

Kunhimon Vs. Block Development Officer

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Court : Kerala

Decided On : Sep-16-2003

Reported in : 2003(3)KLT664

Judge : M. Ramachandran, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 157

Appeal No. : W.P. (C) No. 27549 of 2003

Appellant : Kunhimon

Respondent : Block Development Officer

Advocate for Def. : S.U. Nazar,; Hrithwik,; Murali Purushothaman and;

Advocate for Pet/Ap. : K. Ramakumar, Adv.

Disposition : Writ petition dismissed

Judgement :

M. Ramachandran, J.

1. The question that has been raised in this Writ Petition is as to whether the Block Development Officer, Chavakkad (1st respondent herein) was disabled from drawing up Ext. P2, which had resulted in prejudice to the petitioners. The first petitioner was functioning as the President and rest of the petitioners are the

Members of the Vadakkekadu Grama Panchayat. A no confidence motion came to be presented in the Panchayat. Though initially the officer had declared that the motion stood defeated, he had shortly thereafter declared that the motion stood carried. If the contentions of the petitioners are accepted, it would be possible for the first petitioner to continue as President of the Grama Panchayat, otherwise he will have to vacate office. The brief facts could be narrated herein below.

2. The no confidence motion had been tabled by the opposition. Consequently, a meeting by the competent authority was specially convened on 26th August, 2003. The meeting had commenced at the appointed time and the Block Development Officer, the competent authority, had presided over the meeting. The notified strength of members of the Panchayat was 13. Twelve of them were present. Discussions had been held and the motion was put to vote thereafter. One of the members of the Panchayat had abstained from voting. 7 votes were recorded in support of the motion and 4 against. As prescribed by the statute, it was open voting. The minutes of the meeting shows that after the voting the Block Development Officer declared that the resolution had been lost. It is averred in the Writ Petition that the meeting concluded by 12.30 P.M. He had signed the minutes.

3. The further averment in the Writ Petition is that a few members had 'gheraoed' the officer and he had been pressurised to reconsider the matter. This was for the reason that under the amended Section 157 of the Kerala Panchayat Raj Act (for short, the Act) what was required was only a simple majority to carry the motion. The petitioners submit that while this show was going on, most of them had left the hall. Succumbing to the pressure of the group, after talking with the office of the State Election Commission, the first respondent had altered the minutes and held that since 7 members voted in favour of the motion, it was deemed as carried. Such decision had been recorded as a continuation in the minutes. Ext. P2 is the full text.

3. The petitioners thereupon had approached this Court, and by an interim order on 27.8.2003, Ext. P2 decision had been stayed. In the course of hearing the Writ Petition, it has come out that the Vice President of the Panchayat had been requested to assume office of the President and this had been done. The first

petitioner had re-assumed office on the strength of the order and is continuing.

4. The respondents had filed counter affidavits justifying Ext. P2 final decision of the first respondent. By consent of all the parties, when the matter was listed in the petition list, it was agreed to be finally heard, taking note of the urgency.

5. The Standing Counsel for the State Election Commission has made available the original of Ext. P2 proceedings in a sealed cover. It is evident that substantially the transaction of business, that had been carried out on the relevant date, was as stated by the petitioners in the Writ Petition. The first respondent has recorded in the minutes as following:

Result of polling :Total number of notified strength : 13Members present : 12Members who participated in the election : 11Persons supporting the motion : 07Persons who opposed the motion : 04

Since the notified strength is 13 and its half $6\frac{1}{2}$ which has to be considered as 7 and since the majority is to be obtained by adding one more, since there is no majority of eight vis-a-vis the sanctioned strength, the motion is declared as defeated. However, persons who supported the motion, protested against the decision. The meeting concluded by 12.30 P.M.

6. What is recorded thereafter also becomes relevant. A functional translation could be as following:

Thereafter when persons who had supported the motion suggested that as Section 157 of the Act had been amended and a decision was to be taken on the basis of the amendment, the Block Development Officer had contacted the Secretary of the Election Commission Smt. Remani over phone and he had been informed that such amendment had been brought in. He was also advised that a decision could be taken on the basis of the above provision. Therefore, in respect of the total members present, namely 12, since 7 persons, who had participated in the deliberations supported the motion, following revised declaration is issued finding that the motion had been carried.

