

Joseph Vs. Block Development Officer, Angamaly and ors.

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Court : Kerala

Decided On : Jul-31-1989

Reported in : AIR1990Ker131

Judge : K.T. Thomas, J.

Acts : Kerala Panchayats (Decision of Election Disputes) Rules, 1963 - Rules 2, 5(3) and 5(8); Kerala Panchayats (Election of Members) Rules, 1962 - Rule 20; [Representation of the People Act, 1951](#) - Sections 79 and 80; Representation of the People (Amendment) Act, 1975

Appeal No. : O.P. No. 707 of 1989-H

Appellant : Joseph

Respondent : Block Development Officer, Angamaly and ors.

Advocate for Def. : Govt. Pleader and; K.K. Raveendranath, Adv.

Advocate for Pet/Ap. : M.M. Abdul Aziz, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K.T. Thomas, J.

1. Petitioner and the second respondent were the contesting candidates at the panchayat election from Ward No. VIII to the Manjapra Panchayat. The Returning Officer, on counting the votes treated four votes invalid. It was then found that the rival contesting candidates secured 519 votes each. He then drew lots and declared the second respondent elected. Petitioner filed an election petition before the Munsiff of Alwaye, joining the second respondent and the Returning Officer alone as respondents. A preliminary objection was raised by the second respondent regarding the maintainability of the election petition on the ground that all the seven candidates who were duly nominated to the election were not joined in the election petition. Learned Munsiff upheld the preliminary objection and dismissed the election petition, by Ext. P1 order. This original petition is in challenge of Ext. P1.

2. It is not disputed that there were altogether seven persons who submitted nominations whose nominations were accepted by the Returning Officer, but all the others (except the petitioner and the second respondent) withdrew from the field before the due date for withdrawal and hence the petitioner and the second respondent alone remained for contest.

3. Rule 5(3) of the Kerala Panchayats (Decision of Election Disputes) Rules, 1963 (for short 'the Rules') requires that a petitioner shall join as respondents to his petition 'all the candidates who were duly nominated at the election other than himself if he was so nominated'. Sub-rule (8) enjoins on the Munsiff to dismiss the petition if Sub-rule (3) is not complied with. Learned Munsiff, in support of his conclusion that the petition is not in compliance with the Sub-rule (3), has relied on the decisions of this Court reported is *Khader v. Damodaran*, 1965 Ker LT 1036 and *Krishnankutty Nair v. Joseph*, 1981 Ker LT 565.

4. Learned counsel, in attacking Ext. P1 order, contended that there is no need to join those candidates who have not reached 'at the election', although they were duly nominated. He laid emphasis on the words 'at the election' in Sub-rule (3) for contending that the preceding words 'duly nominated' cannot be allowed to override the remaining postulates. Learned counsel invited my attention to Rule 20 of the Kerala Panchayats (Election of Members) Rules, 1962 which requires the

Returning Officer to prepare a list of contesting candidates. Such candidates include only 'candidates who were included in the list of validly nominated candidates and who have not withdrawn their candidature within the said period.....'. Rule 23 of the said Rules says that 'a candidate at an election may appoint any one person other than himself to be his election agent.....'. In contradistinction with the said expression Rule 25 has used the words 'a contesting candidates' for appointing polling agents. Therefore, learned counsel contended that even though a candidate was duly nominated, he cannot be regarded as a candidate duly nominated at the election. Though a candidate who was duly nominated could be regarded as a candidate for certain purposes, he cannot be treated as a candidate at the election, if he has withdrawn before the expiry of a period for withdrawal, contended the counsel.

5. The argument appeared at the first blush to be attractive. But in the light of two decisions rendered by the Constitution Bench of the Supreme Court. I am unable to give my approval to the said contention. (Vide Mohan Singh v. Bhanwarlal, AIR 1964 SC 1366, and Amin Lal v. Hunna Mal, AIR 1965 SC 1243.) For understanding the said decisions which were rendered while interpreting Section 82 of the [Representation of the People Act, 1951](#), a reference to the relevant provisions of the said Act is necessary. Part VI of the said Act deals with disputes regarding elections. A candidate is defined in Section 79 as 'a person who has been or claims to have been duly nominated as a candidate at any election, and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate'. (The definition was subsequently changed by Act 40 of 1975. But when the Supreme Court considered the cases, the definition remained as quoted above). Section 82 has two limbs. In the first limb (a) an election petitioner shall join as respondents 'all the contesting candidates' in certain cases. In the second limb (b) he has to join 'any other candidate' against whom allegations of any corrupt practice are made in the petition. In Mohan Singh's case the Supreme Court observed that the expression 'any other candidate' must include a candidate who had withdrawn his candidature also. In Amin Lal's case the Supreme Court while directly dealing with the same limb (b) of Section 82 has observed in clear terms that 'a person who was a duly nominated candidate though he withdrew his

candidature within the time permitted by the rules must for the purpose of Section 82 still be regarded as a candidate'.

6. The word 'candidate' is defined in Section 2(b) of the Rules as 'a person who has been or claimed to have been only nominated as a candidate at any election and any such person shall be deemed to have been a candidate as from the time when, with the election in prospect, he began to hold himself out as a prospective candidate'. It is thus clear that the definition of the word 'candidate' in the Rules is identically the same as the said word was defined in the Representation of the People Act before the amendment in 1975. The interpretation placed by the Supreme Court on the definition of the word 'candidate' in the Representation of the People Act applies with equal force to the same definition given in the Rules in question. When so interpreted, the election petition is liable to be rejected as defective. Hence I hold that the learned Munsiff has rightly rejected the election petition.

In the result, I dismiss this original petition. No costs.

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