
(1999) 09 KL CK 0006
In the High Court Of Kerala
Case No : W.A. No. 1922 of 1999-C

Mullappally Ramachandran

APPELLANT

Vs

District Collector, Kannur and Another

RESPONDENT

Date of Decision : 09-09-1999

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 8(2)
Constitution of India, 1950 — Article 226, 329
Representation of the People Act, 1951 — Section 169

Citation : AIR 2000 Ker 15

Hon'ble Judges : R. Rajendra Babu, J;K.K. Usha, J

Bench : Division Bench

Advocate : Sudhi Vasudevan and Bindu Mohandas, for the Appellant; H.B. Shenoi, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Usha, J.—Petitioner in O.P. No.22359/ 99 is the appellant. The petitioner is a candidate for election to the Lok Sabha (1999) from No. 2 Cannanore Parliamentary Constituency scheduled to be held on 11-9-1999. The challenge in the original petition was against Ext. P5 proceedings issued by the 1st respondent rejecting petitioner's request to show his name in the ballot paper as "Mullappally Ramachandrail. He had also prayed for a writ of mandamus directing the 1st respondent to show his name as "Mullappally Ramachandran in the ballot paper. The learned single Judge before whom the original petition came up for admission dismissed the same in limine. Aggrieved by the above, the petitioner has come up in appeal.

2. It is contended by learned counsel for the appellant that the appellant had submitted his nomination paper in the prescribed form before the 1st respondent wherein his name was shown as "Mullappally Ramachandran". After scrutiny his nomination was accepted on 20-8-1999. The name of the petitioner Is shown as "Mullappally Ramachandran" in Ext. P 1 2 list of contesting candidates whose

nominations had been found valid. Thereafter the 1st respondent directed the appellant and other candidates to specify the manner in which their names should appear in the ballot paper. The appellant wanted his name to be shown as "Mullappally Ramachandran" in the ballot paper. The above request was rejected by the 1st respondent under Ext. P5 for the reason that the name of the appellant as shown in the electoral roll does not tally with the name proposed to be shown in the ballot paper. This view was taken by the 1st respondent in spite of the fact that the appellant had contended that his full name is "Mullappally Ramachandran" and that he is popularly known by that name.

3. According to the appellant, Ext. P5 proceedings had been issued by the 1st respondent without jurisdiction. The provisions contained under Rule 8(2) of the Conduct of Election Rules, 1961 invoked by the 1st respondent can have application only where the concerned candidate makes a request for correction in the list of validly nominated candidates, on the ground that his name is incorrectly spelt or his name is otherwise incorrectly shown in his nomination paper or is different from the name by which he is popularly known. None of these conditions are available in the case of the appellant and therefore Rule 8(2) of the Conduct of Election Rules should not have been invoked by the 1st respondent. There are other contentions also taken by the appellant challenging Ext. P5.

4. The learned single Judge after referring to the provisions of Section 33(4) of the Representation of the People Act, 1951 and Rule 8 of the Conduct of Election Rules, 1961 took the view that prima facie there is no defect in the procedure adopted by the 1st respondent. According to the learned single Judge, it is the duty of the Returning Officer to see that the name in the ballot paper should be the name appearing in the electoral roll. In the electoral roll the petitioner's name is "Ramachandran" and house name is "Mullappally" and father's name "Govindan". The nomination paper was not rejected even though the name given therein was not the same as shown in the electoral roll. But under Ext. P5 proceedings it was ordered that the name in the ballot paper should be as it contained in the electoral roll. According to the learned single Judge, there is no procedural irregularity committed by the 1st respondent. The learned single Judge also took the view that the writ petition is not maintainable in the teeth of Article 329 of the Constitution of India. The learned single Judge, therefore, observed that this Court cannot look into the matter in view of Article 329 of the Constitution, as election process is already started, but it is open for the petitioner to take up his remedies elsewhere. If the petitioner moves the appropriate forum, it shall look into the complaint untrammelled by any of the observations in the judgment. The learned single Judge also noted that the ballot papers are already printed for the election to be held on 11-9-1999 and no relief can be granted in the original petition at this stage.

5. We are in respectful agreement with the learned single Judge that this Court has no Jurisdiction to entertain the writ petition under Article 226 of the

Constitution of India in view of the provisions contained under Article 329(b), which reads as follows :--

"(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by a election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

We are not able to accept the contention raised by the learned counsel for the appellant that provisions contained under Article 329(b) would come into play only after the election is over. This position has been clarified as early as in 1952 by the Supreme Court in its landmark case in Election Laws in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, . It was a case where proceedings of the Returning Officer rejecting the nomination of the appellant for election to the Madras Legislative Assembly was sought to be challenged before the High Court under Article 226 of the Constitution. The High Court dismissed the petition as unsustainable, in view of Article 329(b). While affirming the above view Fazal Ali, J. observed that "it does not require much argument to show that in a country with a democratic constitution in which the legislatures have to play a very important role, it will lead to serious consequences if the elections are unduly protracted or obstructed." According to the learned Judge, immediate individual relief at an Intermediate stage when the process of election is under way has to be sacrificed for the paramount public good of promoting the completion of elections. It was further observed as follows :--

The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary Jurisdiction of the courts having been expressly excluded), and another after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which, as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court."

6. The principle laid down in the above decision has been later followed in several rulings of the Supreme Court in Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others, , Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others, , Smt. Indira Nehru Gandhi Vs. Shri Raj Narain and Another, , Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, and Election Commission of India Vs. Shivaji and Others, . In Election Commission of India Vs. Shivaji and Others, the Bombay High Court entertained writ petition challenging the notification fixing the calendar of events for the purpose of holding the elections to legislative council from certain local authorities constituency. While

finding that the Bombay High Court had acted without Jurisdiction the Supreme Court observed as follows :--

".....The word "election" has by long usage In connection with the process of selection of proper representatives in democratic institutions acquired both a wide and a narrow meaning. In the narrow sense it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling, or a particular candidate being, returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating in a candidate being declared elected and it is in this wide sense that the word is used in Part XV of the Constitution in which Article 329(b) occurs."

In the light of the above, we have no hesitation to hold that this Court has no jurisdiction to entertain the present writ petition.

7. The learned, counsel appearing on behalf of the appellant writ petitioner submitted that even if the writ petition is not maintainable, this Court may Interpret the provisions contained in Rule 8(2) for future guidance. We are afraid that we have to deny the above prayer of the appellant also. If this Court has no jurisdiction to entertain the writ petition, any exercise to interpret a provision of law, which is the issue raised in the writ petition, will also be without jurisdiction. We, therefore decline to make any observation on the merits of the contentions raised by the appellant with respect to provisions of the Rule.

8. In the result, the writ appeal stands dismissed. We make it clear that this Court has not expressed any view on the correctness or otherwise of the contentions raised by the writ petitioner on the merits of the case. Therefore, as observed by the learned single Judge, dismissal of the writ petition and writ appeal would not stand in the way of the petitioner taking up the matter before the appropriate authority at the appropriate time.