

Kamaruddin Vs. State Election Commission

Kamaruddin Vs. State Election Commission

SooperKanoon Citation : sooperkanoon.com/727954

Court : Kerala

Decided On : Aug-02-2006

Reported in : 2006(4)KLT188

Judge : Thottathil B. Radhakrishnan, J.

Acts : Kerala Municipality Act, 1994 - Sections 19(2), 19(3), 19(5) and 19(12)

Appeal No. : W.P. (C) No. 37499 of 2004

Appellant : Kamaruddin

Respondent : State Election Commission

Advocate for Def. : Murali Purushothaman,; Grashious Kuriakose,; S.U. Nazar

Advocate for Pet/Ap. : A.V.M. Salahudin, Adv.

Disposition : Petition dismissed

Judgement :

Thottathil B. Radhakrishnan, J.

1. Petitioner was elected as a Councillor of the third respondent Municipality. He was thereafter, elected as the Vice Chairman.

2. On 9-12-2004, the respondent, being the officer authorised by the first respondent State Election Commission for the purpose of Section 19(2) of the Kerala Municipality Act, 1994, hereinafter referred to as 'the Act', received a written notice of the intention to make a motion expressing want of confidence in the petitioner. The second respondent issued notice convening a meeting on 20.12.2004 under Sub-section 3 of Section 19 of the Act for consideration of the motion. Petitioner filed W.P.(C). No. 36477/2004 seeking to quash the said notice on ground that it is in violation of the statutory provisions in Section 19(3) of the Act. On behalf of the second respondent herein, who was the first respondent in the said Writ Petition, it was admitted that the notice convening the meeting on 20.12.2004 was served on the petitioner only on 10.12.2004. It was held by this Court that going by the provisions in Section 19(3) of the Act, no notice as contemplated by the said provision has been issued. At that time, the learned Counsel for the second respondent herein, namely, the authorised officer under Section 19(2) of the Act, submitted before this Court that the authorised officer may be permitted to take fresh steps as provided under the Statute to convene a meeting to consider the no confidence motion. That Writ Petition was closed without any specific direction or expression of any permission as sought for on behalf of the second respondent herein. Ext.P2 is the judgment in that case.

3. On 17.12.2004, the second respondent, the authorised officer, issued the impugned Ext.P3 notice convening the meeting for consideration of the no confidence motion on 29.12.2004, thereby re-scheduling the meeting scheduled on 20-12-2004, to 29.12.2004. According to the petitioner, the convening of meeting on 29.12.2004 is after the period of fifteen days prescribed by Section 19(3) and is, therefore, invalid. He therefore seeks to invalidate the said meeting.

4. Section 19(3) provides that the meeting for consideration of a no confidence motion shall be at a time appointed by the authorised officer and it shall not be later than fifteen days from the date on which the notice of the intention to make the motion was delivered to the authorised officer. In this case, the notice of the intention to make the motion was delivered on the authorised officer on 9.12.2004 and the notice was issued by him convening the meeting on 20.12.2004. This means that the meeting was convened on a date which is not

later than fifteen days from the date on which the notice of the intention to make the motion was delivered to the authorised officer. However, by virtue of the fact that the notice of the said motion was delivered on the petitioner only on 10.12.2004, Ext.P2 judgment was issued on the basis that notice of not less than ten clear days was not issued as regards the meeting scheduled on 20.12.2004. This only means that there was no proper notice for the meeting as prescribed by Section 19(3). Having fixed 20.12.2004 as the date for holding the meeting, the authorised officer is to be treated to have acted in consonance with law in so far as the first sentence of Sub-section 3 of Section 19 is concerned. If that be so, the question the remains for consideration, in the wake of Ext.P2 judgment and the admitted fact that there was no notice of not less than ten clear days in terms of the second sentence of Sub-section 3 of Section 19 , is as to whether the authorised officer was within jurisdiction or justified in adjourning the meeting scheduled on 20.12.2004 to 29.12.2004 as per the Ext.P3 notice dated 17.12.2004. This is more so because, the petitioner has no case that in so far as the meeting scheduled 19.12.2004 as per Ext.P3 is concerned, he did not have notice of not less than ten clear days as provided for by the second sentence of Sub-section 3 of the Section 19.

