

Radhakrishnan Vs. State of Kerala

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Court : Kerala

Decided On : Jul-30-2015

Judge : Honourable Mr.Justice a.M.Shaffique

Appellant : Radhakrishnan

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937 WP(C).No. 30517 of 2013 (L)

----- PETITIONER: ----- RADHAKRISHNAN, LEKSHMI BHAVANAM (REGHUVILASAM), MAYYANADU P.O., KOLLAM-691303, MEMBER, WARD NO.12 MAYYANADU GRAMA PANCHAYATH, KOLLAM. BY ADV. SRI.UNNI. K.K. (EZHUMATTOOR) RESPONDENT(S): -----

1. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, GOVT. SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. MAYYANADU GRAMA PANCHAYATH, REPRESENTED BY ITS SECRETARY, MAYYANADU P.O., KOLLAM-691303.

3. KERALA STATE ELECTION COMMISSION, REPRESENTED BY ITS SECRETARY, OFFICE OF THE STATE ELECTION COMMISSION,

THIRUVANANTHAPURAM-695001.

4. S.SUNILKUMAR, ALAYIL HOUSE, MAYYANADU P.O., KOLLAM-691303. R1 BY GOVERNMENT PLEADER SRI.RAMPRASAD UNNI R2 BY ADVS. SRI.R.S.KALKURA SRI.M.S.KALESH SMT.A.V.PRIYA SRI.HARISH GOPINATH SMT.R.BINDU SRI.SANIL KUNJACHAN SMT.M.K.LEELAKUMARI R3 BY ADV. SRI.MURALI PURUSHOTHAMAN, SC R4 BY ADV. SRI.B.MOHANLAL THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06-2015, THE COURT ON 30/07-2015 DELIVERED THE FOLLOWING: mbr/ WP(C).No. 30517 of 2013 (L) ----- APPENDIX PETITIONER(S)' EXHIBITS: ----- P1: TRUE COPY OF THE

ORDER

OF THE STATE ELECTION COMMISSIONER IN O.P.NO.107/2012 DATED 4/12.2013. P2: TRUE COPY OF THE

ORDER

OF THE KOLLAM DISTRICT CONSUMER FORUM IN C.C.NO.09/205 WHICH WAS OBTAINED FROM THE WEBSITE. P3: TRUE COPY OF THE LIST SUBMITTED BY THE BOOTH LEVEL OFFICER, WHICH WAS APPROVED BY THE ELECTORAL OFFICER. P4: TRUE COPY OF THE PETITION FILED BY THE 4TH RESPONDENT WHICH NUMBERED AS OP.P.NO.107/2012. P5: TRUE COPY OF THE OBJECTION FILED BY THE PETITIONER AGAINST O.P.NO.107/2012. P6: TRUE COPY OF THE MINUTES BOOK OF THE GRAMA SABHA. RESPONDENT(S)' EXHIBITS: ----- EXT. R2(A) : TRUE COPY OF RELEVANT PAGE OF THE VOTERS LIST PREPARED BY THE PANCHAYATH SECRETARY FOR THE YEAR 2010 EXT. R2(B) : TRUE COPY OF THE RELEVANT PAGE OF THE VOTERS LIST PREPARED BY THE ELECTORAL REGISTRATION OFFICER FOR THE YEAR 2012 IN POLLING STATION NO.152. EXT.R2 (C) : TRUE COPY OF THE RELEVANT PAGE OF THE VOTERS LIST FOR THE YEAR 2013 IN RESPECT OF WARD NO.12 OF THE MAYYANAD PANCHAYATH. //TRUE COPY// P.S.TO JUDGE mbr/ A.M.SHAFFIQUE, J * * * * * W.P.C.No.30517 of 2013 ----- Dated this the 30th day of July 2015

JUDGMENT

This writ petition is filed seeking to quash Ext.P1, an order issued by the Kerala State Election Commission (hereinafter referred to as 'the Commission') in O.P.No.107 of 2012 dated 04/12/2013, and for other consequential reliefs:

2. The petitioner herein is the respondent in the said original petition which was filed by the fourth respondent herein. By Ext.P1 order, the Commission, after considering the petition filed under Section 35(1)(p) of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as 'the Act'), held that the petitioner is not entitled to continue as a member of Mayyannad Grama Panchayat on being disqualified under Section 35(1)(p) of the Act.

