

Mohammedkutty Vs. Sadanandan

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Court : Kerala

Decided On : Jan-08-2010

Reported in : 2010(1)KLT1018

Judge : P.R. Raman and; P.S. Gopinathan, JJ.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 30, 30(2), 35, 35(1), 36, 36(2), 84, 84(2), 98, 100, 101, 102, 107(1), 107(2), 149, 149(3), 150 and 159; Representation of the People Act - Sections 147, 149, 150, 151 and 151A

Appeal No. : W.A. No. 12 of 2010

Appellant : Mohammedkutty

Respondent : Sadanandan

Advocate for Def. : Murali Purushothaman and; A. Ranjith Narayanan, Adv.

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

Disposition : Appeal dismissed

Judgement :

P.R. Raman, J.

1. The appellant contested the bye-election to the Koduvally Grama Panchayat from Ward No. II on 23.1.2007. The first respondent was also a contesting

candidate from the same Ward. The result of the election was announced on 24.1.2007 and the first respondent was declared to have been elected by a majority of 8 votes. The appellant thereafter filed the Election Petition, Election (O.P.) No. 18 of 2007 before the Munsiff Court-II, Kozhikode, under the relevant provisions of the [Kerala Panchayat Raj Act, 1994](#) (hereinafter referred to as 'the Act' for short), to set aside the election of the first respondent and to declare the appellant as the elected Member of the Panchayat. The main grounds urged in the Election Petition were double voting, voting by impersonation etc. According to the appellant, 2 he has got every chance of winning the above Election Petition, and it is still pending.

2. While so, one Mr. Muhammed, a voter in the Koduvally Grama Panchayat, has filed a petition before the State Election Commissioner to declare that the first respondent is disqualified under Section 35(q) of the Act, on the ground that he has not declared his assets within the prescribed time limit, as contemplated therein. The Election Commission eventually declared that the first respondent is disqualified with effect from 27.3.2008.

3. Though the first respondent challenged the said decision of the Election Commission before this Court by filing Writ Petition, W.P. (C) No. 14596 of 2008, the same was dismissed on 26.11.2009. In the meanwhile, pursuant to the decision of the Election Commission and apprehending that a notification for bye-election to be conducted for the vacancy which arose as a result of the declaration made by the Election Commission may be issued and inter alia seeking for a declaration that the second respondent, Election Commission, cannot order bye-election based on the disqualification of the first respondent vide Ext.P2 order, at a time when the very election of the first respondent is under challenge before the Election Tribunal, the Writ Petition was filed. He also sought to issue a writ of mandamus, order or direction, directing the second respondent not to proceed to conduct any election in Ward No. II of Koduvally Grama Panchayat, until the disposal of the Election Petition O.P. 18 of 2007 pending before the Munsiff Court-II, Kozhikode.

4. The learned Single Judge, after referring to the relevant provisions contained in the Act, more particularly Sections 101 and 107(1) of the Act, took the view that an order under Section 100 and 101 will take effect as soon as it is pronounced by the Court and Sub-section (2) of Section 107 saves all proceedings in which the member whose election is declared as invalid had participated, from invalidation on that ground. Thus, the order takes effect as void as soon as it is pronounced. The continued trial of the Election Petition has since been disqualified, and therefore, cannot be insisted upon since the elected member, even before the Election Petition is decided, has ceased to be a member by the operation of Section 35(1) of the Act and the decision declaring the election of the returned candidate to be void can take effect only from the date on which the court orders so. The relief sought for was accordingly declined and hence this appeal.

5. We have heard the learned Counsel, Sri. P.V. Kunhikrishnan, appearing for the appellant, as also the learned Standing Counsel, Sri. Murali Purushothaman, appearing for the Kerala State Election Commission.

