed under sub-section (2) of Sec.13B of the Representation of the People Act, 1950, who is familiar with the electors and generally a voter in the same polling area who assists in updating the roll using his local knowledge. On the basis of such and other materials, the draft electoral roll was published by the Election Commission in October, 2017 and objections were invited to the draft electoral roll so published. Petitioner's name was included in the 'Deleted Lists', and wide publicity was given to the publication of the roll in draft. After the period of

lodging claims and objections to the draft electoral roll, final electoral roll was published by the Commission in January, 2018.

6. According to the respondent, petitioner did not submit objection to deletion of his name from the electoral roll. Anyhow, after one year thereafter, another summary revision of electoral roll was undertaken by the Commission and draft electoral roll was published and claims and objections were invited to the said draft electoral roll. But the petitioner did not file any objection and also did not make any claim for inclusion of his name in the electoral roll. Thereafter, the final electoral roll was published on 30.01.2019. But, in spite of the same, petitioner did not make any complaint. Anyhow, it is submitted that, on the basis of the complaint made by the petitioner, a report was drawn from the Village Officer, and the report dated 06.06.2019 submitted by the Village Officer to the Electoral Registration Officer is produced as Annexure-R1(a). It is also submitted that, on the basis of the report of the Village Officer and other reports, serious enquiry is being made by the respondent, and if any malpractices are found out, action will be initiated against the officer concerned.

7. I have heard the petitioner appearing in person, and the learned Standing Counsel appearing for the respondent and perused the pleadings and the documents on record.

8. Going by the relief sought for by the petitioner, it is evident that the subject issue has become infructuous, since election to the Lok Sabha is over. However, the issue of deletion of name from the voters' list is a serious matter to be looked into by this Court. Case of the petitioner is that, petitioner is residing in the address contained in the voters' list ever since he started voting, and even now residing in the same building. It is also pointed out that, petitioner's wife and daughter who are residing in the very same address were in the voters list, and therefore, the contention advanced in the statement that petitioner is not ordinarily resident in the address is not true or correct. The said statement made by the petitioner is not disputed by the respondent. Anyhow, it is submitted that, for a short period, petitioner has shifted his residence while the repair works of the residential building was going on. But, it is quite surprising to note that, even though the entire family members were shifted to temporary

residence, the wife and son of the petitioner still remained in the voters list and the petitioner's name alone was deleted.

9. In my considered opinion, this is a matter to be looked into by the respondent seriously in order to avoid such situations in future. The voting right of a person is a valuable right enjoyed by a person, which cannot be taken away by deleting the name from the voters list. If a person is already appearing in the voters list, before removing the said person from the voters' list, necessarily due and thorough enquiry should be conducted, and I do not think, in the case on hand, the officers functioning under the respondent have undertaken such an exercise. In this context, Sec.22 of Act, 1950 is relevant, which read thus:

**"22. Correction of entries in electoral rolls.--***If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency--*

*(a) is erroneous or defective in any particular,*

*(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency, or*

*(c) should be detected on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that*

*roll,*

*the electoral registration officer shall, subject to such general or special directions, if any, as may be given by the Election Commission in this behalf, amend, transpose or delete the entry after proper verification of facts in such manner as may be prescribed:*

*Provided that before taking any action on any ground under clause (a) or clause (b) or any action under clause (c) on the ground that the person concerned has ceased to be ordinarily resident in the constituency or that he is otherwise not entitled to be registered in the electoral roll of that constituency, the electoral registration officer shall give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him after proper verification of facts in such manner as may be prescribed."*

10. On an evaluation of the said provisions, it is explicit that, they are peremptory in nature and can never be brushed aside or overlooked. Proviso thereto makes it clear that before removing a person from the voters list, the electoral registration officer is duty bound to give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken. Which thus also means, the action or enquiry contemplated under Sec.22 of Act, 1950 is not an empty formality, but on the other hand, founded on principles of natural justice, which if violated, action becomes arbitrary and illegal inviting action against the officer concerned. Bearing the said



aspects in mind, it is clear, no such serious exercise is undertaken by the officer, before removing the name of the petitioner. It is also apposite to mention that, mere inaction on the part of the petitioner to restore the name removed from the voters list, is not a justification for removing the name, otherwise than in accordance with law.

11. In that view of the matter, there will be a direction to the respondent to conduct detailed enquiry in the subject matter, and if required, take appropriate action against the officers who have removed the name of the petitioner from the voters list, at the earliest, and at any rate, within two months from the date of receipt of a copy of this judgment. Learned Standing Counsel for the respondent submitted that, if the petitioner makes an application to the officer concerned, his name will be restored in the voters list. Therefore, petitioner is given the liberty to submit any application before the officer concerned, in accordance with law, and as per the procedure prescribed, and if any such application is received, it shall be processed and finalized, at the earliest, and at any rate, within two weeks from the date of receipt of application from the petitioner.

The writ petition is disposed of, with the aforesaid directions.

sd/-

**SHAJI P.CHALY**

**JUDGE**

St/-  
11.06.2019

**APPENDIX**

**PETITIONER'S EXHIBITS:**

- EXHIBIT P1 TRUE COPY OF ELECTION ID CARD  
NO.KL/20/136/342308 OF THE PETITIONER.
- EXHIBIT P2 PETITIONER'S APPLICATION DATED 25/04/2019  
TO STATE PUBLIC INFORMATION OFFICER.
- EXHIBIT P3 STATEMENT OF VOTERS' STATUS FURNISHED BY  
THE STATE PUBLIC INFORMATION OFFICER TO THE  
PETITIONER.
- EXHIBIT P4 PETITIONER'S APPLICATION DATED 02/05/2019  
TO THE CHIEF INFORMATION COMMISSIONER.
- EXHIBIT P5 CHIEF ELECTION COMMISSIONER'S OFFICE REPLY  
LETTER DATED 05/05/2019 TO THE PETITIONER.
- EXHIBIT P6 TRUE COPY OF JUDGMENT IN WPC  
NO.20060/2010(S) .

**RESPONDENT'S  
ANNEXURES:**

- ANNEXURE-R1 (A) THE PHOTOCOPY OF THE REPORT NO.668/2019  
DATED 06.06.2019 OF THE VILLAGE OFFICER,  
MANACAUD SUBMITTED TO THE TAHSILDAR AND  
ELECTORAL REGISTRATION OFFICER,  
THIRUVANANTHAPURAM.
- ANNEXURE-R1 (B) THE PHOTOCOPY OF THE POSTAL ENVELOP  
DESPATCHED TO THE PETITIONER AND RETURNED  
TO THE TALUK OFFICE, THIRUVANANTHAPURAM.
- ANNEXURE-R1 (C) THE PHOTOCOPY OF THE REPORT NO.E1/19273/19  
DATED 07.06.2019 OF THE TAHSILDAR/ERO  
SUBMITTED TO THE DISTRICT ELECTION OFFICER.

//TRUE COPY//

P.S. TO JUDGE

St/-