

Jijesh Vs. the Commandant

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Court : Kerala

Decided On : Aug-19-2014

Judge : Honourable Mr. Justice a.Muhamed Mustaque

Appellant : Jijesh

Respondent : The Commandant

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE TUESDAY, THE 19TH DAY OF AUGUST 2014 28TH SRAVANA, 1936 WP(C).No. 18703 of 2014 (K)

----- PETITIONER(S): ----- 1. JIJESH, HAVILDAR 7405 S/O.GANGADHARAN, AGED 26 YEARS, F COMPANY, KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT.

2. RASHEED.A., PC7757 S/O.P.K.HAMZA, AGED 34 YEARS, C COMPANY, KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT.

3. SUBHASH, PC7612 S/O.RAJARAM, AGED 28 YEARS, HQ COMPANY, KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT.

4. RAKESH, TECHNICAL HAVILDAR 1302 S/O.SASIDHARAN, AGED 33 YEARS, HQ COMPANY, KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT. BY ADVS.SRI.BABU S. NAIR SMT.SMITHA BABU
RESPONDENT(S): ----- 1. THE COMMANDANT, KAP4H

BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT.PIN-670 001 2. THE DEPUTY COMMANDANT,KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT.PIN-670 001 3. RANJITH K., HAVILDAR6567 RETURNING OFFICER, F COMPANY,KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT.PIN-670 001 4. SUDHEESH.V.,HAVILDAR6842 RETURNING OFFICER, C COMPANY, KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT.PIN-670 001 sts 2/- -2- WP(C).NO.18703/2014 5. BAIJU.P.L.,HAVILDAR3781 RETURNING OFFICER, HQ COMPANY, KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT.PIN-670 001 6. MAHESH, P.C.7746, HQ COMPANY, KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT.

7. VINOD, TECHNICAL HAVILDAR1291 HQ COMPANY, KAP4H BATTALION,MANGATTUPARAMBU, KANNUR DISTRICT. PIN-670 001 8. MOHANAN.V.K., HAVILDAR3769 F COMPANY, KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT.PIN-670 001 9. NISAB PALAKKAL, P.C.7643, C COMPANY, KAP4H BATTALION, MANGATTUPARAMBU, KANNUR DISTRICT. PIN-670 001 R2 BY GOVERNMENT PLEADER SRI.K.C.VINCENT R6 TO R9 BY ADV. SRI.K.R.SUNIL THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON1908-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: sts WP(C).No. 18703 of 2014 (K)
----- APPENDIX PETITIONER(S)' EXHIBITS
----- P1: COPY OF THE BYE-LAWS OF THE KERALA POLICE ASSOCIATION PUBLISHED BY DEPARTMENT OF HOME AS PER G.O.(MS)NO.134/79/HOME DATED410.1979. P2: COPY OF THE FINAL VOTERS LIST PUBLISHED BY THE FIRST RESPONDENT BY

ORDER

NO.G3-3807/2013/KAP IV DATED, 14.7.2014. P3: COPY OF THE COMMUNICATION GIVEN BY THE3D RESPONDENT TO THE FIRST PETITIONER DATED, 17.7.2014. P4: COPY OF THE REPRESENTATION SUBMITTED BY THE1T PETITIONER BEFORE THE1T RESPONDENT DT. 18.6.2014. P5: COPY OF THE COMMUNICATION ISSUED TO THE2D PETITIONER BY THE4H RESPONDENT DATED, 17.7.2014. P6: COPY OF THE

REPRESENTATION SUBMITTED BY THE2D PETITIONER BEFORE THE1T
RESPONDENT DATED, 18.7.2014. P7: COPY OF THE COMMUNICATION
ISSUED BY THE5H RESPONDENT TO THE3D PETITIONER DATED, 17.7.2014.
P8: COPY OF THE COMMUNICATION ISSUED BY THE5H TO THE4H
PETITIONER DATED, 17.7.2014. P9: COPY OF THE REPRESENTATION
SUBMITTED BY THE3D PETITIONER TO THE1T RESPONDENT, DT.
18.7.2014. P10: COPY OF THE REPRESENTATION SUBMITTED BY THE4H
PETITIONER TO THE1T RESPONDENT, DT. 18.7.2014. P11: COPY OF THE
ELECTION SCHEDULE OF THE KERALA POLICE ASSOCIATION201415 P12:
COPY OF THE

