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Subramaniyan S., vs the Kerala State Election Commission,

Subramaniyan S., vs the Kerala State Election Commission,

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Court : Kerala

Decided On : Sep-30-2020

Judge : Honourable Mr. Justice a.Muhamed Mustaque

Appeal No. : WP(C)/1159/2020

Appellant : Subramaniyan S.,

Respondent : The Kerala State Election Commission,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE WEDNESDAY, THE 30TH DAY OF SEPTEMBER 2020 / 8TH ASWINA, 1942 WP(C).No.1159 OF 2020(T) PETITIONER/S: SUBRAMANIYAN S., AGED 45 YEARS S/O RAMAN,MANNUTHODY,VENGASSERY.P.O, PALAKKAD-679516,MEMBER,WARD NO.8, AMBALAPARA GRAMA PANCHAYAT. BY ADVS. SRI.M.V.BOSE SRI.VINOD MADHAVAN SRI.SHARATH S.PUTHENPARAMPAN SMT.P.M.MAZNA MANSOOR RESPONDENT/S: 1 THE KERALA STATE ELECTION COMMISSION, THIRUVANANTHAPURAM-695033. 2 P.P.SREEKUMAR, PUNATHIL PUTHEN VEEDU,VENGASSERY.P.O, PALAKKAD-

679516,MEMBER,WARD NO.9, AMBALAPARA GRAMA PANCHAYAT. R1 BY SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM R2 BY ADV. SRI.K.B.ARUNKUMAR THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 2209-2020, THE COURT ON 30-09-2020 DELIVERED THE FOLLOWING: WP(C).No.1159 OF 2020(T) -:1:-

JUDGMENT

Dated this the 30th day of September, 2020. This writ petition was filed challenging an order of the Kerala State Election Commission dismissing the petition filed by the petitioner under Section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (for short, the 'Defection Act') to declare that the second respondent disqualified to continue as a member of the Ambalappara Grama Panchayat. The petition was filed on the ground that the second respondent, who was elected as a member of the Ambalappara Grama Panchayat on the symbol of Communist Party of India (Marxist) [CPI(M)] has voluntarily given up his membership by joining BJP, another political party.

2. The case in this matter is relatable to first part of Section 3(1)(a) of the Defection Act. It is appropriate to refer Section 3(1)(a) of the Defection Act which reads thus:

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 WP(C).No.1159 OF 2020(T) -:2:- other provisions of this Act,-

(a) if a member of a local authority belonging to any political

party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting,-

(i) in a meeting of a Municipality, in an election of its Chairperson, Deputy Chairperson, a member of a Standing Committee or the Chairman of a Standing Committee; or

(ii) in a meeting of a Panchayat, in an election of its

President, Vice President, a member of a Standing Committee or the Chairman of the Standing Committee; or in a voting on a no-confidence motion against any one of them except a member of a Standing Committee;

3. There are two parts related to the grounds of disqualification as aforementioned. Firstly, a member of the local authority belonging to a political party

voluntarily gives up his membership; secondly, acting against the whip of political party. The disqualification can be based on satisfying any one of the part or both. In this case, the case projected on the first part of the ground of disqualification under Section 3(1)(a) of the Defection Act.

4. The petitioner is an elected member of the Grama Panchayat belonged to Communist party of CPI(M), alleged that the second respondent announced his decision to join WP(C).No.1159 OF 2020(T) -:3:- BJP in a press conference held on 21.3.2018. The petitioner also produced materials before the Election Commission to substantiate his contentions. The petitioner also relied on oral evidence. The second respondent denied the allegation of defection and joining BJP. The Election Commission on analysing the materials was of the view that there was no convincing and satisfactory evidence to show that the second respondent has given up his membership from CPI(M).

5. In the light of the stand taken by the second respondent that he has not joined BJP, it was incumbent on the part of the petitioner to prove his allegation. Following are the evidence relied by the petitioner: i. Exts.A2 and A3 news report in Malayala Manorama and Mathrubhumi.

ii. Ext.A4 Poster.iii. Notices with photos [Exts.X

6. The second respondent denied attending any press

conference announcing his decision to join BJP. Apart from the newspaper reports, nothing was available before the Election Commission to hold that such a declaration WP(C).No.1159 OF 2020(T) -:4:- was made by the second respondent in the Press Conference.

7. The Election Commission adverted to photo posters and observed that some of those do not connect with the second respondent. In some of the photos it was found that the second respondent is found sitting with BJP leaders. Perhaps the only evidence to connect the second respondent with BJP is the photos taken along with BJP

leaders. The petitioner was also seen participating inthe p

office bearers and members would indicate that the second respondent remained absent from attending the meeting of the CPI(M) Committee. The Election Commission observed that CPI(M) has not chosen to expel the second respondent from the party. On an appreciation of the evidence, the Election Commission was of the view that there was nothing on record to show that the second respondent has joined BJP.

8. This Court invoking its power under Article 226

of the Constitution cannot upset finding of fact unless such finding of fact is perverse or irrational based on the materials before the authority which is competent to

WP(C).No.1159 OF 2020(T) -:5:- take primary decision. Mere presence of a CPI(M) party member along with the members of BJP cannot be viewed to hold that the member of CPI(M) has joined BJP. This has to be taken into account in the background CPI(M) has not chosen to expel the second respondent for anti-party activities by joining with rival political parties.

9. There is nothing on record to show that the second respondent at any point of time supported BJP, atleast to infer that he has given up membership of

CPI(M). Apart from pointing out the presence of the second respondent with BJP members or Hindu Aikkiya Vedi there is nothing on record to show that the act of the second respondent would amount to giving up membership with CPI(M). Further, absence of the second respondent in the party meeting of CPI(M) at the best would attract disciplinary proceedings against him, but cannot lead to hold that be has joined BJP. As rightly noted by the Election Commission, CPI(M) has not chosen to take any action against the second respondent.

10. The Election Commission came to a firm opinion

based on the materials, there is nothing to indicate that the second respondent has joined BJP. This Court cannot WP(C).No.1159 OF 2020(T) -:6:- find that the Election Commission has been misdirected on arriving at such a conclusion based on the materials available before the Commission. Therefore, this writ petition is only to be dismissed. Accordingly, dismissed. No costs. Sd/- A.MUHAMED MUSTAQUE, JUDGE ms/ln APPENDIX PETITIONER'S/S EXHIBITS: EXHIBIT P1 TRUE COPY OF THE PETITION FILED UNDER SECTION 3 AND 4 OF THE KERALA LOCAL AUTHORITIES (PROHIBITION OF DEFENCTION)ACT,1999 BY THE PETITIONER HEREIN IN O.P.NO.15/2018 ON THE FILES OF THE KERALA STATE ELECTION COMMISSION,THIRUVANANTHAPURAM. EXHIBIT P2 TRUE COPY OF THE COUNTER STATEMENT DATED HEREIN IN O.P.NO.15/2018 ON THE FILE OF THE KERALA STATE ELECTION COMMISSION, THIRUVANANTHAPURAM EXHIBIT P3 TRUE COPY OF THE ORDER DATED 10/12/2019 IN O.P.NO.15/2018 PASSED BY THE KERALA STATE ELECTION COMMISSION,THIRUVANANTHAPURAM.

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