

(2000) 09 KL CK 0016
In the High Court Of Kerala
Case No : W.A. No. 2067 of 2000

State Election Commission

APPELLANT

Vs

Krishnan

RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 243
Kerala Panchayat Raj (Registration of Electors) Rules, 1994 — Rule 12
Panchayat Raj Act, 1994 — Section 14, 22, 23, 24, 25
Registration of Electors Rules, 1960 — Rule 21, 22, 23
Representation of the People Act, 1950 — Section 23(3)

Citation : (2000) 09 KL CK 0016

Hon'ble Judges : K.K. Usha, Acting C.J.; Kurian Joseph, J

Bench : Division Bench

Advocate : N. Nandakumara Menon, for the Appellant;

Final Decision : Allowed

Judgement

K.K Usha, Ag.C.J.

1. This appeal, at the instance of the State Election Commission and the Electoral Registration Officer for Kizhakkambalam Gram Panchayat, is directed against the interim order passed by a learned Single Judge in C.M.P. No. 44609 of 2000 in O.P. no. 24450 of 2000. The Original Petition was filed by respondents 1 to 1219 herein claiming themselves to be ordinarily residents in Ward Nos. 4, 7 and 8 of Kiznakkambalam Gram Parchayat. They sought a declaration that petitioners 1 to 131, 132 to 483 and 434 to 1219 are entitled for inclusion of their names in the electoral roll for Ward Nos. 7, 8 and 4 respectively of Kizhakkambalam Gram Panchayat. There was a further prayer for a writ of mandamus directing respondents 4 and 5 in the Original Petition to include their names in the respective wards, thereby enabling them to cast vote in the ensuing election for the local bodies. Apart from the above, they sought a writ of certiorari to quash Ext. P10 to P1299 orders rejecting their request to be included in the voters" list.

2. Petitioners contended that their applications for inclusion of their names in the electoral roll of Ward Nos. 4, 7 and 8 of Kizhakkambalam Gram Panchayat were wrongly rejected by the Electoral Registration Officer viz., fourth respondent in the Original Petition. So also, according to them, dismissal of the appeals filed before the Deputy Director of Panchayats was unsustainable in law. C.M.P. No. 41209 of 2000 was filed by the petitioners in the Original Petition praying for an interim direction to respondents 2 and 4 to permit the petitioners to cast their votes in the forth coming election to the Kizhakkambalam Gram Panchayat. In the above petition, an order was passed by the learned Single Judge on 24.8.2000 permitting the petitioners in the Original Petition to file individual applications before the fourth respondent under S. 24 of the Kerala Panchayat Raj Act, 1994 (for short, the Act) and the fourth respondent was directed to pass orders on those applications within a period of 5 days from the date of receipt of such applications. Subsequently, petitioners filed C.M.P. No. 42916 of 2000 on 30.8.2000 complaining that the fourth respondent was not accepting the applications submitted by them. On 31.8.2000, a learned Single Judge passed an order directing fourth respondent to accept all the applications submitted by the petitioners in the Original Petitions before 5.00 p.m. on 31.8.2000. It is the case of the fourth respondent that all the above mentioned applications received on 28.8.2000, 30.8.2000 and 31.8.2000 were considered on merits and disposed of on 1.9.2000 rejecting the claims put forward by the petitioners. Thereafter, petitioners filed C.M.P. No. 44609 of 2000.

3. The contention raised by the petitioners in the affidavit filed in support of C.M.P. No. 44609 of 2000 was that there was no proper disposal of their applications by the fourth respondent, rejection of their claim is arbitrary and that they were not individually served with copies of the orders rejecting their applications. The petitioners, therefore, prayed in the above petition that they may be permitted to cast their votes provisionally in the forthcoming election to various constituencies of Kizhakkambalam Gram Panchayat after keeping separate ballot boxes pending disposal of the Original Petition. On the above application, the learned Single Judge directed the respondents in the Original Petition that the names of 1144 petitioners, who had submitted applications in Form No. 4, should be incorporated in the electoral roll of the Panchayat as separate groups against appropriate wards so as to make them eligible to cast their votes. The respondents were to issue consequential directions to the polling officers to keep the votes cast by the petitioners in separate boxes. There is a further direction by learned Single Judge that counting of votes of any of the wards of the Panchayat should not be undertaken. The C.M.P. and the O.P. were then posted for further orders on 28.9.2000. Aggrieved by the above directions given by the learned Single Judge in the order dated 20.9.2000, respondents 2 and 4 in the Original Petition have filed this appeal.

