

Ahammedkutty Vs. Ali

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Court : Kerala

Decided On : Mar-26-2003

Reported in : 2003(3)KLT739

Judge : K. Padmanabhan Nair, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 51, 55, 87, 100, 101, 113, 113(2) and 114(1); Code of Civil Procedure (CPC)

Appeal No. : C.R.P. No. 1369 of 2002

Appellant : Ahammedkutty

Respondent : Ali

Advocate for Def. : P.C. Sasidharan,; I.V. Prasad,; V.R. Babumon and;

Advocate for Pet/Ap. : T. Krishnan Unni, Adv.

Judgement :

ORDER

K. Padmanabhan Nair, J.

1. The petitioner in an Election Petition filed under Section 87 of the Kerala Panchayat Raj, Act ('Act' for short) is the revision petitioner. He filed the Original Petition to declare that the election held to Constituency No. 4 of Urngattiri Grama

Panchayat on 25th September, 2000 is void on the ground that his nomination was improperly rejected. The trial court allowed the Election Petition and declared that the election of the first respondent was void. The first respondent, the returned candidate, appealed to the District Court. The learned District Judge allowed the Civil Miscellaneous Appeal, set aside the order passed by the trial court and dismissed the Original Petition, That order is under challenge in this Civil Revision Petition.

2. The short facts necessary for the disposal of this Civil Revision Petition are as follows: On 1st September, 2000 at 1.25 p.m. the revision petitioner filed his nomination before the third respondent for contesting as a candidate for Thachanna, Constituency No. 4 of Urngattiri Grama Panchayat, which was accepted by the third respondent. According to the revision petitioner, thereafter he filed another nomination before the third respondent for contesting as a candidate from Therattammal, Constituency No. 12 of the same Panchayat, which was received by the third respondent. The scrutiny of the nomination papers were conducted by the second respondent at 11.00 a.m. on 2nd September 2000. According to the revision petitioner he was told that both the nominations were accepted and he withdrew his nomination from Constituency No. 12 on 4th September, 2000. The further case of the petitioner is that thereafter he was informed that his nomination filed for Constituency No. 4 was rejected. It is also averred that the nomination for Constituency No. 4 was filed earlier in point of time and that was improperly rejected without consulting the revision petitioner or without giving an opportunity to him to elect either the two and hence the rejection of his nomination was improper. So, the Election Petition for declaring that the election held from Constituency No. 4 is void.

3. The first respondent, the Returning Officer, filed a written statement admitting that the revision petitioner filed two nominations, one for contesting from Constituency No. 4 and another for contesting from Constituency No. 12. It was contended that both nominations were submitted at 1.25 p.m. on 1st September, 2000. The nomination filed by the revision petitioner for Constituency No. 4 was kept aside and it was taken along with the nomination submitted for Constituency No. 12 and both the nominations were scrutinised simultaneously. At that time the

revision petitioner did not inform the Returning Officer his intention to contest from Constituency No. 4. It was further contended that since the nominations for both constituencies have been filed at the same time and it was not possible to decide which one was filed earlier in point of time, the second respondent contacted the District Election Officer and as per his directions, the nomination filed for Constituency No. 12 was accepted and the one filed for Constituency No. 4 was rejected.

4. The second respondent filed a written statement admitting that both the nominations filed by the revision petitioner were accepted by him. It was also contended that after conducting a prima facie verification, all the nomination papers were entrusted with the Returning Officer and further actions were taken by the Returning Officer.

5. The third respondent filed a counter contending that after filing a nomination to contest from one constituency, a person cannot file a nomination for contesting from another constituency and in such cases, the nomination filed at the earlier point of time will also become void and the revision petitioner lost his right to contest from Constituency No. 4. The averment that the nomination filed for Constituency No. 4 was improperly rejected was denied. It was also averred that the Returning Officer is not bound to give any option or any opportunity to the revision petitioner to elect one of the nominations.

6. The other respondents remained ex parte.

7. As already stated, the learned Munsiff after trial found that the nomination was improperly rejected. The lower Appellate Court found that a person can be said to be nominated when, after scrutiny of the nomination papers by the Returning Officer his nomination is accepted and the list containing his name was published by the Returning Officer in the notice board. It was further held that whether the nominations of the petitioner from two constituencies were hit by the proviso to Section 51 of the Act was required to be considered by the Returning Officer at the time of scrutiny. Since the petitioner did not elect either of the nominations, it was open to the Returning Officer to reject one. The appellate court hence allowed the appeal in reversal of the order passed by the trial court and dismissed the Original

Petition. That order is under challenge in this Civil Revision Petition.

