

(2010) 10 KL CK 0081

In the High Court Of Kerala

Case No : Writ Petition (C) No. 32282 of 2010 (I)

M.A. Hari Kumar and Lijo Abraham

APPELLANT

Vs

State Election Commission and Others

RESPONDENT

Date of Decision : 22-10-2010

Acts Referred:

Constitution of India, 1950 — Article 243(K)
Kerala Municipalities Act, 1960 — Section 96A
Kerala Panchayat Raj (Conduct of Election) Rules, 1995 — Rule 31, 32, 33
Kerala Panchayat Raj Act, 1994 — Section 40(A), 48(A)

Citation : (2010) 10 KL CK 0081

Hon'ble Judges : M.C. Hari Rani, J;K.M. Joseph, J

Bench : Division Bench

Advocate : M.P. Krishnan Nair, for the Appellant; Murali Purushothaman, SC, for the Respondent

Judgement

K.M. Joseph, J.—This batch of Writ Petitions raise essentially common questions.

2. One of the petitioners is the Chairman of the UDF Election Committee. In the other cases, the petitioners are candidates in the forthcoming election to the Local Bodies scheduled to be held on 23.10.2010 and 25.10.2010. In a few cases, the petitioners are agents of the candidates. Petitioners have approached this Court apprehending that the elections to the Local Bodies will not be conducted in a free and fair manner. Various types of allegations have been raised. In some of the Writ Petitions, allegations are fairly general. In some other Writ Petitions, allegations are more specific. The allegations in many cases are to the effect that the polling stations are sensitive. The reliefs which have been sought in these Writ Petitions essentially are to grant police protection to the candidates, to their agents and also for the voters, so that the election is held in a free and fair manner. In many of the Writ Petitions, there is a prayer that the Election Commission Officials may be directed to videograph the electoral process in their polling stations.

3. A statement has been filed on behalf of the State Election Commission. Therein it is inter alia stated as follows:

3. There are 21612 Local Self Government constituencies in Kerala. There are 37233 polling booths in the State housed in 22061 building.

4. The State Election Commission has taken all steps for the conduct of a free and fair election. Meetings were held with the Chief Secretary of the State, Director General of Police and other top police officials, District Collectors and other senior officers of the State.

5. Sensitive and troublesome areas in the State were identified through the District Superintendents of police and the District Collector. Senior officials of the Government have been nominated as Observers in consultation with the Government for overseeing/observing the election in terms of Section 40A of the Kerala Panchayat Raj Act and Section 96A of the Kerala Municipality Act. The Observers have been given instructions to keep close watch of sensitive areas including polling stations and other areas which they deem fit. They have been provided with vehicles and mobile phones to exercise their duties.

7. It is reported that 3218 polling stations in the State are situated in politically sensitive areas. The district wise number of polling stations identified as sensitive is given below.

Name of District	Number of polling stations identified as sensitive	Number of polling stations identified as vulnerable
Thiruvananthapuram	118	Kollam
89	Pathanamthitta	60
Alappuzha	233	Kottayam
52	Idukki	Nil
Ernakulam	442	Thrissur
31	Palakkad	80
42	Malappuram	58
Kozhikode	396	Kannur
1345	84	Wayanad
49	Kasaragod	265

In Idukki there is no polling station identified as sensitive. In all other districts there are number of polling stations which are identified as sensitive. 1345 polling stations in Kannur District are identified as sensitive and this is the largest number of sensitive polling stations in the State followed by Ernakulam at 442 and Kozhikode at 3rd position with 396 polling stations.

8. Sufficient police forces have been deployed in these sensitive areas to meet law and order problems. Special care and attention have already been taken by the Police in these sensitive areas to provide adequate security measures to the electorate and the polling officials for the smooth conduct of election in a peaceful atmosphere.

