

Ahammed Vs. Antony

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Court : Kerala

Decided On : Sep-05-2005

Reported in : 2005(4)KLT361

Judge : Rajeev Gupta, C.J. and; K.S. Radhakrishnan, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 6(1), 153, 157(2), 157(5) and 157(9A); Kerala Local Authorities (Prohibition of Defection) Act, 1999 - Sections 153(7A), 157(9A); [Representation of the People Act, 1951](#) - Sections 36(4) and 82; ;Anti Defection Act; Kerala Panchayat Raj (Election of President and Vice President) Rules 1995 - Rule 10

Appeal No. : W.A. No. 1683 of 2005

Appellant : Ahammed

Respondent : Antony

Advocate for Def. : K. Lakshmi Narayanan, Government Pleader,; Murali Purushothaman,;

Advocate for Pet/Ap. : T.D. Rajalakshmi and; E.R. Venkateswaran, Advs.

Judgement :

K.S. Radhakrishnan, J.

1. Does the omission to provide any consequence for an action or inaction would make the provision of an election statute directory or mandatory is the question that has come up for consideration in this case.

2. The design of all election laws is to uphold the right to vote, a precious personal prerogative to be sedulously guarded. We are confronted with such a situation in the instant case, Petitioner's vote cast in the meeting to consider the no-confidence motion against 5th respondent was rejected by the Election Commission on the ground that the petitioner had failed to write his name and affix signature on the reverse side of the ballot paper instead on the facing sheet of the ballot paper. Election Commission authorised the District Collector under Section 157 (2) and (5) of the Kerala Panchayat Raj Act to convene a meeting to consider the motion of no-confidence against the President and Vice President of the District Panchayat. On 7-6-2005 eight members of the Wayanad District Panchayat submitted a notice of their intention to move a motion of no-confidence against the 5th respondent, President of the District Panchayat, before District Collector/Authorised Officer. Pursuant to the said notice the District Collector by notice dated 10-6-2005 convened a meeting of the elected members of the District Panchayat to consider the motion of no-confidence against the 5th respondent on 24-6-2005. All the 15 members of the District Panchayat participated in the meeting, out of which seven members voted in favour of the motion and seven members voted against the motion. Vote cast by the petitioner was rejected on the ground that he had failed to write his name and affix his signature on the reverse side of the ballot paper as per the mandate contained under Section 157(9A) of the Kerala Panchayat Raj Act. Since the motion was not carried in support of the majority of the members of the Panchayat the same was declared as not passed.

3. Petitioner being aggrieved by the rejection of his vote approached this Court seeking a writ of certiorari to quash the decision of the 4th respondent rejecting the vote cast by him and also for a direction to treat his vote as valid and pass appropriate orders. Learned single Judge accepted the plea of the writ petitioner and granted declaration that the vote cast by the petitioner is a valid vote and consequently 5th respondent was declared as ceased to be in office.

4. Sri. E.R. Venkiteswaran, counsel appearing for the appellant submitted that the learned single Judge was not justified in diluting the statutory provision in holding that the writing of the name and affixture of the signature on the facing page of the ballot paper would be sufficient compliance under Sub-section (9A) of Section 157 of the Kerala Panchayat Raj Act 1994, Counsel placing reliance on the decision of the Supreme Court in Shashikant Singh v. Tarkeshwar Singh, : 2002 CriLJ2806 , submitted that when statute provides the manner in which the things have to be done it should be done in that manner which, according to the counsel is a mandatory requirement. Counsel appearing for the respondent Sri. P.P.V. Surendranath on the other hand contended that by writing name and affixing signature on the facing sheet of the ballot paper there is a substantial compliance of the statutory provision and consequently the learned single Judge was justified in holding that the petitioner's vote shall not be rejected as invalid.

5. Chapter XIV of the [Kerala Panchayat Raj Act, 1994](#) refers to the provision relating to Members and President of Panchayats. Section 153 deals with election of President and Vice President. Section 157 deals with motion of no-confidence. The relevant portions of the said provision are extracted below for easy reference.

'(1) Subject to the provisions of this section, a motion expressing want of confidence in the President or the Vice-President of a Panchayat may be moved in accordance with the procedure laid down herein.'

(5) A meeting convened under this section shall be presided over by an officer authorized by the State Election Commission under Sub-section (2).

(7) As soon as the meeting convened under this section has commenced, the person presiding shall read at the meeting the motion for the consideration of which it has been convened and declare it to be open for debate.

(9A) 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.