8. When the Civil Revision Petition came up for hearing, the learned Counsel appearing for the first respondent-the returned candidate-raised a preliminary objection that the revision itself is not maintainable. It was argued that the Election Petition filed before the Court below was defective for non-compliance of Section 91 of the Kerala Panchayat Raj Act and as such the learned Munsiff ought to have dismissed the Election Petition at the threshold. The argument was based on the provisions contained in Section 91(1) of the Panchayat Raj Act, which requires that any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. First of all, no such contention was raised in the objection filed by the first respondent. The learned District Judge after perusing the Election Petition found that the petition was verified in the manner prescribed. It was also found that the revision petitioner and his Counsel had affixed their signature in the schedule and annexure containing the list of documents and witnesses; but those documents do not contain a second verification. In view of the principle laid down in *Ahamed Kabir v. Azeez* (2001 (3) KLT 478), it is a curable defect. In *P. Aisha Potty v. Returning Officer, Kollam District Panchayat* (AIR 2002 Kerala 89) this Court has found that non-verification of the annexure/schedule is not fatal. The first respondent has not pleaded and proved any prejudice. So, the finding of the learned District Judge that the Election Petition is maintainable is correct and does not call for any interference.

9. The learned Counsel appearing for the revision petitioner has argued that the District Judge went wrong in entertaining the appeal. It was argued that the order by the Munsiff was passed on 21st August, 2001 and the appeal was filed on 24th September, 2001, after the expiry of 30 days and the appeal was not accompanied by any petition to condone the delay. So, the learned District Judge ought to have rejected the appeal as not maintainable. Section 113 of the Panchayat Raj Act deals with appeals. Section 113(2) reads as follows:

'113.Appeals.-

** ***(2) Every appeal under this section shall be preferred within a period of thirty days from the date of the order of the court under Section 100 or Section

101:

Provided that the Appellate Court may entertain an appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period.'

It is argued that the 30 days from the date of order expired on 20th September, 2001; but the appeal was filed only on 24th September, 2001, four days after the expiry of the period of limitation, that too without a petition for condoning the delay and hence the appeal is not entertainable. The Counsel for the revision petitioner relied on a decision reported in *Anandavally v. Ajitha* (2001 (1) KLT 211). The principle laid down in that decision can have no application to the facts of this case. The question arising for consideration in this case is whether the time requisite for obtaining the certified copy of the order can be excluded.

10. Section 114 of the Kerala Panchayat Raj Act deals with the procedure in appeal. Section 114(1) reads as follows:

'114. Procedure in appeal.- (1) Subject to the provisions of this Act and of the rules, if any, made thereunder the District Court or the High Court may dispose of the appeal in accordance with the procedure laid down in the Code of Civil Procedure, 1908 (Central Act 5 of 1908) for the hearing of appeals and the decision of the Court in the appeal shall be final:

Provided that such appeals shall be disposed of, as far as possible within six months from the date of filing of such appeals.'

11. The learned Counsel appearing for the first respondent relying on a decision reported in *Sathish Babu v. State of Kerala* (2000 (3) KLT 551) has argued that the provisions of Sections 4 to 24 of the Indian Limitation Act are applicable in view of the provisions contained in Section 29(2) of the Indian Limitation Act. The Supreme Court had considered whether the time taken for obtaining a copy of the order passed under the provisions of the Representation of the People Act can be excluded while computing the period of limitation for filing an appeal. A Constitution Bench of the Supreme Court in *Vidyacharan v. Khubchand* (AIR 1964

SC 1099) had held that the time taken by the Court for preparing the copy can be excluded. It was held as follows:

'A comparison of the terms of Article 156 and Article 151 indicates that the emphasis is more upon the procedure applicable to an appeal than on the right of appeal conferred under an Act. The phraseology used in Article 156 describes the nature of the appeal in respect of which a particular period of limitation is prescribed. It does not refer to a right conferred under the Code of Civil Procedure, but only describes the appeal with reference to the procedure applicable thereto.'