5. Now, in considering the question whether the authorised officer under Section 19(2) has sufficient power under the Statute to adjourn a meeting fixed in terms of the first sentence of Sub-section 3 of 19, certain relevant provisions in Section 19 have to be borne in mind itself. Sub-section 5 of Section 19 provides that a meeting convened for considering a motion under Section 19 shall not be adjourned, except for reasons beyond control. The term 'reason beyond control' has fallen for consideration before this Court on more than one occasion. In Jacob Abraham's case 1999 (1) KLT 225, the Division Bench of this Court held that the term 'reasons beyond control' occurring in Sub-section 5 of the Section 19 is not to be equated with the concept of 'act of God'. In an unreported decision in Jayasree Kesavan Nair's case (judgment dated 2.7.2004 in W.P.(C) No. 19439 of 2004), the learned single Judge held that there cannot be a direction to adjourn the consideration of no confidence motion on the ground that one of the members was unable to vote in the no confidence motion since she could not be physically present on account of her advanced stage of pregnancy. I refer to those decisions

for the purpose of noticing that the grounds on which a meeting convened for considering a no confidence motion could be adjourned, depend upon the facts and circumstances leading to each situation that falls for consideration. The nature in which Sub-section 5 is couched, suggests that the legislature has, in its wisdom, comprehended that there may be situations where a meeting convened for considering a no confidence motion may require to be adjourned. Sub-section 5 is couched, suggests that the legislature has, in its wisdom, comprehended that there may be situations where as meeting convened for considering a no confidence motion may require to be adjourned. Sub-section 12 of Section 19 provides that no notice of any subsequent motion expressing want of confidence in the same Chairperson or the Deputy Chairperson, as the case may be, shall be entertained until after the expiry of six months from the date of the meeting, if the motion is not carried by the prescribed majority, or if the meeting could not be held for want of quorum. Therefore, the insulation that a Chairperson or the Deputy Chairperson obtains from being called upon to face a no confidence motion after the notice of intention to make a no confidence motion is one delivered to the authorised officer under Section 19(2), is only under two contingencies, namely, either the meeting could not be held for want of quorum, or if the motion is not carried by the prescribed majority. Benefit of these two situations, the consideration of a no confidence motion can be had. So much so, in the absence of a total statutory ban against adjournment of a debate on the no confidence motion, the authorised officer under Section 19(2) has the sufficient statutory authority to adjourn a debate to consider the no confidence motion. No, when the correctness of the notice dated 9.12.2004 delivered on the petitioner on 10.12.2004 regarding the scheduling of the meeting on 20.12.2004 was found to be invalid by this Court as per Ext. P2 judgment dated 16.12.2004, are the persons who delivered the notice of the intention to make the no confidence motion under Section 19(2) to be deprived of their statutory entitlement to have the no confidence motion moved? A motion of no confidence is part and parcel of the democratic process. Can such a process be set at nought merely because of the fact that a statutory authority, like an officer authorised under Section 19(2) acted contrary to the provisions of Section 19(3) in the matter of issuing notice regarding the intention of the meeting for considering the no confidence motion? Reading

Section 19 of the Act, as a whole, in the backdrop of the constitutional requirement to treat self Government bodies as independent statutory democratic bodies the finality of a proceeding initiated by the delivery of a notice of the intention to make a no confidence motion, cannot be laid to hang or be terminated by reason of an action of the authorised officer, contrary to law. So much so, the contention of the petitioner that the authorised officer did not have the power to adjourn the meeting from 20.12.2004 to 29.12.2004 is unsustainable and is accordingly rejected. In the result, the Writ Petition fails. The same is accordingly dismissed. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com