

Jose Augustine and anr. Vs. State of Kerala and ors.

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Court : Kerala

Decided On : Feb-02-1999

Reported in : AIR1999Ker293

Judge : P. Shanmugam, J.

Acts : [Constitution of India](#) - Article 243C(5); Kerala Panchayati Raj Act, 1994 - Sections 35, 157, 157(2), 157(7) and 157(9); Kerala Local Authorities (Prohibition of Defection) Ordinance, 1998 - Sections 1

Appeal No. : O.P. No. 2056 of 1999-T

Appellant : Jose Augustine and anr.

Respondent : State of Kerala and ors.

Advocate for Def. : V.M. Kurain, Govt. Pleader

Advocate for Pet/Ap. : Benoy Thomas and Paulson Thomas

Disposition : Petition dismissed

Judgement :

P. Shanmugam, J.

1. This Original Petition challenges the vires of Section 157 (dealing with no confidence motion) of the Kerala Panchayath Raj Act, hereinafter referred to as

'the Act', and the consequential notices and proceedings taken.

2. The petitioners are elected members of Kalloorkad Village Panchayath. The 1st petitioner is the Vice-President of the Panchayath and the 2nd petitioner is the Standing Committee Chairman of the Panchayath. The total strength of the Panchayath is 8. A notice under Section 157(2) of the Act was received by the Deputy Director of Panchayats, the 3rd respondent herein on 12-1-1999. In pursuance to the said notice the Deputy Director has convened the meeting of the elected members of the Panchayath on 29-1-1999 to consider the no confidence motion as per Sections 157(3) and 157(5) of the Act. At this stage this Original Petition is presented inter alia contending that the removal of a Chairperson once elected is not contemplated under the Constitutional Scheme in Part IX of the Constitution. Article 243C(5) of the Constitution provides for the election of the Chairperson of the Panchayath.

According to the Constitutional Scheme, a member including the Chairperson cannot be removed unless he is disqualified. He should be allowed to continue, till the expiration of his term of the member of the Panchayath provided he is not disqualified. It is further argued that a non-member of the Panchayath, i.e. the Deputy Director of Panchayath, cannot be authorised to preside over and to decide on the motion. That would be arbitrary and violative of Articles 243D and 243C(4) of the Constitution. It is further submitted that the motion is said to be moved without giving particulars of the motion and copies of letters said to have been sent expressing no confidence motion. This violates principles of natural justice. Lastly it is submitted that respondents 6 and 7 have suffered disqualification under the Anti Defection Ordinance and that the matter is pending before the Election Commission. Hence the meetings proposed should be postponed till the disposal of the petition pending before the 5th respondent. In support of his contention learned counsel referred to the decision of the Full Bench of this Court in *Bar Council of Kerala v. Thankappan Pillai*, 1985 Ker LT 986 : (AIR 1986 Ker 144).

3. I have heard the counsel and considered the matter carefully.

4. The previous Act, viz. The Kerala Panchayats Act, 1960, also contained a similar provision to that of Section 157 of the Act. Section 54 of the old Act is substantially incorporated under the new Act. This Act was preceded by the Madras Village Panchayats Act, 1950. The 1960 Act was a consolidated Act to give effect to Article 40 of the [Constitution of India](#) to enable the Panchayath to function as units of self-Government. The present Act of 1994 replaced the old Act and the preamble of the Act states that it is intended to establish a three-tier Panchayat Raj System in the State in line with the Constitution (Seventy-third Amendment) Act, 1992, for securing a greater measure of participation of the people in planned development and in local Governmental affairs, by constituting village, block and district panchayats. The Panchayat is to function as institutions of self-Government. They are entrusted with powers of preparation of plans and implementation of schemes for economic development and social justice. The statement of objects and reasons for the new Act provides inter alia for fixing tenure of five years of Panchayaths and holding elections within a period of six months in the event of supersession of Panchayaths, disqualification of members of Panchayats, devolution by the State Legislature of powers and responsibilities upon the Panchayaths.