A reading of Section 114 of the Kerala Panchayat Raj Act and Section 116A of the Representation of the People Act shows that the provisions of the Kerala Panchayat Raj Act are *pari materia* with those contained in Section 116 of the Representation of the People Act. So, in view of the principles contained in Vidyacharan's case (*supra*) the parties are entitled to exclude the time taken for obtaining the copy of the orders. So, there is absolutely no merit in the contention raised by the Counsel for the revision petitioner that since the appeal was not filed within 30 days from the date of the order it was time barred.

12. In this case, the first respondent had filed I.A.1403 of 2001 in the appeal for condoning the delay in filing the appeal. It is true that that petition was filed after the revision petitioner filed I.A. 1189 of 2001 for dismissal of the appeal as time barred. It was argued that since that petition was filed not along with the appeal, the Court below ought to have found that there was no properly constituted appeal and rejected the same. As rightly observed by the learned District Judge, there is no provision in the Act which enjoins that there must be a written application for condoning the delay and it shall be filed along with the appeal. Even if such an application is contemplated, it is not a condition precedent for filing the appeal. It can be filed subsequently. Section 113 of the Panchayat Raj Act itself contains provision for condoning the delay in filing the appeal. It is true that Section 114(1) provides that in disposing of the appeal the District Court may follow the procedure prescribed under the Code of Civil Procedure, But, that is subject to the provisions contained in Section 113(2) of the Act. The petitioner has offered valid explanation for the delay, if any, in filing the appeal. The learned District Judge had found that

the delay, if any, is to be condoned. I do not find any reason to disagree with that finding. So, there is absolutely no merit in the contention raised by the revision petitioner that the appeal ought to have been dismissed as time barred.

13. There is yet another aspect. Section 105 of the Panchayat Raj Act provides that the Court shall intimate the substance of the order to the State Election Commission and the President of the Panchayat concerned as soon as possible. It reads as follows:

'105. Communication of orders of the Court.- The Court shall, as soon as may be, after the conclusion of the trial of an election petition, intimate the substance of the order to the State Election Commission and the President of the Panchayat concerned and, as soon as may be, thereafter, shall send to the State Section Commission an authenticated copy of the order.'

Section 107 of the Kerala Panchayat Raj Act provides that an order passed under Section 100 or Section 101 shall take effect as soon as the Court pronounces it. Section 107 reads as follows:

'107. Effect of orders of the Court.-

(1) An order under Section 100 or Section 101 shall take effect as soon as it is pronounced by the Court.

(2) Whereby an order under Section 101 the election of a returned candidate is declared to be void, acts and proceedings in which that returned candidate has, before the date thereof, participated as a member of a Panchayat shall not be invalidated by reason of that order, nor shall such candidate be subjected to any liability or penalty on the ground of such participation.'

So, when a competent Court declares the election of a candidate from a particular constituency as void, he ceases to be a member from that point of time itself. But, there is no provision in the Act or Rules which provides that the Court shall supply a copy of that order at least to the person who is adversely affected by that order at the time of pronouncement of the order itself. It is only just and proper that necessary provisions are made in the Act or Rules for issuing the copy of the order

to the party against whom such an order is made at the time of pronouncement of the order itself.

14. Now I shall consider the contention of the revision petitioner that his nomination paper filed for contesting from Constituency No. 4 ought to have been accepted since the same was filed earlier in point of time. On 1st September, 2000 the revision petitioner appeared before the third respondent the Secretary, Urngattiri Grama Panchayat at 1.25 p.m. and presented two nominations, one for contesting from Constituency No. 4 of Urngattiri Panchayat and another one for contesting from Constituency No. 12 of the same Panchayat. Exts.A1 and A2 are the receipts issued by third respondent for receipt of the nominations. The nomination filed for Constituency No. 4 was numbered as 141/2000 and that of Constituency No. 12 as 142/2000. Though two nominations were given at the same-time, the nomination filed for Constituency No. 4 was taken up for preliminary scrutiny as provided under Section 52(4) of the Act at first and the other subsequently. No formal defect was noted by the third respondent at the time of filing of the nominations. The scrutiny of both the nominations started from 11.00 a.m. on 2nd September, 2000. The nomination filed by the revision petitioner for Constituency No. 4 was taken up for scrutiny by the second respondent first. At that time the second respondent was told that the revision petitioner had filed another nomination for another Constituency as well. So, he did not complete the process of scrutiny of that nomination; but kept aside the same and proceeded with scrutiny of other nominations. At the time of scrutiny of the nomination filed by the revision petitioner for Constituency No. 12 the one filed for Constituency No. 4 was again taken up. No defects were noticed in both the nomination papers. The second respondent discussed the matter with the Election Deputy Collector over telephone, who advised him to accept one nomination and reject the other. The evidence of the second respondent shows that after discussing the matter with the Election Deputy Collector, he rejected the nomination submitted by the petitioner in respect of Constituency No. 4 and accepted that of the one filed for Constituency No. 12. Thereafter he published a list of the duly nominated candidates on that day itself and forwarded a copy of the same to the District Collector, who is the Chief Electoral Officer of the District. 4th September, 2000 was the last date fixed for withdrawing the nominations. The

