

Sandeep M.T. Vs. P.V.Pathrose

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Court : Kerala

Decided On : Dec-08-2014

Judge : Honourable Mr.Justice C.T.Ravikumar

Appellant : Sandeep M.T.

Respondent : P.V.Pathrose

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR MONDAY, THE 8TH DAY OF DECEMBER 2014 17TH AGRAHAYANA, 1936 WP(C).No. 3649 of 2014 (E) ----- PETITIONER(S): ----- SANDEEP M.T. AGED 28 S/O.LATE THANKAPPAN MALAYAN COLONY POOVANCHIRA P.O-680652 BY ADV. SRI.V.PHILIP MATHEWS RESPONDENT(S): ----- 1.P.V.PATHROSE S/O.VARGHESE MEMBER, WARD NO.17, VEENDASSERY WARD PANACHERRY GRAMA PANCHAYATH THRISSUR DISTRICT RESIDING AT PULIMATTU, KANNARA P.O THRISSUR DISTRICT. 2.STATE ELECTION COMMISSIONER THIRUVANANTHAPURAM-695001 R1 BY ADV. SRI.P.VISWANATHAN R1 BY ADV. SRI.K.V.VINOD R1 BY ADV. SRI.SUNIL N.SHENOI R1 BY ADV. SRI.B.DEEPAK R2 BY SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMMUN. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-12-2014, ALONG WITH WPC. 3873/2014 & CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: W.P.(C).3649/14 APPENDIX PETITIONER'S EXHIBITS: P1. COPY

OF OP. NO. 14/2012 FILED BY THE FIRST RESPONDENT. P2. COPY OF OBJECTION FILED BY THE PETITIONER. P3. COPY OF THE APPLICATION FOR AMENDMENT. P4.COPY OF THE OBJECTION TO THE AMENDMENT APPLICATION FOR AMENDMENT. P5. COPY OF

ORDER

DATED 15-1-2014 PASSED BY THE 2D RESPONDENT IN I.A. NO. 130/13 IN OP.NO.14/2012. RESPONDENT(S)' EXHIBITS:NIL -----
//TRUE COPY// P.A.TO JUDGE "C.R." C.T. RAVIKUMAR, J.

===== W.P.(C). Nos.3649, 3873, 3885 3891, 3894, 3897 AND 3913 OF 2014===== Dated this the 8th day of December, 2014

JUDGMENT

The petitioners in the captioned writ petitions are the respondents in the original petitions filed by the common first respondent herein, before the Kerala State Election Commission (for short 'the Commission'). They filed interlocutory applications under Order VI Rule 17 of the Civil Procedure Code (for short the 'Code') in the respective original petitions for amending the objections filed by them. It is the dismissal of those applications that constrained the petitioners to come up with the captioned writ petitions assailing the respective orders passed against them. For the sake of convenience, the number of the writ petitions, the number of the original petitions from which each of these writ petitions arose and the number of the interlocutory applications dismissed by the W.P.(C).3649/14 & conn. 2 Commission are tabulated as hereunder:-

W.P.(C).No.	O.P.No.	I.A.No.
3649/14	14/12	130/13
3873/14	18/12	133/13
3885/14	17/12	132/13
3891/14	19/12	134/13
3894/14	20/12	135/13
3897/14	21/12	136/13
3913/14	16/12	131/13

2. In all these cases, copy of the original petitions filed by the common first respondent before the Commission, copy of the objection filed by the respective petitioners in the respective original petition, copy of the amendment applications, copy of the objection filed by the common first respondent to the amendment application and the copy of the impugned order passed by the Commission are produced respectively as Exts.P1 to P5. In view of the generality of the issues germinated

under exactly similar set of facts and also of the commonness of the point posed for consideration, individual consideration of these writ petitions is uncalled for. Therefore, on consent of parties, they were heard jointly and are being disposed of W.P.(C).3649/14 & conn. 3 by this common judgment.

