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Muhammad Ali Vs. State Election Commission

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Court : Kerala

Decided On : May-16-2006

Reported in : 2006(3)KLT496

Judge : Thottathil B. Radhakrishnan, J.

Acts : Constitution of India (73rd Amendment) Act, 1992; Constitution of India - Articles 226, 243E, 243O, 243U and 329; Kerala Panchayat Raj Act, 1994 - Sections 38; Kerala Panchayat Raj (Registration of Electors) Rules, 1994 - Rules 8, 10, 11, 12, 13, 14, 21, 22 and 22(1)

Appeal No. : W.P.(C) No. 27311 of 2005

Appellant : Muhammad Ali

Respondent : State Election Commission

Advocate for Def. : E.S. Muhammed Kabir, A.C.G.S.C. and; Murali Purushothaman, Adv.

Advocate for Pet/Ap. : Sivan Madathil, Adv.

Disposition : Petition dismissed

Judgement :

Thottathil B. Radhakrishnan, J.

1. Following the coming into force of the Constitution (73rd amendment) Act 1992 which received assent of the President and was published in the Gazette of India dated 20/04/1993, whereby Part IX relating to the Panchayats, as if now stands, was inserted in the Constitution of India. Kerala Panchayat Raj Act 1994, hereinafter referred to as the 'Act' was passed which provides, inter alia, in Section 38 thereof, for notification for general election to Panchayats. On 29/08/2005, the Government of Kerala, in exercise of such authority, on the recommendation by the State Election Commission, notified the election to the Panchayats.

2. Before that, the Electoral Roll for the constituencies in Nadapuram Grama Panchayat was published, in draft, in terms of Rule 8 of the Kerala Panchayat Raj (Registration of Electors) Rules 1994, hereinafter referred to as the 'Registration Rules', on 15/06/2005 and the Electoral Roll (final) was published on 19/08/2005. It is the assertion of the State Election Commission that no complaints, whatsoever were received by the Electoral Registration Officers regarding non-inclusion of 69 permanent residents from ward No. 2 of the Nadapuram Grama Panchayat in the electoral roll and that no mass non-inclusion of names has come to the notice of the authorities after the publication of the electoral roll. All persons, who had filed statutory objections under the Registration Rules were included in the voters list after necessary enquiry. According to the Commission, no names were included in the electoral role and no names were deleted after 6/9/2005. It is so stated in Annexure A communication addressed by the Kerala Electoral Registration Officer of Nadapuram Grama Panchayat which is appended to the statement filed on behalf of the State Election Commission on 22/09/2005.

3. The plea of the Writ Petitioners is that the first among them is a candidate for the aforesaid election and the second one is a local resident and a voter, whose name, though included in the latest voters list for the election to the Legislative Assembly, is not included in the voters list for the election to the Panchayats.

4. On the basis of the aforesaid facts, the primary contention raised in this Writ Petition is that any embargo created by Article 243O(b) of the Constitution of India is unconstitutional in so far as it excludes judicial review, under Article 226 of the Constitution of India, even as regards the non-inclusion or exclusion of eligible

voters.

5. After the 73rd amendment of the Constitution, the Panchayat is a constitutional institution and a survey of the historical reasons for providing such an amendment to the Constitution would show that the paramount consideration was to ensure that the Local Self-Government Institutions sustain as edifices of the democratic process and that the duration of such institutions are constitutionally provided, including by ensuring their constitution or re-constitution before the expiry of the duration specified by the Constitution itself. A reference to Article 243E of the Constitution would show that one of the paramount constitutional goals sought to be achieved by the 73rd amendment is that consistency, in so far as the periodicity of the term of a Panchayat is concerned, is constitutionally secured. I refer to this provision to remind myself of not only the constitutional requirements, but also the fundamental need envisaged by the 73rd amendment to ensure that the elections to Panchayats do not depend upon the will of the State Governments, by treating the Panchayats as mere statutory bodies as they were before the 73rd amendment to the Constitution. Similar are the vibrant provisions that relate to the Municipalities in Part IXA of the Constitution, as inserted by the Constitution (74th Amendment) Act, 1992.

