

Pullikunnil Yousuf Vs. Alayan Abdul Rasheed and Another

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Court : Kerala

Decided On : Mar-17-2015

Judge : Honourable Mr.Justice Antony Dominic

Appellant : Pullikunnil Yousuf

Respondent : Alayan Abdul Rasheed and Another

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE ANTONY DOMINIC & THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS TUESDAY,THE17H DAY OF MARCH201526TH PHALGUNA, 1936 WA.No. 1757 of 2010 () IN WP(C).18360/2010

APPELLANT(S)/PETITIONER: ----- PULLIKUNNIL YOUSUFF, MEMBER, WARD NO.IV, ALANALLUR GRAMA PANCHAYATH, ALANALLUR.P.O PALAKKAD DISTRICT (RESIDING AT PULLIKUNNIL HOUSE THIRUVIZHAMKUNNU.P.O, ALANALLUR, PALAKKAD DISTRICT). BY ADVS.SRI.P.B.KRISHNAN SMT.GEETHA P.MENON SRI.P.M.NEELAKANDAN

RESPONDENT(S)/RESPONDENTS: ----- 1. ALAYAN ABDUL RASHEED, S/O.HAMZA ALAYAN, MEMBER WARD NO.IX, ALANALLUR GRAMA PANCHAYATH ALANALLUR.P.O, PALAKKAD DISTRICT.

2. KERALA STATE ELECTION COMMISSION, THIRUVANANTHAPURAM, REPRESENTED BY ITS, SECRETARY. R,R2 BY ADV. SRI.MURALI

PURUSHOTHAMAN, SC,K.S.E. COMMISSION R1 BY ADV. SRI.S.SANTHOSH KUMAR R1 BY ADV. SMT.P.LISSYJOSE. R1 BY SRI.M.SREEKUMAR THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON1703-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: ANTONY DOMINIC & ALEXANDER THOMAS, JJ.

===== W.A.No. 1757 of of 2010 ===== Dated this the 17th day of March, 2015

JUDGMENT

ANTONY DOMINIC, J.: The petitioner in W.P.(C).No.18360/2010 is the appellant herein. He is aggrieved by the judgment of the learned Single Judge dismissing the Writ Petition filed by him challenging Ext.P-9, order passed by the 2nd respondent, finding that he has voluntarily given up membership of his party, IUML, and disqualifying him under the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (hereinafter referred to as "the Act" for short).

2. We heard the learned Senior Counsel appearing for the appellant and the learned Standing Counsel appearing for the 2nd respondent Commission.

3. Briefly stated the facts of the case are that there are 22 wards in Alanallur Grama Panchayat in Palakkad district. In the election that was held in September, 2005, the appellant contested as a nominee of the Indian Union Muslim League belonging to the United Democratic Front, in ward No.6 and won the election. In the W.A.1757/10 - :

2. :- Panchayat nine members belonged to the Left Democratic Front and 13 members belonged to the United Democratic Front. Among the 13 members, six were from Indian National Congress, five from IUML and two were independents. It is also seen that a candidate belonging to Indian National Congress was elected as the President and a candidate from the IUML was elected as the Vice President. According to the appellant, there was an understanding to interchange this, after the initial two-and-a-half years' tenure and therefore both the President and the Vice Presidents resigned from office on 6.5.2008. Thereafter, the 1st

respondent, from IUML, was elected as the President and one Sri.Ummer was elected as the Vice President.

4. While they were continuing in office, LDF moved a no confidence motion against both of them in the meeting held on 17.3.2009. Though the members owing allegiance to UDF staged a walk out, no confidence was supported by nine members from the LDF, the appellant and two independent members. As a result, no confidence motion, which was supported by 12 members, was carried and the 1st respondent and Sri.Ummer, who was the Vice President, were unseated from the office. Thereafter, the election W.A.1757/10 - :

3. :- was held on 7.4.2009, when, on behalf of the UDF, the 1st respondent and Sri.Ummer were again contested. The appellant contested to the post of President on being proposed by one Sri.Sethumadhavan, an independent member and seconded by a member belonging to the CPI(M), a constituent of LDF. In the election that was held, the appellant defeated the 1st respondent, the official candidate of the UDF and Sri.Sethumadhavan, who proposed the appellant, was elected as the Vice President.

