
(2009) 07 KL CK 0078
In the High Court Of Kerala
Case No : WP (C) No. 37935 of 2007 (N)

Mercy George

APPELLANT

Vs

The Kerala State Election Gommission and Others

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Constitution of India, 1950 — Article 348, 348(1), 348(3)
Kerala Panchayat Raj (Procedure for Convening and Conducting the Meeting of Grama Sabha) Rules, 1995 — Rule 4
Kerala Panchayat Raj Act, 1994 — Section 3(1), 3(3), 3(4), 35, 36

Citation : (2009) 16 KLJ 844 : (2009) 3 KLT 405

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : K. Ramakumar, for the Appellant; Murali Purushothaman, SC, Jagadeesh Chandran Nair and Jaju Babu, for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—Elected to the Akalakunnam Grama Panchayat to be its member from Ward No, 5, the petitioner became the convener of the Grama Sabha of that constituency in terms of Section 3(4) of the Kerala Panchayat Raj Act 1994, for short, the "Act". The first meeting of that Grama Sabha was held on 28.1.2006. The second meeting scheduled to be held on 20.8.2006 was adjourned for want of quorum and was held on 27.8.2006.

2. The 2nd respondent filed a petition before the Kerala State Election Commission alleging that though the Panchayat was constituted on 2.10.2005, the first and second meetings of the Grama Sabha for Ward No. 5 were convened by the petitioner only on 28.1.2006 and 2 8.7.2 006 respectively and hence, having foiled, twice consecutively, to convene meetings of the Grama Sabha.. due once in three months., she has incurred the disqualification in terms of Section 35(p) of the Act.

3. The writ petitioner denied the allegations against her and contended that she

was not able to convene the Grama Sabha in time as the President of the Panchayat had not fixed and communicated to her the date and time for convening the meeting. She pleaded that as per Rule 4 of the Kerala Panchayat Raj (Procedure for Convening and Conducting the Meeting of Grama Sabha) Rules, 1995, for short,, the "Meeting Rules", the President of the Panchayat shall, after consultation with the Grama Sabha Convener, fix the date, time and venue of the Grama Sabha and that it is up to the Secretary of the Panchayat to make arrangements to conduct the Grama Sabha after due publicity. She also contended that she had made all arrangements to convene the Grama Sabha and that the first meeting of the Panchayat was held on 14.10.2005, after the election of the President of the Panchayat on 2.10.2005. It is also pleaded that the Panchayat Committee was convened on 12.1.2006 to fix various dates for Grama Sabha meetings and the meeting of the Grama Sabha., of which the petitioner is the Convener, was fixed to be held on 28.1.2006, According to her, after that meeting on 28.1.2006, another meeting of the Grama Sabha was scheduled on 20.8.2006 and that was adjourned for want of quorum and was held on 27.8.2006. She also pleaded that the President of the Panchayat was. able to schedule the second meeting of the Grama Sabha only on 20.8.2006 due to the General Elections fixed on 13.5.2006, She contended that there was no failure or lapse in convening the meeting within the stipulated time.

4. Ext.P7 order was passed by the Commission disqualifying the petitioner u/s 36 read with Section 35(p) of the Act. That is under challenge.

5. This writ petition and W.P(C). 37968/07 were earlier considered and the decision of the Commission was quashed as per judgment dated 15.7.2008, reported as Varghese Yohannan v. Kerala State Election Commission 2008 (3) KLT 468, That judgment was reviewed at the instance of the Commission as per the order reported as Kerala State Election Commission v. Mercy George 2008 (3) KLT 83, This writ petition is accordingly listed for hearing- This Court initially held that the provisions in Sections 3(3) and 35(p) of the Act as they stand, are incongruous in as much as Section 3(3) does not prescribe any particular interval for the meetings,, though the prescription of disqualification in Section 35(p) is as if there is one such. This Court therefore, noticed that the penalty of disqualification imposed as per Section 35(p) is provided as a consequence of a nonexistent obligation. It was held that in view of the amendment of Section 3(3), the petitioner cannot be disqualified u/s 35 (p). It was also noticed that Rule 4 of the Meeting Rules shows that it is inconsistent with the provisions of Section 3(3) of the Act Resultantly, the impugned order was quashed- The Commission's application for review of that judgment was allowed on account of the fact that the Malayalam version of the amended Section 3(3) was not brought to the notice of this Court and that the said version contained the prescription that the Grama Sabha shall meet at least once in three months.

