



2025:KER:87325

**CR**

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN**

**THURSDAY, THE 13<sup>TH</sup> DAY OF NOVEMBER 2025 / 22ND**

**KARTHIKA, 1947**

**WP(C) NO. 42170 OF 2025**

**PETITIONER(S):**

- 1 JOMON JACOB,  
AGED 52 YEARS  
S/O JACOB RESIDING AT ODAKKAL HOUSE  
KIZHATHADIYoor KARA, PALA POST, KOTTAYAM, PIN -  
686575**
- 2 THOMAS PALLIYIL,  
AGED 49 YEARS  
S/O ABRAHAM, RESIDING AT PALLIYIL HOUSE  
KIZHATHADIYoor KARA, PALA POST, KOTTAYAM  
DISTRICT, PIN - 686575**

**BY ADV. SRI.JOSEPH T.JOHN**

**RESPONDENT(S):**

- 1 STATE ELECTION COMMISSION,  
REPRESENTED BY SECRETARY KERALA STATE ELECTION  
COMMISSION OFFICE THIRUVANANTHAPURAM, PIN -  
695033**
- 2 DISTRICT COLLECTOR,  
KOTTAYAM, COLLECTORATE P.O., KOTTAYAM, PIN -  
686001**



2025:KER:87325

- 3      **JOINT DIRECTOR,  
RURAL DEVELOPMENT DEPARTMENT COLLECTORATE P.O.,  
KOTTAYAM DISTRICT, PIN - 686001**
- 4      **KOTTAYAM ELECTION REGISTRATION OFFICER,  
PALA MUNICIPALITY, PALA POST, PIN - 686575**

**BY ADV.  
SHRI.DEEPU LAL MOHAN, SC, STATE ELECTION  
COMMISSION, KERALA  
SPL GP, SMT. DEEPA K R**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 13.11.2025, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:**



2025:KER:87325

**CR****P.V.KUNHIKRISHNAN, J.****W.P.(C) No. 42170 of 2025****Dated this the 13<sup>th</sup> day of November, 2025.****JUDGMENT**

Persons with mental illness or persons with intellectual disabilities are also citizens of this country, and they are our brothers and sisters. Section 4 of the Mental Health Care Act, 2017 (for short Act 2017) says that every person, including a person with mental illness, shall be deemed to have the capacity to make decisions regarding their mental health care or treatment, if such person has the abilities mentioned in sub clauses (a) to (c) of that section. A strange prayer is sought for in this Writ Petition. According to the petitioners, voters who are currently in a rehabilitation centre for persons with mental disabilities are unable to



2025:KER:87325

cast their votes according to their will, and therefore, their votes are to be kept in a separate electronic voting machine and recorded digitally while they cast their votes in the ensuing general election of 2025. No documents are produced to show that they are mentally challenged or have a mental illness. They are not even a party in this writ petition, at least in a representative capacity. What an insult to those persons who are said to be in a rehabilitation centre!

2. I will narrate the facts in this case in brief:

Petitioners are permanent residents of Pala Municipality, residing in Ward No. 7, Pulimalakunnu Bhagom. Ext.P1 is the final voters' list published for Ward No.7 of Pala Municipality. According to the petitioners, when the draft voters' list was published and verified, they found that approximately 60 voters were included in the voters' list from House No. 6/141 of Ward No. 7. According to the petitioners, voters from



2025:KER:87325

Serial Nos. 349 to 358 and 360 to 407 in Ext.P1 are residents of 'Mariya Sadhanam', a rehabilitation centre for persons with mental challenges, and their residence number is House No. 6/141. According to the petitioners, voters from Serial Nos. 349 to 358 and 360 to 407 are mentally challenged persons, and they are unable to cast their votes according to their will. Hence, the petitioners approached the 4<sup>th</sup> respondent, who is the enquiry officer preparing the final voters' list, to remove these persons mentioned in the voters' list from the Serial Nos. 349 to 407. Ext.P2 is the receipt issued by the 4<sup>th</sup> respondent in connection with the enquiry. After the enquiry, the 4<sup>th</sup> respondent deleted voter No.349 because the voter was no more. But others' names were included. It is submitted that the voters from Serial Nos. 349 to 358 and 360 to 407 are not permanent residents of building No.6/141, and they are mentally challenged patients, and 'Mariya Sadhanam' is a rehabilitation centre for giving



2025:KER:87325

treatment to mentally challenged persons. Therefore, it is submitted that the 4<sup>th</sup> respondent, without a proper enquiry, included voters from Serial Nos. 349 to 358 and 360 to 407 in the Ext.P1 voters list. It is also submitted that Section 2(s) of the Mental Health Care Act, 2017 (for short 'Act 2017') clearly defines 'mental illness'. According to the petitioners, those persons are governed by the Act 2017.