3. The short facts involved in O.P.No.107/2012 are: The respondent claiming to be a voter of the Grama Panchayat contended that the petitioner has failed to convene the Grama Sabha in terms of the statutory provisions from the date on which he assumed office. It is stated that though he had convened certain Grama Sabha's during his 23 months tenure, for W.P.C.No.30517/2013 2 want of quorum, the Grama Sabhas could not be conducted. And therefore, in terms of Section 35(1)(p) of the Act, he suffered disqualification. The petitioner filed objection, inter alia contending that he had convened the meetings of the Grama Sabha on several occasions, but the same could not be conducted for want of quorum. The records available in the Grama Sabha proves the said fact of convening of the meetings with appropriate notice to all concerned.

4. The commission, after evaluating the evidence, found that the petitioner had convened the Grama Sabhas on 17/01/2011, 22/08/2011, 13/02/2012, 29/06/2012 and on 16/01/2013. However, the Commission further proceeded to find that there was no proper quorum for the said meeting and therefore the said meetings can never be treated as a proper meeting in terms of Section 3(3) of the Act. Hence it was found that the writ petitioner failed to comply with the statutory provision under Section 35(1)(p) of the Act and hence suffered the disqualification to hold office on account of his failure to convene the meetings of the Grama Sabha. On that basis it is found that the petitioner cannot continue as member of the Grama W.P.C.No.30517/2013 3 Panchayat.

5. While impugning Ext.P1 order passed by the Commission, petitioner contends that when it is an admitted fact that he had convened Grama Sabha meetings five times within a period of 24 months, there is no disqualification as provided under Section 35(1)(p) of the Act. The contention is that the statute mandates only to convene the meeting by intimating details of the meeting to the members of Grama Sabha. The statute does not cast a liability to conduct the meeting with full quorum.

6. Counter affidavit has been filed by the second respondent inter alia stating that the meetings were convened as stated in the minutes of the Grama Sabha produced as Ext.P6.

7. The fourth respondent filed counter affidavit supporting the stand taken by the Commission.

8. Heard the learned counsel appearing for the petitioner and the respondents.

9. The petitioner had raised two specific conditions. One is that the fourth respondent had no locus standi to file the original petition as he is not a person residing in the said ward. W.P.C.No.30517/2013 4 Secondly, disqualification under Section 35(1)(p) of the Act arises only in instances where there is failure to convene the meeting. When it is an admitted fact that the petitioner had convened the meeting, but it could not be conducted for want of quorum, there is no disqualification. He also placed reliance on the judgment of Calcutta High Court in Chainbanu Khatun and others v. State of West Bengal and others [2010 KHC6407 wherein it is held that, the words 'convene and hold' cannot be given identical meaning, while interpreting different provisions of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995.

10. It is not in dispute that the petitioner had taken steps for convening the meeting. The Commission proceeded on the basis that since the meetings could not be held for want of quorum, it does not amount to proper convening of the meeting and warrants disqualification under Section 35(1)(p) of the Act.

11. In order to consider the legality and propriety of the order passed by the Commission, it is relevant to note the statutory provisions. Section 3(2) of the Act indicates that all persons whose names are included in the electoral rolls relating to W.P.C.No.30517/2013 5 a Village comprised within the area of the Village Panchayat shall be deemed to be constituted as Grama Sabha of such Village. By virtue of Section 3(3) of the Act, Grama Sabha has to be held at the place, date and time as fixed by the Convener of the Grama Sabha and the Convener shall intimate the details of the meeting to the Grama Sabha members, by a public notice. In terms of Section 3(4) of the Act, a member of the Village Panchayat representing the constituency in the area of the village, shall be the Convener of that Grama Sabha. Section 3A relates to the powers, functions and rights of Grama Sabha. Sub Section (4) of Section 3A indicates that the quorum of the Grama Sabha shall be 10% of the number of voters of the ward. It is further indicated that the procedure for convening and conducting meetings of the Grama Sabha shall be such as may be prescribed. Chapter VII deals with qualifications and disqualifications. Section 35(1) indicates the situations when a member shall cease to hold office and sub Clause (p) indicates that failure to convene meetings of the Grama Sabha once in 3 months, consecutively thrice, would amount to disqualification of the Convener. W.P.C.No.30517/2013 6 12. The Kerala Panchayat Raj (Procedure for Convening and Conducting the Meeting of Grama Sabha) Rules, 1995 (hereinafter referred as 'the Rules') has been framed in exercise of the powers conferred by sub Section (8) and (9) of Section 3 of the Act. The rule provides the manner in which notice is to be given in regard to the date, time and place of conducting the meeting.

