

Returning Officer Vs Chamiyar

Court: High Court Of Kerala

Date of Decision: Dec. 8, 2005

Acts Referred: Constitution of India, 1950 " Article 136(2), 226, 227(4), 243O, 243ZG

Kerala Panchayat Raj (Conduct of Election) Rules, 1995 " Rule 10

Kerala Panchayat Raj Act, 1994 " Section 102, 136, 138, 271G, 34

Citation: (2006) 2 KLT 878

Hon'ble Judges: K.T. Sankaran, J; K.S. Radhakrishnan, J

Bench: Division Bench

Advocate: Murali Purushothaman, for the Appellant; P.N. Ravindran, for the Respondent

Final Decision: Allowed

Judgement

K.S. Radhakrishnan, J.

Kerala State Election Commission is aggrieved by the interim order passed by the learned single Judge directing

the State Election Commission to consider and pass orders on Ext.P3 in exercise of the powers u/s 34(2) of the Kerala Panchayat Raj Act within

a period of three days of receipt of the order.

2. Writ Petition was preferred seeking writ of certiorari to quash Ext.P2 intimation dated 7.9.2005 given by the returning officer stating that the

nomination submitted by the Writ Petitioner was rejected since on scrutiny it was found that the petitioner was indebted to Mundoor Service Co-

operative Bank Limited and hence disqualified to contest for election. Petitioner also sought for a writ of mandam is directing respondents 1 to 3 to

accept his nomination for contesting as a candidate from Ward No. 14 of Mundoor Grama Panchayat and to include his name in the ballot papers

in the election to be held on 26.9.2005.

3. Sri Murali Purushothaman, counsel appearing for the State Election Commission, contended that the learned single Judge was not justified in

entertaining the Writ Petition in view of the specific bar contained in Article 243-O(b) of the Constitution of India. Counsel also submitted that the

petitioner has got an effective alternate remedy. Counsel submitted on rejection of nomination paper after scrutiny, the remedy open to the

petitioner was to move the Election Tribunal, the Munsiff's Court, u/s 88(a) of the Kerala Panchayat Raj Act. Counsel also submitted that learned

single Judge was also not justified in invoking Section 34(2) of the Kerala Panchayat Raj Act in directing the State Election Commission to

consider the objection raised by the petitioner against the rejection of the petitioner's nomination paper by the Returning Officer.

4. Sri P.N. Ravindran, counsel appearing for the writ petitioner on the other hand contended that learned single Judge was justified in directing the

State Election Commission to examine the question whether the Returning Officer has improperly rejected the nomination of the petitioner. Counsel

submitted that Section 34(1) deals with disqualification of candidates and if there is any dispute as to whether a candidate has been subjected to

any of the disqualifications mentioned in Sub-section (1), that question shall be referred for the decision of the State Election Commission and the

decision of the State Election Commission shall be final. Counsel submitted on the basis of the direction of the learned single Judge State Election

Commission has already passed an order holding that Returning Officer went wrong in rejecting the nomination. Since State Election Commission

has already answered the reference and held that no money was due either to the Government or to the Panchayat from the petitioner,

disqualification u/s 34(1) of the Act was not attracted. Counsel submitted that State Election Commission has rightly answered the reference u/s

34(2) of the Act.

5. We may point out at the very outset, that learned single Judge was not justified in entertaining the Writ Petition challenging the rejection of the

nomination paper of the petitioner at the time of scrutiny. Conduct of election is dealt with in Chapter IX of the Panchayat Raj Act. Section 55

deals with scrutiny of nominations. Sub-section (2) of Section 55 states that the returning officer shall examine the nomination papers and shall

decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if

any, as he thinks necessary, reject any nomination on any of the grounds stipulated therein. Sub-section (8) of Section 55 states that immediately

after all nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall

prepare a list of validly nominated candidates and affix it on his notice board. Rule 10 of the Kerala Panchayat Raj (Conduct of Election) Rules

stipulates that immediately after the scrutiny of the nomination papers is over the Returning Officer shall prepare, in Form No. 4 the list of

candidates found legally nominated.

6. Section 102 dealing with the grounds for declaring election to be void, states that if the court is of the opinion that on the date of his election a

returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Act or that any nomination has been improperly

rejected, the court shall declare election void. Section 87 of the Act states that no election shall be called in question except by an election petition

presented in accordance with the provisions of Chapter X. Section 88 states that the Court having jurisdiction to try an election petition in the case

of Village Panchayat is the Munsiff's court having jurisdiction over the place in which the headquarters of the Panchayat is located. Petitioner's

nomination was rejected by the returning officer while exercising powers u/s 55(2) of the Act. Consequently the only remedy available to the

petitioner is to file an election petition before the Munsiff's Court and not to invoke the jurisdiction of this Court under Article 226 of the

Constitution of India.

