

(2014) 11 KL CK 0171

In the High Court Of Kerala

Case No : Writ Petition (Civil) Nos. 2783 and 10737 of 2012 (W)

P. Krishnan

APPELLANT

Vs

The State of Kerala

RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 KL CK 0171

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : N. Raghuraj and K. Amminikutty, Advocate for the Appellant; Sunitha Vinod, Govt. Pleader, Blaze K. Jose, SC, M. Ramesh Chander, Aneesh Joseph, B.S. Swathy Kumar, M.G. Aishwarya, Advs., George Poonthottam and K.K. Ravindranath, Addl. Advs, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—Since the issue involved in both these writ petitions is the same they are taken up for consideration together and disposed by this common judgment.

2. The petitioners in W.P.(C). No. 2783 of 2012 were members of the Standing Committee of the 3rd respondent Council during the year 2007. Petitioners 1 to 5 continued as Standing Committee members of the 3rd respondent Council even thereafter, pursuant to the election that was conducted in 2010. In the writ petition, they are aggrieved by Ext. P16 order dated 28.01.2012, by which they were ousted from the membership of the 3rd respondent Council. The brief facts leading up to Ext. P16 order are as follows:

3. The petitioners, as members of the Standing Committee of the 3rd respondent Council had resolved to build an additional floor, to an existing building of the Council at Thiruvananthapuram, so as to create space for accommodating abandoned children. Although, the initial estimate for the work of expansion was fixed at Rs. 25,20,000/-, and the State Government had sanctioned an amount of Rs. 10 lakhs towards the cost of the said expansion, the Standing Committee

of the respondent Council by a resolution decided to augment the floor area in respect of the additional construction. This decision of the Standing Committee is stated to have been ratified by the Executive Committee. The revised estimate was thereafter worked out at Rs. 59 lakhs. Thereafter, by Ext. P3 communication dated 19.03.2008, the President of the 3rd respondent Council requested the Thiruvananthapuram Corporation to accord sanction to the revised plan, that was submitted in connection with the expansion activities. It is understood that, pursuant to a request of the Corporation to produce the stability certificate in respect of the construction proposed, Ext. P5 certificate was also forwarded to the Corporation. Thereafter, when nothing was heard from the Thiruvananthapuram Corporation, the petitioners proceeded with the construction of the additional floor based on their understanding that, as per the provisions of the Kerala Municipal Building Rules, the permission sought for would be deemed as granted. Accordingly, the construction was completed by 17.02.2010. Immediately thereafter, based on a complaint preferred by the 5th respondent, alleging corruption in the construction activities carried out by the petitioners, the Enquiry Commissioner and Special Judge forwarded the complaint received by him to the Director of the Vigilance and Anti-Corruption Bureau. It is also understood that the 5th respondent filed another complaint before the then leader of opposition citing the same allegations against the petitioners. On 18.05.2011, pursuant to the General Elections conducted in the State, the erstwhile Leader of opposition became the Chief Minister, and in that capacity also became the President of the 3rd respondent Council. It is stated that thereafter, the 5th respondent, who was the member of the 3rd respondent Council was nominated as the representative of the Council to represent the Council before the Central Adoption Research Authority (CARA) at New Delhi. It would appear that the Central Government informed the 3rd respondent Council that the representation of the 3rd respondent Council before CARA could only be through an elected office bearer of the 3rd respondent Council as was required by the bye-laws. On account of the said communication received from the Central Government, there was no representation of the 3rd respondent Council before the CARA. While matters stood thus, in a writ petition filed by another member of the 3rd respondent Council - Sri Riju K. Thomas, seeking a disposal of a representation with regard to certain allegations against the petitioners, this Court by Ext. P10 judgment directed the 2nd respondent to consider and pass orders on the representation preferred by the said Mr. Riju K. Thomas. Pursuant to the directions of this Court in Ext. P10 judgment, the 2nd respondent conducted a hearing on 02.12.2011. During the course of the hearing, the 2nd respondent felt the need to go through certain documents with regard to the technical aspects of the construction that was undertaken by the petitioners on behalf of the 3rd respondent Council. He therefore, requested the General Secretary of the 3rd respondent Council to make available the said technical documents regarding the construction, by Ext. P13 communication dated 04.01.2012. Thereafter, by Ext. P14 show cause notice dated 09.01.2012, the petitioners were asked to show cause as to why action should not be taken

against them pursuant to Clause 26(a) of the bye-laws of the 3rd respondent Council which are produced as Ext. P1 in the writ petition. Although, the petitioners preferred Ext. P15 reply dated 12.01.2012 to the said show cause notice, the 2nd respondent by Ext. P16 order dated 28.01.2012 held the petitioners as ousted from the membership of the Council in terms of Clause 20(b) and simultaneously nominated the 5th and 6th respondent to the Executive Committee in terms of Clause 25(16) of the bye-law of the 3rd respondent Council. As already noted Ext. P16 is impugned in W.P.(C). No. 2783 of 2012.

