
(2010) 10 KL CK 0233

In the High Court Of Kerala

Case No : Writ Petition (C) No. 31837 of 2010 (D)

Moyan Kolakkadan

APPELLANT

Vs

Kerala State Election Commission and Others

RESPONDENT

Date of Decision : 19-10-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Panchayat Raj (Conduct of Election) Rules, 1995 — Rule 28(4)

Citation : (2010) 10 KL CK 0233

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : K.P. Sudheer, for the Appellant; Murali Purushothaman, SC, K.S.E. Comm., for the Respondent

Final Decision : Dismissed

Judgement

T.R. Ramachandran Nair, J.—The 5th respondent is a candidate contesting in the same Ward wherein the petitioner is contesting. The petitioner's grievance is that in the ballot paper their names have been shown as Moyan Kolakkadan and Moyan Kottammal, though there is difference in their residential names. The petitioner is seeking for a direction to the Returning Officer to publish his name as Moyan Kolakkadan and that of the 5th respondent as Moyin Kottammal. It is pointed out that the 5th respondent is mainly known as Moyin and not Moyan. In support of the above plea, Exhibit P4 voters list has been produced. Complaining about the action of the Returning Officer, the petitioner filed a representation before the District Collector and failing to get any positive action in the matter, this Writ Petition has been filed.

2. The 1st respondent has filed a statement, as directed by this Court. It is mainly contended that since the election to the local bodies is in progress, a Writ Petition under Article 226 of the Constitution of India cannot be entertained. Reliance is placed on various decisions of the Apex Court and that of this Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, ,

Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, , Anugrah Narain Singh and Another Vs. State of U.P. and Others, , Election Commission of India Through Secretary Vs. Ashok Kumar and Others, , Harnek Singh Vs. Charanjit Singh and Others, and Kurapati Maria Das Vs. Dr. Ambedkar Seva Samajan and Others, .

3. It is further pointed out in paragraph No. 8 that Rule 28(4) of the Kerala Panchayat Raj (Conduct of Election) Rules, 1995 provides that if two or more candidates bear the same name, they shall be distinguished by the addition of their occupation or residence or in some other manner. The 5th respondent submitted an application on 7.10.2010 before the publication of list of contesting candidates to the Returning Officer that he is popularly known as Moyan Kottammal and his name in the ballot paper may be printed as Moyan Kottammal. Allotment of symbol also was made on the same date after the time fixed for withdrawal of candidature. On receipt of the complaint of the petitioner, the District Collector called for a report from the Returning Officer. Finally it is pointed out that the election process has reached an advance stage and the date of polling is on 23.10.2010. The printing of ballot papers are over and postal ballots have been despatched.

4. The learned Counsel for the petitioner submitted that in the light of Section 52(4) of the Panchayat Raj Act, the Returning Officer had to verify the electoral roll to find out the description of the candidate also. It is therefore pointed out that herein the electoral roll has definitely given the name and the description of the 5th respondent as Moyin Kottammal instead of Moyan Kottammal and hence the action is unsupportable.

5. Evidently, the action was taken by the Returning Officer in the light of the application filed by the 5th respondent. Rule 28(4) enables the Returning Officer to consider that application.

6. As rightly pointed out by the learned Standing Counsel for the Election Commission, at this 11th hour, as the ballot papers have already been despatched, it may not be proper for this Court to interfere with the election process.

7. The learned Counsel for the petitioner submitted that he is prepared to meet the expenses for printing the ballot papers again. But, still, as any direction will interfere with the progress of the election and the process of the election and in the light of the facts pointed out by the learned Standing Counsel for the Election Commission, I refrain from issuing any such direction as sought for by the learned Counsel for the petitioner.

The Writ Petition is accordingly dismissed without prejudice to the right of the petitioner to avail of the remedy under the Statute after the election is over.