

(2012) 04 KL CK 0019
In the High Court Of Kerala
Case No : M.F.A. No. 214 of 2011

Joby George

APPELLANT

Vs

Thomas Varghese

RESPONDENT

Date of Decision : 13-04-2012

Acts Referred:

Constitution of India, 1950 — Article 243J
Penal Code, 1860 (IPC) — Section 143, 147, 323

Citation : (2012) 3 ILR (Ker) 397 : (2012) 2 KLJ 558 : (2012) 2 KLT 598

Hon'ble Judges : Thottathil B. Radhakrishnan, J;C. T. Ravikumar, J

Bench : Division Bench

Advocate : Joice George, for the Appellant; Saji Mathew, Able C. Kurian, Denu Joseph and Antony Xavier, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—This appeal is against the dismissal of an application to set aside the election of the respondent as a member of a block panchayat. Though different grounds were pleaded by the appellant before the court below, the only issue pressed for consideration in this appeal is as to whether the sentencing of the respondent in a criminal case (of which Exts. A2 and A3 are the judgments of the trial court and the appellate court) amounts to disqualification under S. 34 (1)(b) of the Kerala Panchayat Raj Act, 1994, herein after referred to as the "Act". Pithily, the question is whether the conviction and sentence was for an offence involving moral turpitude.

2. The verdict of the trial court was interfered with partly, in appeal and as of now, the respondent stands convicted and sentenced under Ss. 143, 147 and 323 I.P.C.

3. As noticed by the court below and as is evident from Exts. A2 and A3 judgments of the criminal courts, the allegations related to the conduct of the respondent in a public road following what occurred during the course of the Grama Sabha meeting of Ward No. 7 of Udumbanchola Grama Panchayat. The incident of the victim being beaten up is shown to have commenced with him

being asked as to whether - "Will you ask for accounts?" and "you will ask for the accounts in Grama Sabha?" - The questions asked were in relation to queries raised by the victim in the Grama Sabha about accounts. The judgments of the criminal courts clearly show that the incident related to matters intricately connected with the activities in the Grama Sabha meeting.

4. The court below noticed that the consideration of the term "moral turpitude" in different precedents and held that the offence for which respondent stands convicted and sentenced does not involve moral turpitude.

5. The learned counsel for the appellant argued that the concept of moral turpitude is to be determined having in view, the situation in relation to which the offence is found. According to him, there must be a purposive approach in construing the provisions of S. 34 (1)(b)(i) of the Act and the situation in hand being one of questioning the asking for accounts in a Grama Sabha, it ought to be treated as an act involving moral turpitude, in as much as, it is an act contrary to accepted and customary principles governing the conduct of Grama Sabhas. It is argued that the offence for which the respondent stands sentenced is a high handed, undemocratic interference, threatening a participant of a Grama Sabha, who exercised his duty as a citizen to ask for the accounts, and therefore, the act is one intended to threaten and put citizens to fear, in relation to affairs of a Grama Sabha and the sentence is for an offence involving moral turpitude.

6. Per contra, learned counsel for the respondent argued that a solitary instance of conviction and sentencing with no previous conviction can never be considered as one for an offence involving moral turpitude and there is nothing to indicate that the action found against the respondent by the criminal court is contrary to modesty or good morals.

7. Going by the judgments of the criminal courts, the offences alleged are intricately connected to the victim raising questions and asking for accounts in the Grama Sabha. The motive for the crime and the provocation for the acts attributed to the accused persons are referable clearly to the transactions in the meeting of the Grama Sabha. The accused persons stand with the finding of a transaction where they were involved, in which, the first accused retorted against the victim questioning and asking for accounts in the Grama Sabha. This was followed by different acts resulting in injuries to the victim. We do not express anything further in relation to the findings in the said criminal case. Criminal revision by the respondent is pending before this Court.

8. The election under challenge is one to the office of a member of a Block Panchayat. The conduct of the respondent as found by the criminal courts is intricately connected with a meeting of the Grama Sabha in which a citizen had raised the questions regarding the accounts of a Grama Sabha and had demanded such accounts.

9. Block Panchayats and Grama Sabhas, as institutions, are part of the three-tier

Panchayat Raj System brought into existence following the introduction of Part IX in the Constitution by the Seventy-third Amendment. That effectuated a cherished dream of Gandhiji to have Grama Swaraj in India to enable the Villages to form their own units of Self Government. As rightly noticed by Mr. Justice R. Bhaskaran (former Judge of this Court) in the Foreword written by him to the Kerala Panchayat Law Manual, compiled and edited by Dominic Johnson and George Johnson, how far the pious wish of the law giver will succeed depends on the selfless services of those who are in charge of the implementation of the Act and Rules, i.e., the elected representatives and bureaucracy who have to deal with the problem of the people who approach them on various issues. Part IX and the Eleventh Schedule of the Constitution show that the main object of the whole exercise undertaken by the 73rd Constitutional Amendment is to make the panchayats the implementing agencies to bring into existence a welfare State in the country. The provisions of Part IX categorically show that the Grama Sabhas are conceived as the grass-root level institution of self governance subject to the Constitution and the laws made by the State Legislature. Constitution authorizes the Legislature to endow the panchayats with such power and authority as may be necessary to enable them to function as institutions of self government. Law made in this regard would also provide for devolution of powers and responsibilities on the panchayats at the appropriate level with respect to preparation of plans for economic development and social justice; and the implementation of schemes for economic development and social justice as may be entrusted to them, including those in relation to the Eleventh Schedule. Article 243J provides that the Legislature may provide law for maintenance of accounts by panchayats and auditing of such accounts. Adverting to the Preamble to the Kerala Panchayat Raj Act, it can be seen that the avowed object sought to be achieved by that enactment is to secure a greater measure of participation of the people in planned development and in local governmental affairs, by constituting village, block and district panchayats and endowing such panchayats with such powers and authority to enable them to function as institutions of self- government. Such institutions are to be entrusted with the preparation of plans and implementation of schemes for economic development and social justice and implementation of such schemes as envisaged by the Constitution, including in relation to matters enlisted in the Eleventh Schedule.

