

John John @ Onachan Vs. State Election Commission

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Court : Kerala

Decided On : Jun-26-2015

Judge : Honourable Mr. Justice Shaji P.Chaly

Appellant : John John @ Onachan

Respondent : State Election Commission

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR. JUSTICE SHAJI P.CHALY FRIDAY, THE 26TH DAY OF JUNE 2015 5TH ASHADHA, 1937 W.P(C) NO.30749 OF 2010-----

PETITIONERS: ----- JOHN JOHN @ ONACHAN, PALAKKALKALAYIL HOUSE, THALAYOLAPARAMBU-686 605. BY ADVS.SRI.SANTHOSH MATHEW SRI.SATHISH NINAN SRI.ARUN THOMAS SRI.JENNIS STEPHEN RESPONDENTS: ----- 1. STATE ELECTION COMMISSION, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.

2. THE RETURNING OFFICER, G-11, THALAYOLAPARAMBU GRAMA PANCHAYAT AND ASST.DIRECTOR OF AGRICULTURE, KADUTHURUTHY. R1 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC, STATE ELECTION COMMISSION R2 BY SENIOR GOVERNMENT PLEADER SRI. R. PADMARAJ THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/06- 2015, THE COURT ON 26/06.2015 DELIVERED THE FOLLOWING: WP(C).No. 30749 of

2010 APPENDIX PETITIONER'S EXHIBITS: P1 : PHOTOCOPY OF CERTIFICATE NO.CP5/43/6197/2010 DATED149.2010. P2 : PHOTOCOPY OF THE NOMINATION SUBMITTED BY THE PETITIONER BEFORE THE2D RESPONDENT. P3 : PHOTOCOPY OF THE OBJECTION SUBMITTED BY THE PETITIONER BEFORE THE2D RESPONDENT. P4 : PHOTOCOPY OF THE REJECTION

ORDER

ISSUED BY THE2D RESPONDENT ON1510.2010. RESPONDENT'S ANNEXURES: ANNEXURE A : THE PHOTOCOPY OF THE RELEVANT PAGE OF THE LETTER NO.8229/L/2009/SEC DATED0110.2010 ISSUED BY THE STATE ELECTION COMMISSION TO THE DIRECTOR OF PRINTING. ANNEXURE B : THE PHOTOCOPY OF THE LETTER NO.6598/B/07/SEC DATED299.2010 ISSUED BY THE STATE ELECTION COMMISSION TO THE DISTRICT COLLECTORS. //TRUE COPY// P.S. TO JUDGE smv CR SHAJI P. CHALY, J.

----- W.P.(C) No.30749 of 2010
----- Dated this the 26th day of June, 2015

JUDGMENT

Petitioner has approached this Court by filing the writ petition impugning Ext.P4 order passed by the Returning Officer dated 05.10.2010, by which he was prevented from contesting the election as per the prohibition contained under Sec.34(1)(b)(i) of the Kerala Panchayat Raj Act, 1994 and has sought the following reliefs: "(a) To call for the records leading to Exhibit P4 and to quash the same by the issuance of a writ of certiorari. (b) To issue a writ of mandamus or any other appropriate writ, order or direction declaring that Sec.34(1)(b)(i) does not impose a life ban on persons who have been sentenced by a Court to imprisonment for a period not less than three months for an offence involving moral turpitude. (c) To direct the 1st respondent to reconsider the disqualification of the petitioner as contemplated under Sec.34(2) of the Kerala Panchayat Raj Act. (d) To issue such other appropriate writ order or direction which this Hon'ble Court may deem just and fit under the circumstances of the case." W.P.(C).No.30749 of 2010 2 2.

Heard Sri. Santhosh Mathew, learned counsel appearing for the petitioner, Sri. Murali Purushothaman, learned Standing Counsel for the State Election Commission and Sri. R. Padmaraj, learned Senior Government Pleader appearing for the 2nd Respondent.

