

(2010) 09 KL CK 0063

In the High Court Of Kerala

Case No : Writ Petition (C) No. 28664 of 2010

Rajesh, O.

APPELLANT

Vs

State of Kerala and Another

RESPONDENT

Date of Decision : 16-09-2010

Acts Referred:

Companies Act, 1956 — Section 617
Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 6, 7, 8
Kerala Municipalities Act, 1994 — Section 86(1)
Kerala State and Subordinate Services Rules, 1958 — Rule 2(15)

Citation : (2010) 4 KLT 124

Hon'ble Judges : P.N.Ravindran, J

Bench : Single Bench

Advocate : P. Deepak and Aparna Rajan, for the Appellant; Murali Purushothaman, S.C. for Election Commission and K.R. Deepa, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Ravindran, J.—The Petitioner, who is the Councillor representing Division No. 4 of Kollam Corporation and an SLR worker in the Water Resources Department, has filed this writ petition challenging Ext.P-2 communication issued to him by the Secretary of the Kerala State Election Commission and seeking a declaration that he is entitled to contest in the ensuing elections to the Kollam Corporation.

2. By Ext.P-2 letter dated 31-8-2010 the Secretary of the Kerala State Election Commission informed the Petitioner that the Ground Water Department is a Department of the Government and therefore the Petitioner, who is an employee of the said Department, is disqualified from being a member or for being chosen as the Councillor of a Municipality in view of Section 86(1) of the Kerala Municipality Act, 1994.

3. Section 86(1) of the Kerala Municipality Act, 1994 reads as follows:

86. Disqualification of officers and employees of Government, local authorities

etc.--(1) No officer or employee in the service of a State or Central Government or a local authority or a Corporation owned or controlled by a State or the Central Government or of a company in which a State or Central Government or local authority has not less than fifty one per cent share or of Boards or any University established under a State enactment shall be qualified for election as, or for holding the office of Councillor of a Municipality.

Explanation.--For the purpose of this section, company means a Government Company as defined in Section 617 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a Co-operative Society registered or deemed to have been registered under the Kerala Co-operative Societies Act, 1969 (21 of 1969).

(emphasis supplied)

The Petitioner is admittedly a Government servant, an employee of the Water Resources Department. If that be so, Section 86(1) would disqualify him from being chosen as a Councillor of the Municipality. The fact that the Petitioner is a Government servant is not in dispute. He however contends for the position that the post of SLR worker in the Water Resources Department is not a post borne in the State Services or in the Subordinate Services within the meaning of the said terms occurring in Rules 6, 7 and 8 of the Kerala Civil Services (Classification, Control and Appeal) Rules. Relying on the definition of the term "service" in Rule 2(15) of Part I of the Kerala State and Subordinate Services Rules, 1958 it is contended that the word "service" means a group of persons classified by the State Government as a State or a Subordinate Service as the case may be, and that as the post of SLR worker is not a post borne either in the State Services or in the Subordinate Services, the Petitioner cannot be said to be an officer or employee in the service of the State Government. I am afraid there is no merit in the said contention. The words "in the service of" occurring in Section 86(1) of the Kerala Municipality Act, 1994 are not used in the context in which the word "service" is used in the Kerala Civil Services (Classification, Control and Appeal) Rules or in the Kerala State and Subordinate Services Rules. The purpose of section 86(1) of the Kerala Municipality Act is to prohibit Government servants, namely officers and employees of the State and Central Governments from contesting elections to local bodies. The words "in the service of" only denote the condition of being a Government servant, either of the State Government or the Central Government. Besides employees of the State Government and the Central Government, employees of a local authority or a Corporation owned or controlled by the State or the Central Government or of a company in which the State or Central Government or local authority has not less than fifty one per cent share or of Boards or any University established under a State enactment are also disqualified from contesting the elections to local bodies. Therefore, the words "in the service of" occurring in Section 86(1) of the Kerala Municipality Act can only mean the condition of being an employee of the various categories of bodies mentioned therein. The prohibition is against persons in Government service and not merely on the members of a State or Subordinate Service within

the meaning of the said terms occurring in the Kerala State and Subordinate Services Rules, 1958 or the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960.

I accordingly hold that there is no merit in the writ petition. The writ petition fails and is dismissed.