3. The writ petitioners and the common first respondent are members of Pananchery Grama Panchayat (for short the 'Panchayat') in Thrissur District. They contested the election to the Panchayat in October, 2010 under the banner of the political party Indian National Congress (for short 'INC'). The Panchayat consists of 23 wards. In the election, candidates including the writ petitioners belonging to INC returned from 13 wards and the candidates contested the election under the Left Democratic Front (for short 'LDF') were elected from 9 wards and from the remaining one ward, a candidate from the political party Kerala Congress (M) got elected. The common first respondent was elected as the President of the Panchayat. Later, a motion of no confidence was brought against the common first respondent by the petitioner in W.P.(C).No.3897 of 2014 viz., the respondent in O.P.No.21 of 2012. The allegation raised by the common first respondent against the writ petitioners in the respective original W.P.(C).3649/14 & conn. 4 petitions before the Commission is that defying the whip issued by the President of the District Congress Committee, Thrissur to abstain from 'no confidence motion' held on 8.3.2012, they participated in the 'no confidence motion' and voted in favour of the 'no confidence motion' and consequently he was unseated from the presidentship. The original petitions referred above were filed before the Commission, in the circumstances, seeking disqualification of the writ petitioners on the ground of defection under section 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (for short the 'Act'). The petitioners filed objections in the respective original petitions filed against them denying allegation of defiance of the direction-in-writing/whip. After completion of the pleadings issues were framed and the joint trial of all these cases was conducted. Witnesses from both sides have been examined and it is thereafter that Ext.P3 applications were filed by the petitioners seeking amendment to the objection filed by them in the respective original petition. The common first respondent filed objection to the amendment W.P.(C).3649/14 & conn. 5 applications and after hearing the arguments on both sides, on the applications, they were dismissed by the

Commission as per Ext.P5 (Ext.P5 in all cases) and it is mounting challenge against the said orders that these writ petitions are filed.

4. I have heard the learned counsel for the petitioners, the learned counsel for the common first respondent and the learned standing counsel appearing for the the Commission. Various grounds have been raised by the petitioners to challenge the impugned order rejecting their application for amending their respective objection. The common first respondent filed original petitions against the petitioners under section 4 (1) of the Act and going by section 5 of the Act, such petitions are to be disposed of in accordance with the procedures under the Code and, in such circumstances, the Commission was to dispose of Ext.P3 applications for amendment of the objections filed in the said original petitions, in accordance with the principles governing amendment of pleadings in a civil suit, it is W.P.(C).3649/14 & conn. 6 contended. Nonetheless, according to the petitioners, Ext.P5 orders were passed on such applications for amendment without giving due regard to the principles governing amendment of pleadings under Order VI Rule 17 of the Code. It is their further contention that the Commission went wrong in considering the merits of the proposed amendments while passing Ext.P5 orders. It is also contended that the petitioners sought for amendment to bring in explanations to the effect that they did not act against their own political party and in fact, subsequent to 8.3.2012, the common first respondent defied the whip of the party in the 'no confidence motion' against the then Vice- president of the panchayat and committed defection and for that purpose, to bring on record what happened before and after 'no confidence motion' against the common first respondent held on 8.3.2012. It is further contended that the joint trial of the original petitions is not yet over and in such circumstances, there was absolutely no justification for the Commission to dismiss the applications for amendment. The learned counsel for the petitioners W.P.(C).3649/14 & conn. 7 further contended thus:- In the light of the provisions under Order VI Rule 17 it is permissible to move application for amendment at any stage prior to the pronouncement of the judgment and that it is also permissible in law to bring by way of an amendment, new grounds of defence or to substitute or alter defence or even to take pleas inconsistent with the pleas taken in an earlier written statement/objection. No delay could be attributed on the part of the petitioners in moving such applications for