6. After the writ petitions were thus re-opened for hearing, the Government issued an erratum notification No. 23879/Leg. Cl./2008/Law dated 2,2.2009,

stating that in the authoritative text in English of the Amending Act 31 of 2005 published in the gazette dated 24.8.2005, the words "shall meet" in Sub-section (1) of Section 3 shall be read as "shall meet at least once in three months".

7. Learned senior counsel appearing for the petitioner argued that under Article 348(1)(b)(ii) of the Constitution, notwithstanding anything in the provisions foregoing that Article in Part XVII, until the Parliament by law otherwise provides, the authoritative texts of all Acts passed by the Legislature of a State shall be in the English language and relied on *Prabhat Kumar Sharma Vs. U.P.S.C. and Others*, to contend that English continues to remain the authoritative text and therefore, in case of ambiguity between English and Malayalam versions of the provisions in hand, it is the English version that has to be applied. Accordingly, it is further argued that since Section 3(3) of the Act, as it stood as on the date of the alleged disqualification, did not contain any prescription as, to any interval of time between two meetings of a Grama Sabha, the disqualification u/s 35(p) is not valid. Referring to Rule 4 of the Meeting Rules, it was argued that the obligation to fix the date and time for the meeting is on the President of the Panchayat and there is no obligation for the Convener in terms of that Rule, that could oblige any action; failure of which could invite penalty in the nature of that prescribed in Section 35(p) of the Act. *Lissy Valsalan Vs. State Election Commission*, was cited in support. It was also argued that the provision in Section 35(p) is one with penal consequences and the explanation of the petitioner that it was not she, but the President of the Panchayat, who had the duty to fix the time and date of the meeting and her further plea that the President could not fix the meeting earlier owing to the General Elections ought to have been considered by the Commission to hold that there is no failure to hold meeting in terms of Section 35(p) of the Act.

8. Learned Counsel appearing for the Commission pointed out that the erratum published on 2.2.2009 is a curative exercise correcting an obvious mistake in the translation and that it therefore, relates back to the date of the coming into force of the amendment as per Act 31 of 2005, viz., 24.8.2005. Though relating to a notification under the Land Acquisition Act profitable reference was made to State of Tamil Nadu and another Vs. Mahalakshmi Ammal and others, laying down that once errata was published, it relates back to the date of the notification. He further pointed out that following its judgment in *Thanga Dorai v. Chancellor, Kerala University 1995 (2) KLT 663*], this Court has laid down in *Thomas v. David 1999 (1) KLT 208* that Article 348(3) of the Constitution states that the translated text in English language, published in the gazette, shall be taken to be the authoritative text.

9. Footed on the fact that the State of Kerala has the Kerala Official Language (Legislation) Act, 1969, for short, Official Language Act, in force> the learned Counsel for the second respondent argued that in terms of Article 348(3) of the Constitution, notwithstanding anything contained in Clause (b) of Article 348(1), where the Legislature of a State has prescribed any language other than the

English language for use in Bills, Acts, Ordinances, Orders, Rules, Regulations or Bye-law, a translation of the same in the English language published under the authority of the Governor shall be deemed to be the authoritative text thereof in the English language under Article 348. He, accordingly, argued that as regards such instruments relating to States which have legislations prescribing any language other than English language for use in such instruments, the English version is merely the authoritative text in the English language; such authoritative-ness not amounting to be one that would over-ride the original version in any language other than English, as is prescribed by the State Legislature. Accordingly, it was argued that the writ petitioner cannot feign ignorance of the law since the Malayalam version of Section 3(3) of the Act is a flawless prescription that the Grama Sabha shall meet once in three months. It was argued that a close reading of the decisions *Nityanand Sharma and another Vs. State of Bihar and others*, *Mathura Prasad Singh and Others Vs. The State of Bihar and Others*, and *Gouri Devi v. State of Himachal Pradesh* 2003 AIHC 393 (DB) would show that the courts lean to prefer the language in which the Bill is introduced in the House and treat it as the original version, once passed.

