

(2008) 07 KL CK 0065

In the High Court Of Kerala

Case No : Writ Petition (C) 37935 of 2007

Varghese Yohannan

APPELLANT

Vs

The Kerala State Election Commission and Others

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Kerala Panchayat Raj (Procedure for Convening and Conducting the Meeting of Grama Sabha) Rules, 1995 — Rule 4
Kerala Panchayat Raj Act, 1994 — Section 3(3), 35, 36

Citation : (2008) 3 ILR (Ker) 341 : (2008) 2 KLJ 970

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : K. Ramakumar, Saritha David Chunkath, A. Sameer and R. Jayachandran, for the Appellant; Murali Purushothaman, SC, Jagadeeschandran Nair, K. Jaju Babu and T.S. Shyam Prasanth, for the Respondent

Final Decision : Allowed

Judgement

Antony Dominic, J.—Petitioners challenge Ext. P7 orders passed by the 1st respondent, the Kerala State Election Commission, disqualifying them u/s 36 read with section 35(p) of the Kerala Panchayat Raj Act. The impugned orders were rendered on the basis that the petitioners, being conveners, had failed to convene the meetings of the Grama Sabha, as required of them u/s 3(3) of the Kerala Panchayat Raj Act.

2. The facts of the case are that, the petitioners are members elected from Ward Nos 5 and 6 of Akalakunnam Grana Panchayat and were sworn in on 3-10-2005. The President was elected on 6-10-2005 and the first meeting of the Panchayat was held on 14-10-2005.

3. In so far as the issue raised in these writ petitions is concerned, it needs to be noticed that the first meeting of the Grama Sabha in so far as Ward No. 5 was held on 28-1-2006 and the second meeting was held on 27-8-2006. In so far as Ward No. 6 is concerned, the first meeting was held on 13-1-2006 and the

second one, on 26-6-2006. The 2nd respondent in WP(C) 37935 of 2007 filed a petition before the 1st respondent, alleging that the Panchayat was constituted on 2-10-2005, and that the 1st and IInd Grama Sabhas were convened by the petitioner only on 28-1-2006 and 28-7-2006. In so far as WP(C) 37968 of 2007 is concerned, it was alleged that the 1st and IInd Grama Sabhas were convened by the petitioner only on 30-1-2006 and 19-8-2006. On this basis it was alleged that there was two consecutive failure on the part of the petitioners to convene Grama Sabha and that by their failure, the petitioners herein have rendered themselves liable to be disqualified in terms of section 35(p) of the Act. It was accepting this contention that Ext. P7 orders have been passed disqualifying the petitioners.

4. As already noticed, the ground on which the petitioners have been disqualified is that they have failed twice consecutively in convening meetings of the Grama Sabha atleast once in three months and the question is whether they had such an obligation. Section 3(3) of the Panchayat Raj Act as it stood prior to 24-8-2005 provided that the "Grama Sabha shall meet atleast once in three months at the place fixed by the Village Panchayat". By Act 31/2005, with effect from 24-8-2005, Sub-section (3) has been substituted as follows:

Grama Sabha shall meet at the place, date and time, fixed by the Convener of Grama Sabha in consultation with the president of the village panchayat and the Convener of the Grama Sabha shall intimate the details of the meeting to the Grama Sabha Members by a public notice and to such meetings, the Convener of Grama Sabha shall, compulsorily invite the member of the Block Panchayat, the District Panchayat and the Legislative Assembly representing the area of the Grama Sabha:

Provided that the Convener shall, on a request in writing made by not less than ten percent of the members of any Grama Sabha, convene a special meeting of the Grama Sabha within fifteen days with the agenda given along with the request.

Provided further that such special meeting shall be convened only once within the period between two general meetings.

5. A reading of Section 3(3) of the Act extracted above shows that, with the amendment, the provision that the Grama Sabha shall meet atleast once in three months stands deleted and that there is no such prescription in the Act with effect from 24-8-2005. True, section 35(p) of the Act provides that a member is liable to be disqualified if he "has failed, twice consecutively, to convene the meetings of the Grama Sabha, due once in three months, of which he is the convener". Section 35(p) of the Act thus provides for the consequence of non compliance with section 3(3) of the Act.