amendment and that there is no legal impediment to amend written statement/objection to bring in subsequent events. To buttress the said contentions, the learned counsel for the petitioners relied on the decisions of the Hon'ble Apex Court in Harish Chandra Bajpai v. Triloki Singh reported in 1957 KHC348 Sushil Kumar Jain v. Manoj Kumar [AIR 2009 SC2544, Sampath Kumar v. Ayyakannu reported in 2002 KHC1366 Andhra Bank v. ABN Amro Bank [(2007) 6 SCC167, (1974) 1 SCC675 Sultan Saluddin Owasi v. Mohammed Osman Shaweed and others reported in 1980 KHC699 Parsvnath Developers Ltd. W.P.(C).3649/14 & conn. 8 v. Ghanshyam Das Agarwal [AIR2009 Delhi 24] and Samant N.Balakrishna and others v. George Fernandez and others reported in 1969 KHC608 Several other judgments were also cited by the learned counsel for the petitioners on different questions involved in these cases. However, taking into account the nature of the issues involved in these cases and also the fact that a survey of all those decisions is not required to decide those issues, I do not think it necessary to burden this judgment with all those authorities. The learned counsel appearing for the common first respondent contended that in view of the amendment brought in to Order VI Rule 17 of the Code as per the Code of Civil Procedure (Amendment) Act, 1999 (Act 46 of 1999) with effect from 1.7.2002 by introducing a proviso, an application for amendment could not be allowed after the commencement of the trial unless the court came to the conclusion that in spite of due diligence, the party seeking amendment could not have raised the matter before the commencement of trial. It is submitted that after completion of pleadings in these cases, the parties have let in their respective evidence and it is thereafter that the W.P.(C).3649/14 & conn. 9 writ petitioners have filed application for amendment. In fact, now, the argument by the common first respondent (petitioner in the O.Ps) is also over. In such circumstances, according to the learned counsel appearing for the common first respondent, the attempt on the part of the petitioners is nothing but to protract the proceedings and even a consideration in the light of the proviso to Order VI Rule 17 of the Code was not warranted in view of the indisputable fact that the trial was already commenced and none of the applications carried a statement to the effect that in spite of due diligence the party could not have raised the matters now sought to be incorporated, before the commencement of trial. The learned standing counsel

appearing for the Commission contended that the Commission considered the applications in accordance with law and as is evident from the impugned orders, the Commission dismissed the applications on coming to the conclusion that the events occurred subsequent to the date of voting on the 'no confidence motion' are totally irrelevant for deciding the fact in issue and other facts tried to be incorporated are already been taken up in the pleadings. The delay in the matter of W.P.(C).3649/14 & conn. 10 filing applications was also taken into consideration.

5. In the context of the rival contentions, it is only appropriate to have a survey on the various provisions of the Act and the Kerala Panchayat Raj Act, 1994 firstly to consider the question whether scrupulous and strict adherence to the principles governing amendment of pleadings in a civil suit in accordance with the procedures under the Code viz., Order VI Rule 17 is required while considering an application for amendment in a petition filed under section 4(1) of the Act. Subject to its answer the question whether mere failure to follow the same is sufficient to annul an order dismissing a prayer for amendment of pleadings also crops up for consideration. A glance at relevant provisions under the Representation of the People Act will also be profitable in that regard. Before advertng to the said provisions, it is only apposite to note that in the decision in Ramaswamy and others v. Kamaraj Ponnuswamy and another reported in 2010

(1) KLT255, a learned W.P.(C).3649/14 & conn. 11 Judge of this Court held thus:-
"7.The power of the Commission under S.4 of the Act is to decide on the question as to disqualification on the ground of defection. Sub-s.

(2) of S.4 requires that the Commission shall decide such issue after making such enquiry as it deems necessary. That provision also gives statutory finality to the decision of the Commission. The prescription in S.5(1) that the provisions of C.P.C as may be applicable for trial of suit would apply for the disposal of the petition filed under S.4(1) and the enumeration in S.5(2), of the different powers from among those contained in, C.P.C, which the Commission may use for the purpose of the trial of the petition, affirm that the Act does not say that C.P.C will mutatis mutandis apply. The conduct of enquiry 'as it may deem necessary' and the

application of the C.P.C for the disposal gives a fair room to follow the procedural system within the format of C.P.C, however, not being tied down to the strict rules as may be available in C.P.C. (emphasis added)

6. Thus, going by Ramaswamy's decision (*supra*), the Commission could not be tied down to the strict rules of the Code in the matter of disposal of a petition for disqualification of a member on the ground of defection W.P.(C).3649/14 & conn. 12 under section 3(1)(a) of the Act. Now, I will refer to certain provisions, as mentioned hereinbefore, under the Kerala Panchayat Raj Act. Section 87 of the said Act provides that no election shall be called in question except by election petition presented in accordance with the provisions of Chapter X thereunder. Section 88 of the said Act provides the jurisdictional courts to try election petition and going by the same, in the case of a Village Panchayat, it shall be the Munsiff's Court having jurisdiction over the place in which the headquarters of the Panchayat is located and in the case of a Block Panchayat or District Panchayat, it shall be the District Court having jurisdiction over the place in which the headquarters of the Panchayat concerned is located. Section 94 of the said Act prescribes the procedures before such courts while trying such election petitions and it reads thus:- "94.Procedure before the Court--(1) Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act W.P.(C).3649/14 & conn. 13 5 of 1908) to the trial of the suits: Provided that the Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so in frivolous ground or with a view to delay the proceedings. (2)The provisions of the Indian Evidence Act, 1872 (Central Act 1 of 1872), shall, subject to the provisions of this Act, be deemed to apply in all respects to the trial of any election petition." Section 95 of the said Act reads thus:- "95.Documentary evidence--Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered. Now, I will refer to the relevant provisions under section 4 of 'the Act'. Section 4: Decision on question as to disqualification on ground of defection--(1)If any question arises as to whether a

