

Kunjappan Vs. Rajan

Kunjappan Vs. Rajan

SooperKanoon Citation : sooperkanoon.com/730692

Court : Kerala

Decided On : Aug-27-2003

Reported in : 2004(1)KLT536

Judge : K. Padmanabhan Nair, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 29, 34, 35 and 36

Appeal No. : C.R.P. No. 1613 of 2002

Appellant : Kunjappan

Respondent : Rajan

Advocate for Def. : K. Ramakumar,; P. Sathisan and; Murali Purushothaman

Advocate for Pet/Ap. : K.P. Dandapani,; V. Giri,; P.N. Ramakrishnan Nair an

Judgement :

ORDER

K. Padmanabhan Nair, J.

1. These three Civil Revision Petitions arise from a common order passed by the District Judge disposing of C.M.A. Nos. 24, 32 and 36 of 2002, which in turn arose from three different Election Petitions numbered as O.P. (Election) Nos. 12 of 2000, 8 of 2000 and 15 of 2000. Since the challenge in all the three Election

Petitions is one and the same, that is to say, the validity of the election of the first respondent in all the three Civil Revision Petitions, who is the returned candidate, the learned District Judge heard and disposed of these three Civil Miscellaneous Appeals together. So, the Civil Revision Petitions are also heard together and disposed by a common order.

2. The first respondent was the returned candidate of the Constituency No. VII of Kizhakkambalam Grama Panchayat for the election to the local bodies held on 27th September, 2000, He was declared elected. The revision petitioner in C.R.P.1613 of 2002 who is an elector of that Ward filed O.P. (Election) No. 12 of 2000 for a declaration that the election of the first respondent to Ward No. VII of Kizhakkambalam Grama Panchayat is void. The revision petitioner in C.R.P. No. 1765 of 2002 who is another elector filed O.P. (Election) No. 8 of 2000 for the identical relief. The revision petitioner in C.R.P.2098 of 2002, another elector, had filed O.P. (Election) No. 15 of 2000 in the very same court for the very same relief. The common ground alleged in all the three petitions is that the first respondent was not qualified and hence disqualified for being chosen as and for being a member of the Panchayat. It was alleged that the first respondent was a member of the former Panchayat Committee. He ceased to hold office as a member of the Panchayat under Section 35(k) of the Kerala Panchayat Raj Act ('Act' for short) and consequently on the date on which he filed the nomination as well as on the date of declaration of the results, he was not qualified and hence disqualified to be a member. In C.R.P. No. 1765 of 2002 the election was challenged on the further ground that names of large number of electors were clandestinely removed from the voters list, thereby blocking the chance to exercise their right of franchise. In that case, the learned Munsiff found the Original Petition as not maintainable as there is violation of the provisions contained in Section 91(2) of the Act. The learned Munsiff found that the fact that the first respondent ceased to hold the office as a member of the previous Panchayat will not attract the mischief of Section 34 of the Act and hence he was not disqualified from contesting as a member. The learned Munsiff dismissed all the three Original Petitions. Aggrieved by the decisions the petitioners in the three Original Petitions filed three Civil Miscellaneous Appeals. The learned District Judge concurred with the view taken by the learned Munsiff and dismissed all the three Civil Miscellaneous Appeals.

Those orders are under challenge in these three Civil Revision Petitions.

3. As I have already stated, the case of the revision petitioners in all the three Civil Revision Petitions is that the first respondent was not qualified to contest the election and hence the first respondent was disqualified for being chosen as and for being a member of the Panchayat at any level. The first respondent was a sitting member of the former Panchayat Committee. The evidence adduced in these cases shows that the first respondent was involved in a criminal case. He was absconding for some time. Subsequently he was under judicial custody. Since the first respondent did not attend the meetings of the Panchayat for more than three consecutive months without obtaining permission, the Panchayat passed a resolution disqualifying him from holding the office as the member of the Panchayat for the remaining period of his term. He filed an appeal before the Election Commissioner and the same was dismissed. He challenged the decision of the Panchayat before this Court in O.P. No. 8375 of 1998. The Original Petition was dismissed upholding the decision of the Panchayat. W.A. No. 1992 of 1998 filed against the decision rendered by the learned Single Judge was also dismissed. The last date fixed for filing the nomination was during the existence of the previous Panchayat Committee. The election was also held during that period. The question arising for consideration is whether a member who ceased to hold the office as a member in view of the violation of the provisions contained in Section 35(k) of the Act is entitled to contest for the another Panchayat Election during the period of the former Committee.