4. W.P.(C). No. 10737 of 2012 was filed at a stage when, after Ext. P16 order in W.P.(C). No. 2783 of 2012 was passed and the petitioners in that writ petition had been found disqualified from membership of the 3rd respondent Council, an interim order was passed by this Court on 27.03.2012, on consent of all parties, directing that a General Body Meeting of the 3rd respondent Council be convened for considering the question of disqualification of the petitioners in W.P.(C). No. 2783 of 2012 since it was felt that the General Body is the ultimate authority to take a final decision in the matter. This Court then proceeded to confer the authority to issue notices for convening the General Body Meeting on the Director of Social Welfare Department. It was made clear that if the General Body adopted a resolution holding the petitioners as liable to be disqualified then the disqualification would stand, if on the other hand General Body adopted a resolution that the petitioners are not liable to be disqualified, they would continue as members of the 3rd respondent Council untrammelled by Ext. P15 order. The District Collector was also put in charge of the day to day affairs of the establishment, pending the taking of a final decision in the matter by the General Body, as directed in the interim order. It would appear that when steps were taken to convene the General Body Meeting, as directed by this Court in the interim order referred to above, it was noticed that in connection with the General Body Meeting, notice was issued to 1742 persons as against the 890 life members who, according to the petitioner were the only life members of the 3rd respondent Council at the time they were ousted from membership by Ext. P16 order. The petitioners in W.P.(C). No. 10737 of 2012 therefore approached this Court challenging the order dated 28.01.2012, that was impugned as Ext. P16 in other writ petition, as also seeking a direction to the respondents to limit the participation in the General Body Meeting, scheduled pursuant to the directions from this Court, to only those 890 members in respect of whom there was no dispute with regard to their life membership in the 3rd respondent Council. In the said writ petition, there are definite allegations regarding the manipulation and falsification of the membership registers and in that connection, a declaration is sought to the effect that those persons who were admitted subsequent to 04.08.2011 by fabrication, manipulation and falsification of records and who were assigned membership numbers from 891 onwards are not entitled to participate in the General Body Meeting scheduled. Thus in essence the grievance of the petitioners in W.P.(C). No. 10737 of 2012 is with regard to

the admission of 868 persons as life members of the 3rd respondent Council and the consequent exercise by the said person of their rights as members of the 3rd respondent Council.

5. It needs to be noted at this stage that during the pendency of the writ petition, the District Collector who had been put in charge of the day to day administration of the 3rd respondent Council by this Court, approached this Court through an interlocutory application pointing out that the term of the Standing Committee and the Executive Committee had since expired and therefore, there was a need to conduct a fresh election for the purposes of electing a new Standing Committee and Executive Committee. While attempts were made through directions of this Court to hold an election, the said attempt did not fructify on account of the interim orders being carried in appeal, and directions having been issued by the Division Bench in those appeals. The fall out of the various orders passed by this Court was that, the status quo with regard to the District Collector continuing with the day to day administration of the 3rd respondent Council continued and it was felt that there would be no point in conducting an election until the dispute, with regard to the eligibility of the 868 persons aforementioned to exercise their rights as life members of the 3rd respondent Council, was first determined. It is also apparent from a reading of the order dated 16.07.2014 of the Division Bench in the writ appeals that there is a civil suit pending (O.S. No. 78 of 2013) before the Munsiff's Court, Trivandrum challenging the induction of the 868 persons as life members of the 3rd respondent Council. It is in this factual back drop that I have to now decide the writ petitions before me.

6. I have heard Sri N. Raghuraj, the learned counsel for the petitioners in W.P. (C). No. 2783 of 2012, Sri P.K. Vijayamohanan, the learned counsel for the petitioners in W.P.(C). No. 10737 of 2012 and Sri Blaze K. Jose the learned Standing counsel and Sri M. Ramesh Chander, Sri O.V. Maniprasad, Sri B.S. Swathy Kumar, Sri George Poonthottam, Sri K.K. Raveendranath, the learned Counsel appearing for the respondents in both the writ petitions.