member of a local authority has become subject to disqualification under the provisions of this Act a member of that local authority or the political party concerned or a person authorised by it in this behalf may file a W.P.(C).3649/14 & conn. 14 petition before the State Election Commission for decision. (2)The State Election Commission shall, after making such enquiry as it deems necessary, decide whether such member has become subject to such disqualification or not and its decision thereon shall be final. Section

5. Powers of the State Election Commission--(1) Every petition under sub-section

(1) of section 4 shall be disposed of by the State Election Commission in accordance with the procedure/as applicable while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908). (2)The State Election Commission shall while trying petition under sub-section (1), have the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act 5 of 1908), in respect of the following matters, namely:- (a)summoning and enforcing the attendance of any person and examining him on oath; (b)requiring the discovery and production of any document or other materials that may be produced as evidence; (c)receiving evidence on affidavits; (d)requisitioning any public record or copy thereof from any court or office; W.P.(C).3649/14 & conn. 15 (e)issuing commission for taking evidence from witnesses or documents."

7. A scanning of the provisions thus referred above would reveal that in the case of trial of election petitions filed under section 87 of the Kerala Panchayat Raj Act, despite the fact that such petitions are triable only by the established courts viz., the Munsiff's Court or the District Court having jurisdiction over the place in which the headquarters of the concerned panchayat is located, what is stated under section 94 of the said act, is that election petition shall be tried by the Court, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) to the trial of the suits. Section 95 thereunder would reveal that notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered. What is relevant to note for the purpose of these cases is that even after empowering the established

Courts to try election petitions under W.P.(C).3649/14 & conn. 16 section 87 of the Kerala Panchayat Raj Act, such Courts are not tied down to the strict rules of the Code in the matter of trial of such petitions as can be seen from the aforesaid provisions. A careful perusal of section 4 of the Act would reveal that under the Act, the Commission is to decide only on the question as to disqualification on ground of defection and section 4(2) makes it plain as a pikestaff that the Commission is only to conduct an enquiry as it deems it necessary for deciding whether such a member has become subject to said disqualification or not. Thus, it is evident that in contradistinction to the trial of election petitions under the Representation of the People Act, 1950 or under the Kerala Panchayat Raj Act virtually, what is envisaged under section 4

(2) of the Act is only an enquiry to find whether a member of a local authority has become subject to disqualification or not, on the ground of defection. Section 3(1)(a) of the Act identifies twin grounds that incur disqualification on the ground of defection and they are 'voluntary giving up of membership of a political party' to which the member concerned belongs and 'voting or abstain from voting' contrary to any direction in writing W.P.(C).3649/14 & conn. 17 issued by the political party to which he belongs. The expression 'direction-in-writing' is defined under clause (ivA) of section 2 of the Act to mean a direction in writing, signed with date, issued to a member belonging to a political party or who has the support of the said political party, by the District President or the District Secretary of the said political party for exercising vote favourably or unfavourably or to abstain from voting. Thus, the task under section 4

(2) of the Act is cut out as culling out of circumstances from the established facts to see whether they fall under any of the twin grounds under section 3(1) of the Act to attract disqualification on ground of defection. The legislature in its wisdom thought it fit not to leave that task to established courts but to the Commission. Section 5 deals with the powers of the Commission while dealing with such a petition filed under sub-section