5. It was in this factual background the 1st respondent filed petition before the 2nd respondent seeking to disqualify him under Sec.3 of the Act. Before the Election Commission, the appellant filed his objections evidenced by Ext.P-2 and witnesses were examined on both sides. On conclusion of the trial, the Commission passed Ext.P-9 order. In this order, the Commission held that the appellant voluntarily gave up the membership in the political party, to which he belonged and on that basis, he was disqualified under Sec.3 of the Act. It is this order, which was challenged before the learned Single Judge. By the judgment under appeal, the learned Single Judge upheld the order and hence this appeal.

6. The first contention raised by the learned counsel for the W.A.1757/10 - :

4. :- appellant is that in order to prove the appellant's contention that he was decided to be the official candidate of his party in the election that was held on 7.4.2009, he wanted to examine two witnesses for which purpose, he filed an additional witness schedule. It is stated that those witnesses were issued

summons and that by Exts.P-5 and P-8, witnesses had informed the Commission their inability to appear on the dates specified. Referring to Ext.P-5, the counsel told us that intimation requiring him to appear on 17.5.2010 was received by one witness on 18.5.2010. Similarly, insofar as the other witness is concerned, in Ext.P-8, he has intimated the Commission that the telegram requiring him to appear on 18.5.2010 was received by him only on 26.5.2010. It is stated that the Commission denied him an opportunity to examine his witnesses and passed Ext.P-9 order against him. This, according to the counsel, is illegal and at any rate, is in violation of the principles of natural justice.

7. The second contention raised by the counsel is that the finding of the Commission that the appellant had given up his membership in the political party is incorrect and against the evidence.

8. As far as the first grievance of the learned counsel for W.A.1757/10 - :

5. :- the appellant is concerned, from the materials before this Court, we find that after the witnesses were examined and evidence was closed, the appellant filed an application to examine two witnesses. It is also true that though intimations were given to those witnesses and for the reasons stated in Exts.P-5 and P-8 referred to above, the witnesses did not appear on the dates specified and the Commission did not wait any further and proceeded to hear the parties and passed final orders in the case. The question is whether this conduct of the Commission can be said to have caused prejudice to the appellant. The judgment under appeal shows that that this contention was urged before the learned Single Judge and the learned Single Judge has made reference to paragraphs 9, 13 and 15 of the objection filed by the appellant and found that in his pleadings the appellant did not raise any specific contention in this regard, nor did he plead the particulars thereof. The learned Single Judge has also found that in the oral evidence let in by the appellant, who was examined as RW-1, he did not divulge the details of his case that he was decided to be the official candidate. It is further found by the learned Single Judge that when the 1st respondent-petitioner was examined before the Commission as PW- W.A.1757/10 - :

6. :- 1, the appellant did not cross-examine him on this contention and did not even make a suggestion supporting his case.

9. Yet another aspect of the matter is that, if, as stated by the appellant, the party had chosen him to be the official candidate in the election to the office of President, that would have been the first contention raised by the appellant in the proceedings before the Election Commission. Secondly, if, as stated by him, he was decided to be the official candidate in the election that was held on 7.4.2009, he would have been proposed and seconded by the members of his party. On the other hand, he was not only not supported or seconded by the members of the party, no member from the party or even the coalition even voted for him. All this coupled with these pleadings and the evidence show that there is no substance in the plea and that by lodging an additional witness schedule, the appellant was only trying to prolong the proceedings. Therefore, we are not inclined to find fault with the Commission in having not waited any further for examining the witnesses named by the appellant in the additional witness schedule.

10. Insofar as the finding of the Commission that the appellant has voluntarily given up his membership of the political W.A.1757/10 - :

7. :- party is concerned, admitted facts are that in the election that was held on 7.4.2009, the appellant contested against the official candidate of his own party, on being proposed by an independent candidate and supported by a member from CPI(M), belonging to a rival front. He won the election entirely with the support of the members of the LDF, the rival front. These undisputed facts are sufficient to hold that the appellant has, by his above conduct, given up membership of his political party and this conclusion of the learned Single Judge is fully supported by the principles laid down by this Court in *Shajahan v. Chathannoor Gramat Panchayat and others* reported in 2000 (2) KLJ451 *Faisal v. Abdulla Kunhi*, reported in 2008 (3) KLT534 and *Dharma Mani v. Parassala Block Panchayat* reported in 2009 (3) KLT29 In such circumstances, we do not find any reason to interfere with the judgment under appeal. The appeal therefore fails and is dismissed. Sd/- ANTONY DOMINIC, JUDGE Sd/- sdk+ ALEXANDER THOMAS, JUDGE ///True copy/// P.S. to Judge W.A.1757/10 - :

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