3. When the matter was heard, before proceeding with the arguments, learned counsel for the petitioner Sri. Santhosh Mathew has submitted that he is not pressing for the reliefs contained under relief Nos. (a) and (c). So, I am concerned only with relief No.(b) sought for in the writ petition.

4. The main grievance of the writ petitioner is that, on a reading of Ext.P4 order passed by the 2nd Respondent, it has an appearance of permanent ban on the petitioner from contesting as a candidate in any election. This is all the more so, since on a reading of Sec.34(1) r/w clause (b)(i) alone, it has the appearance of a permanent disqualification or a permanent prohibition for the petitioner from contesting election. I will refer to the provisions of law at a later point of time. Brief facts leading to the case are as follows:

5. Petitioner had submitted Ext.P2 nomination dated 04.10.2010 as a candidate for election to the W.P.(C).No.30749 of 2010 3 Thalayolaparambu Grama Panchayat from constituency No.9 of Illithondu, as a candidate of Kerala Congress (M). The said nomination was rejected by the 2nd Respondent on 05.10.2010 on the ground that the petitioner is disqualified as per Sec.34 (1)(b)(i) of the Kerala Panchayat Raj Act, 1994, in view of the jail sentence suffered by him exceeding three months.

6. It is the case of the petitioner that he was convicted and sentenced to undergo rigorous imprisonment for life under Sec.302 r/w Sec.149 IPC, one year rigorous imprisonment under Sec.148 IPC and one year rigorous imprisonment under Sec.324 IPC in Sessions Case No.64/78 dated 07.12.1978 of the Sessions Court, Kottayam and the sentence was directed to run concurrently. Petitioner was admitted in the prison as Convict No.6197 on 08.02.1978 and was released on 25.11.1987 as per G.O.(Ms) No.141/87/Home Department dated 20.11.1987. The imprisonment undergone by the petitioner and his release was certified by the Superintendent of Central Prison, Trivandrum, vide his certificate

No.CP5/43/6197/2010 dated 14.09.2010, which is evidenced by Ext.P1 in the writ petition. It is also contended by the petitioner that after his release on 25.11.1987, he was not W.P.(C).No.30749 of 2010 4 involved in any criminal case and there is no crime registered against him and further that he was a reformed person and has dedicated his life for public service. He was also holding the post of 'Mandalam President' of Kerala Congress (Mani Group), Thalayolaparambu 'Mandalam' and was also the Chairman of the U.D.F Mandalam Committee, Thalayolaparambu.

7. Pursuant to Ext.P2 nomination, petitioner was called for scrutiny of the same on 05.10.2010 and on that date, the 2nd Respondent had entertained a doubt as to whether the petitioner was qualified to contest the election on account of his conviction by virtue of Sec.34(1)(b)(i) of Kerala Panchayat Raj Act, 1994. When the 2nd Respondent entertained such a doubt, as a precautionary measure, petitioner had submitted Ext.P3 representation to the 2nd Respondent clarifying the doubt expressed by the 2nd Respondent and also stating that a period of more than 22 years have elapsed after he was released from the prison.

8. Anyhow, without considering the representation so made, Ext.P4 impugned order was passed by the 2nd Respondent, disqualifying the petitioner from contesting in the W.P.(C).No.30749 of 2010 5 election as a candidate.

9. Petitioner, without waiting for completion of the election, has approached this Court invoking the extraordinary jurisdiction conferred under Article 226 of the Constitution and has sought for the reliefs, immediately on the rejection of the nomination itself. But, taking into account the settled legal position of not interfering in any election process after the election is declared, this Court did not pass any order touching upon the illegality or otherwise of Ext.P4 impugned order. Since prayer Nos.(a) and (c) are not pressed by the petitioner, I am called upon only to decide upon relief No.(b) by which the petitioner seeks a declaration that Sec.34(1)(b)(i) does not impose a life ban on persons who have been sentenced by a court to imprisonment for a period not less than three months for an offence involving moral turpitude.