6. As per Section 35(q) of the Act, a member shall cease to hold office, if he has failed to file declaration of his assets within the time limit prescribed under Section 159. This is subject to the provisions of Section 36 or Section 102, as the case may be. As per Section 36 of the Act, whenever a question arises as to whether a member has become disqualified under Section 30 or Section 35, except Clause (n) thereof, after having been elected as a member, any member of the Panchayat concerned or any other person entitled to vote at the election in which the member was elected, has a right to file a petition before the State Election Commission for decision, and the State Election Commission has to take a decision thereon as empowered under Sub-section (2) of Section 30, thereof.

7. The State Election Commission, has therefore, in exercise of its power under Sub-section (2) of Section 36, disqualified the first respondent under Section 35(q) of the Act, which for the present has become final. As a result, a casual vacancy has arisen and by virtue of Section 149(3) of the Act, such a casual vacancy shall be filled up by the State Election Commission within six months after the 2 occurrence of the vacancy through a bye-election. Sub-section (3) of Section 149

of Act reads thus:

149. Term of office of members:

(1) xxxxxx

(2) xxxxxx

(3) A casual vacancy in the office of a member of Panchayat at any level shall be filled by the State Election Commission, within (six months) after the occurrence of the vacancy, through a bye-election.

8. Now coming back to Section 84 of the Act, when a Panchayat at any level is dissolved before its duration specified in Article 243E or when the seat of a member elected to a Panchayat becomes vacant or is declared vacant or his election to the Panchayat is declared void, the State Election Commission shall, subject to the provisions of Sub-section (2) by a notification in the Gazette, call upon the constituencies in such Panchayat or the constituency concerned, as the case may be, to elect members or member for the purpose of constituting the Panchayat or filling the vacancy, as the case may be, before such date, as is specified in the notification and the provisions in the Act and the Rules, shall apply as far as may be, in such election. Sub-section (2) of Section 84 of the Act is however not relevant for the purpose of our case.

9. Thus, by a combined reading of Section 84 read with Section 149 of the Act, the Election Commission is bound to fill up the casual vacancy within six months after the occurrence of the vacancy through a bye-election, in the manner as laid down in Section 84.

10. We may, in this context, refer to a similar provision as is corresponding to Section 149(3) of the Act, in the Representation of the People Act, viz., Section 151A, wherein also, a bye-election for filling any vacancy shall be held within a period of six months from the date of the occurrence of the vacancy, notwithstanding anything contained in Sections 147, 149, 150 and 151 of the Representation of the People Act. However, Section 151A of the said Act was an insertion made by Act 21 of 1996 with effect from 1.8.1996. Therefore, by virtue of

the disqualification earned by the first respondent as declared by the second respondent, by its order, Ext.P2, and when a casual vacancy has arisen, it has to be filled up within a period of six months from the date of occurrence of the vacancy, viz., 27.3.2008, the date of the order.

11. Therefore, if we grant the prayer as sought for by the appellant, this Court will be injuncting the Election Commission from exercising its power as mandated by Section 149(3) of the Act. According to the appellant, the Election Petition filed by him and pending consideration, if ultimately allowed, will have two consequences, viz., that the election of the first respondent will be declared void and secondly, in the very same election, the appellant can be declared elected, he being the next candidate who secured maximum votes. It is contended by the learned Standing Counsel for the Election Commission that at the conclusion of the trial of the Election Petition, only when the Court makes an Order declaring the election of the returned candidate to be void, the question of declaring the appellant or any other candidate to have been duly elected could be made. He places reliance on Section 100(c) of the Act. According to him, since the first respondent's election has already become void, the first prayer in the Election Petition has become infructuous. We are unable to agree with this contention since the Election Commission has only disqualified the first respondent under Section 35(q) of the Act, read with Section 159, so that disqualification is earned for the non-compliance of Section 159, after he became a member. Therefore, when a member is disqualified under the aforesaid provision, he is presumed to be validly elected. Whereas, in the Election Petition filed by the appellant herein, the very election of the first respondent is under challenge. If the election of the first respondent is declared void, then he cannot be deemed to have been validly elected. Therefore, as far as the prayer made in the Election Petition is concerned, the disqualification attached to a candidate, after he became a member cannot strictly become infructuous. But then, according to the appellant, in case, he ultimately succeeds in the Election Petition and if he is declared elected and if by appointment, the bye-election is conducted, there will be two candidates from the same ward, which could be prevented, if only the bye-election is stayed until final decision is rendered in the Election Petition.

