
(1955) 01 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 193 of 1954

A. Kunjan Nadar	Vs	APPELLANT
The State		RESPONDENT

Date of Decision : 07-01-1955

Acts Referred:

Constitution of India, 1950 — Article 190(3), 190(3)(a), 190(4), 191, 191(1)
Representation of the People Act, 1951 — Section 7, 7(b)

Citation : AIR 1955 Ker 154

Hon'ble Judges : Koshi, C.J;Menon, J

Bench : Division Bench

Advocate : T.N. Subramonia Iyer and S. Subramonia Iyer, for the Appellant;
Mathew Muricken), for the Respondent

Judgement

Menon, J.—This is a petition by a member of the Travancore-Cochin Legislative Assembly who was arrested on 12-8-1954 in connection with P.E. No. 9 of 1954 of the Court of the stationary First Class Magistrate, Kuzhithurai, and against whom that case and P.E. No. 10 of 1954 are pending at present. Paragraph 5 of the petitioner's affidavit states:

An application for the issue of a writ of Habeas Corpus to this Honourable Court on my behalf and my application for bail have all been rejected by all the Courts in this State. The trials in the cases have not yet commenced and I am continued in custody.

and the prayer in the petition is:

That a writ of mandamus, privilege or other appropriate directions and orders should issue directing the respondents to enable the petitioner to attend the session of the Legislative Assembly of the Travancore Cochin State summoned to commence its sittings on 25-1-1955 and to remove the obstructions in that behalf.

2. According to the learned counsel for the petitioner his client has a paramount

right to attend the proceedings of the Legislative Assembly and his detention though admittedly legal and under due process of law should be subordinated to that right and appropriate writs or directions to effectuate that right by permitting his client to take part in the proceedings of the Legislative Assembly commencing on 25-1-1955 should be issued by us. We are unaware of the existence of any such right and our attention has not been drawn to any constitutional or statutory provision in that behalf.

3. Article 194 deals with the powers, privileges and immunities of the Legislatures and their members in the Part A States and Art. 238 makes those powers, privileges and immunities available to the Legislatures and their members in the Part B States as well. Clause (3) of Art. 194 deals with the privileges and immunities available to the petitioner in a matter like this and they are, according to that clause "such as may from time to time be defined by the Legislature by law" and, until so defined, those of a member of the House of Commons of the Parliament of the United Kingdom at the commencement of the Constitution.

4. As stated before there is no statutory provision granting the privilege or immunity invoked by the petitioner and it is clear from May's Parliamentary Practice, 15th Edn. 1950), p. 78 that "the privilege of freedom from arrest is not claimed in respect of criminal offences or statutory detention" and that the said freedom "is limited to Civil causes, and has not been allowed to interfere with the administration of criminal justice or emergency legislation."

5. It was conceded by the learned counsel for the petitioner that the claim made by his client is unavailable to a member of the House of Commons in the United Kingdom and that the petition is based on the assumption that a wider privilege exists in this country by virtue of Art. 190(3)(a) and Art. 191(1)(e) of the Constitution and S. 7(b), Representation of the People Act, 1951.

6. Article 190(3) provides that:

If a member of a House of the Legislature of a State-

(a) becomes subject to any of the disqualifications mentioned in Cl. (1) of Art. 191;

his seat shall thereupon become vacant.

Article 191(1):

A person shall be disqualified for being chosen as and for being a member of the Legislative Assembly or Legislative Council of a State-

(e) if he is so disqualified by or under any law made by Parliament;

and under S. 7, Representation of the People Act, 1951:

A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative Assembly or Legislative Council of

a State-

(b) if, whether before or after the commencement of the Constitution, he has been convicted by a court in India of any offence and sentenced to transportation or to imprisonment for not less than two years, unless a period of five years, or such less period as the Election Commission may allow in any particular case, has elapsed since his release.

It is nobody's case that the petitioner's seat has become vacant or that the disqualification specified in sub-s. 7(b), Representation of the People Act, or for the matter of that in any of the sub-sections of S. 7, has disqualified the petitioner for being chosen as, or for being a member of the Travancore-Cochin Legislative Assembly.

7. The argument based on the provisions extracted above is devoid of relevance or substance and has to be rejected. The grounds on which a disqualification may be incurred and a seat vacated have nothing to do with what we are called upon to decide in this case; that is the existence or otherwise of the privilege or immunity claimed by the petitioner and on which his prayer is based.

8. The next position taken up was on the basis of Art. 190(4) which provides that:

If for a period of sixty days a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant.

The argument was that the petitioner stands in real danger of his seat being declared vacant by the House if he is not allowed to attend the next session of the Legislative Assembly, that by his non-attendance he will also be losing the allowance of Rs. 10/- per day and that his valuable rights should be sale-guarded by an appropriate writ or direction from this court. So long as the detention is legal-and in this case there is no dispute about its legality-the danger of the petitioner losing his seat or the certainty of his losing his daily allowance cannot possibly form the foundation for relief against the normal or probable consequences of that detention.

9. At the conclusion of the argument the learned counsel for the petitioner stated that even if no privilege exists which will entitle his client to a writ or direction as prayed for and the fact that there is a clear and present danger to his valuable rights is also not sufficient to sustain such a writ, or direction, we should at least amend the order of this Court denying bail and permit the petitioner to attend the next session of the Legislative Assembly under Police escort and such other conations as are deemed fit in the circumstances of the case. Such a prayer has to be sought within the framework of the Code of Criminal Procedure, 1898, and cannot possibly be adjudged in a petition like this.

10. It follows that this petition has to be dismissed and we decide accordingly; but in the circumstances of the case without any order as to costs.

11. A.S. Subramaniam Chettiar Vs. M.K. Srinivasa Ayyar, ; - In Re: K. Anandan Nambiar, and - Ansumali Majumdar and Others Vs. The State of West Bengal and Another, were cited at the Bar. There is nothing in those cases which in any way militates against the view we have adopted and are hence not discussed in this judgment.