7. A Division Bench of this Court in Chief Electoral Officer v. Sunny Joseph 2005 (2) KLT 599 held that even though judicial review is part of the

basic structure of the Constitution, Constitution could exclude judicial review in certain situations. Reference was made to Articles 31(4), 31(6),

136(2), 227(4), 262(2), 2430, 243ZG, 329(a) etc. which have excluded judicial review with a laudable objective pointing out that judicial review

in certain situations may not be regarded as an indispensable measure to determine the legality or propriety of actions. We may also refer to the

recent decision of the apex court in Harnek Singh v. Charanjit Singh JT 2005 (9) SC 63 wherein it was held that Article 243 of the Constitution of

India mandates that all election disputes must be determined only by way of an election petition. The court further held Article 243O by itself may

not per se bar judicial review which is the basic structure of the Constitution but ordinarily such jurisdiction would not be exercised and there may

be some cases where a Writ Petition would be entertained. But in the above case the court held that the High Court was not justified in entertaining

the petition under Article 226 of the Constitution of India. We are of the view, learned single Judge was not justified in entertaining the Writ Petition

under Article 226 of the Constitution of India in a case where returning officer has rejected the nomination, u/s 55(2) of the Kerala Panchayat Raj

Act, 1994.

8. We are also of the view learned single Judge was not justified in referring the dispute to the Election Commission u/s 34(2) of the Kerala

Panchayat Raj Act, 1994 to resolve the question as to whether returning officer was right in rejecting the nomination of the petitioner. For easy

reference, we may extract Section 34, which reads as follows:

34. Disqualification of candidates-

(1) A person shall be disqualified for being chosen as and for being a member of a Panchayat at any level, if he-

(a) is so disqualified by or under any law, for the time being in force, for the purposes of elections to the Legislative Assembly; or

(b)(i) has been sentenced by a Court or Tribunal to imprisonment for a period not less than three months for an offence involving moral turpitude;

(ii) has been found guilty of an offence of corruption by a competent authority under any law in force;

(iii) has been held personally liable for maladministration by the Ombudsman constituted u/s 271G; or

(c) has been adjudged to be of unsound mind; or

(d) has voluntarily acquired the citizenship of a foreign State; or

(e) has been sentenced by a Criminal Court for any electoral offence punishable u/s 136 or Section 138 has been disqualified from exercising any

electoral right on account of corrupt practices in connection with an election, and six years have not elapsed from the date of such sentence or

disqualification; or

(f) is an applicant to be adjudicated an insolvent or is an undischarged insolvent; or

(g) is interested in a subsisting contract made with, or any work being done for, the Government or the Panchayat concerned except as a

shareholder (other than a director) in a company or except as permitted by rules made under this Act;

Explanation--A person shall not, by reason of his having a share or interest in any newspaper in which an advertisement relating to the affair of the

Government or the Panchayat concerned may be inserted, or by reason of his holding a debenture or being otherwise concerned in any loan raised

by or on behalf of the Government or the Panchayat, be disqualified under this clause; or

(h) is employed as a paid legal practitioner on behalf of the Government or the Panchayat concerned: or

(i) is already a member whose term of office as such will not expire before his fresh election can take effect or has already been elected a member

whose term of office has not yet commenced; or

(j) is in arrears of any kind due by him to the Government or the Panchayat concerned (otherwise than in a fiduciary capacity) upto and inclusive of

the previous year in respect of which a bill or notice has been duly served upon him and the time, if any, specified therein for payment has expired;

or

xxx xxx xxx

(2) If any question arises as to whether a candidate has become subject to any of the disqualifications mentioned in Sub-section (1), the question

shall be referred for the decision of the State Election Commission and the decision of the State Election Commission on such question shall be

final.

Section 34(1) takes in specific categories of disqualification of candidates. Section 34(1)(j) states that a person shall be disqualified for being a

member of the Panchayat at any level if he is in arrears of any kind due by him to the Government or the Panchayat concerned (otherwise than in a

fiduciary capacity) upto and inclusive of the previous year in respect of which a bill or notice has been duly served upon him and the time, if any,

specified therein for payment has expired.

9. We are of the view Section 34(1)(j) would not apply to the facts of this case. Petitioner does not owe any amount either to the Government or

to the Panchayat in respect of any bill or notice duly served upon him and that the time specified therein for payment has expired. Petitioner's

nomination paper was rejected by the returning officer not due to the fact that any amount was due either to the Government or to the Panchayat

but to a Service Co-operative Bank. Such a disqualification would not fall u/s 34(1)(j) of the Act, hence there is no question of referring the

dispute to the Election Commission u/s 34(2) of the Panchayat Raj Act, 1994. Since petitioner has not entailed any disqualification u/s 34(1)(j),

learned single Judge was not justified in directing the Election Commission to examine the question as to whether rejection of the nomination u/s

55(2) was proper or not.

10. We may in this connection refer to the decision of the Division Bench of this Court in Sukumara Kurup v. District Judge 1998 (2) KLT 548

wherein it was held that the designated court is precluded from probing into the disqualification u/s 34(1) once decision is taken by the Election

Commission u/s 34(2). On facts we find that the disqualification would not fall u/s 34(1) and therefore the question of reference to the Election

Commission u/s 34(2) does not arise and hence the principle laid down by the Division Bench is not applicable to the facts of this case.

11. In the above mentioned circumstances, we are inclined to allow the Writ Appeal, set aside the interim order passed by the learned single Judge

and dismiss the Writ Petition. On the basis of the interim order passed by this Court, the Election Commission, though otherwise not bound to

decide the reference allowed the petitioner to contest the election, but the petitioner has lost in the election. Therefore so far as the petitioner is

concerned, the issue is only academic.