

(1996) 07 KL CK 0074

High Court Of Kerala

Case No: O.P. No. 12139 of 1996

C. Azeez

APPELLANT

Vs

V.K. Krishnan and Others

RESPONDENT

Date of Decision: July 29, 1996**Acts Referred:**

- Kerala Panchayat Raj Act, 1994 - Section 93(4)

Citation: (1996) 2 KLJ 211**Hon'ble Judges:** K. Narayana Kurup, J**Bench:** Single Bench**Advocate:** O.V. Mani Prasad, for the Appellant;**Final Decision:** Dismissed

Judgement

K. Narayana Kurup, J.

The first respondent is the member elected from Ward No. XI of Naduvil Panchayat to the Panchayat Committee in the election held on 25.9.1995 the result of which was declared on the same day. Ext.P1 is the election petition filed by the petitioner before the Muniff's Court, Taliparamba challenging the election of the first respondent. The petitioner inter-alia contended that the first respondent was disqualified to contest the election u/s 34(1)(j) of the Kerala Panchayat Raj Act (for short "the Act"). The second respondent in the election petition in his counter statement has contended that the first respondent is a defaulter to the Kerala State Financial Enterprises Ltd. and Kerala State Electricity Board for paying electricity charges. According to the petitioner, the said fact was not known to him till the second respondent has filed his counter statement and it was only on further enquiry that the petitioner come to know that these contentions are true. The petitioner thereupon wanted to amend the election petition incorporating the default of the first respondent to the K.S.F.E. Ltd. and K.S.E.B. as a ground for setting aside the election of the first respondent. The first respondent filed a counter statement contending inter-alia that the amendment petition is not maintainable as

the petitioner's only contention in the election petition was that the first respondent was a defaulter to the K.S.F.E. Ltd. and not to the K.S.E.B. The first respondent returned candidate also relied on Section 39 of the Act according to which, the amendment sought for after a lapse of 7 months from the filing of the election petition based on a new ground is not maintainable. The first respondent had a further case that the petition is not maintainable u/s 93 of the Act. Learned Munsiff on a consideration of the pleadings and Exts. evidenced by XI to XI (b), dismissed the petition on the ground that the amendment sought for is not necessary for the purpose of determining the real question in controversy between the parties. The challenge in this original petition is directed against Ext.P3 order passed by the Munsiff. Having heard learned counsel for the petitioner, I am not satisfied that any ground has been made out for interference by this court in Ext. P3 in the instant proceedings. As already noted, in the election petition filed by the petitioner, the only ground raised is that the first respondent was in default to the K.S.F.E, Ltd. In the petition there is no averment to the effect that the first respondent was in arrears to the K.S.E.B. No doubt, Section 93 (4) of the Act enables the court to allow the particulars of any corrupt practice alleged in the petition to be amended or amplified in such a manner as may, in its opinion, be necessary for ensuring a fair and effective trial of the petition. From a reading of Section 93 (4) of the Act, I am satisfied that as a condition precedent for amending an election petition, the person who approaches the election tribunal should allege the particulars of any corrupt practice so as to enable the Tribunal to allow the particulars of any corrupt practice so alleged in the petition to be amended or amplified. Going by Ext. P1 election petition, I am not in a position to find any particulars of corrupt practice relating to arrears of amount due to the K.S.E.B. In the absence of specific pleadings relating to the corrupt practice, the parties cannot be permitted to take advantage of the provision for amendment so as to widen the scope of the election petition by introducing particulars of corrupt practice not previously alleged or pleaded in the election petition.

In the aforesaid view, learned Munsiff was right in dismissing the petition for amendment of the election petition. I do not find any infirmity in the same and the original petition is dismissed.