

(1984) 12 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 10229 of 1984-P

T.A. Rajendran

APPELLANT

Vs

Vakkam B. Purushothaman and Another

RESPONDENT

Date of Decision : 12-12-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1985 Ker 106

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : Party in person, for the Appellant; A.G., for the Respondent

Final Decision : Dismissed

Judgement

V. Sivaraman Nair, J.—The first respondent is the Speaker of the Kerala Legislative Assembly. The petitioner submits that while continuing in that office, with all the paraphernalia attached thereto he is contesting the Parliamentary Election from Alleppey as a candidate of a political party. The petitioner submits that this is inconsistent with the traditions of independence and impartiality of the office of the Speaker, that in similar situations, persons holding the office of Speaker had resigned from that office to contest the elections and that refusal of the first respondent to do likewise sets up a very bad precedent undermining the basic tenets of our constitutional Government. He, therefore, seeks the removal of the first respondent from the office of the Speaker of the Kerala Legislature. It is submitted that it was assumed in the decision of the Travancore-Cochin High Court reported in *Nesamony v. T. M. Varghese* AIR 1952 Trav Co. 66, that the Speaker of the Legislature is amenable to the jurisdiction of the High Court under Article 226 of the Constitution of India.

2. The Advocate General, who was present in Court when the Original Petition came up for admission, was requested to assist the Court in dealing with the issue. He submitted that there is no express prohibition anywhere in the Constitution of India or the Representation of the Peoples Act disabling the first

respondent from contesting a Parliamentary election while holding the office of the Speaker. He also submitted that Article 212 of the Constitution precludes this Court from granting the relief sought by the petitioner. The Advocate General also submitted that the impropriety, if any, in the candidature or style of functioning of one of the candidates is a matter to be raised before the Election Commission or in an election petition, if one such becomes necessary.

3. True it is that Article 212 of the Constitution of India disables this Court from granting the relief of removal of the Speaker of the Legislature. The question whether the conduct of the person holding the office of the Speaker disentitles him from continuing in that office is a matter for the House to decide. The decision reported in AIR 1952 T.C. 66 did not consider the effect of Article 212 of the Constitution of India. A Division Bench of the Travancore-Cochin High Court in the decision reported in *Nesamani v. Varghese* AIR 1952 Trav. Co. 205, however, held -

"we entertain no doubt that when the matter in controversy has nothing to do with the exercise by an officer of the legislature like the respondent of the powers vested in him, but is concerned with the interpretation of a relevant provision of law which is alleged to affect his legal right to continue in office, a Court of law does have jurisdiction to deal with the matter."

In the present case, however, the relief sought is removal of the Speaker of the Legislature as a consequence of his conduct allegedly irreconcilable with that high and exalted office a matter which is within the exclusive purview of the House.

4. In the Parliamentary system of Government, which we have adopted, the office of the Speaker is a high and exalted office. He represents the entire house of elected representatives of the people and holds a place next only to the Head of the State in protocol. To that office are attached privileges which are inalienable. Under Article 179 of the Constitution of India, he holds office till he ceases to be a member of the Assembly or resigns or is removed by a resolution of the Assembly. He shall not vacate his office even after the dissolution of the Assembly until immediately before the first meeting of the Assembly after dissolution. Though the Advocate General submits that the British Parliamentary Practices shall not be applicable to India, I have to rely on the celebrated treatise of Erskine May on the mother of Parliaments due to lack of any other alternative source suggested by him. Dealing with the Speaker of the House of Commons, it is stated in "Parliamentary Practice", 20th Edition, at pages 234-235;

"The chief characteristics attaching to the office of Speaker in the House of Commons are authority and impartiality. As a symbol of his authority he is accompanied by the Royal Mace which is borne before him when entering and leaving the chamber and upon state occasions by the Serjeant at Arms attending the House of Commons, and is placed upon the table when he is in the chair. In debate all speeches are addressed to him and he calls upon Members to speak a

choice which is not open to dispute. When he rises to preserve order to give a ruling on a doubtful point he must always be heard in silence and no Member may stand when the Speaker is on his feet. Reflections upon the character or actions of the Speaker may be punished as breaches of privilege. His action cannot be criticised incidentally in debate or upon any form of proceeding except a substantive motion. His authority in the chair is fortified by many special powers which are referred to below. Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many; conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognized. He takes no part in debate either in the House or in committee. He votes only when the voices are equal, and then only in accordance with rules, which preclude an expression of opinion upon the merits of a question. Until recently his seat was often uncontested at a general election.

* * *

The Speaker is always ready to advise Members of all parties who consult him privately whether upon any action which they propose to take in the House or upon any questions of order which are likely to arise in its proceedings. Such private rulings of the Speaker generally settle the questions at issue, but they may, if necessary, be supplemented by rulings given from the chair.

The Speaker's rulings, whether given in public or in private, constitute precedents by which subsequent Speakers, Members, and Officers are guided. Such precedents are collected and in course of time may be formulated as principles, or rules of practice. It is largely by this method that the modern practice of the House of Commons has been developed."

5. The petitioner submits that by offering himself as a candidate of a political party, while continuing as Speaker of the Legislature, the first respondent has adopted a position highly derogatory of his exalted office, the insignia of which is impartiality and independence. It is difficult to accept the submission that the conduct of the first respondent has rendered him liable to be declared by this court as unsuitable to hold the office of Speaker of the House. It is not for me in these proceedings to consider whether such conduct may amount to an impropriety. This court is not entitled to investigate such improprieties which fall exclusively within other jurisdictions. There are many improprieties which are beyond the pale of the court's jurisdiction under Article 226 of the Constitution of India. The propriety of the person holding the office of Speaker of the Legislature contesting as a candidate in the Parliamentary Election while holding on to all the protocol privileges and visible insignia of office is a matter to be raised and answered in the forum of an enlightened and resentful public opinion and not before this court in these proceedings. We have to build up and foster healthy traditions so that our nascent democracy survives. The Election Commission under Article 324 before, and the Court under Article 329(D) of the Constitution after the election have to uphold this duty. Suffice it for me to

observe that the relief sought and the forum chosen by the petitioner in this Original Petition, and at this stage, do not seem to be proper.

6. The Original Petition has. therefore, to be and is hereby dismissed.