9. All the police forces including Local Police, Armed Battalion, District Armed Force, Crime Branch, Special Branch, Vanitha Police etc. are being deployed throughout the State for the election purpose. Apart from the above police forces, Excise, Forest and Motor Vehicles Department employees are also being deployed for the election to maintain law and order. 15000 Special Police are being appointed to ensure free and fair election. Moreover, seven company of police force from Karnataka are also being deployed in the State for election

purpose. Further, police force from Tamil Nadu is also requested for being deployed to maintain law and order during election.

10. Polling stations are conveniently categorized into different groups according to its proximity between each other. Mobile Group Patrol and Law and Order Patrol with wireless sets and mobile phone facilities are also been arranged to get in touch with each polling stations and to evaluate the peaceful state of affairs in each polling stations. Video cameras are also arranged in sensitive and vulnerable booths to guarantee unruffled environment throughout the election process.

11. Striking forces are also deployed in all Districts under Superintendent of Police, Dy. SPs. and Circle Inspectors with about 9 units to meet any untoward contingencies during the election period. Hotlines are provided with the Police head quarters-Secretariat-Intelligence headquarters-Superintendent of Police office of all Districts for instant communications, instructions and directions.

12. Strict instructions have been given to the police officials to take stringent and instantaneous action in accordance with law to prevent bogus voting, impersonation, booth capturing and other electoral offences. Any attempt to traverse the tranquility in order to take advantage from countermanding election or any attempt to interfere with the smooth process of election will be dealt with seriously. Appropriate and immediate remedial action will be taken in accordance with law to defeat such despicable situations.

13. Control Rooms and Help Lines equipped with all arrangements are made available in all districts to control the interaction between each of the groups and to make available their service at the spot in time whenever it becomes necessary. The mobile phone numbers of police officers who are in charge of maintaining law and order are being circulated among the public by publishing in daily newspapers.

14. Orders have been issued prohibiting and restricting carrying of fire arms and lethal weapons till the election process is over. Thorough checking of vehicles are directed to be done for 3 days before the day of poll, on poll day and till the completion of counting of votes to ensure that no undesirable elements or arms and ammunitions are smuggled into the constituency from outside. Directions are also issued not to allow cars/vehicles to move in convoys of more than 3 vehicles. Directions have also been issued by the Commission to all District Collectors and the Director General of Police to prevent any corrupt practices or electoral offences being committed at elections.

15. Thus every step is being taken by the Commission with the assistance of the State machinery and police to ensure a free and fair election. The police have been instructed to provide adequate protection to voters, polling agents of all political parties and candidates and to assist the election machinery to ensure fair and free poll. The senior police officials of the State have assured to the Commission all assistance and help of the police force to ensure a smooth, free

and fair election. The arrangements are also reviewed each day with the assistance of the police.

It is also stated in para 16 as follows:

16. The State Election Commission does not object to any direction being issued by this Hon''ble Court to the police to ensure a free and fair poll. However, it is respectfully submitted that any direction that may be issued by this Hon''ble Court at this stage with regard to the arrangements to be made at any polling stations may lead to total confusion in the arrangements now made by the State Election Commission for the conduct of elections to Local Self Government Institutions in Kerala.

4. We heard the learned Counsel for the petitioners, learned Government Pleader and the learned Standing counsel appearing on behalf of the Election Commission and learned Counsel for the party respondents appearing. Learned Counsel for the petitioners reiterated the apprehensions of the petitioners. According to them, several polling stations which ought to have been classified as sensitive and vulnerable, have not been so done and the Norms on the basis of which the polling stations have been classified are not discernible. No materials are there on record apart from the statement of the Commission which we have already adverted to. It is submitted by the learned Counsel appearing in the other cases that there is genuine apprehension that the electoral process would be sabotaged. There is also a complaint that impersonators will be allowed to vote and the candidates and their agents will not be allowed to carry out their work. It is the further complaint that the voters will not be allowed to freely exercise their franchise.