Total voters present : 12
Total persons voted : 11
Persons who supported the motion : 07
Persons who had opposed : 04
In the above circumstances a revised declaration is passed holding that the motion is carried'.

7. As a matter of fact, there cannot be a dispute over the position that the revised decision was the one which should have been arrived at, as required and envisaged under Section 157 of the Kerala Panchayat Raj Act. However, the contention of the learned counsel for the petitioners is that in case a declaration is made by a person, who is authorised to preside over a meeting of Non Confidence Motion, he become functus officio thereafter, and the decision stands, whether it is right or wrong. In other words, even if the officer becomes wiser in due course, that does not authorise him to correct the decision on his own volition. He is bound by the recorded proceedings. After the meeting got concluded, he had no legal authority to revise his earlier proceedings and every such steps are non est in the eye of law. When the statute prescribes the modalities of proceedings, it has to be strictly adhered to and he has no jurisdiction to devise his, own methods. No residuary powers are exercisable even if he might have committed a mistake while exercising his jurisdiction and power. Therefore Ext. P2 in so far as it made inroads to their settled rights does not deserve to be in operation.

8. This submission is not acceptable to the respondents as also the State Election Commission. It is urged that the procedure prescribed by Section 157 of the Act is completed only when the officer concerned forwards the minutes of the meeting to the Election Commission and therefore there cannot be any argument that he had become functus officio prior thereto. It is stated that an officer who was presiding over the matter, was presumed of possessing elementary knowledge about the procedures and he was expected to know the law on the subject. When the statute referred only to a simple majority for a motion for being carried, and when this position had emerged from the pattern of voting, the initial declaration was not to be considered as a decision at all. Ipso facto that did not have any binding effect especially since an officer did not have a power to hold that a motion which stood carried, was of no consequence. What was expected to him was only to record the actual situation and the outcome of the motion. An equivalent to a slip of the tongue or an error in comprehending the situation was not capable of eclipsing the

actualities. When the officer recorded the minutes wrongly, the error was noted by every one of the persons who were present there and as could be seen from Ext. P2, the matter had been brought to his notice, by way of a protest, at once, and it was in the presence of all concerned that he had sought for opinion from the State Election Commission to verify the veracity of the submissions by the aggrieved parties. There was nothing illegal or irregular in such procedure.

9. Sri. K. Ramakumar, appearing for the petitioners, referred to the rules, which according to him govern the subject. He submits that provisions in the Kerala Panchayat Raj (Procedure for Panchayat Meeting) Rules, 1995 are to be strictly followed. These are rules brought in exercise of the powers under Sections 157, 158 and 161 read with Section 254 of the Panchayat Raj Act. He submits that even if there was a mistake in the minutes, it was incompetent for the first respondent to bring about a correction as he became functus officio. Rule 11 had to be strictly followed, Rule 11 states that no resolution of a Panchayat shall be modified or challenged except through a resolution passed in a meeting specially convened for the purpose within three months of passing such resolution, by a two-third majority of the total number of members of the Panchayat. Therefore, a correction forthwith was irregular and not provided for. He refers to Rule 15 and submits that the no confidence motion in respect of a President/Vice President is to be made in accordance with the procedure laid down in Section 157 of the Act and the notice was to be published in the form appended to the rules. Counsel also refers to Rule 26, for there is no provision for incorporating a correction. He also referred to the decision of the Supreme Court, reported in 2003 (1) SCC 108 (Sohan Lal v. Babu Gandhi) as also a Full Bench decision of the Madhya Pradesh High Court in 1966 M.P. 20 (Komal Chand v. State). The authorities who are empowered for special duties, according to him, become functus officio, when they once discharge the duties which are expected of them. Mistakes will not justify them to sit in review, whatever be the emerging results. The counsel, therefore, submits that when there is a declaration that the motion had failed, a review at the instance of parties or presiding officer was impermissible and as Ext. P2 suffered from a jurisdictional error, was to be declared as illegal.

