

(1991) 05 KL CK 0012
In the High Court Of Kerala
Case No : O.P. No. 5242/91

Santhigiri Ashram

APPELLANT

Vs

The Tahsildar and Others

RESPONDENT

Date of Decision : 17-05-1991

Acts Referred:

Registration of Electors Rules, 1960 — Rule 22, 23, 23(3)

Representation of the People Act, 1951 — Section 22, 23, 23(1), 23(2), 23(3)

Citation : (1991) 05 KL CK 0012

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : K.P. Dandapani, for the Appellant; K. Sudhakaran, General for Respondents 1 and 2, for the Respondent

Judgement

M.M. Pareed Pillay, J.—Petitioners seek writ of mandamus commanding Respondents 1 to 3 to permit them to cast their votes in the ensuing General Elections in Kerala. First Petitioner is Santhigiri Ashram and Petitioners 2 to 135 are its inmates.

2. It is the case of the Petitioners that when the draft voters' list was published their names were found omitted, that they immediately filed applications in Form No. 6 requesting for inclusion of their names in the voters' list, that the first Respondent issued a notice dated 23rd March 1991 requiring them to appear before him on 30th March 1991 and that on account of the tension prevailing in the locality they could not do so. On knowing that their applications for inclusion of their names in the amended list were rejected by the first Respondent they filed appeals before the second Respondent-Petitioners contend that they could not appear before the first Respondent on account of the prevailing tension and disorderly situation in the locality and as they apprehended danger to life.

3. Petitioners submitted that they may be allowed to exercise their franchise at least with some conditions imposed. Suggestion is that their ballot papers may be kept in a separate box and it be separately counted. Learned Advocate

General submitted that the above request cannot be granted as they are not voters as per the electoral roll. He pointed out that as an opportunity was afforded to them to appear before the first Respondent on 30th March 1991 and as they failed to avail the same prayer to allow them to exercise their franchise cannot be allowed as the Representation of the People Act (hereafter referred to as the Act) does not envisage any such position. Another contention is that the OP. itself is not maintainable as the Court has no power to direct the first Respondent to include the Petitioners' names in the voters' list as the last date of making nominations is already over.

4. The question that arises for consideration is whether it is within the competence of the Electoral Registration Officer (first Respondent) to include the Petitioners in the electoral roll after the expiry of the last date for making nominations. Section 22 of the Act empowers the Electoral Registration Officer for a constituency, on application made to him or on his own motion, to correct entries in the electoral roll, if after enquiry as he thinks fit, is satisfied that the electoral roll is erroneous or defective in any particular case or any entry should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency or should be deleted on the ground that the person concerned is dead or has ceased to be ordinarily resident in the constituency or is otherwise not entitled to be registered in that roll. The proviso to Section 22 makes it incumbent upon him to give the person concerned a reasonable opportunity of being heard in respect of the action proposed to be taken in relation to him u/s 23(1) a person whose name is not included in the electoral roll of a constituency can apply to the electoral registration officer for the inclusion of his name in the roll. Section 23(2) empowers the electoral registration officer to direct an applicant's name to be included in the electoral roll if he is satisfied that the applicant is entitled to be registered. The proviso is to the effect that if the applicant is registered in the electoral roll of any other constituency the electoral registration officer shall inform his counter part of that other constituency and that officer shall on receipt of the information strike off the applicant's name from that roll.

5. Whereas Section 22 deals with correction of entries in the electoral rolls, Section 23 deals with the inclusion of names in it. The object of Sub-sections (1) and (2) of Section 23 is to ensure that to the extent possible all persons qualified to be registered as voters in any particular constituency should be duly registered. It equally emphasises that those who are not qualified to be registered must be removed from the rolls. But Section 23(2) is an important exception prescribing a time limit for the officer in this regard. Section 23(2) reads:

No amendment, transposition or deletion of any entry shall be made u/s 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which

that constituency is comprised and before the completion of that election.

Section 23(3) gives a mandate to the electoral registration officer not to amend, transpose or delete any entry in the electoral roll of a constituency after the last date for making nominations for election in that constituency and before the completion of that election. Such a provision is specifically made to obviate the possibility of unscrupulous manipulations in the electoral rolls. Section 23(3) makes it impossible of any such attempt to manipulate the electoral rolls at the instance of any candidate with a view to brighten his prospects in the election at the fag end. Section 23(3) interdicts the electoral registration officer from making any amendment, transposition or deletion of any entry in the electoral roll after the last date for making nominations for election in the constituency. Last date for making nominations puts a full stop to the power conferred on the electoral registration officer. As he is statutorily barred from proceeding any further, this Court cannot issue writ of mandamus as wanted by the Petitioners. As the last date for making nominations for the election in the constituency was admittedly over on 26th April 1991, Petitioners cannot seek the writ of mandamus for their inclusion in the "voters" list thereafter.

6. Section 24 provides for an appeal to the chief electoral officer from any order of the electoral registration officer u/s 22 or Section 23. Proviso to Rule 23 of the Registration of Electors Rules, 1960 envisages that no appeal shall lie where the person desiring to appeal has not availed himself of his right to be heard by the registration officer. Though it is stated in the Original Petition that the Petitioners were prevented from appearing before the first Respondent on 30th March 1991, they could not substantiate the allegation. It remains only as an assertion. Contention that O.P. 4490 of 1991 was filed for police protection by the Petitioners cannot be of any assistance to them as it was filed long after 30th March 1991. Petitioners could not successfully establish that they were prevented to appear before the first Respondent due to any cause beyond their control. Merely on the ground that appeal is pending, Petitioners cannot claim that they should be allowed to exercise their franchise. Rule 23(3) provides that the presentation of an appeal shall not have the effect of staying or postponing any action to be taken by the registration officer for final publication of roll under Rule 22. As the Petitioners admittedly failed to report before the first Respondent on 30th March 1991, the appeals filed by them are not maintainable in view of the proviso to Rule 23 which clearly states that no appeal shall lie where the person desiring to appeal has not availed himself of his right to be heard by the registration officer. On the ground that appeals have been filed by the Petitioners they cannot claim to exercise their franchise even provisionally.

7. Though the object of Section 23(1) and 23(2) is to see that to the extent possible, all persons qualified to be registered as voters should be duly registered and to remove from the rolls all those who are not qualified to be registered, Section 23(3) makes the position abundantly clear that the electoral registration officer cannot amend, transpose or delete any entry in the electoral roll of a

constituency after the last date for making nominations for election in that constituency and before the completion of that election. As the last date is admittedly over, Petitioners" claim that they should be allowed to exercise their franchise cannot be allowed. Petitioners are not entitled to the writ of mandamus.

The Original Petition is dismissed.