
(2009) 08 KL CK 0042

In the High Court Of Kerala

Case No : Writ Petition (C) No. 24364 of 2009 (M)

Nattakam Suresh

APPELLANT

Vs

The Kerala State Election Commission and Others

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Anti Defection Act — Section 4, 4(3)

Kerala Local Authorities (Prohibition of Defection) Act, 1999 — Section 4

Kerala Panchayat Raj (Election of President and Vice President) Rules, 1995 — Rule 5(2)

Kerala Panchayat Raj Act, 1994 — Section 153, 153(17), 154(16), 156, 35(1)

Citation : (2009) 3 KLJ 482 : (2009) 4 KLT 297

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : V. Chitambaresh and M. Sreekumar, for the Appellant; Murali Purushothaman, SC, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—While the President of a Grama Panchayat, the petitioner was ousted from that office by the carrying of a motion of no-confidence. He, thereupon, filed two petitions u/s 4 of the Kerala Local Authorities (Prohibition of Defection) Act, 1999 (for short, the "Anti Defection Act") before the Kerala State Election Commission seeking declaration that the two members, who moved and seconded the no-confidence motion against him, had given up their membership of the political party to which they belong and had accordingly defected. He also filed two interlocutory applications before the Commission seeking to interdict those persons from taking part in the meetings of the Panchayat, voting or contesting to any official post in that Panchayat.

2. On the allegation that re-election to the post of President is likely to be held; the petitioner seeks a direction to the Commission to issue interlocutory order restraining the participation of the aforesaid two persons in the meetings of the Panchayat, also from contesting to any post and also seeks a direction to the Commission to dispose of the petitions filed by him.

3. On hearing the learned senior counsel for the petitioner and the learned standing counsel for the Commission, the positions of law that emerge, show that re-election to a casual vacancy can, in no manner, be delayed. The term of office of the President of a Panchayat is co-extensive with the duration of that Panchayat as per Section 153(17) of the Kerala Panchayat Raj Act, 1994 (hereinafter referred to as the "PR Act"). The scheme of Section 153 of the PR Act read with the provisions of the Kerala Panchayat Raj (Election of President and Vice President) Rules, 1995 (hereinafter referred to as the "Election Rules") shows that there cannot be any delay in the matter of filling up of the casual vacancy arising in the office of the President. Section 154(16) of the PR Act provides that any casual vacancy arising in the office of the President or the Vice President shall be reported to the Commission, which shall, thereupon, take steps for the conduct of the election of the President or Vice President, as the case may be. In the case of a casual vacancy, the second limb of Rule 5(2) of the Election Rules obliges the Commission to fix the date of the meeting for the re-election "as soon as after the occurrence of the vacancy". The requirement to fill the post of the President of a Panchayat as soon as after the occurrence of the vacancy, in the event of a casual vacancy arising, can be easily conceived. The large amount of duties and responsibilities enumerated in Section 156 of the PR Act, as functions of the President, are more than sufficient legislative material to state that the casual vacancy of a President of a Panchayat cannot be left unfilled except at the peril of the citizenry, particularly because the LSGIs are the institutions at grass root level of local self governance in terms of the provisions of the Constitution of India. So much so, it is inadmissible to delay the election to the casual vacancy of the President.

4. Looking at the provisions of the PR Act and the Anti Defection Act, it can be seen, as rightly pointed out by the learned standing counsel for the Commission, that Sections 35(1)(n) and Section 36 of the PR Act and Section 4(3) of the Anti Defection Act would categorically show that the Commission is not empowered to pass any interim order interdicting the continuance of a member of a local authority on a ground referable to the provisions of the Anti Defection Act and such a member would cease to hold office only from the date of the decision of the Commission and his disqualification runs for six years from that date. This is the dictate of Section 4 of the Anti Defection Act. Therefore, the Commission is not empowered to pass any interlocutory order in a proceeding pending u/s 4 of the Anti Defection Act. Such power is just not there.

5. The fact that there is no automatic disqualification of a member on the ground of defection is well settled by the decisions of this Court in Jose Augustine and Another Vs. State of Kerala and Others, and Thangal V.A.K. v. BDO and Ors. 2007 (3) KLT 561. This Court has also laid down in CM, Mustafa v. State Election Commission [judgment dated 01.12.2003 in W.P.(C) No. 37014/2003] that a person accused of defection is entitled to act as a member of the Panchayat until the date of the order of the Commission declaring him as disqualified. That principle has been reiterated in C.P. Hydrose v. Kerala State Election Commission

[judgment dated 19.01.2004 in W.P.(C) No. 2047/2004] and in V.C Kariakose v. Kerala State Election Commission [judgment dated 10.01.2007 in W.P. (C) No. 813/2007].

6. In view of the law as noticed above, all that the petitioner can aspire for is the expeditious disposal of the applications filed by him before the Commission u/s 4 of the Anti Defection Act, since, obviously, even if any among the respondents before the Commission get elected as the President, that would also, ultimately, be wiped off, if the Commission decides against them in the matters pending before it.

For the aforesaid reasons, while I do not find any reason to fix any outer time limit, the Commission will consider disposing of the petitions filed by the writ petitioner u/s 4 of the Anti Defection Act expeditiously. All other reliefs sought for, are refused. These writ petitions are ordered accordingly.