7. On a consideration of the facts and circumstances of the case as also the submissions made across the Bar, I find that the principle issue to be decided in these writ petitions is the legality of Ext. P16 order that was passed by the 2nd respondent disqualifying the petitioners in W.P.(C). No. 2783 of 2012 from the membership of the 3rd respondent Council, in purported exercise of the power under Clause 20(b) of Ext. P1 bye-law. It is seen that Ext. P16 order was passed pursuant to Ext. P14 show cause notice that was issued to the 1st petitioner asking him to submit an explanation in connection with the construction that was undertaken by the Standing Committee and which, according to the 2nd respondent, was in excess of the estimate that was prepared in connection with the work and without the approval of the Social Welfare Department. Although, the petitioners had submitted Ext. P15 reply dated 12.01.2012, Ext. P16 order was passed disqualifying them from the membership of the 3rd respondent

Council. In my view, Ext. P16 order of the 2nd respondent suffers from various illegalities. Firstly, Ext. P14 Show cause notice was issued only to the 1st petitioner and the action in Ext. P16 order is taken against all the 7 petitioners. Secondly, the show cause notice issued to the first petitioner refers to Clause 26(a) of the bye laws which states that the President shall have General control over the affairs of the Council. A perusal of Ext. P16 order would indicate that the action taken against the petitioners was in terms of Clause 20(b) of the bye-laws which provides as follows:

"Any member who violates the discipline of the Council shall either be suspended for a specified period not less than one year or removed from the membership of the Council."

Clause 20(c) of the said bye-laws read as follows:

"The standing Committee may either on its own conclusion or based on the specific allegation raised by any member, the punishments specified in Rule 20(b) shall be imposed on the delinquent member after giving him an opportunity to submit his defence."

8. On a reading of clause 20(b) and (c) together, it would appear that the Standing Committee is vested with the power to consider the issue of whether a punishment should be imposed on a member, after giving him an opportunity to submit his defence. It would follow, therefore, that the power to disqualify a member from membership of the Council, which had to be exercised by the Standing Committee at first instance, and in respect of which an appeal lay before the Executive Committee in accordance with Clause 20(b) of the bye-laws, could not have been exercised by the President in terms of Section 26(a) of the bye-laws. In the instant case, the power under Section 26(a) itself is seen exercised by the 2nd respondent and not by the President. Thirdly, the allegations in Ext. P15 show cause notice issued to the 1st petitioner stem from an action that was taken by members of the Standing Committee of the 3rd respondent Council. The explanation that was sought was essentially in respect of the said action of the members of the Standing Committee. Even assuming that there was an action that could be taken against the said members, pursuant to the powers in the bye law, it is apparent that the said action could only result in disqualifying the said persons from continuing as members of the Standing Committee. This must be the sense in which Clause 26(a) of the bye-laws, empowering the President to function as the authority having general control over the affairs of the Council, has to be read. Ext. P16, to the extent it orders the disqualification of the petitioner from even the primary membership of the 3rd respondent Council, is therefore clearly illegal and contrary to the provisions of the bye-laws of the 3rd respondent Council. Thus Ext. P16 order of the 2nd respondent cannot be legally sustained. Accordingly, I quash Ext. P16 and declare that the petitioners will be restored their membership in the 3rd respondent Council, as also the benefit of membership in the Standing Committee till the date of the expiry of the term of the said Standing Committee

(18.02.2013).

9. I must now turn to the prayers in W.P.(C).No. 10737 of 2012. As already noted above, the prayers in the said writ petition are primarily directed to the induction of 868 persons as life members of the 3rd respondent Council. Although, there are allegations in the writ petition regarding the falsification and fabrication of the Minutes Book, Membership Register and other records of the 3rd respondent Council, I am of the view that these matters cannot be gone into by a writ court exercising powers under Article 226 of the Constitution of India. The allegations raised by the petitioners in W.P.(C). No. 10737 of 2012 would require the taking of evidence, both oral and documentary, in order to have an effective adjudication of the same. The writ court is not suited for such an exercise. That apart, I note that there is already a civil suit pending before the Munsiffs Court, Trivandrum, where the very same issue has been raised. Further, the 868 persons, against whose induction as life members of the 3rd respondent Council, the petitioners in W.P.(C). No. 10737 of 2012 are aggrieved, are not parties before this Court in the present writ petition, notwithstanding the submission of counsel for the petitioners that the 4th respondent in W.P.C. No. 10737 of 2012 has been impleaded therein in a representative capacity. Thus, leaving open the right of the petitioners to pursue their civil remedy, if they so desire, I decline interference in the said writ petition save to the limited extent of holding that the petitioners in W.P. (C) No. 10737 of 2012, would also obtain the benefits flowing from a quashing of Ext. P16 order in W.P.(C). No. 2783 of 2012.

Resultantly, both the writ petitions are disposed in terms of the findings above.