5. By the enactment of the new Act the people of the Panchayath are given a greater measure of participation in planned development and in local governmental affairs. However, the institution of the Panchayath and its election continues in the same set up and level. There is no change in so far as the election of office bearers of the Panchayath. Section 7 of the Act provides for the composition of village Panchayath. According to this provision, every village Panchayath shall consist of elected members equal to the number of seats notified. Section 153 of the Act provides for election of President and Vice-President from among the elected members of the Panchayath. Section 157 of the Act provides for motion of no confidence against the President or the Vice-president or the Chairman of the Standing Committee. In so far as the election of the members of the Panchayath and the election of the President and the Vice-President and the motion of no confidence against President and Vice-President concerned there is no substantial change from the old Act. The Constitutional Amendment (Seventy-third Amendment) and Part IX of the Constitution and

specially Article 243C in so far as it deals with the election of the President or Vice-President and the no confidence motion against them there is no change or modification. Article 243C(5) of the Constitution is as follows :

'The Chairperson of--

(a) A Panchayat at the village level shall be elected in such manner as the Legislature of a State may, by law, provide, and'.

Article 243E of the Constitution states that the Panchayath shall have a duration of five years. Article 243K(4) of the Constitution states that subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats. Article 243N of the Constitution provides for continuance of existing laws and Panchayaths.

6. The existing law in so far as the election of Vice-President and President and their removal by no confidence motion has been substantially continued under the new Act and they are not in any way inconsistent with the provisions of Part IX of the Constitution. The provision that the Chairperson shall be elected in such manner as may be provided cannot be extended or interpreted to mean that the elected person shall not be removed from office. The argument that there is no specific provision to enable the Legislature to make a provision for removal of a President or Vice-President and therefore they cannot be removed from office is only to make too simple of the provisions of the Constitution and the Act. Similarly the other argument that the duration of the Panchayath is five years and therefore they cannot be removed before the tenure of five years also has no substance. The tenure of Panchayath is different from the election of President or Vice-President. Similarly the provision for disqualification of a member of the Panchayath has nothing to do with the provision dealing with lack of confidence with the President. In other words even though a member may not be disqualified on any one of the grounds set out in Section 35 of the Act still it is open to the members of the Panchayath to move a motion expressing want of confidence with the President or Vice-President as the case may be. To accept the contrary provision, namely that the President or Vice-President once elected by the

members of the Panchayat to continue till the term of office will be inconsistent with the democratic fabric of the Constitution and the frame work of the Panchayath. The whole object of the Panchayath Act to secure greater measure of participation of the people in a democratic manner and function as a self Government will be defeated if the heads of the Panchayath are permitted to continue irrespective of the fact whether they enjoy the confidence of the members of the Panchayath or not.

7. According to learned counsel 'the maxims *expressum facit cessare taciturn*' (a thing expressed puts to an end tacit implication) and '*expressio unius est exclusio alterius*' (express mention of one thing implies the exclusion of another) apply to the situation and therefore the concept of removal of Chairperson during the term of the Panchayath is excluded in the term of Constitutional Scheme. In my view the express mention of election of a Chairperson would only mean that Chairperson cannot be appointed otherwise than by election. The maxims cannot be extended as to the method of disqualification or removal of the Chairperson elected. Broom in his 'Legal Maxim' says that no maxim of the law is of more general and uniform application; and it is never more applicable than in the construction of interpretation of statutes. Whenever a statute limits an end to be done in a particular form if it necessarily includes negative, namely that the thing shall not be done otherwise, i.e. the Chairperson can be appointed only by election.