6. A closer reading of section 35(p) shows that an amendment corresponding to the amendment effected to section 3(3) by Act 3/2005 was omitted to be incorporated to that section. This means that although the substantive provision

does not create an obligation on the Convener to convene a meeting of the Grama Sabha atleast once in three months, section 35(p) provides the consequence of such a non-existent obligation. In my view, unless the member of the Panchayat who is the Convener of the Grama Sabha, has such an obligation u/s 3(3) of the Act, even if the meeting is not held atleast once in three months, the member cannot be disqualified on that ground, invoking the provisions contained in section 35(p) of the Act.

7. Learned Counsel for the 2nd respondent in these cases submitted that since the Legislature has not chosen to amend Section 35(p) of the Act, dispensing with the obligation to convene meeting once in 3 months, the omission to incorporate the same in Section 3(3) is a legislative omission and should be read into it. According to him "words must be construed with some imagination of the purpose which lie behind them", as held in *Lenigh Valley Coal Co. v. Yensonage* 218 TR 547 and reiterated in *Union of India and Ors. v. Filip Tiago De Gama Vedem Vasco De Gama* AIR 1990 SC 981. It was argued that literal construction of Section 3(3) read with Section 35(p) leads to manifestly absurd and anomalous results which could not have been intended by the legislature.

8. Though these arguments of the learned Counsel would seemed to be attractive, I am not in a position to accept the same. First of all, Section 3(3) as it stood prior to the amendment by Act 31/2005, contained an obligation to convene the meeting of the Grama Sabha, once in 3 months. However, the legislature has chosen to amend the section dispensing with such an obligation. Once such an amendment has been effected to section 3(3), the legislature should have made consequential amendment to Section 35(p) also, which has not been done. Therefore, there is no *casus omissus*, in Section 3(3) of the Act. If at all, the omission is in not amending section 35(p) correspondingly. Therefore, nothing is to be read into Section 3(3) as otherwise such an exercise would defeat the object of the section as it now stands.

9. Even otherwise, a *casus omissus* cannot be supplied by court except in a case of clear necessity and when reason for it is found in the four corners of the statute itself, but at the same time, a *casus omissus* should not be readily inferred and for that purpose, all parts of the statute must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. It has been held that while interpreting a provision court only interprets the law and cannot legislate it and that if a provision of law is misused, and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. The courts are not entitled to usurp legislative function under the disguise of interpretation. (see *State of Kerala and Another Vs. P.V. Neelakandan Nair and Others*, .

10. Ext. P7 orders passed by the 1st respondent in these cases proceed on the basis that the petitioners herein have rendered themselves liable to be

disqualified on the only ground that they have failed twice consecutively to convene meetings of the Grama Sabha atleast once in three months. Since they did not have any such obligation as per section 3(3) of the Act, Ext. P7 orders rendered by the 1st respondent cannot be sustained.

11. Though I have held that in view of the amendment to Section 3(3) of the Act, the petitioners are not liable to be disqualified u/s 35(p), the need to effect suitable amendment to section 35(p) is a matter for the legislature to consider. Similarly, Rule 4 of the Kerala Panchayat Raj (Procedure for Convening and Conducting the Meeting of Grama Sabha) Rules, 1995 reads as follows;

The President of the Village Panchayat shall, in consultation with the Convener of the Grama Sabha concerned fix the date and time between 8 a.m. and 6 p.m. and the Secretary of the Village Panchayat concerned shall publish the place, date and time of the meeting, so fixed, by affixing notice in appropriate public places, Government Offices, Schools in the area of the Grama Sabha and in the Office of the Village Panchayat. The Convener concerned shall try to inform the members of the Grama Sabha the place, date and time of the meeting and cause them to attend the meeting.

12. Though in this context this judgment, this rule may not be relevant, a reading of the rule shows that it is inconsistent with the provisions contained in Section 3(3) of the Act and needs to be suitably modified.

13. In view of the discussions as above, Ext. P7 orders will stand quashed and the writ petitions are allowed as prayed for.