revision petitioner gave notice to withdraw his candidature from Constituency No. 12, which was accepted by the Returning Officer. On 4th September, 2000 he filed a complaint before the second respondent. The second respondent informed him that since there were two nominations, the one filed for Constituency No. 4 was rejected and the one filed for Constituency No. 12 was accepted/The grievance of the revision petitioner is that he was not consulted or given an opportunity to elect before rejecting that nomination. It is also his case that the nomination filed for Constituency No. 4 was earlier in point of time. So, if at all the Returning Officer wanted to reject a nomination paper, he should have rejected the subsequent nomination filed for Constituency No. 12.

15. It is well-settled position of law that improper rejection of the nomination itself is a ground for setting aside the election and it is not necessary to plead or prove any prejudice. In *Somnath Rath v. Bikram K. Arukh* ((1999) 9 SCC 538) the Apex Court has held that improper rejection of a nomination paper is itself a ground for declaring the election void and no further enquiry as to material effect due to such rejection is necessary. In *Krishna Mohini v. Mohinder Nath Sofat* ((2001) 1 SCC 145) also it ' was held that even if nomination of main candidate of the party is accepted, nomination of the substitute candidate, if subscribed by ten electors as proposers, cannot be rejected and in that case such candidate has to be treated as an independent candidate and a symbol has to be allotted to him. It was further held that the rejection is improper and the election is liable to be set aside. In *Bhogendra Jha v. Manoj Kumar Jha* ((1997) 2 SCC 236) the Supreme Court held that even if the nomination of the candidate is rejected as a dummy candidate, that rejection is improper and the election has to be declared void.

16. The learned Counsel appearing for the first respondent has argued that the right to contest an election is not a common law right; but it was confined to the provisions of the Act and Rules made thereunder. He relied on the decision reported in *Jyothi Basu v. Debi Ghosal* ((1982) 1 SCC 691) in which it was held as follows:

'Right to elect, to be elected or to dispute election are neither fundamental rights nor common law rights but are confined to the provisions of the Representation of

the People Act and Rules made thereunder. Being statutory rights the remedies are limited to those provided by relevant statutory provisions.'

The principle laid down in that decision was followed in *P. Nalla Thampy v. B.L. Shanker* (AIR 1984 SC 136). The Apex Court after an exhaustive survey of various decisions on the point had found that election disputes are strictly statutory proceedings. The Supreme Court has considered the effect of the decisions in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* (AIR 1952 SC 64), *Jagan Nath v. Jaswant Singh* (AIR 1954 SC 1210) and *Jyothi Basu v. Debi Ghosal* ((1982) 1 SCC 691 = AIR 1982 SC 983). The matter was again considered by the Apex Court in *Rama Kanat Pandey v. Union of India* ((1993) 2 SCC 438) in which it was held that right to vote or to stand as a candidate and contest election are not fundamental or civil right, but purely statutory right and, therefore, subject to statutory limitations. In *Subhash Desai v. Sharad J. Rao* (1994 Supp. (2) SCC 446) also the Apex Court held that right to contest an election is a special right created by statute, which can only be based on the conditions laid down in it. It is argued by the respondent that when a person files nomination for contesting from more than one Constituency of the same Panchayat, both nominations will become void so he will lose right to contest from both the Constituencies,

17. Section 51 of the Panchayat Raj Act deals with filing of nomination. It reads as follows:

'51. Nomination of candidates for election.- Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act:

Provided that a person nominated as a candidate to fill a seat in a Constituency in a Panchayat shall not be nominated as a candidate for another Constituency in the same Panchayat.'