8. K. J. Aiyar's Judicial Dictionary, 1984 edition explains the latter maxim as follows : The rule *expressio unius est exclusio alterius* must be applied with great caution for it is not of universal application and it cannot be applied unless the statute by its language shows that all things different in genus and description from those which are enumerated are intended to be excluded. Where an Act gives general powers to a municipality to fix the amount or rate at which it desires to make the class or classes of persons or property liable, it is not proper to suggest to infer that because specific instances are enumerated wherein it is said that the Municipality can impose rates upon certain basis, such enumeration has the effect of limiting the municipality's choice on the basis upon which the taxes can be levied (*Sidhrao Narayan Rao v. Municipality Athni*, (1943) 204 Ind Cas 352 : (AIR

1943 Bom 21).'

9. Dealing with the tenure of the Ministers under the Constitution and while interpreting Articles 74 and 75 learned Author M.P. Jain in his Indian Constitutional Law, 4th Edition at page 90 states as follows ;

'Ministerial tenure : The Council of Ministers remains in office so long as it enjoys the confidence of the Lok Sabha and a majority of members in that House back and support it. It should resign when it is unable to command this confidence. This is the inevitable result of Article 75(3) which requires the Council of Ministers to be collectively responsible to the Lok Sabha'.

At page 87 the learned author further states as follows : To keep the fabric of parliamentary Government in proper working order, it is necessary that the Council of Ministers, of which the Prime Minister is the head, enjoys the confidence of the Lok Sabha.

10. H.M. Seervai in his Constitutional Law of India, Volume 2, Fourth edition at page 2050 dealing with the power of the President to dismiss the Prime Minister if he lost the confidence of members of his party states that it has been suggested that under Article 367 unless the context otherwise requires the General Clauses Act, 1897 applies to the interpretation of the Constitution, And Section 16 of that Act, provides that the power to appoint includes the power to suspend or dismiss. But this power is expressly made subject to a context to the contrary. And the context, which includes other provisions of the Constitution clearly indicate to the contrary because once the Ministry is formed, then under Article 74(1) the President must in the discharge of his functions, act according to the advice of the Council of Ministers. Consequently the President cannot on his own dismiss the Prime Minister.

11. Insofar as Article 243 is concerned there is no contrary indication so as to exclude the applicability of Section 16 of the General Clauses Act read with Article 367. The word 'election' as interpreted by the Supreme Court in N. P. Ponnusamy Returning Officer, AIR 1952 SC 64 and The Election Commission of India v. Shivaji, AIR 1988 SC 61 have relevance only to Article 243 of the Constitution

viz., Bar to interference by Courts in electional matters and has no applicability to the facts of the case.

12. The rules of procedure and conduct of business in Kerala Legislative Assembly provides for moving the motion of no confidence against Ministers under Chapter XII. Dealing with Part IX and Part 1X-A of the Constitution by Durga Das Basu in his Shorter [Constitution of India](#) has the following comments :

'Implementation by legislation. A striking feature of these new provisions inserted in the Constitution by Articles 243 and 243G is that they are in the nature of basic provisions which are to be supplemented by laws made by the respective State Legislatures, which will define the details as to the powers and functions of the various organs, just mentioned.

It is to be recalled that 'local Government' including self-Government institutions in both urban and rural areas is an exclusive State subject under Entry 5 of List II of the 7th Schedule so that the Union cannot enact any law to create rights and liabilities relating to these subjects. What the Union has, therefore, done by inserting Parts IX and IXA in the Constitution is to outline the scheme which would be implemented by the several States by making laws, or amending their own existing laws to bring them in conformity with the provisions of the 73rd and 74th Constitution Amendment Act'.

13. The State Legislature in exercise of the Legislative power traceable to Entry 5 of List II-Statc List of the 7th Schedule, namely, 'local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, districts, boards, mining settlement authorities and other local authorities for the purpose of loeal self-government or village administration' has enacted the Panchayath Raj Act, 1994. Constitutional provisions are made only to supplement the laws already made by the State Legislature. Article 243-I also envisages the continuation of the existing laws provided that they are not inconsistent with the constitutional provisions. As the Panchayaths are institutions of self-government and they are based on democratic system of Government, it ipso facto follows the system of responsible Government i.e. the elected representatives continue so long as they enjoy the confidence of the electors and they are liable to be removed

in a democratic manner. No President or Vice-President are elected by the Panchayath committee on a permanent basis. He is elected subject to the provisions of the Act which empowers the majority of the Panchayath Committee to remove the President. This, in my view, is consistent with the democratic set up which is one of the basic fundamental feature of our Constitution and system of self-government. Any other interpretation would be destructive the preamble and objective of the Panchayath Raj Act besides violating the [Constitution of India](#).