4. Petitioners claimed that they are employees of KiteX Garments Ltd., Kizhakkambalam and are ordinarily residents in Ward Nos. 4, 7 and 8 of Kizhakkambalam Gram Panchayat. The draft electoral roll in respect of the above

Panchayat was published on 30.5.2000. Petitioners submitted their applications on 30.6.2000 and 6.7.2000 before the Secretary, Kizhakkambalam Gram Panchayat for inclusion of their names in the electoral roll of the constituencies. Such applications were filed within the time prescribed under R. 12 of the Kerala Panchayat Raj (Registration of Electors) Rules, 1994 (for short, "the Rules"). These applications were rejected by order dated 29.7.2000. Petitioners thereupon filed appeals before the Deputy Director of Panchayats, fifth respondent in the Original Petition, as provided under R. 22 of the Rules. These appeals were rejected on 7.8.2000. Thereupon, the petitioners filed the Original Petition on 18.8.2000. As mentioned earlier, it was pursuant to an interim order passed by this Court on 24.8.2000 in C.M.P. No. 41209 of 2000, the petitioners filed separate applications before fourth respondent.

5. The appellants have a case that the applications initially filed by the petitioners before the Secretary, Kizhakkambalam Gram Panchayat is not in accordance with the Rules as the Secretary, Kizhakkambalam Gram Panchayat is not the Electoral Registration Officer, who is empowered to consider such applications. "According to the appellants, it is only the subsequent applications filed pursuant to the interim order passed by this Court on 24.8.2000 that can be treated as applications in accordance with the Rules. We do not propose to go into the merit of this contention at this stage as it is not necessary to appreciate the main contention raised by the appellants before us regarding jurisdiction of this Court to pass order as the one which is under challenge in this appeal. According to the appellants, in view of the provisions contained in An. 243-O of the Constitution of India, this Court has no jurisdiction to pass the impugned order. An. 243-O reads as follows:

"243-O. Bar to interference by Courts in electoral matters:- Notwithstanding anything in his Constitution,-

(a) the validity of any law relating to the delimitation of constituencies, made or purporting to be made under Art. 243K, shall not be called in question in any Court;

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

Going by the decisions of the Apex Court, the term "election" mentioned in An. 243-O(b) would take in the whole procedure of election and not confined to the final result thereof. It is contended that the last date for acceptance of nomination as per election notification for the ensuing election was 1.9.2000. In the light of the provisions contained in the Act and the Rules, inclusion of any name in the electoral roll after the above date is prohibited. It was also contended that the direction given by the learned Single Judge not-to have the counting of the votes cast in any of the wards in the Panchayat would amount to interference with the election process, which is also a direction without

jurisdiction.

6. We will now refer to some of the relevant provisions in the Act and the Rules. S. 14 of the Act empowers the Electoral Registration Officer designated in that belief by the State Election Commission to prepare and revise electoral rolls of all the constituencies comprised in a village Panchayat in such manner as may be prescribed. S. 24 of the Act provides that any person whose name is not included in the electoral roll of a constituency may apply to the Electoral Registration Officer for inclusion of his name in that roll. There is a total bar under sub-s. (3) of S. 24 of the Act in inclusion of a name in the electoral roll of a constituency or making an amendment, transportation or deletion of any entry under S. 23 after the last date for making nominations for an election in that constituency and before the completion of that election. A person aggrieved by an order of the Electoral Registration Officer is entitled to file an appeal to the District Election Officer under S. 25 of the Act. R. 22 provides the manner in which appeals are to be filed. Sub-r. (4) of R. 22 of the Rules says that every decision of the appellate officer shall be final, but in so far as it reverses or modifies the decision of the Registration Officer, shall take effect only from the date of the decision in appeal.

7. We find merit in the contention raised by the appellants that the impugned order passed by the learned Single Judge is beyond the jurisdiction of this Court, in view of the provisions contained in Art. 243-O(b) of the Constitution. In the light of the decision of the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, and the subsequent decision viz., *Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others*, it is now beyond controversy that Art. 329(b), corresponding to Art. 243-O(b), would take in the whole procedure of election and it is not confined to the final result thereof. So also, in *State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc.*, the Apex Court had held that the High Court should not interfere with electoral matters in exercise of the jurisdiction under Art. 226 of the Constitution, after election notification was issued. *Anugrah Narain Singh and Another Vs. State of U.P. and Others*, is a matter which arose under Art. 243-ZG, corresponding to Art. 243-O(b), where it has been held that there is a complete and absolute bar in considering any matter relating to municipal election on any ground whatsoever, after the publication of notification for holding municipal election. It has been further held that as far as preparation of electoral roll is concerned, there are sufficient safeguards in the U.P. Nagar Mahapalika Adhiniyam 1959 against any abuse or misuse of power. In view of such provisions, particularly sub-s. (6) of S. 39, which provides for appeals in regard to inclusion, deletion and correction of names there is hardly any scope for a court to intervene and correct the electoral rolls under Art. 226 of the Constitution.