10. With reference to the counter affidavits filed, the respondents submit that a honest mistake committed by an officer need not interfere with the basic rights of the affected parties. It was a case where the first respondent, without noticing the amended provisions in the statute, had acted. He had therefore a duty to see that the error was corrected then and there and before a report was forwarded to the competent authorities. The counsel submits that the non-official respondents had no hand in the preparation of the minutes and only when it was read out the mistake was found out by them and the protest has been made on the spot. The contention of the petitioners that they had departed from the scene and the proceedings were taken without notice and overlooking their protest is denied.

11. In his counter affidavit the first respondent submits that when the mistake had been brought to his notice he had ascertained the legal position from the Election Commission and had recorded the minutes with the consensus of all present. He regretted that a confusion got created because of his mishandling of the situation. After understanding his mistake, according to him, it would have been improper for him to stick on to the wrong recordings.

12. The learned counsel representing the respondents also referred to decisions reported in 2003 (1) KLT 858 (Valsalam v. State of Kerala) and 2002 (3) KLT 57 (Kuttappan v. State of Kerala). This was for canvassing the position that the rules referred to by the petitioners had no relevance. This Court had held that rules relied on do not apply to a no confidence motion and the entire situation is governed only by Section 157 which was a complete code by itself. Justice Babu had in clear terms indicated that a no confidence motion cannot be considered as one coming within the purview of a resolution, since it is not a meeting of the Panchayat, but proceedings presided by an officer. This did not come within the normal business of a Panchayat.

13. A general reading of the rules lend support to the above observations. In the matter of notice, conduct and quorum, and the general procedure spoken to by the Rules, they are distinct and different from the modalities prescribed by Section 157 of the Act. Only the form of the no confidence motion is to be in the prescribed form of the Rules. It is also meaningful to note that in respect of such proceedings

what is tabled is not a resolution, but a motion. We have therefore to draw sustenance from Section 157 of the Act alone when a dispute arises about the procedures of a no confidence motion.

14. The section as presently in existence had undergone several changes as has been referred to in detail in Kuttappan's case (cited supra), and it may be that the officer, who had been empowered to preside over the meeting, was not fully aware of his role and jurisdiction about the business procedure which he was expected to follow. The previous provisions, in fact, permitted the President or the Vice President, as the case may be, to preside over such meeting. There was even a privilege of casting vote for the Presiding Officer. Because of the amendment, now an independent officer is to preside over a no confidence motion. He has no right to vote. The wordings of the section also have been drastically changed. The first respondent was under the impression that something more than a simple majority was essentially required for carrying a motion. This in fact in retrospect contributed to the entire confusion.

15. In *Ambili v. Deputy Director* (1996 (2) KLT 486), this Court had held that the expression in the Act 'more than one-half of the elected members' was having a definite meaning, and this was deliberate. The Court examined the position where the total seats were 9. One-half could have been 5 and not 4 1/2. More than one-half therefore could have been only 6. But, immediately thereafter, the fallacy of the view had been adverted to by a Division Bench, in *Joseph Thomas v. State of Kerala* (1996 (2) KLT 927). The first respondent has borne in mind the position spoken in *Ambili's* case, notwithstanding the later pronouncement of this Court, and the amendment brought to the section viz., Section 157(12); what was required was only a simple majority.

16. The short question therefore is as to whether this Court should exercise its discretionary jurisdiction in favour of the petitioners. The counsel vehemently submits that in matters of election, the procedure has an extra relevance, and this position has been recognised by the Court all time, and when admittedly there is a declaration in favour of his clients, this could not have been upset. In this context, we may examine the decision to which the learned counsel has made advertence.

Komal Chand v. State (AIR 1966 MP 20) was a case, where the Sub Registrar had impounded a document, which he found had not been properly valued. The Court held that after registration, he becomes functus officio, as he had no jurisdiction to enquire into the value of the property, covered by the deed. But, obviously the Full Bench was examining an altogether different proposition, and the petitioners may not be able to derive support from the observation contained therein. Impounding is a totally different procedure than from registration, which is not the case here. The other decision relied on was Sohan Lal v. Babu Gandhi (2003 (1) SCC 108). The Court was examining the jurisdiction of a Returning Officer to order a recount, or to change the result of an election, after declaration of the results. The court observed that the only remedy for the candidate was an election petition. The subtle difference is that there is no question of any election here (though the word election is found used in Section 157(9A), brought about by amendment by Act 11/99). The whole exercise is to see whether a motion was carried or defeated, and no appeal or statutory remedy is prescribed thereafter.

