
(1994) 06 KL CK 0003
In the High Court Of Kerala
Case No : O.P. No. 1969 of 1989-H

Varkey

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 30-06-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 488(8)
Divorce Act, 1869 — Section 3(3)
Registration Act, 1908 — Section 33, 33(1)

Citation : (1994) 06 KL CK 0003

Hon'ble Judges : K. Narayana Kurup, J

Bench : Single Bench

Advocate : V. Gopalakrishna Pillai, for the Appellant; T.R. Raman Pillai and P. Jayasankar, Government Pleader for Respondents Nos. 1, 2, 4 and 5, for the Respondent

Judgement

K. Narayana Kurup, J.—The question that arises for consideration in this original petition is the meaning to be attributed to the expression "normally resident" occurring in the Second Proviso to Clause 51(1) of the Kerala Rationing Order.

2. The facts of the case are as follows: Consequent on the sanctioning of a new authorised wholesale depot (A.W.D.) at Vennikkulam of Puramattom Panehayat in Mallappally Taluk as per Ext. P-1 proceedings of the Government, the first Respondent, District Collector issued Ext. P-2 notification inviting applications for the appointment of a new A.W-D. In response to Ext. P-2 notification, 8 applications were received including Ext. P-3 application filed by the Petitioner, of which the application received from one M/s Palathungal Agencies was rejected for want of required documents. The remaining 7 applications were, got enquired into through the Taluk Supply Officer, Mallappally. On the basis of the enquiry report and after conducting personal interviews the first Respondent as per Ext. P-4 proceedings appointed the third Respondent as the new A.W.D. at Vennikkulam. Aggrieved thereby, the Petitioner herein filed Ext. P-5 appeal petition before the second Respondent.

3. During the pendency of the appeal, the Petitioner filed O.P. No. 2367 of 1988 before this Court which was disposed of by judgment dated 23rd March 1988 with direction to the second Respondent, Commissioner of Civil Supplies to dispose of Ext. P-5 appeal within a period of two months from the date of receipt of a copy of the judgment. On receipt of the judgment in O.P. No. 2367 of 1988 the appeal was posted for hearing on 4th May 1988 by the second Respondent. Since the first Appellant (Petitioner herein) and the third Appellant (one Rajasekharan Nair) were absent on the date notified for hearing, the second Respondent, after hearing the sole Respondent (3rd Respondent herein) passed orders rejecting Ext. P-5 appeal filed by the Petitioner and upholding the order of the first Respondent as per proceedings No. C.S. A7-34136/87, dated 7th May 1988. Thereupon, the Petitioner filed O.P. No. 3884 of 1988 before this Court complaining that notice for hearing of Ext. P-5 appeal which was fixed on 4th May 1988 was actually received by him only on the very same date and hence he could not be present for hearing. This Court disposed of the said original petition directing the second Respondent to take up the appeal again and dispose of the same within two months from the date of receipt of a copy of the judgment after giving notice to the Petitioner and other parties interested. On receipt of a copy of the judgment in the original petition on 6th October 1988, the second Respondent after affording an opportunity of being heard to the Petitioner as well as the affected parties, passed Ext. P-6 order No. C.S. A7-32484/88, dated 6th December 1988 holding that the Petitioner is disqualified for appointment as A.W.D. since he is not "normally resident" in the locality within the meaning of that expression in the second proviso to Clause 51(1) of the Kerala Rationing Order and the decision of the first Respondent District Collector to appoint the third Respondent as A.W.D. was upheld. The challenge in this original petition is directed against Exts. P-4 and P-6 orders passed by Respondents 1 and 2 respectively and for issuance of a writ of mandamus directing the first Respondent to appoint the Petitioner as A.W.D. at Vennikkulam pursuant to Ext. P-1 order and Ext. P-2 notification.