14. Under the Kerala Co-operative Societies Act, 1969 there is no specific provision regarding the removal of the President by passing no confidence motion, A learned Judge of this Court in Narayanan Nair v. Joint Registrar, 1982 Ker LT 602 : (AIR 1983 Ker 136) had taken the view by applying the principle of Section 16 of the General Clauses Act construed that authority which appointed the President shall have the power to remove him from office. The learned Judge referred and followed the decision in N. Venkataratnam v. Dist. Collector, Nellore, AIR 1972 Andh Pra 349 wherein Sambasiva Rao, J. held as follows :

'A co-operative society, as a gram panchayat, is a basic democratic unit intended to help its members to manage some of their affairs for themselves in a democratic way. At every stage of the creation and functioning of a co-operative society it is the will of the members that is important..... Thus once a committee is elected by the General Body, it is the committee that elects its office-bearers..... But considering the democratic and the co-operative principles underlying the co-operative law it could not be said that the absence of a specific provision debars the Committee of Management from changing its office-bearers in whom they have no confidence.'

15. In B. Liugamma v. R.D.O. (1972) 2 Andh WR 30 a learned Judge of the Andhra Pradesh High Court dealing with Section 51 of the Andhra Pradesh Gram Panchayat Act held that the dominant intention is to see that a person who has forfeited the confidence of the bulk of the members should not be allowed to remain in the elected post. Again dealing with an improperly worded notice for no confidence motion it was held that the words 'expressing want of confidence' should receive a liberal construction so as to make the expression of opinion in the

notice in whatever form it is done adequate. It is not the form that matters but substance.

16. The Full Bench decision in Bar Council of Kerala v. Thankappan Pillai, 1985 Ker LT 986 : (AIR1986 Kerala 144) has taken the view that the proposed Rule providing for no confidence against a member elected is not violative of the Act. The Full Bench approved the view of the Division Bench of the Delhi High Court in Bar Council of Delhi v. The Bar Council of India, AIR 1975 Delhi 200 wherein it is held that the body which has the authority to elect its Chairman has the inherent and implies power to remove the Chairman.

17. Under the Kerala Local Authorities (Pro-libition of Defection) Ordinance, 1998, there is no automatic disqualification of a member. Before a member is disqualified certain conditions have to be satisfied and it is subject to the decision and adjudication by the Election Commission.

Therefore the allegation of shifting of loyalty and defection and consequent attraction of anti defection Ordinance are matters that are to be adjudicated and there cannot be automatic disqualification.

18. The no confidence notice is given in writing before the officer empowered who convenes the meeting and conducts the proceedings. As per Sub-section (7) of Section 157 of the Act as soon as the meeting is convened and commenced the person presiding shall read at the meeting the motion for consideration and no debate on any motion shall be allowed as per Sub-section (8). Under Sub-section (9) a debate on any no confidence motion shall automatically terminate on the expiry of three hours from the time appointed for the commencement of the meeting. Sub-section (10) specifically excludes the person presiding not to speak on the merit of the motion and shall not be entitled to vote thereon. The power of the Panchayat is in no way prejudiced or interfered with. On the contrary the officer does only the administrative work of receiving notice and conducting the meeting. He had no role to play except to preside over and record the minutes and reporting to the Government. The power to convene the meeting is vested in him with clearly laid down limitations. Therefore, I am unable to find any illegality in permitting an officer authorised by the Government to conduct or presiding the

meeting of no confidence motion. In Ext. P1 letter there is a sufficient indication to the petitioners that a written notice expressing want of confidence had been given in compliance with Section 157(2) of the Act. No further reason is contemplated for expressing no confidence by the movers of the motion. The question of giving copies Of notices are not contemplated. An advance clear seven days notice had been given and that motion is going to be discussed in the meeting where the petitioners would have full opportunity to meet the motion. Therefore, there is no substance in the contention that there is violation of principles of natural justice. Provisions of Section 157 of the Act is valid.

For all these reasons I do not find any grounds to grant the relief sought for. The Original petition is dismissed.

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