ORDER

OF THE FIRST RESPONDENT AS NO.G3/3807/2014 DATED, 24/7/2014
RESPONDENT(S)' EXHIBITS ANS ANNEXURES:

----- ANNEX R2(A): COPY OF
THE COMMUNICATION ISSUED BY THE RETURNING OFFICER TO THE
ADDITIONAL8H RESPONDENT INFORMING HIM REJECTION OF THE
NOMINATION PAPER OF THE1T PETITIONER. ANNEX R2(B): COPY OF THE
SCHEDULE OF ELECTION WAS ISSUED BY THE RETURNING OFFICER FOR
THE PRESENT YEAR201415 sts 2/- -2- WP(C).NO.18703/2014 ANNEX R2(C):
COPY OF THE

ORDER

NO.G3/3807/14 DATED2407/2014 ANNEX R2(D): COPY OF THE RELEVANT
PAGES OF

ORDER

NO.G3/3807/13/KAP-IV DATED1407/2014 IN WHICH NAME OF PERSONS
WHOSE NAME APPEARS AS PERSONS SUBMITTED APPLICATION FOR
CORRECTION OF THEIR NAME. ANNEX R2(E): COPY OF THE

ORDER

NO.G3/3807/13/KAP-IV DATED0407/2014 PUBLISHING THE DRAFT VOTERS
LIST WANTING TIME TILL1007/2014 ANNEX R2(F): COPY OF THE FINAL
VOTERS LIST

ORDER

NO.G3/3807/13/KAP-IV DATED 14/07/2014 ANNEX R2(G): COPY OF THE PERSONS WHO REPRESENTS AS PERSONS ELECTED FROM THE RESPECTIVE UNITS AS CONSTITUENCY. ANNEX R2(H): COPY OF THE PETITION FILED BY SRI.JIJESH KELAMBATH, HAVILDAR NO.7405. /TRUE COPY/ P.A.TO.JUDGE sts A.MUHAMED MUSTAQUE, J.

= = = = = WP(C).No.18703 of 2014-K. = = = = =
Dated this the 19th August, 2014.

JUDGMENT

This writ petition is filed by the police personnel working in the KAP IVth Battalion at Mangattuparamba in Kannur District challenging the rejection of the nomination for the election of office bearers of Kerala Police Association.

2. Kerala Police Association has been formed by virtue of Government Order, GO.(Ms).No.134/79/Home dated 4.10.1979. Police Forces (Restriction of Rights) Act, 1966 is a Central enactment came into force in Kerala on 1.9.1979. Article 33 of the Constitution provides that the Parliament may by law determine to what extent any of the rights confirmed by Part III of the Constitution shall, in their application to the members of the Armed Force or the Forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge WP(C).No.18703/2014-K. 2 of their duties and the maintenance of discipline among them. Section 3 of the Police Force (Restriction of Rights) Act, 1966 restrict the right to form association, freedom of speech, etc., without the express sanction of the Central Government or of the prescribed authority. The Government of Kerala being the prescribed authority under the Rules by the aforesaid Government Order gave permission to form association to the Police personnel in Kerala.

3. Respondents 1 and 2 are the Commandant and Deputy Commandant of the KAP IVth Battalion. They have raised a preliminary point regarding the maintainability of the writ petition by way of an additional statement. According to

the additional statement, the writ petition is not maintainable against the Police Association as the same is not a statutory body nor it discharges any public or statutory function.

4. The Kerala Police Association as revealed from the bye-law is the only Association of the Police Force in Kerala. WP(C).No.18703/2014-K. 3 The election is conducted by dividing into units as per the structure of the Police Force. The object and purpose of the Association is mentioned in clause 5 of the bye-laws. It is stated that it shall function as a non political association for inter-alia to promote unity, co-operation, create responsibility, discipline, patriotism among the police personnel in the State of Kerala and also to have a cordial relationship with the civil society. It is also mentioned that it shall strive for the common good of the police personnel within the frame work of discipline in the police force. It is also the object to promote the social and moral values of the police personnel and to provide social security measures to the family of the police personnel who die-in-harness.