10. Chapter II of the Act provides for Grama Sabha in a village or group of villages. A study of the provisions commencing from Part IX and the Eleventh Schedule of the Constitution to the Act and the different Rules would show that the Grama Sabha is the basic unit at the grass-root level where the common man's voice will be heard in matters relating to his grievance. That self government institution is where the weakest of the weak is empowered to raise questions in relation to governance through that institution and the implementation of schemes for economic development in the area to which a Grama sabha relates and social justice policies are definitely matters of concern for every individual citizen who comes to the Grama Sabha. That citizen is

entitled to know about the grants for economic development. He has the right under the Constitution and laws to ensure for his society that implementation of schemes for economic development is appropriately carried out. This includes the requirement to avoid pilferage. In this era when much is spoken about illegal siphoning of public funds, the right of the citizens to ask for the accounts in the Grama Sabha is among the most cherished entitlements that he has under the Constitution and the Act. If the exercise of such constitutional and statutory right is sought to be crippled by threat or criminal force, that would debase the very concept of the Grama Sabha and its strength as an institution of self government. The concept of moral turpitude has fallen for consideration of the Apex Court and of this Court, as also other courts in different occasions. References have been made by the learned counsel for parties to Joy v. State of Kerala (1991 (1) KLT 153), Saseendran Nair v. General Manager (1996 (2) KLT 482), U.P. Bhoodan Yagna Samiti, U.P. Vs. Braj Kishore and Others, , Surjit Singh v. Mahanagar Telephone Nigam Ltd. (2008 (2) KLT 473(SC), In The Matter of P. An Advocate, , Siby Joseph Vs. State Election Commission, , Kalyan Kumar Gogoi Vs. Ashutosh Agnihotri and Another, , Pawan Kumar Vs. State of Haryana and another, , Ibrahim Kannu Vs. State of Kerala, , Smt. T. Bhagya Laxmi Vs. The Returning Officer-cum-Municipal Commissioner and Others, , Kuber Swain and Others Vs. State of Orissa, and Sushil Kumar Singhal Vs. The Regional Manager, Punjab National Bank, . All those precedents essentially stand to advise that the concept of moral turpitude always depends upon the conduct for which the offender stands convicted and sentenced. It is not merely one that has to be decided with reference to the definition of any particular offence in the penal laws. It has to be examined and appreciated as to whether the conduct attributed is relevant to the purpose for which the quality of a conduct is to be looked into. It is in this context that it has to be said that if a person who is lawfully entitled to be present in a Grama Sabha raises questions and asks for disclosure of accounts, he cannot be put under any threat or duress. None protected by the Indian Constitution can be made voiceless by threat or duress. Grass-root level public institutions like Grama Sabhas are the ground fields where the citizens are expected to bring out their grievance and discuss matters in relation to the development of the society. If any such person is threatened or attacked even after the Grama Sabha, in the public road, that is nothing but a challenge to the societal existence of the local self government institution of a grass-root level, i. e., a Grama Sabha. Physical prowess, financial clout, political or other considerations cannot, at any point of time, be accepted as a social norm when it threatens the core rights of the citizens in relation to a grass-root level institution like Grama Sabha. The purpose of Grama Sabha and the need to have governance to the grass-root is, ultimately, intended also for self empowerment. The empowerment of the citizens cannot be had under duress and threat by those who are capable of such actions. In the context of the transaction involved in the criminal cases in hand, the respondent stands convicted of offence where a group of persons questioned the victim and retorted against him for having asked for accounts in the Grama Sabha. That followed the

overt acts by which the victim was found to have suffered. We are not on the quality of injuries or the nature of assaults. Those may be matters for concern in the criminal revision. But, here, we are clear in our mind that the conviction of the respondent under Ss. 143, 147 and 323 I.P.C. as they now stand and the sentence imposed on him is for a conduct which amounts to an offence involving moral turpitude. This is clearly so in the context of the fact that what is being examined is the quality of the conduct of one who is competing to hold a post of public nature, with public accountability.

In the result, the impugned order is set aside and O.P. (Election). No. 37 of 2010 of the Court of the District Judge, Thodupuzha is allowed setting aside the election of the respondent from Ward No. VI of Parathodu Constituency of B56 of Nedumkandom Block Panchayat at held on 25.10.2010 and declared on 27.10.2010 on the ground that he was disqualified from being chosen as and for being a member of that panchayat on ground under S. 34 (1)(b)(i) of the Kerala Panchayat Raj Act. No costs.

The office is directed to communicate the judgment to the State Election Commission and the Nedumkandom Block Panchayat and other officials as required under the provisions of the Kerala Panchayat Raj Act and Kerala Panchayat Raj (Conduct of Election) Rules immediately.

Upon pronouncement of this judgment, the learned counsel for the respondent made a request to keep operation of this judgment in abeyance. We find no ground to grant such request. Request rejected.