
(2010) 10 KL CK 0146

In the High Court Of Kerala

Case No : W.A. No's. 1683 and 1687 of 2010

Indian National Anganwadi Employees Fed.

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 01-10-2010

Acts Referred:

Companies Act, 1956 — Section 617

Kerala Panchayat Raj Act, 1994 — Section 30, 30(1)

Kerala Panchayat Raj Ordinance, 2010 — Section 5

Citation : (2010) 10 KL CK 0146

Hon'ble Judges : Jasti Chelameswar, C.J.; P.R. Ramachandra Menon, J

Bench : Division Bench

Advocate : T.C. Govinda Swamy, for the Appellant; Murali Purushothaman, SC, K.S.E. Comm., for the Respondent

Final Decision : Dismissed

Judgement

J. Chelameswar, C.J.—These two writ Appeals are filed aggrieved of a common interim order dated 29.09.2010 passed in W.P.(C) Nos. 29708 and 29782 of 2010. By the impugned order, the learned Single Judge declined to pass an interim order as prayed for in the Writ Petitions.

2. The writ petitioners who are the appellants herein claimed to be Anganwadi workers engaged under a Scheme formulated by the Govt. of India viz., the Integrated Child Development Service. Apprehending that Anganwadi workers would be debarred from contesting to the ensuing Panchayat election in view of the proposed amendment to Section 30 of the Kerala Panchayat Raj Act, 1994, the present Writ Petitions came to be filed.

3. Section 30 of the Kerala Panchayat Raj Act reads as follows:

30. Disqualification of officers and employees of Government, local authorities etc: (1) No officer or employee in the service of the State or Central Government or of a local authority or a corporation controlled by the State or Central

Government or of a local authority or any company in which the State or Central Government or a local authority (not less than fifty one percent share) or of a Statutory Board or of any University in the State shall be qualified for election or for holding office as a member of a Panchayat at any level. [Explanation: For the purpose of this section, company means a Government company as defined in Section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a co-operative society registered or deemed to be registered under the Kerala Co-operative societies Act, 1969 (21 of 1969).

(2) Any officer or employee referred to in Sub-section (1) who has been dismissed for corruption or disloyalty shall be disqualified for a period of five years from the date of such dismissal for election or for holding office as a member of a Panchayat at any level.

4. It appears that some of the Anganwadi workers had earlier contested in the elections to the various Panchayats covered by Kerala Panchayat Raj Act and were holding the office of the various Panchayats. Recently, the State of Kerala had issued an Ordinance No. 34 of 2010 seeking to amend Kerala Panchayat Raj Act. By Clause 5 of the said Ordinance, it is proposed to amend Section 30 of the Kerala Panchayat Raj Act, 1994, by adding another explanation. Section 5 of the Ordinance reads as follows:

5. Amendment of Section 30: In Sub-section (1) of Section 30 of the principal Act, the existing Explanation shall be numbered as "Explanation 1" and after Explanation 1, so numbered, the following Explanation shall be inserted namely:

Explanation 2: For the purpose of this section, the part-time employees and those receive honorarium shall be deemed to be employees.

5. It can be seen from the proposed Explanation that the part-time employees and those who receive "honorarium" would be deemed to be employees of the State for the purpose of Section 30. It may be worthwhile to mention herein that the question whether the Anganwadi Workers are holding civil posts either under the Union of India or under the State was considered by the Honourable Supreme Court in the decision in State of Karnataka and Ors. v. Ameerbai and Ors. 2007 (11) SCC 681 and it was held that Anganwadi workers are not holding a civil post. Apart from the Anganwadi workers, there are various other categories of persons who are receiving payment from the State for the service rendered by them, though nomenclature of payment differs in respect of such categories. In the case of Anganwadi workers, the payment given to them is described as "honorarium" while in the case of Accredited Social Health Activists (ASHA), it is described as "incentive" for the service rendered by them.

6. The petitioners had sought for an interim order restraining the 1st respondent State and its officers from enforcing or giving effect to the provisions of Ext.P3 ordinance to the extent it deals with the amendment to Section 30 of the Kerala Panchayat Raj Act, 1994. But, by the order impugned in these appeals, the learned single Judge declined to grant the interim relief prayed for in the writ

petitions and hence these appeals.

7. The petitioners in support of the apprehension expressed by them, relied on the communication of the Addl. Secretary to the Govt. of Kerala, Local Self Government (EM) Department dated 14.09.2010 issued to the State Election Commission, Thiruvananthapuram, the relevant portion of which is extracted below:

Attention is invited to the reference above. As per the 31st Ordinance of the year 2010 (copy enclosed) amendment has been made effect to Section 30 of the Kerala Panchayat Raj Act wherein the "part time employees and those in receipt of Honorarium are explained to be considered as employees for the purpose of Section 30. As the Anganwadi employees receive Honorarium, as per the condition stipulated in Section 30 of the Kerala Panchayat Raj Act, it is informed that Anganwadi employees are disqualified from contesting in the Election to the Local Self Government Departments.

8. The question, whether the amendment proposed to be brought out, which is impugned in these proceedings is constitutionally permissible or not is a matter to be considered at the time of hearing of the Writ petitions. The learned Counsel for the petitioners contended that the State is adopting a discriminatory attitude in the application of law in so far as Anganwadi workers are included in the prohibitory category, whereas the other category of persons who are identically situated (accordingly to the petitioners) are excluded from the prohibitory category (such as ASHA). Whether (1) the "Anganwadi workers" and other categories like "ASHA" workers are identical in all respects; (2) opinion of the State as to the inclusion or exclusion of any one of the categories of these persons within the purview of amended provision is correct and binding upon by the various authorities entrusted with the responsibilities of conducting election; are all matters required to be examined in the Writ Petition. Merely on the basis of an apprehension expressed that the State is adopting a discriminatory approach in the application of law, this Court will not be justified in restraining the State from enforcing a legislation.

9. We therefore find no merits in the case. The Writ Appeals are dismissed at the admission stage itself. However, having regard to the importance of the questions raised, we are of the view that the Writ Petitions be heard and disposed of at an early date. The Registry is directed to post the aforesaid Writ Petitions before the appropriate Bench on 06.10.2010.