(1) of section 4 and it provides that such a petition shall be disposed of by the Commission in accordance with the procedure as applicable while trying suit under

the Code. The expression 'dispose of ' means put an end to the petitions/appeals by any of the recognised methods. True that the Commission will W.P.(C).3649/14 & conn. 18 have powers of the civil court while trying a suit under the Code in respect of matters enumerated thereunder under section 5(2) of the Act. If an established court while trying an election petition filed under section 87 of the Kerala Panchayat Raj Act is not tied down to the strict rules under the Code how can it be said that while making enquiry on a petition filed under section 4(1) of the Act to decide whether a member has become subject to disqualification or not, on the ground of defection on defined acts the Commission is bound strictly by the procedures under the Code especially in the light of section 4(2) of the Act. It is to be noted that the very purpose of enactment of the Act is to prohibit defection among members of the local authorities in the State of Kerala and to provide for disqualification of the defective members for being members of the local authorities. This must have weighed with the legislators for incorporating sections 4(2) and 5 of the Act. In such circumstances, the very object of the Act could not be permitted to be defeated by compelling scrupulous adherence of the provisions under the Code by the Commission which is not supposed to be judicially trained. W.P.(C).3649/14 & conn. 19

8. I will now consider the contentions of the petitioners based on the decisions referred to hereinbefore. In Harish Chandra Bajpai's case (supra), the Hon'ble Supreme Court considered a contention made with a view to bring out a distinction between power and procedure by contending that granting of amendment being a power and not a matter of procedure it could be claimed only under section 92 of the Code and Representation of People Act, not under section 90

(2) of the said Act. After considering the provisions, the Hon'ble Apex Court held that no antithesis could be found between 'procedure' in section 90(2) and 'powers' under section 92 of the said Act. Section 90(2) provides that subject to the provisions of the said Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Act V of 1908), to the trial of suits. Section 92 provides that the Tribunal shall have the powers, which are vested in a court under the Code of Civil Procedure, 1908 (Act V of

1908), when trying a suit in respect W.P.(C).3649/14 & conn. 20 of matters enumerated thereunder as (a) to (g). After considering the relevant provisions, the Hon'ble Apex Court held thus:- "26.The result of the foregoing discussion may thus be summed up: (1)Under S.83(3) the Tribunal has power to allow particulars in respect of illegal or corrupt practices to be amended, provided the petition itself specifies the grounds or charges, and his power extends to permitting new instances to be given. (2)The Tribunal has power under O.VI.R.17 to order amendment of a petition, but that power cannot be exercised so as to permit new grounds or charges to be raised or to so alter its character as to make it in substance a new petition, if a fresh petition on those allegations with then be barred."

9. With reference to the question regarding the time limit, if any, to exercise the power to permit amendment under Order VI Rule 17 of the Code it is to be noted that the said decision was rendered by the Hon'ble Apex Court prior to the amendment brought in as per the Code of Civil Procedure (Amendment) Act, 1999 (Act 46 of 1999) with effect from 1.7.2002 and therefore, the impact of the proviso has W.P.(C).3649/14 & conn. 21 to be looked into. I will deal with it a little later. In Sampath Kumar's case (supra), what was sought to be introduced by way of amendment was a cause of action which arose during the pendency of the suit. After considering the amendment sought to be made, the Hon'ble Apex Court found that only the nature of relief sought for would be changed in case of grant of the said prayer for amendment and at the same time, the basic structure of the suit would remain unchanged. It was held that pre-trial amendments should normally be more liberally allowed than amendment sought after commencement of 'the trial'. In such circumstances, naturally the question that may crop up consideration is 'when does a trial commence?' The term trial is not defined in any of these enactments. Even then, can it be said by any stretch of imagination that even when examination of the parties and other witnesses were over based on completed pleadings in a case the trial of that particular case has not commenced. Very fairly, the petitioners have not taken any such contention but, their contention is that the trial is not yet over and therefore, going by the principles governing the amendment of pleadings under Order VI W.P.(C).3649/14 & conn. 22 Rule 17 of the Code the applications for amendment of the objections could have been and

should have been allowed. In fact, it is to lend support to the said contention that the petitioners relied on Harish Chandra Bajpai's case (supra) and contended that the term trial would take in all steps commencing from the presentation of the petition till the pronouncement of the judgment. It is in this context that the proviso which was introduced to Rule 17 of Order VI of the Code will assume relevance. It reads thus:- "Provided that no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial." (emphasis added)