6. In the above backdrop, a reference to the Registration Rules would show that a fair procedure has been evolved by providing subordinate legislation (Rules) under proper statutory authority, to provide for and ensure transparency and opportunity to raise claims and objections, in so far as electoral rolls are concerned, however without sacrificing or, in any way, interfering with the time frame fixed by the Constitution and the Act, to have the elections conducted. Rule 8 provides for publication of roll, in draft. Rule 10 provides for the period for lodging claims and objections, the form and manner of which are governed by Rule 11 and 12. The Designated Officers are to follow the procedures prescribed in Rule 13, while Registration Officers are to follow the procedure in Rule 14. The rules provide for hearing, in situations where it is required and provide for enquiry and inclusion of names inadvertently omitted. Deletion of names is also provided for. The publication of the final voters list is provided for by Rule 21. Rule 22 provides for the ways and methods of consideration of claims and objections, with an embargo

in the form of a proviso to Sub-rule (1) of Rule 22 that an appeal shall not lie where the person desiring to appeal has not availed himself of his right to be heard by. or to make representations to the registration officer on the matter, which is the subject of appeal. The aforesaid provisions will show that any person, who has any objection to the draft voters list has to object to the same, at the first instance, to the Registration Officers, bereft of which, he would have no right to carry on with his objections or file an appeal. A survey of the provisions of the Registration Rules would show that they provide adequate remedies and take care to provide reasonable opportunity for aggrieved persons for redressal of their grievances. Rules having been thus framed and the said rules being comprehensive enough to take care of the complaints, there is no room to sustain any challenge to the alleged non-inclusion of any of the persons in the voters list. On the face of the un-controverter assertion of the State Election Commission regarding the absence of any objection to the draft voters list, as already noticed above, I do not find any grounds to entertain this Writ Petition.

7. Having thus considered the merits of the matter on the facts of the case, a reference is needed to the argument that Article 243O(b) is liable to be declared ultra vires the Constitution of India, for being a provision that deprives the constitutional remedy of judicial review by recourse to Article 226 of the Constitution of India, which is part of the basic features of the Constitution. Much labour is not required to answer the said contention. Even before the introduction of Article 243O(b), as if now stands, in Lakshmi Charan Sen and Ors. v. A.K.M. Hassan Uzzaman and Ors. AIR 1985 SC 1233, the Constitution Bench of the Apex Court, while dealing with a challenge to preparation of electoral roll held that the High Courts must observe self-imposed limitation on their power to act under Article 226, by refusing to pass orders or give directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are of the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact that whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of Article 329(b) of the Constitution or not. In Anugrah Narain Singh v. State of U.P. : (1996)6SCC303 , an yet another matter pertaining also to preparation of electoral roll, their Lordships held that so far as preparation of the

electoral roll is concerned, there are sufficient safeguards in the Act against any abuse or misuse of power. It was held that in view of the provisions for filing objections and also the right of appeal against inclusion, deletion and correction of names and also to the constitutional authority of the Election Commission to give directions in all matters pertaining to elections, there is hardly any scope for a court to intervene and correct the electoral rolls under Article 226 of the Constitution. Therefore, the Court should not intervene at all on the basis of allegations as to preparation of electoral rolls. If this is allowed to be done, every election will be indefinitely delayed and it will not be possible to comply with the mandate of the Constitution that every Municipality shall have a life span of five years, or less, if dissolved earlier, and thereafter fresh elections will have to be held within the time specified in Clause (3) of Article 243U. The Division Bench of this Court in State Election Commission v. Krishnan 2001 (1) KLT 285 held that in view of Article 243O(b), there is hardly any scope to correct an electoral roll in exercise of authority under Article 226 of the Constitution of India.

8. The right to be included in an electoral roll and to challenge the exclusion are, entirely, rights of the individual and if the individual has not initiated the prescribed statutory procedures, no right will lie in any one else to challenge the same.

9. The constitutionality of Article 243O(b) does not depend upon the non-availability of remedy under Article 226 of the Constitution of India. In the realm of discretion, jurisdiction under Article 226 needs only to be refused in this case. Under such circumstances, this Writ Petition fails. Hence dismissed.

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