

Vasanthakumari vs the Kerala State Election Commission

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Court : Kerala

Decided On : Dec-18-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : WP(C)/3935/2023

Appellant : Vasanthakumari

Respondent : The Kerala State Election Commission

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS MONDAY, THE 18TH DAY OF DECEMBER 2023/27TH AGRAHAYANA, 1945 WP(C) NO. 3935 OF 2023 PETITIONER: VASANTHAKUMARI MEMBER, WARD NO.4, MANKARA GRAMA PANCHAYAT, W/O LATE ASOKAN, MANGURUSSI P.O, KUNNUMMEL, MANKARA, PALAKKAD DISTRICT, PIN - 678613 BY ADVS. SRI.THOMAS ABRAHAM SMT.MERCIAMMA MATHEW SRI.ASWIN.P.JOHN SRI.R.ANANTHAPADMANABAN SRI.PAUL BABY RESPONDENTS: 1 THE KERALA STATE ELECTION COMMISSION VIKAS BHAVAN, JANAHITHAM, NEAR LEGISLATIVE ASSEMBLY, THIRUVANANTHAPURAM, PIN - 695033 2 M.V.RAMESH MEMBER WARD NO.1, MANKARA GRAMA PANCHAYAT, S/O VELAYUDHAN,

MOOKKATTUKUNNU HOUSE, KALLOOR P.O, MANKARA, PALAKKAD
DISTRICT, PIN - 678613 BY ADVS. SRI.DEEPU LAL MOHAN
SRI.SAIJO HASSAN SRI.BENOJ C AUGUSTIN

W.P.(C) No.3935/23 :-2:- SRI V.K.RAFEEK SRI.U.M.HASSAN SMT.AATHIRA
SUNNY SMT.BINCY JOB SRI.SALMAN FARIS SMT.DEVI.R.SENS THIS WRIT
PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12.12.2023, THE
COURT ON 18.12.2023 DELIVERED THE FOLLOWING: W.P.(C) No.3935/23 -
:3:-

BECHU KURIAN THOMAS, J.

----- W.P.(C) No.3935 of 2023 ----- Dated
this the 18th day of December, 2023

JUDGMENT

Petitioner challenges the order of the Kerala State Election Commission (for short
'the Election Commission') in O.P. No.10 of

2021. By virtue of the impugned order dated 17-01-2023, the

Election Commission found the writ petitioner disqualified on the ground of
defection as per section 3(1)(c) of the Kerala Local Authorities (Prohibition of
Defection) Act, 1999, (for short 'the Act)

2. The second respondent and the writ petitioner in this writ

petition were the original petitioner and the respondent, respectively, before the
Election Commission. For the purpose of easier comprehension, the parties are
referred to as they were arrayed before the Election Commission, i.e. writ
petitioner as 'respondent' and second respondent as 'petitioner'.

3. According to the petitioner, he and the respondent were elected members of
Ward No.1 and Ward No.4 of Mangara Grama Panchayat in the elections held to
the Local Self Government W.P.(C) No.3935/23 :-4:-

Institutions in December 2020. While the petitioner was the official candidate of the Indian National Congress (for short 'the INC'), the respondent contested as an independent candidate with the symbol 'mobile phone'. Petitioner alleges that the respondent had, in her nomination paper, given a statement that she does not belong to any political party or any coalition and is an independent candidate, contesting without the help of any political party or coalition. Petitioner further alleged that after the respondent was elected as an independent candidate, she gave a sworn declaration that she was elected as an independent candidate with the support of CPI(M) of the LDF coalition. According to the petitioner, as the respondent joined a political party after the election, she has committed defection, attracting the vice of disqualification under section 3(1)(c) of the Act.

4. On the contrary, the respondent, in her objection,

questioned the locus standi of the petitioner and stated that after she filed her nomination as an independent candidate, the CPI(M) took a decision to support her and votes were solicited for her by them after the LDF coalition decided to freeze its candidate in the Ward. Respondent thus alleged that she had, in effect, become the LDF

W.P.(C) No.3935/23 -:5:- candidate in the Ward and that the voters were all aware of it. The respondent further pleaded that she had never approached the voters claiming to be an independent candidate, and on the other hand, she contested and was elected as an independent candidate supported by the CPI(M) in the LDF coalition. According to the respondent, the declaration filed by her cannot result in her disqualification due to the peculiar circumstances.

5. In order to prove the case of the petitioner, he examined PW1 and PW2 and marked Ext.A1 to Ext.A8, while the respondent examined RW1 to RW4 and marked Ext.B1 to Ext.B3. Court exhibits were marked as Ext.X1 to Ext.X4.