4. The learned District Judge had found that the disqualification is not for any specified period. In view of the provisions contained in Chap. VII of the Act, which deals with qualifications and disqualifications for membership of a Panchayat, the view taken by the learned District Judge is not correct. Section 149 of the Panchayat Raj Act provides that the term of office of a Village Panchayat, a Block Panchayat or a District Panchayat shall be five years from the date fixed for convening the first meeting of that Panchayat. Section 149(3) deals with filling up of casual vacancies through by-election. Section 29 of the Act deals with qualifications for membership of Panchayat. In Section 35 of the Act, the contingencies under which a member shall cease to hold the office as such is

described. In view of the provisions contained in Sub-section (k) of Section 35 of the Act the member who fails to attend the meetings of the Committee for the terms specified under that sub-section shall cease to be member of the Panchayat. Section 37(1) of the Act deals with restoration of membership. But, in view of Sub-section (2) of Section 37, a membership can be restored only twice during the term of office of a member. The period of disqualification is very clear. The first respondent is disqualified to be a member of a Panchayat for such portion of the period for which he was elected and remained unexpired at the time of his disqualification. If a sitting member ceases to be a member of a Panchayat at any level under Section 35(k) during the first year of the term he is disqualified to be a member for remaining period of four years calculated from the date fixed for the convening of the first meeting unless he was restored under the proviso to Section 37(2) of the Act. If a by-election under Section 149(3) of the Act declared to fill that casual vacancy, can the former member who ceased to be a member be allowed to contest for such a vacancy? In view of the provisions contained in Sections 29, 35(k), 37(2) read with Section 149(1) of the Act, he is not qualified for chosen to fill a seat as he was disqualified to be a member for that period under Section 25(k) of the Act. If he is allowed to contest the by-election on the ground that he is not disqualified for any particular term, it will lead to an absurd result. So, the intention of the Legislature is very clear. If an elected member ceased to be a member, unless that disqualification is determined in accordance with the provisions contained in Section 36 or restored under Section 37 of the Act, he cannot hold the office as a member of the Panchayat for the rest of the period for which he was elected. That is a disqualification. Since he is disqualified under the provisions of the Act, he is not qualified to be chosen to fill a seat in that Panchayat. So he is not qualified to contest a by-election, if any, declared consequent to his cessation of membership and hence disqualified.

5. The next question to be considered is whether a member who is not entitled to contest for a by-election for filling a casual vacancy can be allowed to contest for an ordinary vacancy during a general election declared during that period? Chap. VII of the Act deals with qualifications and disqualifications. Section 29 deals with qualifications for membership of a Panchayat, the relevant portion of which reads as follows:

'29. Qualifications for membership of a Panchayat.- A person shall not be qualified for chosen to fill a Seat in a Panchayat at any level unless,-

(f) he has not been disqualified under any other provisions of this Act.'

Section 30 deals with disqualification of officers and employees of Government, local authorities etc. Section 31 deals with disqualification of persons convicted for certain offences. Section 32 deals with disqualification on the ground of corrupt practices. Section 33 deals with disqualification for failure to lodge account of election expenses. Section 34 deals with disqualification of candidates. The relevant portion of Section 34 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; or* * * *'

Section 35 deals with disqualifications of members, the relevant portion of which reads as follows:

'35. Disqualifications of members.-Subject to the provisions of Section 36 or Section 102, a member shall cease to hold office as such, if he-

* * *(k) absents himself without the permission of the Panchayat concerned from its meeting or the meeting of the Standing Committee thereof for a period of three consecutive months reckoned from the date of commencement of his term of office or of the last meeting that he attended, or of the restoration to office as member under Sub-section (1) of Section 37, as the case may be, or if within the said period, only in less than three meetings of the Panchayat or of the Standing Committee as the case may be, have been held, absents himself from three consecutive meetings held after the said date.'

