

Sathi Udayakumar vs the Kerala State Election Commission

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Court : Kerala

Decided On : Nov-23-2023

Judge : Honourable Mr. Justice Bechu Kurian Thomas

Appeal No. : WP(C)/697/2018

Appellant : Sathi Udayakumar

Respondent : The Kerala State Election Commission

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS THURSDAY, THE 23RD DAY OF NOVEMBER 2023 / 2ND AGRAHAYANA, 1945 WP(C) NO. 697 OF 2018 PETITIONER: SATHI UDAYAKUMAR MANGATTUKIZHAKKATHIL, IVERKALAPADI NORTH, PUTHANAMBALAM P.O., KOLLAM-691553.

BY ADVS. DR.K.P.SATHEESAN (SR.) SRI.S.K.ADHITHYAN SRI.P.MOHANDAS ERNAKULAM SRI.MUHAMMED IBRAHIM ABDUL SAMAD SRI.SABU PULLAN SRI.K.SUDHINKUMAR SRI.S.VIBHEESHANAN RESPONDENTS: 1 THE KERALA STATE ELECTION COMMISSION REPRESENTED BY ITS SECRETARY,

OFFICE OF THE STATE ELECTION COMMISSION,
THIRUVANTHAPURAM-695001. 2 BEENA V. W/O.SAJEEV,
KUZHIVILA VEEDU, KUNNATHUR EAST P.O., KOLLAM-691540. BY
ADVS. KODOTH SREEDHARAN SRI.V.M.KRISHNAKUMAR
V.M.KRISHNAKUMAR -:2:- OTHER PRESENT SHRI.DEEPU LAL
MOHAN, STANDING COUNSEL STATE ELECTION COMMISSION,
KERALA THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 23.11.2023, ALONG WITH WP(C).805/2018, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE BECHU KURIAN
THOMAS THURSDAY, THE 23RD DAY OF NOVEMBER 2023 / 2ND
AGRAHAYANA, 1945 WP(C) NO. 805 OF 2018 PETITIONER/S:
RAJASEKHARAN PILLAI P.S. PURANGATTUKIZHAKKATHIL,
IVERKALA,PUTHANAMBALAM P.O., KOLLAM - 691 553.

BY ADVS. DR.K.P.SATHEESAN (SR.) SRI.S.K.ADHITHYAN
SRI.P.MOHANDAS ERNAKULAM SRI.SABU PULLAN
SRI.K.SUDHINKUMAR RESPONDENTS: 1 THE KERALA STATE
ELECTION COMMISSION REPRESENTED BY ITS SECRETARY,
OFFICE OF THE STATE ELECTION
COMMISSION,THIRUVANANTHAPURAM - 695 001. 2 BEENA V W/O.
SAJEEV, KUZHIVILA VEEDU, KUNNATHUR EAST P.O., KOLLAM -
691 540. BY ADVS. KODOTH SREEDHARAN
SRI.V.M.KRISHNAKUMAR V.M.KRISHNAKUMAR SHRI.DEEPU LAL
MOHAN, SC, STATE ELECTION COMMISSION, KERALA -:4:- OTHER
PRESENT SHRI.DEEPU LAL MOHAN, STANDING COUNSEL, STATE
ELECTION COMMISSION, KERALA THIS WRIT PETITION (CIVIL)
HAVING COME UP FOR ADMISSION ON 23.11.2023, ALONG WITH
WP(C).697/2018, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: -:5:-

Dated this the 23rd day of November, 2023

JUDGMENT

The petitioners in these two writ petitions were the elected members of Kunnathur Grama Panchayat, Kollam District. Alleging that, they became disqualified due to defection, the 2 nd respondent filed O.P. No.10/2016 and O.P. No.11/2016 before the Kerala State Election Commission (for short the Commission). By the impugned order, the Commission found that the writ petitioners were disqualified for being members of the Panchayat.

2. The main contention urged by Sri.K.Sudhinkumar, the learned

counsel for the petitioners is that, the disqualification alleged is based on an allegation of violation of whip. Law mandates the petitioners before the Commission to plead and prove that there was a valid whip and also that a copy of the whip (direction in writing) was given to the Secretary of the Panchayat. Petitioners alleged that there was no valid whip and in the absence of proper pleadings and consequential proof, the writ petitioners cannot be disqualified.

3. Sri. V.M.Krishnakumar, the learned counsel for the 2 nd

respondent, on the other hand, contended that there are valid pleadings in the petitions for disqualification since they had stated that a valid whip -:6:- was issued, which is more than sufficient. As far as the evidence regarding the service of the whip in writing to the Secretary is concerned, the learned counsel contended that the writ petitioners had not, during their evidence, raised such a contention, and therefore, they are estopped from now contending that there was no service of the direction in writing to the Secretary. It was further contended that, in exercise of the jurisdiction under Article 226 of the Constitution of India, this Court ought not to interfere with the impugned orders especially when the decision has been taken in compliance with all the legal requirements.

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

Kerala State Election Commission pointed out that, in the decision in *George Elamplakkadu @ Vakkachan Powathil v. A. V. Mathew @ Samkutty Vettupalam and Others* [2020 (5) KHC 297], the learned Single Judge had observed that service of copy of the direction in writing (whip) on the Secretary is mandatory in nature, and non compliance is fatal.