6. After analysing the evidence, the Election Commission concluded that the respondent had defected as per section 3(1)(c) of the Act and held her to have become disqualified as per the provisions of the Act.

7. Sri. Aswin P. John, learned counsel for the writ petitioner (respondent before the Election Commissioner), submitted that the Election Commission erred in finding her disqualified under section 3(1)(c) of the Act. The learned counsel contended that the respondent was all along supported by the CPI(M), and therefore, W.P.(C) No.3935/23 -:6:-

her declaration cannot be a reason for concluding that she had defected. It was also submitted that, all along, the respondent was known as a member of CPI(M), and she won the election supported by CPI(M) and a mere reference by her in the nomination form as an independent candidate cannot result in her being disqualified. The learned counsel also argued that trivial factors like the symbol allotted at the time of elections have no bearing on whether the writ petitioner was an independent candidate and thus sought to dismiss the petition.

8. Sri. Saiju Hassan, the learned counsel for the second

respondent in this writ petition (petitioner before the Election Commission), contended that a comparison of the nomination paper and the declaration submitted by the respondent after the elections would be sufficient to conclude that she had defected as per section 3 (1)(c) of the Act and therefore there is no reason to interfere with the order of the Election Commission.

9. Sri. Deepu Lal Mohan, the learned Standing Counsel for the

Election Commission, submitted that the declaration submitted by the respondent alone is sufficient to conclude that she had defected as she had submitted her nomination and contested the election as an W.P.(C) No.3935/23 -:7:- independent candidate not supported by any political party. According to the learned Standing Counsel, the impugned order of the Election Commission does not call for any interference as there is no perversity and the findings are all based on the evidence adduced in the case.

10. The question to be determined is whether the respondent had become disqualified on the ground of defection as per section 3(1)(c) of the Act. Section 3(1)(c) is extracted as below:- 3. Disqualification on ground of defection.-

(1) Notwithstanding anything contained in the Kerala Panchayat

RaJ Act, 1994 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994) or in any other law for the time being in force, subject to the other provisions of this Act,-

(a) xxx xxx xxx (b)xxx xxx xxx

(c) if an independent member not belonging to any

coalition, joins any political party or coalition; he shall be disqualified for being a member of that local authority. Explanation.-For the purpose of the section an elected member of a local authority shall be deemed to be a member belonging to the political party if there is any such party, by which he was set up or given support as a candidate for the election.

11. Section 3 of the Act deals with different types of defections. Section 3(1)(c) deals with the manner in which an independent member can acquire disqualification. As per the provision, if an W.P.(C) No.3935/23 -:8:-

independent member who had contested in the elections without the affiliation or support of any party or coalition joins a political party or coalition after the election, he or she shall become disqualified for being a member of that local authority.

12. A perusal of Ext,A3 declaration submitted by the

respondent along with her nomination in Form No.2 reveals that she had submitted a nomination as an independent candidate. In the list of candidates published in Form 6 as per rule 13 of the Kerala Local Authorities (Disqualification of Defected Members) Rules, 2000 (for short the Rules), it is seen that the respondent was allotted the symbol 'mobile phone' while one Sreeja V.K. contested with the symbol 'corn and sickle'. In Ext.A5 and Ext.A6 election notices published by the respondent, it was stated that she was contesting in Ward No.4 of Mankara Grama Panchayat as an independent candidate with the symbol 'mobile phone' while in Ext.A7, Smt.Sreeja V.K. is stated to be contesting from Ward No.4 as the LDF candidate with the symbol 'sickle and corn'. Therefore, it is

evident that the respondent had contested the elections as an independent candidate without the support of any political party. PW2, who is the secretary of the Panchayat, had, in his evidence, stated that the respondent

W.P.(C) No.3935/23 -:9:- had given a declaration before the election that she was contesting as an independent candidate while, subsequent to the elections, she gave Ext.A8 declaration as per Rule 3(2) of the Rules that she was an independent member supported by CPI(M).

13. Further, the respondent, in her evidence, admitted Ext.A3

as the copy of her nomination paper and also admitted that she had filed the same as an independent candidate without the support of any political party. She had also, in her evidence, admitted that Ext.A5 was her election manifesto, wherein she had also specified that she was an independent candidate and had not mentioned the support of any political party. She has also admitted that there was a candidate of the LDF coalition in the same Ward, and Ext.A7 was the request of the said candidate. Thus, the evidence adduced has convincingly brought out that the respondent had submitted a nomination and contested the election as an independent candidate without the support of any political party.