10. Considering the aforesaid facts, materials and arguments, I shall first deal with the issue relating to Article 348 of the Constitution. In *Nityanand Sharma* (supra), it has been categorically laid down that by the operation of Article 348(3) with a non-obstante clause, where the Legislature of a State has prescribed a language other than English language for Bills, Acts, Ordinances, Orders, Rules, Regulations and Bye-laws, a translation of the same in the English language published under the authority of the State shall be taken to be the authoritative text thereof in the English language under Article 348, It was accordingly held that the authoritative text is the one in English language. The argument on behalf of the second respondent that the effect of the prescription in Article 348(1)(b) prescribing English language would give way in view of the Official Language Act as a result of the non-obstante clause in Article 348(3) does not stand in view of the law laid by the Apex Court in *Nityanand Sharma* (supra). Not only that, even if that argument on Article 348 were to commend acceptance, the constitutional fact required to make Clause 3 of Article 348 operational is that the Legislature of a State has prescribed any language "other than" the English language for use. What is contemplated is a prescription to the exclusion; not one in the alternative. The Official Language Act states that the language to be used in Bills, Acts, Ordinances, Orders, Rules, Regulations and Bye-laws shall be Malayalam or English. The said Act does not prescribe Malayalam to the exclusion of English. Therefore, it does not amount to the prescription of any language other than English language for use. In *Gouri Devi* (supra). Section 5 of the Himachal Pradesh Official Language Act, 1975, as quoted in paragraph 3 thereof, shows that the said provision insists that the language to be used in Bills, Acts, Ordinances, Orders, Rules, Regulations or Bye-laws shall be Hindi. The decision in *Gouri Devi* which is delivered on the basis of that legislative mandate does not, therefore, apply to the case in hand. *Mathura*

Prasad Singh (supra) was decided in a situation where the Bihar Legislature had provided that the instruments shall be in Hindi, -See paragraphs 7 and 8 of that judgment Nityanand Sharma (supra) was not decided by the Apex Court on the reason that the Act was enacted by the Parliament in English language. The law laid therein is that the official English translation published under the authority of the Governor shall be taken to be the authoritative text thereof in the English Language and to treat it as the authoritative text. In so far as the State of Kerala is concerned,, the language to be used shall be Malayalam or English as per the Official Language Act. Therefore, following Nityanand Sharma (supra) or even otherwise., the authoritative text of the instruments of the State of Kerala falling in Article 348 of the Constitution shall be those in the English language.

11. The question whether the erratum issued on 2.2.2009 correcting the authoritative text in English, of the amending Act 31 of 2005, relates back to the date of the amendment brought in as per that amending Act has necessarily to be answered by holding that it does. This is because it is nothing but rectification of an apparent mistake or omission and is only a curative mechanism silencing any possible linguistic gullery. Not only that, neither bilingual nor multi-lingual publication is part of the constitutional prescriptions that sustain apiece of law.

12. But the most important question that arises for decision would be as to whether a disqualification could be incurred by the non-compliance of a provision or non-performance of an obligation which was not there in the authoritative text of the Act as on the date of the alleged cause of action. Certainly, Section 35(p) is one that visits a person with penal consequences. The member of a Panchayat would cease to hold office if he incurs the disqualification prescribed in Section 35(p). There is also a disqualification from future participation. Therefore, that provision calls to be strictly construed. As held in Lissy Valsan (supra) disqualification is provided as the wages of failure and therefore., the relevant provisions have to be strictly construed. Vagueness in a penal provision would render it ultravires and unconstitutional. Defining the commissions and omissions with precision is a necessary pre-requisite to visit a person with penal consequences. The conclusions arrived at in that regard in Lissy Valsan relying on the words of Douglas, J, in the decision in Krishian v. Board of Regents (1967) 385 US 589 and the decision of the Apex Court in Kartar Singh v. State of Punjab : (1994) 3 SCC 569 are salutary. As stated in Lissy Valsan, vagueness, if any, in the statutory proceedings should go in favour of the person who stands charged with commissions and omissions, the findings of which would result in penal consequences.