10. Going by the proviso introduced with effect from 1.7.2002 to Order VI Rule 17 of the Code, no application for amendment shall be allowed after the trial is commenced unless the court comes to the conclusion that in spite of due diligence the party could not have raised the matter before the commencement of the trial. Thus, the position prior to the amendment granting power to amend pleadings at W.P.(C).3649/14 & conn. 23 any stage of the proceedings before the pronouncement of the judgment is not the law now prevailing in view of the said position, even under Order VI, Rule 17 of the Code. Now, after the commencement of the trial, going by the proviso, the party seeking the trial is under an obligation to satisfy the court that those matters sought to be brought in through amendment could not have raised before the commencement of the trial in spite of due diligence. In fact, going by the decision in Harish Chandra Bajpai's case itself, the petitioner cannot be heard to contend that in this case the 'trial' has not commenced in view of the indisputable and undisputed position obtained in these cases that examination of the parties and the other witnesses were already over and in fact, the common first respondent/the petitioner in those original petitions was also heard by the Commission. It is also to be noted that the very contention of the petitioners is that the provisions under the Code in Order VI Rule 17 are strictly applicable in the proceedings for consideration of petition under section 4(1) of the Act, before the Commission. Thus, going by the very contention of the petitioners, they were bound to satisfy the W.P.(C).3649/14 & conn. 24 Commission that in spite of due diligence they could not have raised the matter before the commencement of the trial, even under Order VI Rule 17 of the Code. Evidently, such a statement has not been made by the petitioners in any of the

applications for amendment. The learned counsel for the petitioners has also relied on decision in Sushil Kumar Jain's case (supra) to canvass the position that the Commission should have taken a liberal attitude in considering the application for amendment of written statement. In the said decision, the Hon'ble Apex Court held that the amendment of a plaint and amendment of written statement under Order VI Rule 17 are not governed by the same principle and the court has to be more liberal in allowing amendment of written statement than that of plaint. It was further held that meaning of the expression 'commencement of trial' as used in the proviso must be understood in the limited sense as having the meaning of the final hearing of the suit, examination of witnesses, filing of documents and addressing of arguments. It was then found by the Hon'ble Apex Court in that case that the documents were not yet filed. In the decision in Parsvnath Developers Ltd's W.P.(C).3649/14 & conn. 25 case (supra) relied on by the petitioners also, the pleadings were not completed at the time when the amendment was sought for. It was held therein that when pleadings have not been completed it could not be said that the trial has commenced. The said decisions relied on by the petitioners cannot, in the circumstances, lend support to the claim and case of the petitioners in the light of the proviso to Order VI Rule 17 of the Code and in the absolute absence of pleadings in the amendment applications that those matters could not have raised before the commencement of the trial in spite of due diligence. The said decision was cited by the petitioners with another purpose as well viz., to canvass the position that it is impermissible to consider the correctness or falsity of the case in the amendment while considering the question whether the application for amendment of pleadings could be allowed or not. True that the said position was made clear by the Hon'ble Apex Court in Rajesh Kumar Aggarwal and others v. K.K.Modi and others [2006

(4) SCC385 that while considering an application for amendment, the Court should not go into the correctness or falsity of the case in the amendment and also should not W.P.(C).3649/14 & conn. 26 record the finding of the merits of the amendment sought to be incorporated. The said decision was rendered relying on the decision in Sampath Kumar's case (supra). Thus, evidently the settled position is that the merits of amendments sought to be incorporated are not to be adjudged at the stage of considering the question whether that application could be allowed or not.

The impugned Ext.P5 orders would indubitably reveal that the Commission had not gone into the question of correctness or falsity of the amendments sought to be incorporated and the Commission had only considered the question as to whether those matters are essential for the decision on the real issue involved in the original petitions. A careful scrutiny of the aforesaid decisions would also reveal that consideration of amendments for the purpose of ascertaining whether they are relevant for the purpose of deciding the real issues involved in a case would not go against the dictum laid down by the Hon'ble Apex Court in those cases and in fact, such consideration is very much relevant and essential for deciding an application for amendment of pleadings. It cannot be said that applications for amendment have to be considered invariably in W.P.(C).3649/14 & conn. 27 favour of the applicants disregarding the other relevant aspects and principles governing consideration of such applications. This position is very much evident from the proviso to Order VI Rule 17 of the Code itself. Even in a civil suit where procedures are strictly regulated by the Code, in the light of the proviso, the applicant concerned is bound to satisfy the court that the matters sought to be incorporated could not have been raised in spite of due diligence. When that is the law even in respect of matters regulated by the procedures under the Code, in original petitions filed under section 4