12. The learned Counsel for the appellant placed reliance on the decision reported in *D. Sanjeevayya v. Election Tribunal, Andhra Pradesh and Ors.* AIR 1967 SC 1211, wherein the Apex Court in Para.4 held as follows:

(4) We are unable to accept the argument of the appellant as correct. In our opinion, the provisions of Section 150 of the Act must be interpreted in the context of Sections 84 and 98(c) and other relevant provisions of Part III of the same Act. If the interpretation contended for by the appellant is accepted as correct the vacancy must be filled by a bye-election as soon as a member resigns his seat notwithstanding the pendency of an Election Petition challenging his election. If the candidate who filed the Election Petition eventually gets a declaration that the election of the member is void and that he himself had been duly elected there will be two candidates representing the constituency at the same time, one of them declared to be duly elected at the General Election and the other declared to have been elected at the bye-election and an impossible situation would arise. It cannot be supposed that Parliament contemplated such a situation while enacting Section 150 of the Act. Parliament could not have intended that the provisions of Part VI of the Act pertaining to Election Petitions, should stand abrogated as soon as a member resigns his seat in the Legislature. It is a well-settled rule of construction that the provisions of a statute should be so read as to harmonise with one another and the provisions of one section cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. The principle stated in *Crawford's Statutory Construction* at p.260 is as follows:

Hence, the Court should, when it seeks the legislative intent, construe all of the constituent parts of the statute together, and seek to ascertain the legislative intention from the whole Act, considering every provision thereof in the light of the general purpose and object of the Act itself, and endeavouring to make every part effective, harmonious and sensible. This means, of course, that the Court should attempt to avoid absurd consequences in any part of the statute and refuse to regard any word, phrase, Clause or sentence superfluous, unless such a result is clearly unavoidable.

13. But as rightly pointed out by the learned Standing Counsel appearing for the Election Commission, it was subsequent to the said decision and much later that Section 151A of the Representation of the People Act was inserted, i.e., with effect from 1.8.1996, and therefore, the Apex Court had no occasion to consider the effect of the said provision in the Representation of People Act, as per which, the election shall be held within a period six months, notwithstanding anything contained in Sections 147, 149, 150 and 151 of the said Act. Therefore, by a clear provision inserted subsequently, if the Legislature has intended that a bye-election shall be conducted within the prescribed time, merely because an unpleasant situation may arise, in case the Election Petition is ultimately allowed, cannot injunct the Election Commission from proceeding to conduct the bye-election, when it is mandated by the provisions and thereby bound to exercise its duty and to conduct the bye-election within the said framework, unless there is any other provision which empowers the authority or the Act to relax time limit as prescribed the reunder.

14. As we have already noticed, Section 149(3) of the Act corresponds to Section 151A of the Representation of the People Act, and therefore, the decision rendered by the Apex Court as noticed supra, in the light of the subsequent provisions cannot support the contention of the appellant that for the sake of preventing an unpleasant situation, that too, if the Election Petition is ultimately decided, itself is not a ground on which the Court could prevent an authority from conducting the Election contrary to the mandatory provisions contained under Section 149(3) of the Act. Therefore, the conclusion reached by the learned Single Judge, though for our own reasons, as stated above, in declining to grant the relief as sought for, does not call for any interference. The finding of the learned Single Judge, however, on the maintainability of the Election Petition because of the Order passed by the Election Commission disqualifying the first respondent is vacated and left open.

15. The learned Counsel appearing for the appellant though contended that in case the Election Petition is eventually allowed and the prayers are granted, as sought for, it may even make the bye-election invalid, since that is not a matter to be examined in this Writ Appeal, we are afraid, we cannot comment upon the said

contention.

In the result, the appeal fails, dismissed.

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