

Pathumma Vs. State Election Commission

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Court : Kerala

Decided On : May-25-2004

Reported in : 2004(2)KLT568

Judge : M. Ramachandran, J.

Acts : Kerala Local Authorities (Prohibition of Defection) Act, 1999 - Sections 2 and 3

Appeal No. : W.P. (C) Nos. 37300 and 37347 of 2003

Appellant : Pathumma

Respondent : State Election Commission

Advocate for Def. : Murali Purushothaman and; T.R. Ramachandran Nair, Advs.

Advocate for Pet/Ap. : K.T. Sankaran,; R. Rajesh Kormath,; A. Meena,;

Disposition : Petition allowed

Judgement :

M. Ramachandran, J.

1. The Kerala Local Authorities (Prohibition of Defection) Act, 1999 (hereinafter referred to as the Act) authorises, under Section 4 of the Act, the State Election Commission to decide any question as to whether a member of a local authority

has become subject to disqualification provided under the Act, on a petition filed before him. The petitioners in the above two Writ Petitions were elected members of the Kunnamangalam Panchayat, in the Malappuram District. The two women members were signatories to a No Confidence Motion, and on it being tabled on 4.1.2003, the President and Vice President of the Panchayat had to bow out. Two Original Petitions as O.P.No.9 and 10 of 2003 thereupon came to be filed before the State Election Commission. The petitioner there was the unseated President Mr. Chakkeeri Abdul Haque (2nd respondent herein). The prayers in the petitioners were for holding that the said members had committed defection as envisaged by Section 3 of the Act and consequently were to be declared as disqualified for holding the position of members of the Panchayat, and unseating them.

2. On notice being issued, the respective members had entered appearance and contested the petitions. Oral and documentary evidence had been adduced by the parties. By a common order, dated 4.11.2003, the first respondent -- State Election Commission had allowed the petitions, and declared that the said two members had ceased to be members of the Panchayat and also became disqualified for contesting as candidates to any local bodies, for a period of six years. According to the Election Commission, the said members had voluntarily given up their membership from the political party, viz., Indian Union Muslim League (IUML) and had committed defection as contemplated under Section 3(a) of the Act. This order is under challenge. The petitioner in WPC No.37300 of 2003 (V.T. Pathumma) was the first respondent in O.P.No. 10 of 2003 before the Commission. Pulikodan Sulaiikha (Petitioner in WPC 37347/2003) was the first respondent in O.P.No.9 of 2003 as above. The above said common order is under challenge. The parties agreed that the two Writ Petitions could be jointly heard and disposed of in view of the more or less identical contentions taken by them all through out. By virtue of the interim orders, the petitioners are even now continuing as members of the Panchayat.

3. The first respondent -- Election Commission had been addressed on two grounds. The first was that the President Mr. Haque, as the leader of the Indian Union Muslim League, a political party, had been validly nominated as the whip

and the conduct of the two members, over reaching the whip issued and crossing over side was an actionable claim; entitling him to move for disqualifying them. The second contention was the two members had voluntarily given up membership from the political party (IUML) and were 'guilty' of defection.

4. Election was held on 25.9.2000 to the fifteen wards of the Panchayat concerned. It is stated that a registered political party (IUML) had fielded candidates both in its banner as well as independents supported by them. According to Mr. Haque, himself, Pathumma, Sulaikha and three others were such independent candidates supported by IUML. There was an understanding at the time of election as between the IUML and the CPI (M) that in respect of wards where CPI (M) candidates or independents supported by them were contesting, IUML candidates would not be fielded. A reciprocal understanding was there on the part of the IUML also.

5. Altogether, nine persons from IUML and independents supported by them had won. Two CPI (M) candidates also got returned. The rest of the seats went in favour of the coalition led by Indian National Congress (INC). In the election of President and Vice President, the eleven members of the coalition had voted as a bloc, and Mr. Haque was elected as President. A member of CPI (M) group was elected as Vice President.

6. The plaint showed that later on, the group of nine persons, who had allegiance to IUML, had decided to bring a No Confidence Motion, against the CPI (M) Vice President. But without waiting for the voting the Vice President had resigned. In the place, an independent candidate (Sri. Bapputty Haji) supported by IUML was elected on 25.7.2001.

7. Later developments compelled him to approach the Election Commission. Smt. Pathumma and Sulaikha had subscribed their signature to a No Confidence Motion for ousting the Vice President as well as President on 4.1.2003. For discussions on the motion, the Secretary of the Block Panchayat had given notice convening a meeting on 21.1.2003. When contacted, he had been assured by Smt. Pathumma that no confidence motion was signed on a misconception, and they had no intention to vote against him. Smt. Pathumma had given the

assurance in writing. But, both the women members had supported the motion, and Mr. Haque as well as the Vice President had to vacate their office. He had, therefore, cause of action to move the Commission.