(1) of the Act how can the writ petitioners, who did not state in their applications for amendment (Ext.P3) that matters sought to be incorporated as stated in paragraphs 17(A) to 17(D) could not have been raised before the commencement of trial in spite of due diligence, claim for a favourable consideration of such applications. Ext.P3 is the application for amendment of objection filed by each of the petitioners in the concerned original petitions and those applications would go to show that all the petitioners have sought for incorporating paragraphs 17(A) to 17(D) in their respective objection W.P.(C).3649/14 & conn. 28 and Ext.P5 order passed thereon would reveal that they were all considered by the Commission in detail in paragraphs 7 and 8 thereunder. Paragraph 17(A) was evidently sought to be incorporated to show that the common first respondent has committed defection subsequent to 8.3.2012. A conjoint reading of sections 3(1)(a) and 4

(1) would reveal that in case of such a grievance and contention, the remedy of a member having locus standi to raise a dispute in that regard lies before the Election Commission by filing a petition under section 4(1) of the Act. At any rate, such subsequent events cannot have any relevance in the matter of consideration of petitions filed by the common first respondent seeking declaration that the writ petitioners herein have incurred disqualification on the ground of defection. No doubt, such a declaration against the common first respondent could not have been sought for by the writ petitioners and granted by the Election Commission, in any of the original petitions referred hereinbefore filed by the common first respondent against the writ petitioners. Such aspects were rightly considered by the Commission in paragraph 7 of the impugned orders to hold that they W.P.(C).3649/14 & conn. 29 are not matters which are essential for the consideration of the issue involved in the aforementioned original petitions. The facts sought to be incorporated by way of amendment as paragraph 17(B) in the objection also relate to subsequent events and the Commission found that they are also totally irrelevant for the consideration of the issues involved in any of the original petitions. True that by way of an amendment, subsequent events could also be brought in, as a general rule. However, if such subsequent events sought to be incorporated through amendment are not at all essential for the decision of the issues involved in the cases under consideration the Election Commission would be justified in rejecting a prayer for amendment in relation to the same. Having gone through paragraph 17(B) in Ext.P3, I do not find any reason to hold that the Commission has committed a flaw or illegality in arriving at such a conclusion. Through paragraph 17(C), the petitioners have sought for incorporating facts that a joint meeting of the parliamentary party and the political party was convened in the presence of the DPCC President and KPCC General Secretary Sri.N.Venugopal on 7.3.2012 W.P.(C).3649/14 & conn. 30 and that the common first respondent was directed to resign from the post of President and he had also agreed to resign before no confidence motion was moved. It is further stated therein that despite such an agreement, the common first respondent had not resigned and therefore, no confidence motion was moved as decided by the Congress party and therefore, evidently the petitioners have committed such actions, as alleged against them, with the consent of their political party. The

Commission found that in the main objection itself filed by each of the writ petitioners in the original petition such facts were already mentioned. In fact, it has been stated therein that the DCC President directed the common first respondent to resign the presidency and that no confidence motion was moved against the common first respondent, owing to his failure to resign, in order to protect the integrity and honour of INC and that it was moved with the consent of the said political party. The Commission also found that in the original objection itself all the writ petitioners herein have further stated that the 'no confidence motion' was moved in such circumstances, as decided by the party. The Commission, therefore, W.P.(C).3649/14 & conn. 31 arrived at the conclusion that sufficient materials have already been pleaded by the writ petitioners in their original objections and that evidences were also adduced by both parties based on such pleadings already raised and, as such, even without incorporating the facts noted in paragraph 17(C) a proper decision could be arrived at on the real issue to be decided in the original petitions. As rightly held by the Commission, a perusal of paragraph 17(D) in Ext.P3 application for amendment would reveal that the facts sought to be incorporated thereunder are only statements of general nature and Ext.P2 would reveal that they are already available in the main objection. It was after considering all such aspects that the Commission found that those facts sought to be incorporated through amendment by the petitioners are either not essential for the purpose of deciding the real issue involved in the original petitions or were already pleaded in the original objections. Such a consideration cannot be equated as a consideration regarding the correctness or falsity of the facts sought to be incorporated through amendment applications and in fact, they would go to show that such a consideration was undertaken solely to W.P.(C).3649/14 & conn. 32 ascertain whether the facts sought to be incorporated are essential for the purpose of deciding the real issues involved in the original petitions. In such circumstances, I am of the considered view that the consideration undertaken by the Commission, in the aforesaid manner, as per Ext.P5 impugned orders would not in any way violate the dictum laid down by the Hon'ble Apex Court.