5. The learned Special Government Pleader would submit that there is no public discharge of function or obligation by the association and would argue that merely because the sanction has been obtained as per the Police Force Act for forming an association that does not itself entail in constitution of an 'authority' falling within the WP(C).No.18703/2014-K. 4 meaning of the State in Article 12 of the Constitution. The learned Spl.Govt.Pleader relies on decisions of the Hon'ble Supreme Court in Dwarka Prasad Agarwal and another v. B.D.Agarwal and others [(2003) 6 SCC230, Federal Bank Ltd. v. Sagar Thomas [(2003) 10 SCC733, State of Rajasthan v. Bhawani Singh and others (1993 Supp (1) SCC306 and M.D.Maharashtra Cotton Growers Market Federation Ltd. v. Choughule Popatrao Annasaheb and another [(2003) 6 SCC247.

6. The learned counsel for the petitioner Sri.Babu S.Nair relying on the decisions of the Hon'ble Supreme Court in Ajay Hasia v. Khalid Mujib (1981 SC487 and also in General Manager, KSCM Ltd. v. Satrugan Nishad (AIR 2003 SC4531 would argue that the existence of pervasive control by the State on the freedom of police personnel itself gives the association the character of the 'other authority'.

According to the learned counsel, the bye- laws itself has been framed by the Government. The learned counsel also by referring to various provisions in the WP(C).No.18703/2014-K. 5 bye-laws such as nature of branch, designated officer to hear the appeal on rejection of the nomination etc., submits that the very foundation of association is with reference to exercise of duties attached to the officer concerned with reference to his designation in the police force. Therefore, he would say officials discharging other function under the bye-laws are not in a private capacity but in their official capacity with an object to sustain the discipline of the force as otherwise contemplated under the Article 33 of the Constitution as well as in the Police Act.

7. In *Pradeep Kumar Biswas v. Indian Institute of Chemical Biology and others* [(2002) 5 SCC111 after examining of the line of decisions including some of the decisions relied by the counsel for both parties laid down the test to determine 'other authority' as State as defined under Article 12 and held as follows: "Whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be WP(C).No.18703/2014-K. 6 pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State." The only document available before this Court is the bye- laws of the association. It is nowhere indicated in bye-laws that the Government has any deep or pervasive control over the association. The reference to the police officers in their official capacity in bye-laws is not as a nominee of the Government in the association. On the other hand, the reference to the official designation is for the purpose of identification of the police personnel to discharge various duties and functions attached to the police personnel who are members of the association. The regulatory power exercised by the Government for giving sanction to form association in terms of the Article 33 of the Constitution and also under the Police Forces Act is only as legal sanctity for the police personnel to form an association, but for which the association would have become illegal. But that does not mean the association itself is controlled by the WP(C).No.18703/2014-K. 7 Government. Approval granted for the association itself will not confer it as an 'other authority'

as defined under Article 12 of the Constitution. There are no functional aspects qualifying them to call as an 'other authority'. The functional aspect must be discharged of public duty or that of a sovereign function. The association duly constituted under any statute if involved in discharge of public functions or duties that may attract Article 226 of the Constitution if there is any aberrations of the rights and duties attached under the bye-laws available to the members of that association. The bye-laws, on the other hand, clearly spells out the object and function of the association which is purely social and recreational and no way connected with the discharge of a public duty or a public function. If that be the case, I am of the view the writ petition is not maintainable in respect of the election of the association. Merely because the respondents 1 and 2 who heard the appeal rejecting the nomination with reference to their duty attached under the bye-laws terming them as an appellate WP(C).No.18703/2014-K. 8 authority identifiable with reference to the designation in an official capacity cannot give rise to a cause of action for the petitioners under Article 226 of the Constitution. Their function is purely in private domain and not referable under official capacity. In view of the above, this writ petition is dismissed as not maintainable. In view of the dismissal of the writ petition, interim orders are vacated. Sd/- A.MUHAMED MUSTAQUE, (Judge) Kvs/- // true copy //

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