5. Per contra, the learned standing counsel for the Commission would submit that it is not correct to say that there is no rational basis. There are elaborate processes involved. He reiterates that there are 21612 constituencies in the State of Kerala in the forth coming election. There are 37233 polling stations situated in 22061 buildings. The Election Commission is constituted under the provisions of Article 243K of the Constitution. He would submit that the Commission is appointing observers in all the districts. The observers will be senior Administrative officers in all the districts. He would point out Rule 31 of the Kerala Panchayat Raj (Conduct of Election) Rules, 1995. It reads as follows:

31. Identification of electors:

(1) The Presiding Officer may employ at the polling station such person as he thinks fit to help in the identification of the electors or to assist him otherwise in taking the poll.

(2) As each elector enters the polling station, the Presiding Officer or the Polling Officer authorised by him in this behalf shall check the elector's name and other particulars with the relevant entry in the electoral roll and then call out the serial number, name and other particulars of the elector.

(3). In deciding the right of a person to obtain a ballot paper the Presiding Officer or the Polling Officer, as the case may be, shall overlook merely clerical or printing errors in an entry in the electoral roll, if he is satisfied that such person is identical with the elector to whom such entry relates.

(4). Each elector shall produce either the identity card issued by the Central Election Commission or Revenue Card or Ration Card or Passport or Driving Licence or Pass Book obtained from Bank or Post Office, if demanded by the Presiding Officer or the Polling Officer authorised by him in this behalf.

6. He would point out that under Rule 32 it is open to any polling agent to challenge the identify of person. Rule 33 also deals with safeguards against personation. He also brought to our notice a Bench decision of this Court a public interest litigation (W.P.(C) No. 1080/2010). Therein this Court also relied on the provisions of Rule 31 and repelled the contentions of the petitioner therein for interference by the Court. The Court took the view that it is a matter which should engage the attention of the legislative body.

7. Learned standing counsel also brought to our notice Section 48A of the Kerala Panchayat Raj Act, 1994. It reads as follows.

48A. Returning officer, Presiding Officer etc. be deemed to be on deputation to the Election Commission.--The Returning officer, the Assistant Returning Officer, the Presiding Officer, the Polling Officer, any other Officer and any Police Officer designated for the time being to conduct a general election or by-election under the provisions of this Act shall be deemed to be on deputation to the State Election Commission for the period from the date of the notification for such election to the date of declaration of the result of such election and accordingly, such officer shall be subject to the control, supervision and command of the State Election Commission during that period.

8. According to him the decision to categorise polling stations as sensitive or vulnerable is based on intelligence input by police officers. He fairly contends that those who sent reports may not by themselves be covered by Section 48A. He, however, pointed out that these reports are sent by Superintendent of Police who are coming under the purview of Section 48A.

9. Learned Government Pleader who was asked to get instructions in regard to the criteria and the basis of classification of booths as sensitive or vulnerable as the case may be are concerned, would submit before us that the categorization is done on the basis of certain criteria. They include prevailing law and order situation in the area, anticipated law and order problems and issues and disputes in a particular area. Sensitive or vulnerable areas are assessed by the District Special Branch and State Intelligence Wing. The Electoral Incidents reported during the past elections are taken into consideration. Learned Government Pleader would submit further as follows: That police is deployed in scheme for the conduct of polling based on the above criteria. That additional police will be deployed in sensitive and vulnerable areas. He would further submit that as

stated in the statement of the Commission 7 companies of police from the Karnataka State have been requested and they have been allotted to the State. Out of the 7 companies 3 have been allotted to Kannur district, one company is allotted to Kasargode and 3 are kept as reserve to be used on the basis of fresh intelligence inputs. Learned Government Pleader would further submit that there would be general law and order patrolling in all the constituencies from the day on which election campaign ends. It is further submitted that all directions given by the electoral officers will be complied in letter and spirit.