3. After publishing the Ext.P1 voters list, and after knowing that they were included in the final voters list, the petitioners approached the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to remove those persons from the voters list, as evident by Ext.P3 representation. Ext.P4 is the acknowledgement showing the receipt of Ext.P3 representation. The petitioners also submitted an application to the 2nd respondent, as evident from Ext. P5 and Ext. P6, which is the postal receipt showing the dispatch of Ext. P5. But, after submitting Ext. P3 and Ext. P5, there is no response. Therefore, it is submitted



2025:KER:87325

that it is highly necessary to keep their votes separately classified as challenged votes, and that these should be recorded on a separate electronic voting machine. Hence, this Writ Petition is filed seeking the following reliefs:

“i) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to keep the voters of 349 to 358 and 360 to 407 in ward No.7 of Pala municipality for casting their vote in a separate electronic voting machine and keep the same in safe custody.

ii) Issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents to record the votes of voters from 349 to 358 and 360 to 407 digitally at the time of cast their votes and keep the same in a safe custody.

iii) Award costs and

iv) Any other relief this Hon’ble Court deems fit.”

[SIC]

4. Heard the learned counsel appearing for the petitioners, the learned Standing Counsel appearing for the State Election Commission and the learned Special Government Pleader.

5. The main prayer of the petitioners is to



2025:KER:87325

issue a direction to the respondents to keep the voters of the Serial Nos. 349 to 358 and 360 to 407 mentioned in the Ext.P1 voters list in Ward No.7 of Pala Municipality for casting their votes in a separate electronic voting machine. The alleged mentally ill persons are not parties either personally or through a fit person in this Writ Petition. According to the petitioners, they are residents of 'Mariya Sadhanam', a rehabilitation centre for persons with intellectual disabilities. 'Mariya Sadhanam Rehabilitation Centre' has not been made a party in this Writ Petition. No materials are produced before this Court to show that Serial Nos. 349 to 358 and 360 to 407 in the Ext.P1 voters list are suffering from mental illness. Without any iota of evidence, the petitioners approached this Court with a prayer that Serial Nos. 349 to 358 and 360 to 407 in the Ext.P1 voters list are mentally ill persons, and their votes are to be entered in a separate electronic voting machine and are to be kept in safe





2025:KER:87325

custody.

6. First of all, this Writ Petition is to be dismissed for the simple reason that the affected parties are not impleaded in this Writ Petition. Even if the petitioners contend that the serial numbers 349 to 358 and 360 to 407 in Ext. P1 voters' list is persons suffering from mental illness, they ought to have been impleaded as a party through a fit person. That is also not there. In the Writ Petition, it is stated that the above voters reside in 'Mariya Sadhanam', a rehabilitation centre for persons with mental challenges, which is located in Building No. 6/141 of Pala Municipality. The authorities of 'Mariya Sadhanam rehabilitation centre' were also not impleaded in this Writ Petition. Therefore, this Writ Petition is to be dismissed *in limine* for failing to array the affected parties.

7. Assume for argument's sake, Serial Nos. 349 to 358 and 360 to 407 in the Ext.P1 voters list are



2025:KER:87325

staying in a rehabilitation centre for mentally challenged persons; this Court cannot presume that they are mentally challenged persons or suffering from mental illness. It will be an insult to them if this court proceeds like that, especially when they are not a party in this Writ Petition. Again, even if it is assumed that they have some mental ailments, that alone will not disqualify them for registration in an electoral roll. Section 74 of the Kerala Municipality Act, 1994 (for short 'Act 1994') deals with disqualifications for registration in the electoral roll. Section 74 of the Act 1994 is extracted hereunder:

"74. DISQUALIFICATIONS FOR REGISTRATION IN ELECTORAL ROLL.—

(1) A person shall be disqualified for registration in an electoral roll if he-

(a) is not a citizen of India; or

(b) is of unsound mind and stands so declared by a competent court; or

(c) is for the time being, disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.



