

Antony Vs. State of Kerala

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Court : Kerala

Decided On : Aug-08-2005

Reported in : 2005(4)KLT69

Judge : Thottathil B. Radhakrishnan, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 157; Kerala Local Authorities (Prohibition of Defection) Act, 1999 - Sections 153, 153(7A) and 157(9A); Conduct of Election Rules, 1961 - Rule 39(2); Kerala Panchayat Raj (Election of President and Vice President) Rules, 1995 - Rules 9(2) and 10

Appeal No. : W.P.No. 20473 of 2005

Appellant : Antony

Respondent : State of Kerala

Advocate for Def. : Murali Purushothaman,; T.D. Rajalakshmi, E.R. Venkateswaran, Advs. and;

Advocate for Pet/Ap. : P.V. Surendranath,; V.A. Abdul Jaleel and; P.M. Manoj (K

Disposition : Writ petition allowed

Judgement :

Thottathil B. Radhakrishnan, J.

1. Section 157 of the [Kerala Panchayat Raj Act, 1994](#) (hereinafter referred to as 'the Act') governs motion of no-confidence. Sub-section (9A) thereof reads as follows:

'Election shall be by means of open ballot and the member who casts his vote shall write his name and affix his signature on the reverse side of the ballot paper',

(emphasis supplied)

2. The question raised is as to whether the vote of a member on a no-confidence motion will be invalid solely on the ground that he wrote his name and affixed his signature on the facing side of the ballot paper and not on its reverse side contrary to Section 157(9A).

3. Ext. P2 minutes shows that the ballot paper has to be signed on its reverse and that otherwise the vote will be invalid, were among the instructions given by the President of the meeting to the members. Yet, petitioner, a literate, wrote down his name in Malayalam and affixed his signature on the facing page of the ballot paper. His vote has been treated as invalid.

4. The voting in the no-confidence motion is by open ballot. As of now, seven members have voted in support of the motion, whereas an equal number has voted against it. Therefore, the result of the no-confidence motion will depend upon the validity or otherwise of the vote of the petitioner, on the basis of this judgment.

5. The facts that the Ballot Paper No. 3, the only invalid vote, which has been shown to me by the learned Counsel appearing for the authorised officer, bears the signature of the petitioner as the voter and that it is not invalid on any other ground, are not in dispute.

6. The only question, therefore, is as to whether that vote is invalid merely by reason of the fact that the member (voter) wrote his name and affixed his signature on the facing page, instead of on its reverse.

7. Section 157(9A) was introduced by Act 11 of 1999, namely, the Kerala Local Authorities (Prohibition of Defection) Act, 1999, hereinafter referred to as the 'Anti-defection Act', by which various provisions were made to prevent defection among members of local authorities in the State of Kerala and to provide for disqualification of the defecting members for being members of the local authorities. To achieve the said object, among other things, the [Kerala Panchayat Raj Act, 1994](#) has been modified as provided for in the 1st Schedule to the Anti-defection Act.

8. The identity of the voter will have to be ascertained for the purpose of knowing whether he has acted in any manner violating the Anti-defection Act. The object of Section 157(9A) is to ascertain the identity of the member who has cast the vote using the particular ballot paper. The intention in providing that he shall write his name and affix his signature on the reverse side of the ballot paper is only to ensure that by his doing so on the facing page, the other relevant materials and markings which are to be made available on the facing page shall not be defaced.

9. In this context, it is apposite to refer to the decision of the Apex Court in *S. Sivaswami v. Malaikannan and Ors.*, : [1984]1SCR104 , wherein it was held that the rejection of ballot papers should not be made if marking on ballot paper is indicative of identity of the candidate for whom vote is cast. That decision was rendered construing Rule 39(2)(b) of the Conduct of Election Rules, 1961. The purpose of the marking in the ballot paper in such an election is that the voter ought to indicate with clarity the identity of the candidate. In that context, their Lordships held that

'the essence of the principle incorporated in the rule is that so long as the ballot paper bears mark made with the instrument supplied for the purpose, the ballot paper shall not be rejected as invalid, if it is reasonably possible to gather a definite indication from the marking as to the identity of the candidate in favour of whom the vote had been given. In this context, it is necessary to remember that nearly 90% of the electorate in this country consists of illiterate and uneducated rural folk totally unacquainted with the intricacies of the rules and technicalities of procedure pertaining to elections. Even if the best of endeavour is made to explain

to them such complicated rules and procedures they may not be capable of grasping and fully understanding all the implications and actually carrying them into effect while exercising their franchise. If the right conferred to the people to choose their representatives to the State Legislatures and the Parliament through the process of free and fair elections is to be meaningful the will of the illiterate and unsophisticated voter expressed through a marking on the ballot paper which though not strictly inside the column of the particular candidate is clearly indicative of the identity of the candidate for whom the vote is cast has to be respected and given its full effect'.

10. Similarly, in *Era Sezhiyan v. T.R. Balu and Ors.*, : [1990]1SCR767 , it was held by the Hon'ble Supreme Court as follows:--

'It is true that the column in which the preference should have been marked and intended for that purpose was the column on the right hand side of the first column where the name of the candidate was to be put; but there is no express provision to the effect that unless the preference is marked in the correct column, the ballot paper would be invalid'.