14. Ext.A8 declaration is filed after the election, pursuant to

Rule 3 of the Rules of 2000 and is to be filed in Form No.2 and is bound to be filed on the same day, the member assumes office. As per rule 3(1)(c) of the Rules, an independent candidate who W.P.(C) No.3935/23 -:10:-

contested the election otherwise as the candidate of a political party or a coalition or as a candidate with the support of the party or the coalition shall, file a declaration to that effect and accordingly that member shall be treated as an independent member. Therefore, if an independent candidate, after the election, submits a declaration that she belongs to a political party or is supported by another political party, she will have to be treated as a member of that political party or as a member with the support of that political party.

15. Interpreting the provisions of rule 3(1)(c), a learned single

Judge of this Court had in *Sheeba George v. The State Election Commission of Kerala* [W.P.(C) No.25560 of 2022] observed that when a candidate files a declaration, there is a deeming fiction that such member will be treated as a member of that political party or as a member with support of that political party, as the case may be. The aforesaid case was also based on similar set of facts and the

Election Commission found that the member had defected. The learned Single Judge refused to interfere with the decision and observed as follows: 21. Rule 3(2)(a) provides that when a candidate who contested election as a candidate of a political party or as candidate having the support of a political party files a declaration to that effect, that Member will be treated as a Member of that political party. Thus, when a candidate files such a declaration, there is a deeming fiction that such Member will be treated as Member of that political party or as a Member with the support of that political party, as the case may be. The reliance placed by the petitioner on the

judgment of the Apex Court in *D. Sudhakar and others v. D.N.*

Jeevaraju and others [MANU/SC/0056/2012] will not apply to the

facts of the case in view of the deeming provision contained in Rule

3 of the Rules, 2000.....

22. The materials available from the records of the case

would show that the petitioner contested the election from Ward No.6 as an independent candidate, where other political coalitions including LDF had put up their own candidates. The petitioner has thereafter aligned with a political front and has been elected as Vice President of the Panchayat. The petitioner is an independent candidate not belonging to any political party or coalition. By filing the declaration in question, the petitioner should be deemed to have joined a political party/coalition.

Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 will therefore be attracted.

16. The Division Bench of this Court had, in *Sheeba George v.*

The State Election Commission of Kerala and Ors. [ILR 2022 (4) Ker.386] dismissed the appeal upholding the judgment of the learned Single Judge. It was observed in the above judgment as follows:

When a declaration was made by the appellant, an independent candidate who won the election without support of a coalition or of a political party, as if to appear that she has contested as an independent member with the support of a political party/coalition, and the Secretary of the Grama Panchayat registered so in the statutory register, it is clear that the petitioner has violated the requirements of law.

17. The facts in the above case are almost similar with the present case. The Election Commission has, after appreciating the W.P.(C) No.3935/23 -:12:-

evidence and the documents produced, came to the conclusion that the respondent had contested the election as an independent candidate and filed Form No.2 declaration under rule 3 of the Rules indicating that after the election, she belonged to the LDF coalition as a constituent of CPI(M) political party. In fact, concededly, she has even become the Vice-President of the Panchayat with the support of CPI(M). Undoubtedly, the vice of defection under section 3(1)(c) of the Act is attracted. A reading of the impugned order clearly evinces that the conclusions are legal and proper, and there is no perversity warranting any interference. In such a view of the matter, I find no reason to interfere with the order of the Election Commission.

The writ petition is therefore dismissed. Sd/- BECHU KURIAN THOMAS JUDGE
vps W.P.(C) No.3935/23 -:13:- APPENDIX PETITIONER'S/S' EXHIBITS EXHIBIT
P1 THE CERTIFIED COPY OF THE ORDER DATED 17.1.2023 PASSED BY
THE KERALA STATE ELECTION COMMISSION IN O.P.NO.10 OF 2021
EXHIBIT P2 THE TRUE COPY OF THE PETITION NUMBERED AS O.P NO.10

OF 2021 EXHIBIT P3 THE TRUE COPY OF THE OBJECTION DATED 16.11.2021 FILED BY THE PETITIONER EXHIBIT P4 THE TRUE COPY OF THE SAID LETTER NO.J.C.4-315/2023 DATED 9/3/2023 ISSUED BY THE SECRETARY, MANKARA GRAMA PANCHAYAT EXHIBIT P5 THE TRUE COPY OF THE LETTER DATED KERALA STATE ELECTION COMMISSION

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