Originally there was no proviso to Section 51. The proviso was added by Act 1 of 1995. In the object and reasons it is stated that the proviso was added to prohibit one candidate from contesting from more than one constituency of the same Panchayat. There is no similar provision in the Representation of the People Act or

in the Municipalities Act. In the Kerala Panchayats Act also there was no similar provision. It is also pertinent to note that though there is an express bar for being nominated for two Wards of same Panchayat, a candidate can contest for more than one level in the Panchayat. But, in view of the provisions contained in Section 83A of the Kerala Panchayat Raj Act, a person who is elected to more than one level in a Panchayat shall within fifteen days of his being so elected vacate one membership and retain the other and if he fails to do so, his membership in all levels, of the Panchayat to which he has been elected shall be deemed to have been ceased.

18. The literal meaning of the proviso to Section 51 of the Kerala Panchayat Raj Act is very clear. A person nominated as a candidate to fill a seat in a Constituency in a Panchayat shall not be nominated as a candidate for another Constituency in the same Panchayat. So, the bar is for being nominated as a candidate again. The learned District Judge has found that a person can be said to be duly nominated only when his nomination is accepted by the Returning Officer after scrutiny under Section 55 of the Act. So, the crucial question arising for consideration is when exactly a person can be said to be duly nominated as a candidate.

19. Section 52 of the Act provides for presentation of nomination paper and requirements for a valid nomination. Section 52 reads as follows:

'52. Presentation of nomination paper and requirements for a valid nomination.-

(1) On or before the date appointed under Clause (a) of Section 49, each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under Section 50, a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the Constituency as proposer.

(2) In a Constituency where the seat is reserved for Scheduled Caste or Scheduled Tribe a Candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying

the particular caste or tribe of which he is a member.

(3) Where the candidate is a person who, having held any office referred to in Clause (k) of Section 34 has been dismissed or removed and period of five years has not elapsed since the dismissal or removal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the State Election Commission to the effect that he has not been dismissed or removed for corruption or disloyalty.

(4) On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the Returning Officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(5) Where the candidate is an elector of a different Constituency a copy of the electoral roll of that Constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than three nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer.'

The provisions contained in Section 53 are also relevant. It reads as follows:-

'53. Deposits.- (1) A candidate shall not be deemed to be duly nominated for election from a Constituency of a Panchayat at any level unless he deposits or causes to be deposited such sum, as may be prescribed, and different rates may be prescribed for different levels of the Panchayats. In the case of candidates belonging to Scheduled Castes or Scheduled Tribes, the amount of deposit shall be fifty per cent of the amount prescribed for such Constituency:

Provided that where a candidate has been nominated by more than one nomination paper, not more than one deposit shall be required of him under this sub-section.

(2) Any sum required to be deposited under Sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper under Sub-section (1) of Section 52, the candidate has either deposited or caused to be deposited that sum with the Returning Officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the office of such authority as may be notified by the Government.'

20. A reading of Section 52(3) makes it clear that a person whose case falls under that sub-section shall be deemed to be duly nominated only if the nomination paper is accompanied by a certificate issued by the State Election Commission in the prescribed form. Section 52 (4) confers power on the Returning Officer who receives the nomination to conduct a preliminary scrutiny. It provides that he shall satisfy himself that the names and the electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls. Section 52(6) of the Act provides that a candidate can be duly nominated by more than one nomination paper, but subject to a maximum of three nomination papers. Section 53 of the Act deals with deposit. Section 53(1) provides that a candidate shall not be deemed to be duly nominated for election

from a Constituency of a Panchayat unless he deposits the prescribed amount. In view of the proviso to Section 53(1), if there are more than one nomination paper, the candidate need only make a single deposit. Section 54 deals with notice of nominations and the time and place for their scrutiny. Section 55 deals with scrutiny of nomination papers. Sub-section (2) of Section 55 provides that the Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination and after such enquiry, reject a nomination or accept the same. The Returning Officer can reject the nomination paper on the following grounds:

'(a) that on the date fixed for the scrutiny of nominations, the candidate is either not qualified or is disqualified for being chosen to fill the seat under any of the provisions of this Act;

(b) that there has been failure to comply with any of the provisions of Section 52 or Section 53; or

(c) if he is satisfied that the signature of the candidate or the proposer on the nomination paper is not genuine.' .

The provisions of Section 55(3) is also relevant. It reads as follows:

'(3) Nothing contained in Clause (b) or Clause (c) of Sub-section (2) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.'

