

Mahendran Vs. Asokan

Mahendran Vs. Asokan

SooperKanoon Citation : sooperkanoon.com/725406

Court : Kerala

Decided On : Feb-07-2003

Reported in : 2003(2)KLT737

Judge : Pius C. Kuriakose, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115

Appeal No. : C.R.P. No. 17 of 2002

Appellant : Mahendran

Respondent : Asokan

Advocate for Def. : N.J. Johnson, Adv.

Advocate for Pet/Ap. : R. Krishnakumar, Adv.

Disposition : Revision petition dismissed

Judgement :

Pius C. Kuriakose, J.

1. The revision petitioner who is the 1st respondent before the learned Munsiff is aggrieved by an order allowing an interlocutory application filed by the 1st respondent-petitioner, the unsuccessful candidate for sorting the marked voters' list and counterfoils of the ballots presently kept in safe custody of the Court for the

purpose of making them available for the evidence in the case.

2. Heard Shri. R. Krishnakumar, learned counsel for the revision petitioner and Shri. N.J. Johnson, learned counsel for the contesting 1st respondent.

3. Shri. Krishnakumar very seriously assailed the impugned order on the ground that the impugned order will do away with the secrecy of election. According to the learned counsel, by the impugned order the learned Munsiff has enabled the 1st respondent to fish out evidence after wading through the ballots. According to the learned counsel who supplied me with a copy of the affidavit as well as the interlocutory application on the basis of which the impugned order was passed, neither the affidavit nor the application contained any specific request nor did they make it clear as to what purpose the 1st respondent proposes to achieve by having the sorting requested for. He invited my attention to the decision of the Supreme Court in *Achuthanandan v. Francis* (2001 (1) KLT 740) and the decision of a Division Bench of this Court in *Dominic v. Gopalakrishnan* (1993 (2) KLT 88) in support of his position that secrecy of the ballot papers was not a matter to be violated for the purpose of enabling an unsuccessful party to make out a case for fresh scrutiny without the evidence being initially adduced by him to substantiate the allegations levelled by him through the election petition. The learned counsel interestingly referred me also to the decision of K.A. Mohamed Shafi, J. in *Prabhakaran v. Surendran Nair* (2002 (3) KLT Notes Case No. 99, p.72) to argue for the proposition that the decision in *Sunil Kumar v. K. Sudhakaran* (1992 (2) KLJ 483) and *A. Neelalohithadasan Nadar v. George Mascrene* (1994 AIR SCW 2198) relied on by the learned Judge do not support the view taken in *Prabhakaran* (supra).

4. Per contra Shri. N.J. Johnson relied very much on *Prabhakaran* (supra) and argued that in order to secure the purity of voting and in the larger public interest inspection of the marked copy of the electoral rolls and counterfoils of used ballot papers sought for by the 1st respondent is necessary. The learned counsel also took me to the decision of the Supreme Court in *Neelalohithadasan Nadar v. George Mascrene* (1994 (1) KLT 887 : 1994 AIR SCW 2198) and to the decision of this Court in *Sunil Kumar v. K. Sudhakaran* (1992 (2) KLJ 483).

5. I have gone through the impugned order. I do not find any jurisdictional infirmity about the same. Secrecy of ballots of course is an important consideration. But the consideration of purity of elections has equal, if not more, importance. As opined by K.G. Balakrishanan, J. in Sunil Kumar (supra), it cannot be said that every voter has an absolute privilege regarding the secrecy of the ballot. Having regard to the facts which obtain in the present case, the impugned order was justified. Paragraph 2 of the impugned order will show that the learned Munsiff has kept in mind considerations of secrecy of ballot also. The revision fails and the same is dismissed.