(12) If the motion is carried with the support of the majority of the number of members of the Panchayat notified under Sub-section (1) of Section 6, the

President or the Vice President as the case may be, shall cease to hold office thereafter and their offices shall be deemed to be vacant forthwith, and the officer authorised under Sub-section (2) shall report the vacancy in such offices to the Government and the State Election Commission and the fact shall be published in the notice board of the Panchayat, and on receipt of such a report the Government shall notify in the Gazette the cessation of office by the President or the Vice-President, as the case may be.'

(emphasis added)

The only question to be considered is whether by writing the name and affixing the signature on the facing page of the ballot paper the voter has substantially complied with Sub-section (9A) of Section 157. Sub-section (9A) was added to Section 157 by the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (Act 11 of 1999), which is an Act to prohibit 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. The object of introduction of Sub-section (9A) to Section 157 is to curb the field of defection and to save the foundation of democracy. Law fastens disqualification on a defected member of the Panchayat for being a member for the remaining terms of such membership and also the other legal consequences. The object of Section 157(9A) is therefore to ascertain the identity of the member who has cast the vote using the particular ballot paper. Evidently, the purpose in ensuring that he shall write his name and affix his signature on the reverse side of the ballot paper is only to see that the other particulars mentioned on the facing page of the ballot paper shall not be defaced.

6. The statute has not incorporated any consequence or effect such as invalidating his vote on failure to comply with a requirement under Section 157(9A). Had consequence been provided in the statute on failure to write his name and affix signature on the reverse side of the ballot paper depending that event the requirement could have been judged as directory or mandatory. Apex Court in *Jagan Nath v. Jaswant Singh*, : [1954]1SCR892 interpreting Section 82 of the [Representation of the People Act, 1951](#), which requires certain candidates to be

joined as respondents to an election petition was held to be directory as no consequence of non-joinder was till then provided by the Act. Further in *K. Kamaraja Nadar v. Kunju Thewar*, : [1959]1SCR583 held that after introduction of Section 90(3) by the Amending Act which requires the Election Tribunal to dismiss an election petition for non-compliance of Section 82, the said provision has been held to be mandatory. In this connection reference may be made to the decisions of the Apex Court in *Shivchand v. Ujagar Singh*, : [1979]1SCR520 , *Satya Narain v. Dhuja Ram*, : [1974]3SCR20 , *Sarifuddin v. Abdul Gani*, : [1980]1SCR1177 , *M. Karunanidhi v. H.V. Handa*, : [1983]2SCR629 , *Rajendra Singh v. Usha Rani*, 1984 SC 956, *V.S. Sasidharan v. K. Karunakaran*, : [1989]3SCR958 , *Ramprasad Sarma v. Manikumar Subba*, : AIR 2003 SC51b etc.

7. The Apex Court in *Ramphal Kundu v. Kamal Sharma*, : AIR 2004 SC1657 interpreting Section 36(4) of the Representation of People Act, 1951 held that the absence of the seal on Form No. B is not a defect of substantial character. Apex Court in *S. Sivaswami v. Malaikannan and Ors.*, : [1984]1SCR104 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. Court held that the essence of the principle incorporated in the rule is that so long as the ballot paper bears a 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 *Era Sezhiyan v. T.R. Balu and Ors.*, : [1990]1SCR767 also the Apex Court subscribed the same view and held that the primary task of the court in a case where the question is whether the ballot paper is invalid or not is to ascertain the intention of the voter. 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.

8. The Act 11 of 1999 also introduced *pare materia* provisions such as Sub-section 7A in Section 153 and Sub-section 9A in Section 157 and that even the rule making authority has adopted the above mentioned view which is discernible when we look at Rule 10 of the Kerala Panchayat Raj (Election of President and Vice

President) Rules 1995. Section 153 is the provision which deals with the election of President and Vice President. So far as Section 153 is concerned Rule 10 is relevant. Rule 10 was brought into force to the Kerala Panchayat Raj (Election of President and Vice President) Rules by substitution as per SRO. No. 98/99 following the aforesaid Anti Defection Act and the said provision also 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. Looking at the context in which Sub-section (9A) is placed we are of the view since the particulars mentioned in the facing sheet has not been effaced by putting name and signature on the facing page of the ballot the vote cannot be invalidated.

9. We therefore fully subscribe the view of the learned single Judge and dismiss the Writ Appeal reminding that the cardinal rule to be followed by the election officers and courts in election matter is to ascertain the intention of the voter as disclosed by the vote really cast and give effect to that intention and not to resort strict logomachy and syntax.

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