2025:KER:87325

(2) The name of any person who becomes so disqualified after registration shall forthwith be struck off from the electoral roll in which it is included;

Provided that the name of any person struck off from the electoral roll of a ward by reason of disqualification under clause (c) of sub-section (1), shall forthwith be reinstated in that roll if such disqualification is, during the period such roll is in force, removed under any law authorising such removal of disqualification."

*(Underline supplied)*

Section 74(1)(b) says that a person shall be disqualified for registration in an electoral roll if he is of unsound mind and stands so declared by a competent court. There is absolutely no case to the petitioners that Serial Nos. 349 to 358 and 360 to 407 in the Ext.P1 voters list are persons of unsound mind and stand so declared by a competent court. That is the only disqualification mentioned in the Act 1994 for not allowing registration in the electoral roll.

8. Section 2(s) of the Act 2017 defines "mental illness". It will be better to extract Section 2(s)



2025:KER:87325

of the Act 2017.

“Section 2(s). “mental illness” means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognise reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterised by subnormality of intelligence”

The determination of mental illness is detailed in Section 3 of the Act 2017. It would be better to extract Section 3 of the 2017 Act.

“Section 3. Determination of mental illness.—

(1) Mental illness shall be determined in accordance with such nationally or internationally accepted medical standards (including the latest edition of the International Classification of Disease of the World Health Organisation) as may



2025:KER:87325

be notified by the Central Government.

(2) No person or authority shall classify a person as a person with mental illness, except for purposes directly relating to the treatment of the mental illness or in other matters as covered under this Act or any other law for the time being in force.

(3) Mental illness of a person shall not be determined on the basis of,—

- (a) political, economic or social status or membership of a cultural, racial or religious group, or for any other reason not directly relevant to mental health status of the person;
- (b) non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a person's community.

(4) Past treatment or hospitalisation in a mental health establishment though relevant, shall not by itself justify any present or future determination of the person's mental illness.

(5) The determination of a person's mental illness shall alone not imply or be taken to mean that the



2025:KER:87325

person is of unsound mind unless he has been declared as such by a competent court.”

Section 4 of the Act 2017 pertains to the capacity to make mental healthcare and treatment decisions, which is also outlined below.

“Section 4. Capacity to make mental healthcare and treatment decisions.—

(1) Every person, including a person with mental illness shall be deemed to have capacity to make decisions regarding his mental healthcare or treatment if such person has ability to—

(a) understand the information that is relevant to take a decision on the treatment or admission or personal assistance; or

(b) appreciate any reasonably foreseeable consequence of a decision or lack of decision on the treatment or admission or personal assistance; or

(c) communicate the decision under sub-clause (a) by means of speech, expression, gesture or any other means.



2025:KER:87325

(2) The information referred to in sub-section (1) shall be given to a person using simple language, which such person understands or in sign language or visual aids or any other means to enable him to understand the information.

(3) Where a person makes a decision regarding his mental healthcare or treatment which is perceived by others as inappropriate or wrong, that by itself, shall not mean that the person does not have the capacity to make mental healthcare or treatment decision, so long as the person has the capacity to make mental healthcare or treatment decision under sub-section (1)."

Therefore, how to determine the mental illness is stated in the Act 2017 itself, and there is a legal presumption that every person, including a person with mental illness, shall be deemed to have the capacity to make decisions regarding their mental health care or treatment, if such person has the abilities mentioned in sub clauses (a) to (c) of that section. In such



2025:KER:87325

circumstances, without any documentary evidence, this Court cannot declare that Serial Nos. 349 to 358 and 360 to 407 in the Ext.P1 voters list are persons of unsound mind, and if any such observation is made even without hearing them, that will be not only an injustice but an insult to those persons. Labelling a person as “mentally ill” creates social stigma and various forms of discrimination, emotional harm, promotes social exclusion and undermines their dignity.