13. Section 35(1)(p) reads as under:

35. Disqualification of members.-(1): Subject to the provisions of Section 36 or Section 102, member shall cease to hold office as such, if he- (a) xxxxxx xxxxxx (p) has failed, [thrice] consecutively, to convene the meetings of the Grama Sabha, due once in three months, of which he is the convenor; or It is apparent that the disqualification arises only when there is failure to convene the meeting on three occasions consecutively. Once the meeting has been convened in accordance with the statutory provisions and thereafter it has been adjourned for

want of quorum, can it be said that there is no convening of the meeting. It might be true that the meeting could not be W.P.C.No.30517/2013 7 conducted for want of quorum, but it cannot be said that the meeting was not convened by a member. The difference in the language used in Section 35(1)(p) and the nomenclature of the Rules, were not noticed by the Commission. Rules 4 and 5 reads as under: "4. Date and time for the meeting of Grama Sabha The President of the Village Panchayat shall, in consultation with the Convenor of the Grama Sabha concerned, fix the date and time between 8 am. and 6 pm. and the Secretary of the Village Panchayat concerned shall publish the place, date and time of the meeting, so fixed, by affixing notice in appropriate public places, Government offices, schools in the area of the Grama Sabha and in the office of the Village Panchayat. The Convenor concerned shall try to inform the members of the Grama Sabha the place, date and time of the meeting and cause them to attend the meeting.

5. Matters to be discussed in the meeting.- (1) The Secretary of the Village Panchayat shall, in consultation with the President, prepare an agenda incorporating the matters to be discussed in the meeting of the Grama Sabha and the Chairman shall read over this in the beginning of the meeting of the Grama Sabha. W.P.C.No.30517/2013 8 (2) The proceedings of the meeting, the views of the members and the unanimous, recommendations and suggestions shall be recorded by the officer or the employee entrusted with the duty by the President and the resolutions passed on majority basis shall be communicated to the Village Panchayat. The Secretary of the Village Panchayat shall, within a week of receipt of the resolutions containing such recommendations or suggestions of the Grama Sabha to the Block Panchayat or District Panchayat, forward the same to the Block Panchayat or District Panchayat concerned for their consideration." The Rules specify the manner of convening and conducting the meeting, whereas the disqualification is only on the failure of the Convenor in not "convening" the meeting. As rightly argued by the learned counsel for the petitioner, the judgment of the Calcutta High Court squarely applies to the factual situation in the case. The issue involved in the said case was whether convening and holding of the meeting will have identical meaning in relation to various provisions of West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995. Paragraphs 22

to 24 are relevant which reads as under: W.P.C.No.30517/2013 9

"2. Both the words 'convene' and 'hold' have been used in different provisions of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995. The rule framing authority consciously used the word 'convene' and 'hold' in different provisions of the said Rules, 1995. The word 'hold' has been specifically used in R.3(2) and R.7(2) of the said Rules, 1995. The said Rules, 1995 have been framed in terms of S.417 of the West Bengal Municipal Act, 1993.

23. The word 'convene' cannot be substituted by the word 'hold' as suggested by Mr.Mitra, learned senior Counsel representing the respondent Nos.5 to 14 since the rule framing authority consciously used both the words in different places, of the said Rules, 1995.