Section 35A deals with cessation of membership. Section 36 deals with determination of subsequent disqualification of a member. Section 37(2) deals with restoration of membership, which reads as follows:

'37. Restoration of membership.-(1) * ** * * *(2) Where a person ceases to be member under Clause (k) of Section 35 the Secretary of the Panchayat concerned shall at once intimate the fact in writing to such person and report the same at the next meeting of the Panchayat. If such person applies for restoration to the Panchayat on or before the date of its next meeting or within fifteen days of the receipt by him of such intimation, the Panchayat may at the meeting next after the receipt of such application restore him to his office of member:

Provided that a member shall not be restored more than twice during his term of office.'

A reading of Sections 29, 34 and 35 shows that a person to be qualified for chosen to fill a seat in the Panchayat only if he is qualified. Further, he shall not be disqualified also. A member, who attracts disqualification on account of the provisions contained in Section 35(k) of the Act, is disqualified to hold that office for the rest of the term unless his membership is restored in view of the provisions contained in Section 37(2) of the Act. Though disqualification of a member under Section 35(k) of the Act is not a permanent feature and the same can be restored due to the proviso to Section 37(2), restoration is possible only twice. If the Committee refuses to restore the membership as in the case at hand, the member incurs a disqualification under Section 35(k) of the Act for the rest of the term of his office. The provisions contained in Section 102(1)(a) of the Act also deals with disqualification. Section 102 reads as follows:

'102. Grounds for declaring election to be void.-(1) Subject to the provisions of Sub-section (2) if the court is of opinion- (a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under this Act.'

Whenever a member is disqualified under Section 35(k) of the Act, he is disqualified under the provisions of the Panchayat Raj Act for the unexpired period of 5 years from the date fixed for convening the first meeting of the Panchayat. In view of the provisions contained in Section 29(f) of the Act, a person is entitled to file nomination only if he has not been disqualified under any of the provisions of the Act. A member who was disqualified to hold office for the rest of the period

cannot be considered as a person who is qualified to contest for the election. In this case the notification was published during the currency of the term of office of the present members of the Panchayat. The nomination was filed, scrutiny took place and his nomination was accepted during the currency of the term of office of the present Panchayat Committee. A person who is not entitled to hold the office of the member of Panchayat and who cannot contest in a by-election for the same post cannot be said to be a person qualified to file a nomination for an ordinary vacancy at a general election. So, the irresistible conclusion possible is that on the date of nomination, the first respondent was not qualified. This crucial aspect was not considered by the courts below while dealing with the cases. So, the dismissal of the Original Petitions (Election) on that ground is unsustainable and liable to be interfered with.

6. But, so far as O.P. (Election) No. 12 of 2000 is concerned, dismissal was on other grounds also. But, the lower appellate court did not consider those aspects. It had taken a view that all the contentions even if accepted cannot help the revision petitioners to succeed in their attempt to assail the election of the first respondent. So, the judgment passed by the learned District Judge dismissing the Civil Miscellaneous Appeal Nos. 24, 32 and 36 of 2002 are unsustainable. I set aside the same and remand the Civil Miscellaneous Appeals back to the lower appellate court for considering whether the other objections raised by the first respondent are sustainable.

In the result, C.R.P.Nos. 1613 of 2002, 1765 of 2002 and 2098 of 2002 are allowed. The orders passed by the lower appellate court dismissing C.M.A. Nos. 24, 32 and 36 of 2002 are hereby set aside. The Civil Miscellaneous Appeals are remanded to the District Court for fresh disposal in accordance with law, as expeditiously as possible, at any rate within three months from the date of receipt of a copy of this order. C.M.P.3978 of 2002 in C.R.P.1613 of 2002 shall stand dismissed.