

Nazeera Vs. State of Kerala

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Court : Kerala

Decided On : Jun-08-2006

Reported in : 2006(3)KLT272

Judge : Thottathil B. Radhakrishnan, J.

Acts : Kerala Panchayat Raj (Oath of Members, President and Vice President) Rules, 1995 - Rule 3(2); [Kerala Panchayat Raj Act, 1994](#) - Sections 152, 152(3), 152(5) and 157(6)

Appeal No. : W.P.(C) No. 14568 of 2006

Appellant : Nazeera

Respondent : State of Kerala

Advocate for Def. : John Joseph Vettikkad, Sr. Government Pleader and; M. Saseendran, Adv.

Advocate for Pet/Ap. : Jacob Sebastian, Adv.

Disposition : Petition dismissed

Judgement :

Thottathil B. Radhakrishnan, J.

1. The petitioner contested in bye-election to the second respondent-Grama Panchayat, held on 30.5.2006. On 31.05.2006 as per Ext.P1, the petitioner was declared elected. On 01.06.2006, he made Ext.P4 to the Secretary of the Panchayat, as is required by Rule 3(2) of the Kerala Panchayat Raj (Oath of Members, President and Vice President) Rules, 1995, hereinafter called the 'Oath Rules', for short. The said Rules are framed invoking the rule making power contained in the [Kerala Panchayat Raj Act, 1994](#) for short, the 'Act', hereinafter. On 05.06.2006, the President of the Panchayat issued a communication to the petitioner fixing 15.6.2006 as the date for the petitioner to take oath before the President, in terms of the aforesaid Rule.

2. Section 152(5) of the Act provides that when an elected member has not entered upon his office without sufficient cause by taking oath within a maximum period of thirty days from the date he was declared as elected, the State Election Commission may declare the office of the member as vacated on his own motion. Before the amendment of the said provision as per Act 31 of 2005, the power to so declare, was with the Government. From the facts noticed above, the date fixed by the President, for the petitioner to take oath, is well within the outer time limit of thirty days prescribed in Section 152(5) of the Act. The Legislature has, in its wisdom, taken note of exigencies of circumstances, which may also have to be cared for. This is the reason why, even the outer time limit prescribed as per Sub-section 5 of Section 152 is so fixed by stating that it applies in cases where an elected member does not enter office without sufficient cause. Hence even the time limit fixed as per Section 152(5) cannot, under all circumstances, be treated as an indefeasible cut off date.

3. This Writ Petition is filed contending that the request, made in Ext. P4, that the petitioner may be sworn in, is not being acted upon and that there is likelihood of the swearing in of the petitioner being pushed off beyond 13.6.2006 to which date the competent officer under the Act has scheduled the meeting for consideration of a no confidence motion against the President. The petitioner therefore contends that he, whose political allegiance is against the interest of the president, is thus attempted to be excluded from participating in the voting on the no-confidence motion.

4. Consideration of no-confidence motion and voting thereon, Which is to be on 13.6.2006 is not a matter which should be the guiding yardstick to decide the issue as to whether the action taken by the president, as already noticed, fixing 15.6.2006 as the date for the petitioner to take the oath, is in accordance with law.

5. Now, what falls for consideration is the scope of the authority of the President to prescribe a date for the purpose of a member, who has been elected in a bye-election to take oath. Rule 3(2) of the Oath Rules provides authority to the President, to fix a day for such an elected member to take oath. That Rule is not under challenge before me. The power to so fix a day cannot, however, be immediately referred to Sub-section (3) of Section 152 of the Act, on a superficial reading. However, in construing the scope and limits of Section 152(3) of the Act and Rule 3(2) of the Oath Rules, Section 152 requires to be considered as a whole. The scheme of Section 152 is after every General Election, the Government shall nominate a person among those elected, for the purpose of convening the first meeting of the Panchayat. Such person shall take oath before the Government Officer nominated by the Government for such purpose. All other elected persons are to take oath before the said member. The date on which all other members shall take oath before the member nominated in terms of Sub-section (1) of Section 152 of the Act is to be fixed by the Government which, however, shall be a date before the date fixed by the State Election Commission for the Election of the President of the Panchayat. What Sub-section (3) of the Section 152 takes care Of, are the cases of those members, who could not take oath in terms of Sub-section (2) and those members, who get elected in a bye-election. Such persons are to take oath before the President. The learned Counsel for the petitioner argued that in the absence of a prescription in Sub-section (3) of Section 152 authorising the President to fix a date for the member elected in a bye-election to take oath, there cannot be any subsidiary rule in the form of R.3(2) of the Oath Rules conferring a power on the President to fix a day for an elected, member to take oath. The learned Counsel for the respondents 2 and 3 has contended, that the power available which the President to fix a day is merely recognised by Rule 3(2) of the Oath Rules and such power has to be read to exist in the President in terms of Section 152, read as a whole. Section 152(2), which takes care of the situation immediately after the General Election; provides for an

authority with the Government to fix a date for the members to take oath before the member nominated under Section 152(1), The power to so fix a date for those members, who are elected in a bye-election and also in relation to persons who are elected but could not take oath before the nominated member has to be found in some authority. The mechanism of any Statute, has to work. That is the primary goal of any legislative exercise. If one were to visualise the situation where such provisions are not made, it will only result in an administrative failure. Hence I have no hesitation to hold that the President, having been statutorily chosen under Section 152(3) of the Act as to the authority before whom a member elected in a bye-election can take oath, the President has also the power to fix the date on which a member elected in bye-election could take oath, subject of course to the limits prescribed under Section 152(5). This is how the scheme of Section 152 of the Act work, on a harmonious construction, having regard to the objectives sought to be achieved by that bit of legislation. Viewed in this angle, the President has the authority to fix the date for the 'elected member to take oath and it having been so done within the limits of Section 152(5), the writ petitioner cannot make out a legally sustainable grievance by merely pleading a possible link, within the mind of the President between fixing office date for the petitioner to take oath and the date on which, the President is due to face the no-confidence motion. Having regard to the aforesaid, this Writ Petition fails in so far as relief 1 is concerned.

6. Relief 2 sought for by the petitioner is for JX direction that the no-confidence motion listed on 13.6.2006 may be adjourned to any day after 15.6.2006 to enable him also to participate in the voting on the no-confidence motion. To my mind, this is totally impermissible, particularly in view of Section 157(6) of the Act, which provides that a meeting convened for, consideration of a no-confidence motion shall not be adjourned except for reasons beyond human control and the decision of this Court in Jacob Abraham's case (1999 (1) KLT 225) and the unreported decision in Jayasree Kesavan Nair's case (judgment dated 2.7.2004 in W.P.(C). No. 19439 of 2(504).

In the result, the Writ Petition is dismissed. No costs.