24. Convening a meeting under no circumstances can be equated with holding of the same in view of clear provisions of R.7(2) of the West Bengal Municipalities (Procedure and Conduct of Business) Rules, 1995. The said R.7(2) is set out hereunder: "7. Meeting and its validity.- (1)..... (2) A meeting of the Municipalities shall be deemed to have been duly held when - (a) the meeting is duly convened; (b) there is necessary quorum; (c) the meeting is held within the municipal premises; (d) the meeting is presided over by a person authorised under the Act and these rules; and W.P.C.No.30517/2013 10 (e) the proceedings of the meeting are duly recorded." In Black's Law Dictionary, 8th Edition, the meaning of "convene" is shown as "to call together; to cause to assemble". To summon to respond to an action." In Shackleton on the Law and Practice of Meetings, Eleventh Edition, Chapter 28 deals with Meetings of Local Authorities. The requisites of a valid meeting is specified in paragraph 28-04 which reads as under: "28-04 The following are the essential features of a local authority meeting: (a) The meeting must be properly convened, i.e. There must be public notice of the meeting and a summons sent to every person entitled to attend. (b) There must be more than one person present. A meeting of one person, which can in some circumstances apply in company law, has no place in local authority practice. (c) There must be a chairman, and the proper person must be in the chair. (d) A quorum must be present." Paragraph 28-21 deals with the convening of meetings

which reads as under: W.P.C.No.30517/2013 11 "Convening of meetings 28-21: Three clear days at least before a meeting of a principal council (and of its committees and sub- committees) notice of the time and place of the meeting must be published at the offices of the council. Within the same period, a summons to attend the meeting, specifying the business proposed to be transacted and signed by the proper officer of the council, must be left at or sent by post to the usual place of residence of every member of the council. Service by post is deemed to be effective by properly addressing, prepaying and posting a letter containing the document and, unless the contrary is proved, is deemed to have been effected at the time at which the letter would be delivered in the ordinary course of post. Want of service of the summons on any member of the council will not affect the validity of the meeting. Service, in this connection, means the delivery of the notice if, for example, it is sent by post; the provision does not authorise any laxity on the part of the officials in sending it. It should be noted that no provision is contained in the 1972 Act excusing an accidental failure to give notice to the public. Notice of an adjourned meeting is not, strictly speaking, required although standing orders may provide, for example, that where a meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent. The chairman of a principal council may call an extraordinary meeting of the council at any time. If the W.P.C.No.30517/2013 12 chairman refuses to call a meeting of the council after a requisition for that purpose, signed by five members of the council, has been presented to him, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him, then any five members of the council, on that refusal or on the expiry of those seven days, as the case may be, may forthwith call an extraordinary meeting of the council. The calling of the meeting need not be by the same members as requisitioned it." Similarly, in paragraph 28-24, reference is made to quorum which reads as under: Quorum "28-24 A quorum of a principal council is one-quarter of the members, but if at any time more than one-third of the members is disqualified, the quorum of the council is calculated by reference to those remaining qualified. There is no statutory provision relating to the quorum of a committee or sub-committee of a principal council; the matter will be governed by standing orders, and if these make no provision, the committee or sub-committee will fix its own quorum." The

word "conduct" has been defined in the Advance Law Lexicon, 4th Edition, which indicates as under: W.P.C.No.30517/2013 13 "Conduct" means nothing else than "control". The word "conduct" imports an idea of management, a guidance and overall supervision. "Conduct" is wide enough to include and is synonymous with both manage and control and manage as it seems means an overall supervision even to the details of solving the problems as also take the detail decisions. *Raja Mahapatra v. Board of Secondary Education Orissa*. [AIR1988 Ori 65]. With reference to the word "convene", it is stated that 'to convene' a meeting under the Municipalities Act means to call together or to assemble, and not issue notice, for the meeting of members." In *Ramachary v. State of Andhra Pradesh* [(1964) 2 An WR375, it is held that "the words 'to convene meeting' used in Section 22(7) has a definite meaning. When a meeting has to be convened, not only the President has to fix a date and issue or get issued notices in the name of all the members of the Panchayat Samithi, but he has to see that they are properly served. It is only then that it would be said that the meeting is properly convened." 14. Having regard to the aforesaid factual situation, I am of the view that the Commission has committed error in coming to a W.P.C.No.30517/2013 14 finding that the petitioner was disqualified for not convening the meetings as contemplated under Section 35(1)(p) of the Act.

15. Though the learned counsel for the petitioner submits that the respondent had no locus standi to file the petition before the Commission, I do not think that there is any necessity to go into the said issue as the petition was considered on the allegation that the respondent was a voter in the said ward. Under such circumstances, this writ petition is allowed, and Ext.P1 order of the Commission is quashed. (sd/-) (A.M.SHAFIQUE, JUDGE) jsr W.P.C.No.30517/2013 15 W.P.C.No.30517/2013 16