Sub-section (4) of Section 55 provides that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial nature. Sub-section (6) provides that the Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same. Sub-section (8) provides that immediately after the nomination papers have been scrutinised and decision accepting or rejecting the same have been recorded, the Returning Officer shall prepare a list of validly nominated candidates and affix it on his notice

board and a copy of the same is to be forwarded to the Chief Electoral Officer.

21. Section 2(v) of the Act defines the word 'candidate'. It reads as follows:

'2 Definitions.- In this Act, unless the context otherwise requires,-

** ** *(v) 'candidate' means a person who has been or claims to have been duly nominated as a candidate at any election.'

A reading of Section 52(1) of the Act shows that the word 'candidate' can be used to describe a person who intends to file a nomination also. So, the definition of the word 'candidate' is of no help to resolve the dispute arising for consideration in this case.

22. The provisions contained in the Rules framed under the Kerala Panchayat Raj (Conduct of Election) Rules are also very relevant. Rule 6 deals with nomination of candidates. Rule 6 reads as follows:

'6. Nomination of candidates.-

(1) A candidate shall be nominated by means of a nomination paper in Form No. 2 and on an application in that behalf of an elector in the electoral roll of any Constituency of concerned Panchayat, the Returning Officer shall provide Him Form No. 2 free of cost.

(2) Every candidate shall make and subscribe an oath or affirmation before the Returning Officer or the person authorised by the State Election Commission in the Form specified in the First Schedule of the Act.

(3) The Returning Officer shall, immediately on receipt of the nomination paper, number them serially in the order of their presentation and shall note the date and time of its presentation in each nomination paper and shall issue a receipt attached to Form No. 2.'

Form No. 2 deals with the contents of the application prescribed under Rule 6 of the Rules. It contains the declaration of the proposer. Thereafter it contains the declaration of the candidate. Though a duty is cast upon the proposer to state that

he has not made any other proposal than the one he signs, no duty is cast upon the candidate to declare that he is not nominated as a candidate for another Constituency in the same Panchayat. If the candidate is contesting from a Constituency which is reserved for Scheduled Castes/Scheduled Tribes, then, he will have to fill an additional declaration also. The Returning Officer has to enter the serial number, time and date and the person delivering the nomination paper. In the foot of the application, the decision of the Returning Officer accepting or rejecting the nomination paper is to be recorded. Sub-rule (2) of Rule 6 deals with oath or affirmation to be made before the Returning Officer. Rule 6(3) provides that immediately on receipt of the nomination paper the Returning Officer shall number them serially in the order of their presentation and shall note the date and time of its presentation in each nomination paper. He is also bound to issue a receipt attached to Form No. 2. Rule 8 deals with deposit of amount. Rule 9 provides that the Returning Officer shall, as soon as the last day and time fixed for the receipt of nomination paper is over, publish a list of nomination received. Rule 10 also provides that immediately after the scrutiny of the nomination papers is over, the Returning Officer shall prepare, in Form No. 4 the list of candidates found legally nominated. Rule 13 provides that the list under Section 57 shall be in Form No. 6 and the symbol assigned to the candidates shall be shown against their names therein.

23. A reading of Sections 51, 52, 53 and 55(3) of the Act and Rule 6 of the Conduct of Election Rules makes it clear that a candidate is duly nominated when he or the proposer files a nomination paper in Form No. 2 accompanied by the deposit as prescribed under Rule 8. The proviso imposes a ban on such a person from filing another nomination for another Constituency of the same Panchayat. It is true that at the time of filing of the nomination only a preliminary scrutiny is conducted by the Returning Officer. The fact that a further scrutiny is prescribed under Section 55 and a power is conferred on the Returning Officer to reject the nomination on any one of the three grounds stated in Section 55(2) will not make any change in the position. It is to be noted that the prohibition is imposed on the person being nominated as candidate from two Constituencies of the same Panchayat. It is very pertinent to note that there is no bar for the Returning Officer from accepting nominations filed by a person as a candidate to fill more than one

Constituency. Since the statute does not impose any bar, the Returning Officer can receive all the nominations. It is to be noted that under Section 52(6) the Returning Officer is prohibited from receiving the 4th set of nomination papers.