10. Learned standing counsel for the Commission also on enquiries made by us made available certain judgments of this Court rendered in the context of previous election. In W.P.(C) 27324/2005 and connected cases, we notice that a Division Bench of this Court was considering almost similar contentions. Learned standing counsel would point out that there were almost 30 writ petitions filed during the last election. We notice that after referring to the submissions the Court specifically directed that if requests come from the candidates that there is personal threat that should be promptly attended to.

11. In W.P.C. 27285/2005 after referring to the undertakings of the Government and the Commission the Court directed the State to ensure that the undertakings will be honoured so as to ensure the election process is smoothly carried out. Taking note of the anxiety expressed by the petitioners the Court directed that the vigilance as stated therein should be continued at least up to the time of declaration of the results.

12. In the Constitutional scheme, the local bodies play a pivotal role. The elections therefore to the local bodies must be conducted in the most free and transparent manner. The local bodies under decentralization of power contemplated under the Constitution are the closest to the people and there is much devolution of the power to the chosen representatives of these bodies. Therefore, the importance of holding election in a free and fair manner to the local bodies cannot be over emphasised. It is the bounden duty of the Commission and its officers to make every sincere effort adopting a totally neutral stand and upholding the laws of the land to conduct elections to the local bodies. It is equally the duty of the officers of the State, in particular the police officers that they are quick to respond to the demand in particular of the officers of the Commission in a fair manner so that people have continued faith in the democratic process and the voters in large numbers are persuaded to participate in the democratic processes. It is in the context of these dimensions that that we must approach the issues raised in these writ petitions.

13. Essentially the prayers in the writ petition are for police protection. We have already extracted the statement in its essential particulars in the judgment. The undertakings which have been given by the Commission in the statement shall be honored in letter and spirit. If threat to the lives of the candidates or their agents have been brought to the notice of the respondent police officers, they shall ensure that the lives of the candidates and their agents are protected, if

threats are found to be genuine. As far as the question relating to the protection to voters is concerned, we emphasise the statement made by the Commission namely that the police have been instructed to provide adequate protection to the voters of all political parties. We have already extracted the submission of the learned Government Pleader that the police will abide by the directions of the electoral officers. Reading both these together we feel that it becomes the duty of the police to give adequate protection to the voters so that they may exercise their franchise in a free and fair manner. We also record the submission of the learned Counsel for the Commission that Rules 31 to 33 do provide for a mechanism to deal with impersonation and that the said Rules will be strictly enforced. As far as the question of allowing videography is concerned in some of these cases petitioners have made request for allowing videography in view of the apprehensions of the petitioners. In those writ petitions relating to sensitive and vulnerable polling stations, necessarily videography shall be done in terms of what is stated in the statement which has been filed by the Commission. As far as polling stations which have not been identified as sensitive or vulnerable, in view of the apprehension of the petitioners, where requests have already been made by the petitioners to the District Collector of the District where specific requests have been received for videographing the electoral process, he will look into it and take appropriate decision on the same. When such a decision is taken the District Collector will bear in mind also the decision of the Apex Court in Janak Singh Vs. Ram Das Rai and Others, . In cases where the District Collector finds merit and allows videography, the expenses for doing videography shall be borne by the petitioners. It is open to the District Collector to take decision taking into account all the relevant inputs in the facts of each case. In cases where requests have not been made by the petitioners before the District Collector as such it will be open to the petitioners to approach the District Collector without any delay and if such a request is received it is for the District Collector to take a decision on the same in accordance with law.

14. It is brought to our notice by the learned standing counsel for the Election commission that even if videography is to be permitted, it should not be allowed to be done in the Voting Compartment. We make it clear that if the District Collector permits videography to be done on the request of the petitioners, he need not allow videography in respect of the place where the Voting Compartment is located.

The Writ Petitions are disposed of recording the submissions on behalf of the Election Commission and also the learned Government Pleader and with the directions which we have given in this Judgment.