10. 1st Respondent has filed a counter statement basically contending that since election to the Local Self Government Institutions was declared by the State Election Commission, the reliefs sought for in the writ petition cannot be granted to the petitioner and further that the same was only a cause of action for an election petition if the petitioner chose to do so W.P.(C).No.30749 of 2010 6 after the completion of the election process. It is also contended that improper rejection of nomination is not a ground for interference under Article 226 of the Constitution of India and further that improper rejection of nomination is a ground for declaring the election of the returned candidate to be void under Sec.102(1)(c) of the Kerala Panchayat Raj Act, 1994 in an Election Petition.

11. On a reading of Ext.P4 order passed by the 2nd Respondent, it is categoric and clear that the 2nd Respondent has not considered Sec.34(1)(a) so as to consider the question of disqualification with reference to Representation of the People Act, 1951. For a proper analysis of the situation in this case, I think it is only appropriate to extract Sec.34(1) sub- clauses (a) and (b)(i), hereunder:

"4. Disqualification of candidates.-- (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat at any level, if he-- (a) is so disqualified by or under any law, for the time being in force, for the purposes of elections to the Legislative Assembly; or (b) (i) has been sentenced by a Court or Tribunal to imprisonment for a period not less than three months for an offence involving moral turpitude;" W.P.(C).No.30749 of 2010 7 12. The period of disqualification of persons convicted for certain offences under the Kerala Panchayat Raj Act, 1994 is prescribed under Sec.31, which reads as follows:

"1. Disqualification of persons convicted for certain offences.-- Every person convicted of an offence punishable under Chapter IX-A of the Indian Penal Code, 1860, (Central Act 45 of 1860) or under any other provision of law mentioned in Section 8 of the Representation of the People Act, 1951 (Central Act 43 of 1951) or under any law or rule relating to the infringement of the secrecy of an election, shall be disqualified from voting or from being elected in any election to which this Act applies or from holding the office of a member of a Panchayat at any level for a period of six years from the date of his conviction." 13. Therefore, by virtue of

sub-section 1(a) of Section 34, 2nd Respondent should have referred to Sec.8(3) of the Representation of the People Act, 1951, wherein the disqualification on conviction for certain offences is prescribed. So far as the case of the petitioner is concerned, the same will fall under Sec.8(3) of the said Act. For the purpose of easy reference, Sec.8 (3) is quoted hereunder: W.P.(C).No.30749 of 2010 8 "8(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release." 14. If the disqualification contained in Sec.31 alone is taken into account, petitioner who was suffering life imprisonment was entitled to contest election after a period of six years from the date of his conviction and therefore he could have contested any of the succeeding election to the local body even while undergoing imprisonment. But, it is only by virtue of sub-sec.1(a) of Section 34 of the Kerala Panchayat Raj Act, 1994, the disqualification prescribed under Sec.8(3) of the Representation of the People Act, 1951 is extended to a candidate contesting election to a local body.

15. In that circumstances, on an evaluation of Sec.8(3), it is categorical and clear that the maximum disqualification that can be suffered by a person convicted, is the period of such conviction and for a further period of six years since his release. Therefore, the petitioner who was released from the W.P.(C).No.30749 of 2010 9 prison on 25.11.1987, has exhausted, the disqualification prescribed under Sec.8(3) of the Representation of the People Act, 1951 on 24.11.1993 and the disqualification prescribed under Sec.31 of the Kerala Panchayat Raj Act, 1994 while he was serving sentence in the prison. In that circumstances, Ext.P2 nomination submitted by the petitioner, almost 17 years thereafter, should not have been rejected by the 2nd Respondent on any account. Therefore, apparently it is clear that while scrutinizing Ext.P2 nomination submitted by the petitioner, 2nd Respondent has not adverted properly to the relevant provisions of the Kerala Panchayat Raj Act, 1994 as well as the Representation of the People Act, 1951, in order to ascertain whether the disqualification of the petitioner as prescribed under the aforesaid statutes still continued on the basis of conviction suffered by him.

