
(2014) 01 KL CK 0015
In the High Court Of Kerala
Case No : W.P. (C) No. 24840 of 2013

Vanaraj

APPELLANT

Vs

Santhanpara Grama Panchayat

RESPONDENT

Date of Decision : 08-01-2014

Acts Referred:

Kerala Panchayat Raj Act, 1994 — Section 161, 191(1)

Citation : (2014) 1 ILR 1067 : (2014) 1 KHC 766 : (2014) 1 KLT 1065

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : George Sebastian and Byju Kuriakose, Advocate for the Appellant; C.S. Ajith Prakash, C.S. Yesudas, Shyni Pelexy, Paul C. Thomas, Aysha Youseff, Molly Jacob, T.K. Rabia Beegam, Jobi A. Thampi and M. Kabani Dinesh, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—The petitioner, an elected member of the first respondent Grama Panchayat has filed this Writ Petition challenging the action of respondents 1 and 2 in giving on lease four rooms of a newly constructed shopping complex belonging to the third respondent Co-operative Bank. The contention of the petitioner is that, R. 11 of the Kerala Panchayat Raj Act (Acquisition and Disposal of Property) Rules, 2005 (the "Rules" for short) mandates that no property shall be transferred to anyone except through public auction or by inviting tenders. Since neither of the above procedures have been adopted in the present case, it is contended that the impugned action of the first respondent is illegal and liable to be set aside. According to the petitioner, the third respondent bank had written a letter to the first respondent Grama Panchayat requesting that the building may be given to them on rent. The Panchayat Committee had considered the letter and had taken a decision on 21.5.2013 deciding that the building be let out to the third respondent. The Nedumkandam Urban Co-operative Bank had also submitted a similar request expressing their willingness to take the building on rent. On 11.6.2013 the said

request was considered but, in spite of the objections of the petitioner and four other members, the Committee had decided to let out all the rooms to the third respondent. The petitioner has therefore sought for the issue of appropriate directions quashing the said decision. A counter affidavit has been filed by the third respondent refuting the allegations in the Writ Petition. Adv. Ajith Prakash appears for the said respondent. According to Adv. Moly Jacob who appears for respondents 1 and 2 the Writ Petition itself is not maintainable at the instance of the petitioner for the reason that as a member of the first respondent Panchayat Committee he was a party, to the said decision that is under challenge. The principle of collective responsibility disentitles the petitioner from challenging the said decision. Reliance is placed on a decision of this Court to support the said contention. Apart from the above, it is contended that R. 11 applies only to a situation where any property is proposed to be transferred to a member of the public. Institutions like the third respondent do not come within the scope of the said provision, it is contended. Apart from the above, it is pointed out with reference to Exts. P2(A) and P3(A) copies of the resolutions produced by the petitioner that, the petitioner had not raised any objection to the resolution on the basis of the Rule on which reliance is placed in this Writ Petition. The petitioner only wanted two rooms to be given on rent to a nationalised bank. Later on, in Ext. P3(A) he had taken a stand that two rooms be given on rent to Nedumkandam Urban Co-operative Bank. For the above reasons, it is contended that the Writ Petition is not maintainable either in fact or law.

2. I Have heard Adv. George Sebastian who appears for the petitioner, Adv. Moly Jacob who appears for respondents 1 and 2 and Adv. Ajith Prakash who appears for the third respondent.

3. As already noticed above, the contention of the petitioner is that, Ext. P2(A) resolution by which the Panchayat Committee has decided to give four rooms of the shopping complex constructed by it on rent to the third respondent is in violation of R. 11 of the Rules. It is contended that the shop rooms could be given on rent only by following one of the two procedures stipulated by the said Rule viz., by conducting a public auction or by inviting tenders. R. 7 is also relied on to contend that the Panchayat has no authority to deal with its property in violation of the Rules. Since the facts are not in dispute, it is contended that, the petitioner is entitled to raise the question of legality of the resolution in spite of the fact that he was a party to the decision that is under challenge. The petitioner places reliance on S. 191(1) of the Kerala Panchayat Raj Act, 1994 (the "Act" for short) to contend that under the present Act, even a member of the Panchayat is entitled to challenge a decision taken by the Panchayat. The above provision is according to the counsel, a deviation from the position obtained under S. 364 of the Kerala Municipalities Act, 1960. The change effected by the provision in the present enactment, discloses according to the counsel, a legislative intent to permit a member of a Panchayat Committee also to challenge a resolution of the Panchayat. Therefore, it is contended that, this Writ Petition is maintainable even at his instance. S. 191(1) reads as follows:--

191. Power of cancellation and suspension of resolutions etc.--(1) Government may either suo motu or, on a reference by President, Secretary or a member, or on a petition received from a citizen, cancel or vary a resolution passed or decision taken by the Panchayat if in their opinion such decision or resolution---

a) is not legally passed or taken; or

b) is in excess of the powers conferred by this Act or any other law or its abuse; or

c) is likely to endanger human life, health, public safety, communal harmony or may lead to riot or quarrel; or

d) is in violation of the directions or provisions of grant issued by Government in the matter of implementing the plans, schemes or programmes.