13. Adverting to Section 35(p) with the aforesaid in mind, that provision provides for disqualification if a member has failed, twice consecutively, to convene the meeting of the Grama Sabha due once in three months, of which, he is the Convener. That penal provision is part of the penalties prescribed as disqualifications from holding an elected office. That cannot, by itself, contain any prescription of duty. This is why the legislature has stated in Section 35(p) that

the failure has to be in the matter of convening the meeting, "due" once in three months. The currency of the meetings of the Grama Sabha is not one that could be prescribed in the penal provision. It is not so prescribed either. The word "due" in Section 35(P) denotes that the meeting is due in terms of certain other provisions. Obviously, it was intended to be part of Section 3(3). The English version, which is the authoritative text, did not contain that provision as on the date of the alleged misfiring of the disqualification. The prescription of an action or omission coupled with the prescription of a penalty for the breach of such duty cannot be made retrospectively. Unless the prescription in Section 3(3) and the disqualification prescribed in Section 35(p) stood together, there would not be any occurrence generating the disqualification. Even if the erratum results in the correction of the authoritative text in English retrospectively, that would be no reason to award a penalty of disqualification,

14. Even if Section 3(3) is taken to be one that requires the holding of the meeting of the Grama Sabha, once in three months, Section 3(3) provides that the Grama Sabha shall meet at the place, date and time fixed by the Convener of Grama Sabha, in consultation with the President of the Panchayat.. and the Convener shall intimate the details of the meeting to the members of the Grama Sabha by a public notice and the Convener shall compulsorily invite the members of the Block Panchayat District Panchayat and the Legislative Assembly representing title area of the Grama Panchayat to such meeting. Section 3(5) provides that the President of the Village Panchayat shall preside over the meeting of the Grama Sabha or in his absence, the Vice President or in the absence of both of them, the Convener of the Grama Sabha, The Convener, who is obliged to fix the place, date and time of the Grams Sabha, in consultation with the President, is obliged to do so because the various aspects relevant for the convening of such a meeting, including matters to be deliberated upon and the possibility of the President being available to preside over the meeting, may require to be considered. The scope of the consultation that the Convener should have with the President, for the purpose of fixing the place, date and time for the meeting may depend on different factors. While there may be lack of legislative specificity in that regard, what is more intriguing is that Rule 4 of the Meeting Rules, which are statutory, oblige the President to fix the date and time of the meeting in consultation with the Convener. This is just the converse of the prescription in Section 3(3) of the Act. As per Rule 4 of the Meeting Rules, it is the duty of the Secretary of the Panchayat to publish the notice etc, and the only obligation of the Convener is to try to inform the members of the Grama Sabha, the place, date and time of the meeting and cause them to attend the meeting. It may not require much labour to immediately state that the Meeting Rules being subordinate legislation would not survive to the extent they are in conflict with the primary legislation, viz., Section 3 of the Act. But, such approach would be adopted in relation to interpretation of laws for different purposes, in different jurisdictions and in considering different matters; but never to hold that a citizen, faced with these two sets of laws, could be told that he ought to have made a

choice applying the appropriate tools relating to interpretation of statutes and ought to have acted in terms of the prescription of the primary legislation, ignoring the conflicting subordinate legislation; or otherwise invite the wrath of the penal provision as the one contained in Section 35(p). It has to be remembered that Section 35(p) prescribes for cessation of office, if a member of a Panchayat has failed to convene the due meetings. That failure can be only of an indefeasible obligation. That occurs when one fails to accomplish certain purpose and the failure to accomplish that purpose should fall squarely on the person charged with the failure; with liability to penalty for the failure. A finding of such failure cannot be built on incongruous provisions in the Act and the Meeting Rules and cannot be fastened on the basis of two different versions of a statute in two different languages,, published in the Gazette. The situation emerging out of the statutory provisions as they stood on the date of the alleged failure of the petitioner is nothing short of a swirling enmesh which will not have the constitutional sanction to consume off the statutory right of an elected member of a Panchayat to continue in office.

15. For the aforesaid reasons, there is no ground to sustain the impugned order holding the petitioner disqualified in terms of Section 35(p) of the Act The writ petition succeeds,

In the result, the writ petition is allowed, quashing Ext.P7. No costs.