8. Learned counsel appearing on behalf of the petitioners sought to distinguish the above mentioned decisions of the Supreme Court placing reliance on the recent decision of the Apex Court in *Election Commission of India Through*

Secretary Vs. Ashok Kumar and Others, Emphasis was made by the learned counsel on paragraph 32 of the judgment and contended that judicial review was not totally barred against action taken or orders issued by Election Commission. If there is a case of mala fide action of the Election Commission or arbitrary exercise of power or if it has acted in breach of law, judicial review will be maintainable and without interrupting, obstructing or delaying progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court. It is the above observation, which, according to learned Counsel for the petitioners, justifies the directions contained in the impugned order.

9. We are afraid that no support can be drawn from the above judgment to justify the directions contained in the impugned order. In para 34 of the very same judgment, the Apex Court has referred to the dual tests to be satisfied for enabling the High Court to pass orders regarding election matters while exercising jurisdiction under An. 226 of the Constitution viz., (1) the order sought from the court did not have the effect of retarding, interrupting, protracting or stalling the counting of votes and the declaration of the results as only that much part of the election proceedings had remained to be completed at that stage and (ii) a clear case of mala fides on the part of Election Commission inviting intervention of the Court was made out, that being the only ground taken in the petition. The direction given by the learned Single Judge would certainly stall the counting of votes and the declaration of results not only in the Kizhakkambalam Gram Panchayat, but also in the Vazhakkulam Block Panchayat as well as the District Panchayat. It is submitted before us that portions of Ward Nos. 4, 7 and 8 are included in Ward Nos. 6 and 8 of Vazhakkulam Block Panchayat and Ward Nos. 15 and 16 of the District Panchayat.

10. Apart from the above, in the teeth of the provisions contained in sub-s. (3) of S. 24 of the Act, there can be no inclusion of names in the electoral roll after the last date for making nominations for an election in the constituency, in this case, admittedly, the last date was 1.9.2000. The direction given in the order dated 20.9.2000 is, therefore, in direct violation of the statutory bar. The petitioners have a right of appeal under S. 25 read with R. 22. But, even if their appeals are allowed by the appellate authority, in view of the provisions contained in sub-r. (4) of R. 22, the appellate order will take effect only from the date of the order. The direction given in the impugned order will go against the statutory provisions also. In this contention, we may refer to the decision of the Apex Court in Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman AIR 1985 SC 1233. The Apex Court had considered in this case the effect of the provisions contained in S. 23(3) of the Representation of People Act, 1950 and Rr 22 and 23 of the Registration of Electors Rules, 1960. Sub-s. (3) of S. 23 contains provisions similar to sub-s. (3) of S. 24 of the Act. Under that provision, no amendment,

transposition or deletion of any entry can be made under S. 23 and no direction for inclusion of a name in the electoral roll of a constituency can be given after the last date for making nominations for election to a constituency. The election is to be held on the basis of the electoral roll which is in force on the last date of making nominations. R. 22 of the Registration of Electors Rules, 1960 contains provisions similar to R. 21 of the Rules. The above Rule imposes upon the Registration Officer an obligation to publish the electoral roll which, together with the list of amendments, becomes the electoral roll of the constituency. Sub-r. (3) of R. 23 provides that the presentation of an appeal under R. 23 shall not have the effect of staying or postponing any action to be taken by the Registration Officer in publishing the electoral roll under R. 22. Sub-r. (3) of R. 22 of the Kerala Panchayat Raj (Registration of Electors) Rules has a similar provision viz. that the presentation of an appeal under the rule shall not have the effect of staying or postponing any action to be taken by the Registration Officer under R. 21 regarding publication of electoral roll. After referring to the above-mentioned provisions under the Representation of People Act, 1950 and the Rules referred above, the Supreme Court took the view that "the fact that certain claims and objections are not finally disposed of, even assuming that they are filed in accordance with law, cannot arrest the process of election to the legislature. The election has to be held on the basis of the electoral roll which is in force on the last date for making nominations". The impugned order directing inclusion of the petitioners' names in the electoral roll after 1.9.2000 is directly against the principles laid down in this decision of the Apex Court.

In the light of the above discussion, we set aside the order dated 20.9.2000 in C.M.P No. 44609 of 2000 in O.P. No. 24450 of 2000 passed by the learned Single Judge. The appeal stands allowed.