17. At this context, we may examine the structural nature of Section 157 and the contents of the submissions made. The stages through which a no confidence motion has to travel is provided with minute details. A written notice by a minimum number of elected members have to be submitted before the authorised officer. He has to convene the meeting within 15 days. Seven clear day's notice is to be given to the members about the meeting. As far as I could see, the intention of the statute appears to be that it should not be a light hearted exercise, considering the consequences. Due opportunity is to be given to the parties, taking note of the seriousness of the issue.

18. Section 157(9A) provides for open ballot and the member who casts his vote is to write his name and affix his signature on the reverse side of the ballot paper. The copy of the minutes, together with the result of the meeting, under Section 157(11) forthwith are to be forwarded to the Government. These are totally different from a show of hands, as the statute prescribed for solid records to be made, about the motion, so as to avoid possible controversies in future. Section 157(12) also does not refer to any formal declaration. The outcome of the motion is there for all to see, as what is required is only a majority for the motion to be

carried, under Section 157(12). The President/Vice President, ceases to hold office from that point of time, and the office is deemed to be vacant. The notified officer is expected to report the vacancy to the Government and the Election Commission. This cessation of office is gazetted.

19. Section 157(13) also is to be read at this context. Only in case the motion is not carried, by majority of votes, there is embargo in giving notice for a minimum period of six months. A motion is defeated, where there is no support of majority. That cannot be the case here. No person has been invested with authority to declare that if a motion has, as the matter of fact, been carried, it is not carried. Such a declaration has to be inconsequential. The Act does not deal with the procedure for declaration, but only speaks of the 'result of the voting' to be communicated to the Government. The result has to be with reference only to the recorded vote. This position, according to me, concludes the issue. The authorised officer is not an Arbitrator. He presides over the meeting, but has not been invested with any power to arbitrate, and to use the common parlour expression, he is acting as a post office. A no confidence motion is carried or defeated depending on the votes polled for or against the motion. Therefore, the issue of declaring him as a *functus officio*, does not really arise. He is not expected to adjudicate, and hence he cannot decide. The decision making body is the members, and exclusively depending on the voting pattern, the result has to be understood. The whole principle of *functus officio*, according to me, pertains to a situation, where a person had been invested with a power to act or adjudicate and he had consequently discharged his duties as per the authorisation given to him. By the very absence of a decision making jurisdiction, the principle can have no application here. The person should have performed his duty, or office or should have fulfilled the function, or should have accomplished the purpose for which he stood deputed. The first respondent was more of an observer, and therefore could not have transposed himself to a decision maker by any stretch of imagination.

20. So viewed, I do not think the first respondent's steps, at the second stage, in Ext. P2 is necessary to be decried. The simple question is whether the no confidence motion was carried or defeated on 26-08-2003, in the Vadakkekadu Grama Panchayat. If the answer is affirmative, nothing more remains as to be

disputed. So viewed, there may not be any substance in an enquiry as to whether the first respondent had transgressed his powers.

21. The mistake committed by the officer concerned is owned up. The respondents, who had tabled the motion, had in no way contributed to the unenviable situation. The presiding officer had failed to update himself with the change in law. I feel that the burden and trouble need not be passed on the respondents. Solemnities attached to letter of law are to be observed, but the verity of the facts cannot be ignored. It is also to be borne in mind that technicalities cannot take control over such a situation, so as to confer undue advantage or benefit to a person, wholly overlooking the statutory prescriptions. As pointed out by the respondents, to hold that for a technical reason Ext. P2 is bad would be perpetuating injustice and the will of the majority would stand trampled upon. The principles laid down in the Division Bench decision in *Koya v. State* (1992 (2) KLT 194) have application here. Even if we take it that the proceedings complained of may have an infirmity, in discretionary jurisdiction of this Court, it need not be unsettled, if the order which may revive also might be unpalatable.

22. I hold that the first respondents has not erred in revising the declaration in consonance with the statutory prescriptions. The case presented by the petitioners is too technical and cannot be accepted. Ext. P2 proceedings are upheld. The Writ Petition is dismissed. Interim order stands vacated.