

K. Ambili Vs. the Deputy Director of Panchayaths and ors.

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SooperKanoon Citation : sooperkanoon.com/717455

Court : Kerala

Decided On : Jul-31-1996

Reported in : AIR1997Ker73

Judge : S. Sankarasubban, J.

Acts : Karala Panchayat Raj Act, 1994 - Sectin 157(12)

Appeal No. : O.P. No. 9892 of 1996 C

Appellant : K. Ambili

Respondent : The Deputy Director of Panchayaths and ors.

Advocate for Def. : T.R. Ramachandran Nair and; Monojkumar, Adv.

Advocate for Pet/Ap. : P.C. Sasidharan, Adv.

Disposition : Petition allowed

Judgement :

ORDER

S. Sankarasubban, J.

1. Petitioner was elected as President of the Pathalam Thekkekara Grama Panchayat. The presidentship of the panchayat is exclusively reserved for women belonging to Scheduled Caste.

2. A resolution was moved on 20-6-1996 by the third respondent expressing no-confidence on the petitioner. The motion of no-confidence was taken up for debate on 20-6-1996. In the meeting all the 9 members participated. After the debate when voting was taken up it was found that 5 members had voted in favour of the no-confidence motion and 4 members against the motion. This is clear from Ext. P.2. Ext. P2 states that the no-confidence motion was passed. According to the petitioner the statement in Ext. P2 the no-confidence was passed is not correct. Hence the present original petition has been filed challenging Ext. P2 and to declare that the no-confidence motion is not one carried out in accordance with Section 157(12) of the Kerala Panchayat Raj Act and for other reliefs. The contention of the petitioner is that under Section 157(12) of the Act, a no-confidence motion is said to be passed only if it has got the support or more than one half of the elected members present at the meeting. In this case, all the 9 members of the panchayat were present while 5 members voted for the motion and 4 members voted against the motion. The contention of the petitioner is that half of 9 is 4 1/2. But there cannot be 4 1/2 members. So it has to be corrected as 5. More than is 6 members, since the motion is not supported by 6 members, it is not correct to say that the motion was passed. The petitioner had also taken another contention that the, Office of the president of the fourth respondent Panchayat is reserved for women candidate belonging to Scheduled Caste. Since she is the only candidate belonging to the Scheduled Caste in the panchayat even if, the no-confidence motion is said to be passed, she has to be elected again as the President of the panchayat.

3. On behalf of the first and third respondents counter-affidavits have been filed. According to the counter-affidavits Ext. P2 resolution is in accordance with Section 157(12) of the Act. The contention of the respondent is that when 5 members voted for the motion, the motion is passed in accordance with Section 157(12) of the Act.

4. So the question for consideration is that whether the declaration in Ext. P2 that no-confidence motion was passed is correct or not. Section 157 deals with the motion of no-confidence. The sub-sections up to 11 speak of the procedure before a motion is put to vote. Sub-section (12) reads as follows:

'If the motion is carried with the support of more than one-half of the elected members present at the meeting, the Government shall by notification in the Gazette, remove the President, Vice-president or the Chairman of the Standing Committee'.

Thus the question of interpretation is a true meaning of the words with the support of more than one-half of the elected members. The question is, Is the support of 6 members necessary for carrying the motion in a panchayat having a total strength, of 9 members. A similar question came up for consideration before this Court in the decision *Alexander v. Director of Panchayats* 1971 Ker LT 535, There Section 54 of the Kerala Panchayats Act, 1960 was considered. According to that Section 'if the motion is carried with the support of not less than three-fifths of the total strength of the panchayat the Director shall, by notification in the Gazette remove him from office.' In the panchayat out of the 9 members 5 members voted in favour of the resolution. The argument was that three-fifth of 9 when worked out is five and two-fifth and since it is impossible to produce two-fifth, 5 will be enough. The Court stated thus:

'While it may be difficult, perhaps impossible, to produce two-fifth of a man, it does not necessarily follow that five would be sufficient to constitute the majority visualised by Sub-section (13) of Section 54. Three-fifth of 9 is 5 and two-fifth and the only way there can be five and two-fifth human being is by having 6'.

Thus the Court came to the conclusion that no-confidence motion should have been supported by not less than six persons. In the decision reported in *Kurian v. Registrar*, (1994) 2 Ker LT 202 Viswanatha Iyer, J. interpreted Section 28(5) of the Kerala Cooperative Societies Act. Section 28(5) reads as follows:

'The quorum for a meeting of a committee shall be such number of members just above 50% of the total number of members of that committee'.

In that case the number of members of the managing committee was 11. According to the petitioner, for a quorum there should be at least 7 members attending the meeting. That was on the ground that half of 11 will be 5 1/2. This should be rounded to 6 and more than half comes 7. But Viswanatha Iyer, J.

rejected this contention saying as follows :

'The total number of the members of the committee is first taken, i.e. 11. The second step is a simple arithmetical calculation of 50% of this member, i.e. 5.5 The third step is to fix the integer above this number, i.e. 6'.

Thus his Lordship held that the quorum for a society having 11 members is 6. In a decision reported in *Wahid Ullah Khan v. District Magistrate, Nainital*, AIR 1993 All 249 a similar question was considered by a Full Bench of that Court. Where the Court was interpreting Section 87A(12) of the U.P. Municipalities Act. According to that Section a motion shall be carried out only when it has been passed by a majority of more than half of the total number of members of the Board. Interpreting the above Section the Court held 'when majority could be any number, which is more than half then any number which could be said to be more than half would be a majority number'. *Srivastava, J.* in supporting the judgment held as follows:

'The emphasis is on the number not on the member'.

5. After hearing the arguments on both sides, I am satisfied that this case the no-confidence motion could not be said to be carried in accordance with Section 157(12) of the Act. The motion is said to be carried if it has got the support of more than one-half of the elected members. Identical words appear in the Panchayats Act, 1960. Of course, there the condition was that it should be carried with the support of not less than $\frac{3}{4}$ of the members. In interpreting that Section the Division Bench of this Court in the decision reported in *Alexander v. Director of Panchayats*, 1971 Ker LT 535 held that half of 11 will be 6. In the decision reported in *Kurian v. Registrar*, (1994) 2 Ker LT 202, the stress was on the number. In the Allahabad decision the Court interpreted with the stress on the words majority and number. Whereas in the present case, we find under Section 157(12), the support should be more than one-half of the elected members. Thus in a panchayat having a strength of 9 elected members, one-half of the elected members will be 5.

More than one-half will come to 6. Hence, until the motion has the support of 6 members, the motion cannot be said to be passed. It could not be presumed that

the word more was used by the legislature Without any intention. The word could not be ignored as superfluous. The word majority is also absent in Sub-section (12). This interpretation is further strengthened by a reading of Sub-section (13), which says that if the motion is not carried on by the majority as aforesaid, no further motion shall be received until or after six months: Thus the intention appears to more than half of the members should support the motion. The word number is absent. According to me, the Division Bench of decision reported in *Alexander v. Director of Panchayats*, 1971 Ker LT 535 is the apt decision for interpreting Section 157(12) of the Act. The decision referred to by the learned counsel for the respondents is namely, *Jivendranath Kaul v. Collector/ District Magistrate*, (1992) 3 SCC 576 is not apposite to the facts of this case. In that case out of 60 members 33 voted for the motion. Hence actually it was supported by more than half of the members. Hence I quash Ext. P2 resolution holding that the no-confidence motion against the petitioner was passed. In view of the fact that, I am allowing the original petition on the first ground and I am not considering the second ground raised by the petitioner.

The original petition is allowed.