8. By their written statements, Smt. Pathumma and Sulaikha had refuted the claims and averments of Mr. Haque that they were candidates fielded by the IUML. According to them, the averments in the petition were misleading. In the election, there was contest between two coalitions who opposed each other. One was Vikasana Samithi. It consisted of candidates fielded by IUML, independents and candidates sponsored by CPI (M). On the opposite side, there was another coalition, Janakeeya Munnani, in the leadership of INC and its allies. Birthmarks of any of the candidates were no where there, but the two coalitions were testing their strength.

9. They further pleaded that Mr. Haque was not authorised to issue whip by the coalition. They further submitted that they were not members of the IUML, were independents and had not defected, nor there could have been any giving up of membership of party. According to them, the petitions were frivolous and not maintainable.

10. The Election Commission had rejected the first contention viz., that Mr. Haque had been the validly nominated whip, authorised to issue directions, but had accepted the argument that there was instance of defection by the members giving up membership of the party. As a consequence, the two women members were ordered to be disqualified. The two Writ Petitions are filed challenging the common order.

11. The parties had adduced oral and documentary evidence before the Commission. Counsel had addressed arguments and Mr. Murali Purushothaman had made available the records including the case files. Argument notes are also seen to have been filed. The facts presented, with reference to the law that is to be applied, appear to me leads to a circumstance, where interference is called for.

12. For reference, I would extract herein below Section 3 of the Act, since the entire question centres round the disability which has arisen because of

application of the said provision:

'3. Disqualification on ground of defection:

(1) Notwithstanding anything contained in the Kerala Panchayat Raj Act, 1944 (13 of 1994), or in the Kerala Municipality Act, 1994 (20 of 1994), or in any other law for the time being in force, subject to the other provisions of this Act,--

(a) if a member of local authority belonging to any political party voluntarily gives up his membership of such political party, or if such member, contrary to any direction in writing issued by the political party to which he belongs or by a person or authority authorised by it in this behalf in the manner prescribed, votes or abstains from voting, --

(i) in a meeting of a Municipality, in an election of its Chairperson, Deputy Chairperson, a member of Standing Committee or the Chairman of a Standing Committee; or

(ii) in a meeting of a Panchayat, in an election of its President, Vice President, a member of a Standing Committee; or the Chairman of the Standing Committee; or

in an voting or a no-confidence motion against any one of them except a member of a Standing Committee;

(b) if an independent member belong to any coalition withdraws from such coalition or joins any political party or any other coalition, or if such a member, contrary to any direction in writing issued by a person or authority authorised by the coalition in its benefit in the manner prescribed, votes or abstains from voting,--

(i) in a meeting of a Municipality, in an election of its President, Vice President, a member of Standing Committee or the Chairman of the Standing Committee; or

(ii) in a meeting of a Panchayat in an election of its President/Vice President, a member of a Standing Committee or the Chairman of the Standing Committee; or

in an voting on a no-confidence motion against any one of them except a member of a Standing Committee;

(c) if an independent member not belonging to any coalition; joins any political party or coalition; he shall be disqualified for being a member of that local authority.

Explanation:- For the purpose of this section an elected member of a local authority shall be deemed to be a member belonging to the political party, if there is any such party, by which he was set up as a candidate for the election'.

13. The Election Commission has heavily relied on the explanation to the Section, for holding that the two members are to be deemed as members of a political party, and since they have subscribed their signature to the No Confidence Motion, and had voted against the President and Vice President, unseating them, they are to be considered as having voluntarily abandoned their membership to the party, and consequently could be treated as having defected, entailing the consequences.

14. I am afraid the absolute reliance on the explanation to Section 3, without looking to certain admitted facts has resulted in a judgment, which was not called for.

15. The first and foremost circumstance that was to be taken cognizance of was the presence of two coalitions. The said term has been defined by Section 2(ii) of the Act. Though in the petition filed before the Election Commission Mr. Haque had consciously avoided reference to the coalition, perhaps on the apprehension that it would have cut at the root of the case, mere shutting of the eyes would not have had vaporized its existence as a stark reality. A few persons belonging to IUML had contested as candidates of the said party, but Pathumma and Sulaikha were not IUML candidates, they were only supported by them. They were fielded by a coalition (Vikasana Samithi) where CPI (M) was also a constituent.

16. The Election Commission had entered a finding that Mr. Haque and no authority to issue a whip, and there was no whip issued by the Vikasana Samithi, or a person authorised for such a purpose, and the finding has become final.

17. After the initial good day of honeymoon, grumblings had developed in the coalition. So much so, it broke up, the Vice President had resigned, at the threat of no confidence, and in a new election, the erstwhile constituents, viz., CPI (M) members had parted ways from the coalition. As a result, a new Vice President was elected on 25.7.2001. The coalition had broken up at least on that day. The group headed by Mr.Haque consisted of nine persons, including the petitioners here, but he had no authority to command them to adopt any course of conduct, as has been held by the Election Commission in the order. The coalition had broken down, and unless the two members were party to any indiscretion whereby they had attempted to embrace any political party, they could not have been accused at least of defection. Whether the Commission was justified in coming to the conclusion that there was such conduct on their part, now could be examined.