16. I am persuaded to think so, since the disqualification of a candidate seeking election is made out not only under Sec.34(1)(b)(i) but under Sec.34(1)(a) also of the Kerala Panchayat Raj Act, 1994. If the 2nd respondent had applied his mind properly to Sec.34(1)(a) also, he would not have committed the illegality. Therefore, the rejection of W.P.(C).No.30749 of 2010 10 nomination of the petitioner by the 2nd Respondent prima facie do not appear to be correct. Viewed in that background and on a reading of Ext.P4 impugned order, it is clear that the 2nd Respondent while passing Ext.P4 was also under the impression that the disqualification prescribed under Sec.34(1) (b)(i) is a permanent disqualification. Therefore it is only proper that the relief (b) sought for by the petitioner is granted, declaring that the prohibition created against the petitioner from contesting election is exhausted as on 24.11.1993, and thereafter on the basis of conviction suffered as per details contained in Ext.P1 certificate, petitioner cannot be mulcted with any disqualification to contest any election or suffer from any prohibition on that account on the basis of any disqualification prescribed under Sec.34(1)(a) and (b)(i) of the Kerala Panchayat Raj Act, 1994.

17. Learned counsel for the respondents has brought to my notice a Division Bench judgment of this Court in 'Krishna Kumar v. Kerala State Election Commission' [2010 (4) KLT84 wherein disqualification contained in Sec.35(1)(k) of the Kerala Panchayat Raj Act, 1994 was considered and held that the disqualification prescribed thereunder is only for the W.P.(C).No.30749 of 2010 11 rest of the term and is not a permanent feature. But, so far as the facts of this case is concerned, by a reading of Sec.34 (1)(a) and (b)(i) of the Kerala Panchayat Raj Act r/w Sec.8(3) of the Representation of the People Act, the disqualification prescribed to a candidate contesting election under the Panchayat Raj Act is definite and clear which in effect prevented the 2nd respondent from passing a life ban on a candidate from contesting any election. In that circumstances the declaration generally sought for by the petitioner assumes importance and is perfectly justified.

18. Therefore, on an appreciation of the relevant provisions of the Kerala Panchayat Raj Act, 1994 and the Representation of the People Act, 1951, as aforesaid, I am of the considered opinion that no life ban can be imposed against a

person from contesting an election under Sec.34 of the Kerala Panchayat Raj Act in view of the definite tenure of disqualification prescribed under Sec.31 of the Kerala Panchayat Raj Act, 1994 and Sec.8(3) of the Representation of the People Act, 1951 and accordingly I declare so.

19. In view of the facts and circumstances of the case and the casual nature of Ext.P4 impugned order, passed by the W.P.(C).No.30749 of 2010 12 2nd Respondent, I feel, the State Election Commission should issue proper guidelines and instructions with regard to the applicability of relevant provisions of law under the Representation of the People Act, 1951, the Kerala Panchayat Raj Act, 1994 and such other laws, to the Electoral/Returning Officers and such other officials, in respect of nomination, scrutiny, and acceptance or rejection of the same, in order to avoid situations like the one arisen in this case.

20. The State Election Commission and its officers should realise and understand that they are discharging very important functions prescribed under the Constitution of India and the Statutes discussed supra, in a time bound manner after the declaration of the election and any negligent act on their part can interfere with valuable rights of a citizen and cause irreparable injury to him. Accordingly, they are bound to discharge the duties with great caution and circumspection, by advertng to the relevant provisions of law and thereby avoid reckless and negligent decisions from their part. I therefore direct the 1st Respondent, the State Election Commission, to take adequate and effective steps to see that proper training is imparted to its Officers for discharging their W.P.(C).No.30749 of 2010 13 duties strictly in accordance with law as aforesaid. I am constrained to direct so since Ext.P4 impugned order rejecting the nomination, exemplified absolute ignorance of the relevant provisions of law and blatant violation of the same, exhibited by its author while considering the valuable right of a candidate who propose to contest the election. Writ petition is accordingly allowed partly by granting relief (b) as stated above and in the facts and circumstances of the case there will be no order as to costs. Sd/- SHAJI P. CHALY JUDGE St/-