

Returning Officer Vs. Chamiyar

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Court : Kerala

Decided On : Dec-08-2005

Reported in : 2006(2)KLT878

Judge : K.S. Radhakrishnan and; K.T. Sankaran, JJ.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 34, 34(1), 34(2), 55, 55(2), 55(8), 87, 88, 88(2), 102, 136, 138 and 271G; [Constitution of India](#) - Articles 31(4), 31(6), 136(2), 226, 227(4), 243O, 262(2), 243O, 243ZG and 329; Kerala Panchayat Raj (Conduct of Election) Rules - Rule 10

Appeal No. : W.A. No. 1952 of 2005 and W.P.C. No. 27214/2005

Appellant : Returning Officer

Respondent : Chamiyar

Advocate for Def. : P.N. Ravindran, Adv.

Advocate for Pet/Ap. : Murali Purushothaman, Adv.

Disposition : Appeal allowed

Judgement :

K.S. Radhakrishnan, J.

1. Kerala State Election Commission is aggrieved by the interim order passed by the learned single Judge directing the State Election Commission to consider and pass orders on Ext.P3 in exercise of the powers under Section 34(2) of the Kerala Panchayat Raj Act within a period of three days of receipt of the order.

2. Writ Petition was preferred seeking writ of certiorari to quash Ext.P2 intimation dated 7.9.2005 given by the returning officer stating that the nomination submitted by the Writ Petitioner was rejected since on scrutiny it was found that the petitioner was indebted to Mundoor Service Co-operative Bank Limited and hence disqualified to contest for election. Petitioner also sought for a writ of mandam is directing respondents 1 to 3 to accept his nomination for contesting as a candidate from Ward No. 14 of Mundoor Grama Panchayat and to include his name in the ballot papers in the election to be held on 26.9.2005.

3. Sri Murali Purushothaman, counsel appearing for the State Election Commission, contended that the learned single Judge was not justified in entertaining the Writ Petition in view of the specific bar contained in Article 243-O(b) of the [Constitution of India](#). Counsel also submitted that the petitioner has got an effective alternate remedy. Counsel submitted on rejection of nomination paper after scrutiny, the remedy open to the petitioner was to move the Election Tribunal, the Munsiff's Court, under Section 88(a) of the Kerala Panchayat Raj Act. Counsel also submitted that learned single Judge was also not justified in invoking Section 34(2) of the Kerala Panchayat Raj Act in directing the State Election Commission to consider the objection raised by the petitioner against the rejection of the petitioner's nomination paper by the Returning Officer.

4. Sri P.N. Ravindran, counsel appearing for the writ petitioner on the other hand contended that learned single Judge was justified in directing the State Election Commission to examine the question whether the Returning Officer has improperly rejected the nomination of the petitioner. Counsel submitted that Section 34(1) deals with disqualification of candidates and if there is any dispute as to whether a candidate has been subjected to any of the disqualifications mentioned in Sub-section (1), that question shall be referred for the decision of the State Election Commission and the decision of the State Election Commission shall be final.

Counsel submitted on the basis of the direction of the learned single Judge State Election Commission has already passed an order holding that Returning Officer went wrong in rejecting the nomination. Since State Election Commission has already answered the reference and held that no money was due either to the Government or to the Panchayat from the petitioner, disqualification under Section 34(1) of the Act was not attracted. Counsel submitted that State Election Commission has rightly answered the reference under Section 34(2) of the Act.

5. We may point out at the very outset, that learned single Judge was not justified in entertaining the Writ Petition challenging the rejection of the nomination paper of the petitioner at the time of scrutiny. Conduct of election is dealt with in Chapter IX of the Panchayat Raj Act. Section 55 deals with scrutiny of nominations. Sub-section (2) of Section 55 states that the returning officer shall examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the grounds stipulated therein. Sub-section (8) of Section 55 states that immediately after all nomination papers have been scrutinised and decisions 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. Rule 10 of the Kerala Panchayat Raj (Conduct of Election) Rules stipulates 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.

6. Section 102 dealing with the grounds for declaring election to be void, states that if the court is of the opinion that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Act or that any nomination has been improperly rejected, the court shall declare election void. Section 87 of the Act states that no election shall be called in question except by an election petition presented in accordance with the provisions of Chapter X. Section 88 states that the Court having jurisdiction to try an election petition in the case of Village Panchayat is the Munsiff's court having jurisdiction over the place in which the headquarters of the Panchayat is located. Petitioner's nomination was rejected by the returning officer while exercising

powers under Section 55(2) of the Act. Consequently the only remedy available to the petitioner is to file an election petition before the Munsiff's Court and not to invoke the jurisdiction of this Court under Article 226 of the [Constitution of India](#).