18. Section 3(a) of the Act deals with a situation concerning a member who belongs to a political party. Prima facie reading will indicate that this does not apply to the petitioners. There is no case that they were members of Muslim League at any time.

19. Section 3(b) deals with an independent member who belongs to a coalition. It is the case here, since it has come out that there was a coalition at the time of the election. At the command of the IUML, during July 2001, all the six independent members had withdrawn from the coalition and the arrangement was thereupon thrown to the waste bin. This obviously was creating chaos and instability. But this wholesale conduct is not made subject matter of any attack. It may now be examined, whether there was allegation that the petitioners herein had joined any political party, or crossed over to any other coalition thereafter, as envisaged by Section 3 of the Act, for courting a disqualification. The question is whether a faction of the coalition, after the split, can enforce its edicts on independent members. The answer should be only in the negative, as the Act has not anticipated any such contingency. After finding that Mr.Haque had no authority conferred as whip, vis-a-vis the petitioners what the Election Commission has done is to go back to the declaration stage, which has to be given before assumption of office, prescribed under Rule 3(2) of the Rules. The declaration of Sulaikha is Ext.X1(c) and that of Pathumma Ext.X1(h) (True copies produced

before the Election Commission). From what they are, the documents hardly can be relied on for coming to any conclusive findings, but however are sufficient to show that they did not show that petitioners were members of the political party (IUML).

20. But the Election Commission has, relying on the Explanation to Section 3, entered a finding that they were deemed to be members of Muslim League, and having exercised their discretion to sign a No Confidence Motion, and by adhering to their stand at the time of voting, they had voluntarily given up their membership, and therefore were to be stamped as defectors destined to suffer the consequences.

21. I feel that this was not permissible. The civil consequences of a declaration as above was serious and even capable of annihilating the social and political future of an individual. Therefore, the provisions of the Act needed strict interpretation. When Section 3(b) and again Section 3(c) (which concerned independents who were not members of any coalition) definitely referred to the offending conduct of such members, the situation has to be appreciated in conformity with the section. The Explanation cannot be deemed as running counter to the substantive provisions explicitly stated, and needed no advertence at all here.

22. The Election Petition also erred in holding that the petitioners had been set up by the IUML, and they were bound by the restraints of the explanation. What the provision lays down is that a member of local authority shall be deemed to be a member belonging to the political party, if there is any such party by which he was set up as a candidate for election. The declarations relied on do not show that IUML had set up the petitioners as candidates. The case found by the Commission is that they were candidates fielded by the Vikasana Samithi only. They were independents. If we examine Sections 3(b) and 3(c) once again, it could be seen that an independent member becomes disqualified when he joins a political party, whether he is a member of the coalition or not. The expression in Section 3(b) is that 'if an independent member belong to any coalition withdraws from such coalition or joins any political party', and the provision in Section 3(c) 'if an independent member not belonging to any coalition, joins any political party'. An

independent has always to remain as independent. In the present case, the coalition had come to an end in July 2001 and the position was akin to free for all, as far as Vikasana Samithi was concerned. The Election Commission had not examined this aspect.

23. Various provisions of the Act have to be harmoniously construed, and it can be safely assumed that Explanation to the Section only referred to members who were members of a political party, and for dealing with altogether a different solution. The explanation did not refer to an elected member, who was independent, but only those who had been set up by political party. It may also be relevant to notice that explanation to the definition 'coalition' (Section 2(ii)) was differently worded from the above. A member who stood as a candidate with support of a political party or coalition, were to be deemed as their members. The expression was 'support' and not 'set up'. This essential difference has been used by the Rule makers, with definite purpose. The petitioners were never members of the IUML, and it may be preposterous to suggest that they had lost their membership in the said party, and were therefore liable to be unseated. A person cannot lose what he does not possess or own. A fiction cannot operate in these matters as has been attempted to be relied on by the first respondent straining the language of the section, which had not been called for. The letters and undertaking attributed to the petitioners do not confer any actionable claims to be agitated under the Act.

24. In this view, I am not examining the contentions as to whether there was delay in presentation of the petitions, or any such other aspects, including the reference to authorities, as had been urged. Ext.P3 order is not sustainable, and are quashed. The petitioners would be entitled to continue as members of the Kannamangalam Grama Panchayat, as there have been no circumstances warranting for a declaration that they are to be disqualified with reference to their conduct dated 4.1.2003 or 21.1.2003 in the matter of expressing their views regarding the governance of the Panchayat.

25. The interlocutory orders already passed are to be appropriately taken notice of by the respondents and stand modified in consonance with this judgment.

The Writ Petitions are allowed. Parties are to suffer their costs.

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