11. In the decision in Andhra Bank's case (supra), the Hon'ble Apex Court held that delay in filing an application for amendment of written statement is no ground for not allowing the prayer for amendment of the written statement. I am of the

considered view that the said settled position will not and cannot stand in the way of consideration of the question whether the application for amendment was filed for delaying the proceedings or not. Certainly, they are different and distinct. True that in the impugned Ext.P5 orders, the Commission has stated that the application for amendment has been filed belatedly. But, a careful scrutiny of the order would reveal that the ultimate finding of the Commission is that those W.P.(C).3649/14 & conn. 33 applications were filed without any bona fides only to protract the further conduct of the cases. In this context it is to be seen that going by Article 243-E of the Constitution of India the normal duration of panchayat would be five years from the date appointed for its first meeting and in these cases the expiry of the said period of duration would occur in the year 2015. I have already adverted to the facts sought to be incorporated as paragraph 17(A) to (D) through Ext.P3 applications and found that the Commission could not be said to have committed a flaw or mistake in arriving at the conclusion that they are either not essential for the purpose of deciding the real issues involved in the original petitions or facts which were already pleaded in the original objection itself. In such circumstances, the Commission is justified in arriving at the conclusion that the applications were filed with a view to delay the proceedings. The learned counsel for the common first respondent submitted that in that context it would only be appropriate to look into the interlocutory application filed by each of the petitioners under Order VI Rule 17 of the Code and the affidavits accompanying such applications. The interlocutory W.P.(C).3649/14 & conn. 34 applications carry the date 25.6.2013 and at the same time, the affidavits accompany them carry the date 25.10.2013. This submission was made to suggest that the applications were prepared earlier but filed belatedly with a purpose to delay the proceedings. In view of the findings in respect of the contentions of the petitioners made hereinbefore, I do not think it necessary to go into the said contention any further.

12. To sum up the discussions as aforesaid, I am of the view that going by the provisions in the Act, referred hereinbefore, the Commission cannot be tied down to the strict rules of the Code in the matter of consideration of petitions filed under section 4(1) of the Act and the interlocutory applications, if any, filed therein. At the same time, in a case where even after the commencement of the trial, if an interlocutory application for amendment has been filed, the Commission will be

having power to consider the same in view of the provisions under Order VI Rule 17 if it is satisfied that the matters W.P.(C).3649/14 & conn. 35 sought for incorporation could not have been raised before the commencement of the trial in spite of due diligence or if such facts are essential for the purpose of deciding the real issues involved in the petitions filed before it. However, if the Commission on careful scrutiny of such application arrives at a conclusion that such matters sought to be incorporated are not essential for deciding the issues involved in the petition filed under section 4(1) of the Act; but such matters were sought to be incorporated solely with a view to delay the proceedings in the petition, it would be within the power of the Commission to reject such applications. For all these reasons, I do not find any reason to interfere with the impugned orders in the above writ petitions. Accordingly, these writ petitions are liable to fail. At the same time, from the submissions made by both the parties, it is evident that after taking the evidence, the Commission heard only the arguments of the common first respondent who is the petitioner in all the original petitions pending before it. In such circumstances, the Commission shall afford an opportunity to advance the arguments to W.P.(C).3649/14 & conn. 36 the writ petitioners before finally deciding the original petitions from which the captioned writ petitions arose. Subject to the above observations, these writ petitions are dismissed. Sd/- C.T. RAVIKUMAR (JUDGE) spc/ W.P.(C).3649/14 & conn. 37 W.P.(C).3649/14 & conn. 38 W.P.(C).3649/14 & conn. 39 C.T. RAVIKUMAR, J.

JUDGMENT

September,2010 W.P.(C).3649/14 & conn. 40

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