

Vinodkumar Vs. Faizal

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Court : Kerala

Decided On : Nov-26-2009

Reported in : 2010(1)KLT35

Judge : Thottathil B. Radhakrishnan, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 29, 34(1), 35, 35(1), 36(1), 36(2) and 159

Appeal No. : W.P.(C) No. 11494 of 2008

Appellant : Vinodkumar

Respondent : Faizal

Advocate for Def. : K. Ramakumar, Sr. Adv.,; T. Ramprasad Unni,; M.H. Hanis

Advocate for Pet/Ap. : P.V. Kunhikrishnan, Adv.

Judgement :

Thottathil B. Radhakrishnan, J.

1. The petitioner is a voter in Ward No. 14 of Koduvally Grama Panchayat. A petition filed by him before the Kerala State Election Commission seeking an order that the first respondent is disqualified stands allowed as per Ext.P1 order. Today, vide separate judgment, that order has been confirmed. Petitioner seeks a

direction to the Commission that in view of Ext.P1, the Commission ought to have further declared that the first respondent is disqualified and is not qualified to be chosen in the Panchayat at any level in view of Sections 29(f) and 34(1)(n) of the [Kerala Panchayat Raj Act, 1994](#).

2. Section 29(f) of the Act provides that a person shall not be qualified for chosen to fill a seat in a Panchayat at any level unless he has not been disqualified under any other provision of the Act. The said provision gets automatically attracted when a member is disqualified in terms of Section 35(1) of the Act. The incurring of the disqualification under Section 35(1)(q) is automatic because, Section 35(1) opens by saying that a member shall cease to hold office as such, if he has failed to file declaration of his assets within the time limit prescribed under Section 159. Section 34(1)(n) states that a person shall be disqualified for being chosen as and for being a member of a Panchayat at any level, if he is disqualified under any other provision of the Act.

3. Section 36(1) provides for filing a petition before the State Election Commission for decision on a question as to whether a member has become disqualified under Section 35 except Clause (n) thereof. The provision in Sub-section (2) of Section 36 empowering the Commission to pass an interim order as to whether a member may continue in office or not till a decision is taken on the petition filed under Section 36(1), abundantly enforces the conclusion that the effect of disqualification under Section 35(1)(q) is automatic. This is why Section 35 or 36 does not, in any manner, make the disqualification conditional on any declaration or direction by the Commission.

For the aforesaid reasons, the consideration of Ext.P2 petition by the Commission is unnecessary because, the law takes its course and the statutory conclusions referable to Section 29(f) and 34(1)(n) are automatic and run along with the incurring of the disqualification under Section 35(1)(q). The first respondent would, therefore, stand disqualified in terms of Sections 29(f) and 34(1)(n) also. It is so declared.

The Writ Petition is ordered accordingly.