7. A Division Bench of this Court in Chief Electoral Officer v. Sunny Joseph 2005 (2) KLT 599 held that even though judicial review is part of the basic structure of the Constitution, Constitution could exclude judicial review in certain situations. Reference was made to Articles 31(4), 31(6), 136(2), 227(4), 262(2), 2430, 243ZG, 329(a) etc. which have excluded judicial review with a laudable objective pointing out that judicial review in certain situations may not be regarded as an indispensable measure to determine the legality or propriety of actions. We may also refer to the recent decision of the apex court in Harnek Singh v. Charanjit Singh JT 2005 (9) 3C 63 wherein it was held that Article 243 of the [Constitution of India](#) mandates that all election disputes must be determined only by way of an election petition. The court further held Article 243O by itself may not per se bar judicial review which is the basic structure of the Constitution but ordinarily such jurisdiction would not be exercised and there may be some cases where a Writ Petition would be entertained. But in the above case the court held that the High Court was not justified in entertaining the petition under Article 226 of the [Constitution of India](#). We are of the view, learned single Judge was not justified in entertaining the Writ Petition under Article 226 of the [Constitution of India](#) in a case where returning officer has rejected the nomination, under Section 55(2) of the Kerala Panchayat Raj Act. 1994.

8. We are also of the view learned single Judge was not justified in referring the dispute to the Election Commission under Section 34(2) of the [Kerala Panchayat Raj Act, 1994](#) to resolve the question as to whether returning officer was right in rejecting the nomination of the petitioner. For easy reference, we may extract Section 34, which 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-

(a) is so disqualified by or under any law, for the time being in force, for the purposes of elections to the Legislative Assembly; or

(b)(i) has been sentenced by a Court or Tribunal to imprisonment for a period not less than three months for an offence involving moral turpitude;

(ii) has been found guilty of an offence of corruption by a competent authority under any law in force;

(iii) has been held personally liable for maladministration by the Ombudsman constituted under Section 271G; or

(c) has been adjudged to be of unsound mind; or

(d) has voluntarily acquired the citizenship of a foreign State; or

(e) has been sentenced by a Criminal Court for any electoral offence punishable under Section 136 or Section 138 has been disqualified from exercising any electoral right on account of corrupt practices in connection with an election, and six years have not elapsed from the date of such sentence or disqualification; or

(f) is an applicant to be adjudicated an insolvent or is an undischarged insolvent; or

(g) is interested in a subsisting contract made with, or any work being done for, the Government or the Panchayat concerned except as a shareholder (other than a director) in a company or except as permitted by rules made under this Act;

Explanation--A person shall not, by reason of his having a share or interest in any newspaper in which an advertisement relating to the affair of the Government or the Panchayat concerned may be inserted, or by reason of his holding a debenture or being otherwise concerned in any loan raised by or on behalf of the Government or the Panchayat, be disqualified under this clause; or

(h) is employed as a paid legal practitioner on behalf of the Government or the Panchayat concerned: or

(i) is already a member whose term of office as such will not expire before his fresh election can take effect or has already been elected a member whose term of office has not yet commenced; or

(j) is in arrears of any kind due by him to the Government or the Panchayat concerned (otherwise than in a fiduciary capacity) upto and inclusive of the previous year in respect of which a bill or notice has been duly served upon him and the time, if any, specified therein for payment has expired; or

xxx xxx xxx(2) If any question arises as to whether a candidate has become subject to any of the disqualifications mentioned in Sub-section (1), the question shall be referred for the decision of the State Election Commission and the decision of the State Election Commission on such question shall be final.

Section 34(1) takes in specific categories of disqualification of candidates. Section 34(1)(j) states that a person shall be disqualified for being a member of the Panchayat at any level if he is in arrears of any kind due by him to the Government or the Panchayat concerned (otherwise than in a fiduciary capacity) upto and inclusive of the previous year in respect of which a bill or notice has been duly served upon him and the time, if any, specified therein for payment has expired.

9. We are of the view Section 34(1)(j) would not apply to the facts of this case. Petitioner does not owe any amount either to the Government or to the Panchayat in respect of any bill or notice duly served upon him and that the time specified therein for payment has expired. Petitioner's nomination paper was rejected by the returning officer not due to the fact that any amount was due either to the Government or to the Panchayat but to a Service Co-operative Bank. Such a disqualification would not fall under Section 34(1)(j) of the Act, hence there is no question of referring the dispute to the Election Commission under Section 34(2) of the Panchayat Raj Act, 1994. Since petitioner has not entailed any disqualification under Section 34(1)(j), learned single Judge was not justified in directing the Election Commission to examine the question as to whether rejection of the nomination under Section 55(2) was proper or not.

10. We may in this connection refer to the decision of the Division Bench of this Court in *Sukumara Kurup v. District Judge* 1998 (2) KLT 548 wherein it was held that the designated court is precluded from probing into the disqualification under Section 34(1) once decision is taken by the Election Commission under Section 34(2). On facts we find that the disqualification would not fall under Section 34(1) and therefore the question of reference to/the Election Commission under Section 34(2) does not arise and hence the principle laid down by the Division Bench is not applicable to the facts of this case.

11. In the above mentioned circumstances, we are inclined to allow the Writ Appeal, set aside the interim order passed by the learned single Judge and dismiss the Writ Petition. On the basis of the interim order passed by this Court, the Election Commission, though otherwise not bound to decide the reference allowed the petitioner to contest the election, but the petitioner has lost in the election. Therefore so far as the petitioner is concerned, the issue is only academic.