
(2016) 08 KL CK 0013
In the High Court Of Kerala
Case No : W.P.(C). No. 24517 of 2016 (L)

Kerala Police Association

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Citation : (2016) 4 KerLJ 122 : (2016) 4 KLT 36

Hon'ble Judges : Mr. P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : George Poonthottam, Advocate, for the Petitioner; Sri. K.V. Sohab (State Attorney) and Smt. K.R. Deepa, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Mr. P.B. Suresh Kumar, J.—The Kerala Police Association, hereinafter referred to as "the Association", is the petitioner. The grievance of the petitioner in this writ petition concerns the direction issued by the second respondent, the State Police Chief, for the conduct of elections to its various offices.

2. Ext. P2 is the constitution of the Association. The scheme of Ext. P2 constitution is that the office bearers of the branch units of the Association are to be elected by the members of the Association and the office bearers of the district units of the Association are to be elected by the elected office bearers of the branch units. Likewise, the office bearers of the Association are to be elected by the elected office bearers of the district units. Clause 9 of Exhibit P2 constitution provides that the term of the elected office bearers of the Association will be one year. The constitution of the Association though confers power on the general body of the Association to amend its constitution, it provides that the amended constitution will come into effect from the date on which the Government grants approval for the amendment. In exercise of the said power, the general body of the Association carried out a few amendments to the constitution and the Government granted approval for the said amendments, on 20.08.2015. Exhibit P3 is the amendment to the constitution which is

approved by the Government. As per Exhibit P3, clause 9 of the constitution has been amended, providing that the term of the elected office bearers of the Association will be two years. The case of the Association is that its present office bearers have been elected after Exhibit P3 amendment, on 21.08.2015 and therefore, they are entitled to continue in office for a period of two years from 21.08.2015. Nevertheless, according to the Association, the second respondent has issued Exhibit P5 communication directing them to conduct election to the various offices of the Association in accordance with Exhibit P3 amendment for the period 2016-18 as per the schedule enclosed along with the said communication. The case of the petitioner is that Ext. P5 communication is against the constitution and hence illegal. The petitioner, therefore, seeks a declaration that the elected committees of the Association now in office are entitled to continue till 2017 in terms of Exhibit P3 amendment.

3. A statement has been filed on behalf of the second respondent. The stand taken by the second respondent in the statement is that the process of the election for the year 2015-16 commenced on 01.07.2015; that the branch level and the district level elections for the said period were held on 24.07.2015 and 31.07.2015 respectively and that therefore, though the election to the office bearers of the Association took place on 21.08.2015, the present office bearers of the Association cannot claim the benefit of Exhibit P3 since the office bearers of the Association were elected by the office bearers of the district associations who have been elected prior to the amendment.

4. Heard the learned counsel for the petitioner as also the learned State Attorney for the respondents.

5. The fact that Exhibit P3 amendment to the constitution of the Association has come into effect only from 20.08.2015 is not in dispute. The contention of the petitioner is that since the present office bearers of the Association were elected on 21.08.2015, they are entitled to the benefit of the amended clause 9 of the constitution. As noted above, the scheme of the constitution of the Association is that the elected office bearers of the branch units will elect the office bearers of the district units and the elected office bearers of the district units will, in turn, elect the office bearers of the Association. Therefore, the election to the office bearers of the Association cannot be held to be independent of the election to the branch units and the district units, for the purpose of applying the amended provision of the constitution, for, without there being an election to the branch units, there cannot be an election to the district units and without there being an election to the district units, there cannot be an election to the Association. Exhibit R2(a) is the schedule of the election held during 2015-16. It is seen from Exhibit R2(a) that the election process of the said year began on 01.07.2015 and the branch level elections were held on 24.07.2015. Likewise, the district level elections for the said year were held thereafter, on 31.07.2015. It is beyond dispute that the present office bearers of the Association were elected by the elected office bearers of the district units thereafter, on 21.08.2015. Since

elections to the various branch units of the Association and the district units of the Association were held in accordance with the unamended constitution before 20.8.2015, the elected representatives of the branch units and district units cannot hold office beyond one year, for, the mandate obtained by them to be in office is only for a period of one year. Likewise, in the light of the provisions of the constitution of the Association, the mandate given to the office bearers of the district units by their electorate was not only for holding office for a period of one year, but also for electing office bearers of the Association for a period of one year. In other words, the electorate who have elected the present office bearers of the Association had no mandate to elect the office bearers of the Association for a period beyond one year. The purity of election in a democratic set up can be maintained only by upholding the mandate of the electorate and therefore, the mandate of the electorate must prevail over all other considerations. In the circumstances, the present office bearers of the Association who have been elected on 21.08.2015, cannot claim the benefit of Exhibit P3 order.

6. The writ petition, in the circumstances, is devoid of merits and the same is, accordingly, dismissed.