A perusal of the above provision shows that, the Legislature has provided a remedy to a member of the Panchayat Committee to maintain a challenge against a resolution passed by the Panchayat. It is worth noticing that the Act does not provide any remedy for challenging a resolution of the Panchayat except the above provision. The Government is the authority before whom the challenge is to be made. The manner in which the challenge is to be made is different in the case of different persons who are made mention of in the said provision. Therefore, a resolution can be cancelled or varied by the Government:--

i) either suo motu or

ii) on a reference by President, Secretary or a member or

iii) on a petition received from a citizen.

It is therefore clear that, the remedy available to a member of the Panchayat to challenge the resolution is by a reference to the Government. It is not in dispute that no reference has been made by the petitioner in the present case to the Government and that the Government has not been moved under S. 191(1) of the Act.

4. Section 161 of the Act deals with the manner in which the meetings of the Panchayat are to be conducted. Sub-section (6) of S. 161 provides that all questions before a meeting of a Panchayat shall be decided by a majority of votes of the members who are present. The members are also entitled to dissent. The principle of collective responsibility for the decisions of the Panchayat has not been taken away by any of the provisions of the Act.

Therefore, even if some of the members of the Panchayat committee dissent and the decision is carried by the majority, the principle of collective responsibility would make the same, the collective decision of the Panchayat. The expression "Panchayat" would include the members who have dissented also. In view of the above, just because one of the members has not accepted the decision he cannot wriggle out of his responsibility for the decision that has been taken.

5. In the above view of the matter, there cannot be any doubt that the petitioner was also a party to the decision that is under challenge in this writ petition, which is Ext. P2(A). The question as to whether the dissenting member of a Municipal Council can challenge the decision of the Municipality was considered by a Single Bench of this Court in *George C. Kappan Vs. State of Kerala and Another*, . After considering the rival contentions, S. Siri Jagan, J has concluded the issue in the following words in paragraph 6 of the judgment:--

The result of the above discussion is that the petition filed by the dissenting member of the Municipality against the decision of the Municipality would amount to challenging the decision of the Municipality itself and, therefore, the petition could not have been entertained by the Government under any provision of law. The order does not also mention that the Government had, in fact, chosen to exercise its suo motu powers under the Kerala Municipalities Act. In the above circumstances, Ext. P10 order passed on a petition which is not maintainable in law cannot be sustained.

Though the question in the said case had arose under the Kerala Municipalities Act, 1960 except for the change that has been effected by S. 191(1) of the present Act. The principle of collective responsibility remains unaltered. As already noticed above, the petitioner has not invoked the provision under S. 191(1) to challenge Ext. P2(A) resolution. Therefore, I am not satisfied that the petitioner is entitled to maintain the present challenge, after having been apart of the decision making process as a member of the Panchayat Committee.

6. The next question that arises for consideration is whether the challenge against Ext. P2(A) is justified in the light of the provisions that are relied upon. The main attack against Ext. P2(A) is that the same has been passed in violation of R. 11 of the Rules. As already noticed above, R. 11 stipulates transfer of property belonging to the Panchayat only on the basis of a public auction or by inviting tenders. Admittedly, both the above procedures have not been adopted in the present case. What appears from Ext. P2(A) is that, the Panchayat Committee had considered a request received from third respondent expressing their desire to take on rent, four rooms of the building constructed by the first respondent. The request was considered and it was decided to give the room on rent to the third respondent at the rate of rent prescribed by the Public Works Department. It is true that the petitioner has a case that the decision is tainted by extraneous consideration for the reason that both the third respondent and the Panchayat are controlled by persons belonging to same political party. However, the fact remains that at the time when the decision was taken, there were no other requests available before the Panchayat and that, the rent that was decided to be demanded is at the PWD rates. Therefore, there is nothing on record to conclude that any undue advantage was conferred by the third respondent on any one by the said decision. It is also worth noticing that the only objection raised by the petitioner against the decision was that, two rooms should be given on rent to a nationalized bank. Therefore, he had no objection to

the procedure adopted and even to the leasing of two rooms to the third respondent.

7. Ext. R3(a) is copy of another resolution of 18.5.2013. After Ext. P2(A) resolution, a request appears to have been received from the Nedumkandam Urban Co-operative Bank that a portion of the building be given on rent to them. The petitioner appears to have requested that two rooms be given on rent to the said bank. The said request could not be acceded to since Ext. P2(A) resolution had already been taken. Therefore, I do not find anything wrong in not accepting the said request which was received only after the resolution Ext. R2(A) was received. The conduct of the petitioner shows that he had participated in the process of decision making, his dissent being confined only to a limited modification of the resolution of retaining two rooms to be given on rent to a nationalized bank. The case now pleaded in the Writ Petition is only an afterthought as contended by the counsel appearing for respondents 1 to 3. My attention is also drawn to R. 7(1) of the Rules which provides that the Panchayat is authorised to construct buildings and to give them on rent to the public who require them in accordance with the provisions of the Act and the Rules. Therefore, a contention is raised that the Rules are applicable only in cases where a lease is contemplated in favour of a member of the public. Since I have already found that the Writ Petition at the instance of the petitioner is not maintainable and that the contentions raised lack bona fides, I do not propose to consider the above contention at any length.

For the above reasons this Writ Petition fails and is accordingly dismissed.