5. I have considered the rival contentions.

6. The 2nd respondent had approached the Commission in

O.P.No.10/2016 and O.P.No.11/2016 alleging that the writ petitioners, who were the respondents before the Commission, had violated the whip. The contention regarding the violation of whip obliges the person who seeks such an order to plead and prove the requirements of Section 3 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (in short :- the Act). The said obligation mandates that the direction in writing was served not only on the person allegedly defected but even on the Secretary of the Local Self Government Institutions.

7. I am fortified in the above view by the decision of this Court in *George Elamplakkadu @ Vakkachan Powathil v. A. V. Mathew @ Samkutty Vettupalam and Others* [2020 (5) KHC 297], wherein it has been observed that:

In such circumstance, it is held that sub-section (2) of S.3 of the Act and sub-rule (2) of R.4 of the Rules, which require that a copy of the direction in writing (whip) shall also be given to the Secretary, is mandatory in nature. In a petition filed under sub-section (1) of S.4, on the ground that a member of a local authority belonging to any political party acted contrary to the direction in writing (whip) issued by the political party, the petitioner has to place on record a copy of the direction in writing (whip) issued by the political party; and in the enquiry conducted under sub-section (2) of S.4, the petitioner has to establish the existence of a valid direction in writing (whip) by the political party to its members, in terms of clause (i) of sub-rule (1) of R.4 and that, it was given to the members

concerned and also the the Secretary of the local authority, in the manner prescribed in sub-rule (2) of R.4.

8. Further, in the decision in Jomon K.M v. Kerala State

Election Commission, Thiruvananthapuram, [2021 KHC 3056], another learned Single Judge had observed that in the absence of a finding that the whip was served on the Secretary of the local body, there cannot be a valid service of whip.

9. A perusal of the impugned order reveals that the Commission

-:8:- went on a wrong tangent without considering the question as to whether the Secretary of the Panchayat was served with the direction in writing. At the evidence stage, none of the parties had raised a contention or put any question to any of the witnesses as to whether the direction in writing was served on all persons, including the writ petitioners. Though the Secretary of the Panchayat was examined in chief, there was no cross examination. Even if, this Court accepts the evidence of the Secretary in toto, still, that would not advance the case of the 2 nd respondent, since the evidence of the Secretary falls short of the proof required under Section 3(2) of the Act.

10. Even though writ petitioners contend that, there was no

service of whip on them, I am of the view that the said contention need not be considered since the petitioner before the Commission had not pleaded or proved that the Secretary of the Panchayat was served with the direction in writing issued to the alleged defected members.

11. The question then arises as to what is the nature of relief to be granted and whether the matter requires a remand for the purpose of granting an opportunity to elicit evidence regarding service of the whip on the Secretary.

12. While considering the said question, this Court notices that in

the impugned order there is no finding that the whip was served on the Secretary of the local body. It is also significant to note that the person who is purported to have issued the whip has not been examined as a -:9:- witness. Since none of the

witnesses nor the petitioners before the Commission had a case that the direction in writing was served on the Secretary, I am of the view that, at this distance of time, no purpose would be achieved by remanding the matter.

13. Accordingly, I allow these writ petitions and set aside the

order of disqualification issued in O.P. No.10/2016 and O.P. No.11/2016

(Ext.P4) on the files of the Kerala State Election Commission, Thiruvananthapuram and dismiss those two original petitions. Writ petitions are allowed as above. Sd/- BECHU KURIAN THOMAS JUDGE Jka/23.11.23. -:10:-
APPENDIX OF WP(C) 697/2018 PETITIONERS EXHIBITS

EXHIBIT P1

TRUE COPY OF THE COMPLAINT FILED BY TH

EXHIBIT P2- TRUE COPY OF THE PROOF AFFIDAVIT FILED BY THE PETITIONER IN O.P.NO.11/2016 DATED EXHIBIT P3- TRUE COPY OF THE DISCHARGE SUMMARY ISSUED BY THE CSI MISSION HOSPITAL, KAZHAKKOTTAM DATED 11/08/2016. EXHIBIT P4- TRUE COPY OF THE COMMON ORDER PASSED BY THE FIRST RESPONDENT IN O.P.NO.10/2016 AND O.P.NO.11/2016 DATED 03/01/2018. -:11:- APPENDIX OF WP(C) 805/2018 PETITIONERS EXHIBITS

EXHIBIT P1

TRUE COPY OF THE COMPLAINT FILED BY TH

01.9.2016. EXHIBIT P2 TRUE COPY OF THE PROOF AFFIDAVIT FILED BY THE PETITIONER IN OP NO. 10/2016 DATED 04.7.2016. EXHIBIT P3 TRUE COPY OF THE DISCHARGE SUMMARY ISSUED BY THE CONSULTANT DOCTOR OF TRAVANCORE MEDICAL COLLEGE HOSPITAL, KOLLAM DATED 12.8.2016. EXHIBIT P4 TRUE COPY OF THE COMMON ORDER PASSED BY THE FIRST RESPONDENT IN OP NO. 10/2016 AND OP NO. 11/2016 DATED 03.1.2018.