24. In this case the time recorded in Exts.A1 and A2 receipts is 1.25 p.m. on 1st September, 2000. It shows that the candidate delivered both the nominations together to the Returning Officer. But, the Returning Officer did not accept both the nominations together. The same is impossible also. In view of the provisions contained in Sections 52, 53 and 54 of the Act, the Returning Officer can receive only one nomination at a time. The action of the Returning Officer accepting two nomination papers from a candidate simultaneously itself is illegal. He took up the nomination filed for Constituency No. 4 first, gave serial No. 141/2000, verified the same as provided under Section 52(4) and issued Ext.A1 receipt. That nomination was accompanied by a valid deposit also as can be seen from Ext.A3 receipt. When the Returning Officer accepted that nomination and issued Ext.A1 receipt, the revision petitioner was duly nominated for that Constituency. Thereafter he cannot file a nomination for another Constituency. The evidence adduced in this case shows that after accepting the nomination filed for Constituency No. 4, the Returning Officer took up the nomination filed by the revision petitioner for Constituency No. 12, verified the same as provided under Section 52(4) and issued Ext.A2 receipt. So, the evidence adduced in this case shows that the revision petitioner after being nominated as candidate to fill the 4th Constituency was again nominated as a candidate to contest from Constituency No. 12 of the same Panchayat. That was done in violation of the mandatory provisions contained in the proviso to Section 51 of the Act.

25. The next question to be considered is what is the effect of a person filing two valid nominations to contest from two Constituencies of the same Panchayat. The proviso to Section 51 does not provide that if a person who had already been nominated for one Constituency files a valid nomination to contest from another Constituency the one filed in earlier point of time shall be accepted and the latter one should be rejected. The Returning Officer also has no option. As I have already stated, no option is given to the candidate to elect either of the two.

26. The effect of the proviso to Section 51 is that a person can be nominated to fill only one Constituency of a Panchayat. The intention of the Legislature is very clear and explicit. No person can be permitted to file nomination papers to contest from more than one Constituency of the same Panchayat. When the prohibition is explicit, an act done against the express prohibition will have its own consequence. Section 34(1)(n) reads as follows:

'34. Disqualification of candidates.- (1) A person shall be disqualified for being chosen as and for being a member of a Panchayat at any level, if he -

** ***(n) is disqualified under any other provision of this Act.'

It is very pertinent to note that Section 19 of the Kerala Panchayat Act, 1960 which dealt with the disqualification of the candidate does not contain a similar provision. So, when a person who has already been nominated as a candidate is again nominated as a candidate for another Constituency of the same Panchayat ignoring the express prohibition contained in the proviso to Section 51 of the Act, that will amount to a disqualification as provided under Section 34(1)(n) of the Act. Section 55(2)(a) of the Act provides that the nomination shall be rejected if the candidate is disqualified for being chosen to fill the seat under any of the provisions of the Act. So, at the time of scrutiny the Returning Officer ought to have found that the revision petitioner was disqualified to contest from Constituency No. 4 and Constituency No. 12.

27. The learned Counsel appearing for the revision petitioner has argued that even if there is any bar, it can only be against the second nomination alone. It is argued that the Returning Officer ought to have accepted the nomination filed for Constituency No. 4 and rejected the one filed for Constituency No. 12. It is also argued that if it is held that a person who files nomination for contesting from two Constituencies of the same Panchayat is disqualified from contesting from both Constituencies, the same will affect the right of a person to contest as candidate. As I have already stated, the intention of the Legislature is clear. The proviso to Section 51 makes it very clear that a person shall not be allowed to file nomination for more than one Constituency in the same Panchayat. It is well-settled position of law that the right to contest an election is not a common law right, but a

statutory right. Such a right is regulated by the provisions of the statute. The statutory provision may appear to be very harsh or hypertechnical. When there is no ambiguity and meaning is clear, the Courts have no option but to give effect to that meaning. The duty of the Court is to find out what is the meaning of a statutory provision is and not to find out what should be the law. The Legislature in its wisdom thought to impose a ban in filing nomination for more than one Constituency. When a person files nomination papers to contest from more than one Constituency of the same Panchayat, he is acting against the mandatory provisions contained in the proviso to Section 51 of the Act and will become disqualified to contest from both the Constituencies. So, both the nominations are liable to be rejected. Hence, the rejection of the nomination paper filed for the 4th Constituency is perfectly legal and does not call for any interference. So, the decision of the District Court is only to be confirmed, though for different reasons. From what is stated above, it is clear that there is no merit in the Civil Revision Petition and the same is only to be dismissed.

In the result, the Civil Revision Petition is dismissed. No costs. C.M.P. 3452 of 2002 also shall stand dismissed.

A copy of this order shall be communicated to the State Election Commissioner and the President of the Panchayat.

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