(emphasis supplied)

11. Similar is the situation here. Neither Section 157 nor any subordinate legislation provides that the ballot paper would be invalid, if the name and signature do not appear on the reverse of the ballot paper. In *Era Sezhiyan's* case (supra) the Apex Court has clearly indicated the manner in which such a situation will have to be dealt with. Their Lordships stated as hereunder:

'In such a situation, the principle enunciated by this Court in several judgments and reiterated in *S. Sivaswami v. Malaikannan*, : [1984]1SCR104 , that the primary task of the court in a case where the question is whether the ballot paper is invalid is to ascertain the intention of the voter, must be applied. In that case, the Court held that the ballot paper shall not be rejected as invalid if it is reasonably possible to gather a definite indication from the marking so as to identify the candidate in favour of whom the vote had been intended to be given. This, of course, is subject to the rule that before a ballot paper is accepted as valid the ballot paper must not

be invalid under any other express provision and the intention of the voter must not be expressed in a manner which is contrary to or totally inconsistent with the manner prescribed under the said Act or the Election Rules for expressing the same.'

12. In the case in hand, the fact that the vote in question was cast by the petitioner, is beyond dispute. His name and signature appear on the ballot paper. He has voted in favour of the motion. All these are facts available and determinable on the face of the ballot paper. So much so, the intention of the petitioner, having been clearly expressed, in the absence of any specific statutory provision invalidating the vote on the sole ground that the member's name and signature do not appear on the reverse side of the ballot paper, the vote cast by the petitioner cannot be held to be invalid.

13. Learned counsel for the contesting fifth respondent, who is the President of the District Panchayat, who is facing the no confidence motion, referred to two decisions of this Court in *Retnamma v. State Election Commission*, 2000 (2) KLT 584 and *Anitha v. Kanjirappilly Block Panchayat*, 2004 (3) KLT 211. In *Retnamma's* case it was held that violation of Sub-section 5A invalidates the meeting where a no confidence motion is moved. In *Anitha's* case it was held that the rule as to the provision for issuance of notice by registered post and that the notice should be one giving seven clear days, is mandatory. The said decisions have no application to the facts of the case in hand.

14. The learned Counsel for the petitioner points out that by the Anti-defection Act, in part materia provisions have been introduced as Sub-section 7A in Section 153 and Sub-section 9A in Section 157 and that even the rule making authority has adopted the aforesaid view as is discernible from the subordinate rules framed for the purpose of Section 153.

15. Section 153 is the provision which deals with the election of the President and Vice President. Though no Rules, as are referable to Section 157 have been framed, the Kerala Panchayat Raj (Election of President and Vice President) Rules, 1995 have been made in so far as Section 153 is concerned. Rule 10 thereof is as follows:

'10. Rejection of votes.-- A ballot paper which does not bear the seal and signature of the Returning Officer as specified under Sub-rule (2) of Rule 9 or the mark 'X' as specified under Sub-rule (3) of the said rule or the name and signature of the member who has voted or on which 'X' is marked against the names of more than one candidates shall be rejected as invalid.'

(emphasis supplied)

The said rule was one brought into the Kerala Panchayat Raj (Election of President and Vice President) Rules by substitution as per S.R.O. No. 98/99 following the aforesaid Anti-defection Act and is one to be applied during the course of proceedings referable to Section 153 (7A) which is in pari materia with Section 157(9A) that falls for construction in this case. Yet, the afore-quoted Rule 10 does not provide for rejection of votes on the ground that the name and signature of the voter are not on the reverse side of the ballot paper. This rule is being referred to, only to understand how the object sought to be achieved has been understood even by the rule making authority. Therefore, even the Rules framed for the purpose of in pari materia provisions in the Act are in accordance with the view that has been taken above, to the effect that the provision that the name and signature shall be on the reverse of the ballot paper is not mandatory.

16. It has to be noticed that Section 157 does not provide for rejection of votes as such. No subordinate rules have been framed to regulate the procedure for no-confidence motion under Section 157. So much so, Section 157 has to be applied in a way that it does not defeat the object sought to be achieved by the said legislative provision and also by not depriving a bonafide voter of his legitimate exercise of vote in such a no-confidence motion since that is a right in relation to the democratic process available in the Local Self Government Institution of a Panchayat. As already noticed, the object sought to be achieved is that the identity of the member who casts a particular vote has to be determinable with reference to his signature and name. In this view of the matter, it is sufficient that the name and signature of the member who casts his vote are affixed on the ballot paper, even though they are not affixed on the reverse side of the same.

17. In the result, this Writ Petition is allowed and it is declared that the vote cast by the petitioner, in the consideration of the no-confidence motion against the President of the Wayanad District Panchayat at the District Panchayat Conference Hall on 24-6-2005, is a valid vote. On the basis of the aforesaid declarations, the result of the aforesaid no confidence motion is that the same has been carried with a majority of 8 against 7 and the fifth respondent shall therefore cease to be in office. It is so declared.

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