9. In a democratic process, it is necessary that ineligible persons are not included in the electoral roll. That does not mean that anyone can declare a person to be of unsound mind and approach this Court with a prayer to exclude them from the regular voters and to place them in a separate class, allowing them to vote on a separate electronic voting machine. This is a case in which they were not even made a party. Even the authorities of ‘Mariya Sadhanam’ were also not impleaded. Therefore, the Writ Petition is to be





2025:KER:87325

dismissed with heavy costs. I am not doing so because I am dismissing this Writ Petition at the admission stage.

10. Mental illness is not a sin. It can happen to anyone. All of us, in one way or another, have experienced mental disturbance. Some are hot-tempered, some arrogant, some inhumane, some derive pleasure from the misfortune of others, some enjoy physical confrontations with others, some are jealous of others, and some take pleasure in cruelty toward humans or animals. All these are the varying mental conditions of different individuals. These are more dangerous than the mental illness defined in Section 2(s) of the Act 2017. Mental illnesses can be managed with proper medication and some patience in their treatment. We have to take care of those people. The petitioners can visit that rehabilitation centre and give motivation to them instead of denying them the voting rights. As I observed earlier, we should hold



2025:KER:87325

them close to our hearts and not insult them by treating them as a separate class. They are trying to come to the mainstream. We should keep them tightly in our hearts. Our Malayalam poet, Sugathakumari Teacher, while writing a poem on the Onam festival, wrote like this:

“ഇരുളിൻ കാരാഗാരം - മെല്ലെ  
വലിച്ചുതുറന്നു പുറത്തുള്ളഴകിൻ  
പരമോത്സവമൊരുനോക്കാൽ കണ്ടു  
കുളുർക്കുന്നു നരഹൃദയം ”

It is very difficult to translate a poem of the legendary Sugathakumari Teacher into English. But for the purpose of this judgment, I am translating it into English.

*“The prison of darkness — slowly pulled open,  
It beholds the beauty outside,  
In a single glance, witnesses the supreme festival,  
and the human heart trembles with delight.”*

This is a portion of the poem “പാവം മാനവഹൃദയം”



2025:KER:87325

(*Pavam Manava Hridayam*). Let those alleged mentally ill people open their dark door with our help, and see the beauty of our nature; otherwise, let them see “Paramolsavam” (Supreme festival) as stated by the poet. We should help them open the dark door by holding their hand tightly and leading them to the light of the festival. The petitioners should be part of that, rather than denying them their valuable right to vote. They are human beings, and they are our brothers and sisters. Therefore, there is absolutely no merit in this Writ Petition.

Accordingly, this Writ Petition is dismissed.

**Sd/-**

**P.V.KUNHIKRISHNAN,  
JUDGE**

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Judgment reserved	NA
Date of Judgment	13.11.2025
Judgment dictated	13.11.2025
Draft Judgment placed	17.11.2025
Final Judgment uploaded	18.11.2025



2025:KER:87325

**APPENDIX OF WP(C) 42170/2025**

**PETITIONER EXHIBITS**

<b>EXHIBIT-P1</b>	<b>A TRUE COPY OF THE FINAL VOTERS LIST PUBLISHED FOR THE WARD NO.7 OF PALA MUNICIPALITY DATED 2.09.2025 MAY</b>
<b>EXHIBIT-P2</b>	<b>A TRUE COPY OF THE TRUE COPY OF THE ENQUIRY RECEIPT ISSUED BY THE 4TH RESPONDENT DATED 12/08/2025</b>
<b>EXHIBIT-P3</b>	<b>A TRUE COPY OF THE REPRESENTATION DATED 17/10/2025 BEFORE THE 3RD RESPONDENT</b>
<b>EXHIBIT-P4</b>	<b>A TRUE COPY OF THE ACKNOWLEDGEMENT OF RECEIPT DATED 17/10/2025</b>
<b>EXHIBIT-P5</b>	<b>A TRUE COPY OF THE APPLICATION SUBMITTED BY THE PETITIONERS BEFORE THE 2ND RESPONDENT DATED 17/10/2025</b>
<b>EXHIBIT-P6</b>	<b>A TRUE COPY OF THE POSTAL RECEIPT</b>