4. Heard learned Counsel on both sides.

5. The interpretation" to be placed on the expression "normally resident" occurring in the second proviso to Clause 51 (1) of the Kerala Rationing Order arises in this Original Petition as already noticed. Relevant portion of Clause 51 is extracted below:

51(1) For the purpose of distributing rationed articles the District Collector may, by order, appoint in respect of any area any person as an authorised wholesale distributor in respect of any rationed article.

* * * * Provided further that a person who is a full time employee in any establishment or who is not normally resident in the locality shall not be eligible to hold an authorisation to run a ration wholesale depot under the order.

6. Second proviso to Clause 51 of the Kerala Rationing Order envisages that a

person who is not "normally resident" in the locality shall not be eligible to hold an authorisation to run a ration wholesale depot under the Kerala Rationing Order. The question then is what is the meaning to be ascribed to the expression "normally resident" in the locality. Admittedly, the expression "normally resident" is not defined in the Kerala Rationing Order. All that it imposes is a negative prohibition that a person who is not normally resident in the locality shall not be eligible to hold an authorisation to run a wholesale ration depot under the Kerala Rationing Order. The meaning of the expression "normally resident" has eluded precise definition and a survey of some decisions touching on a similar expression "ordinarily resident" does not reveal any uniformity of opinion and Pilcher, J. has gone to the extent of saying that the adverb "ordinarily" adds nothing to the adjective (vide *Hopkins v. Hopkins* 1950 2 All. E.R.P.D.A. 1035. However, according to me, the words "normally resident" carries with it the idea of some permanence, that is for a length of time as well as continuity. It may also mean residence without any serious break. Viewed in this perspective, it can be said that temporary presence at a given address does not make a man resident there much less normally resident. Conversely, temporary absence from the place of normal residence does not deprive a person of his residence at that place. Normal residence does not connote continuous physical presence but physical presence with some degree of continuity notwithstanding temporary absence. Each case must depend upon the peculiar facts. Therefore, the skulduggery of occupying some building in some place for a time to enable the occupant to apply for the dealership under the Kerala Rationing Order claiming to be a normal resident of that place is not enough to confer the status of being normal resident of that place on that person. Likewise, the mere entry of the person's name in the electoral roll or in the ration card is also by itself not sufficient to give him the status of being a normal resident at a particular place.

7. Viewed in the above backdrop can it be held that the Petitioner is a normal resident of Vennikkulam? I think the answer must be clearly in the negative. Admittedly, the Petitioner who is aged 61, is a native of Thiruvalla, where he was residing with his wife and children till 1st July 1986. It is too much to believe that Petitioner has suddenly shifted his residence to the house of his son-in-law's brother at Vennikkulam lock, stock and barrel without there being, any justifiable reason for the same. The Taluk Supply Officer, who recommended the application of the Petitioner reported that he was staying at Vennikkulam only with effect from 28th August 1986, which is long after Ext. P-1 proceedings of the Government sanctioning an A.W.D. at Vennikkulam and Ext. P-2 notification of the first Respondent inviting applications from A.W.D. In the voters list for the year 1987 of Thiruvalla constituency the name of the Petitioner is included. All these will go to show that the Petitioner was for all practical purposes a normal resident of Thiruvalla and his escapade to Vennikkulam was only a ruse to get himself qualified to apply for A.W.D. His stay at Vennikkulam can only be treated as temporary absence from his normal place of residence which is none other than Thiruvalla.

8. The question as to what is the import of the word "locality" occurring in the proviso shall no longer detain me as the same has been set at rest by the decision of this Court reported in Jose v. Nesamony 1994 (1) KLT 369 D.B., wherein it has been held that the word "locality" has to be understood with reference to the area where the new ration shop has been sanctioned and applications are invited by the District Supply Officer. The result, therefore, is that the Petitioner is not qualified to be considered for appointment as A.W.D. as he is not a "normal resident of the locality".

9. Learned Counsel for the Petitioner places reliance on the decision of the Privy Council reported in Sarat Chandra Basu v. Bijoy Chand AIR 1937 P.C. 468. Having perused the said decision, I am afraid that the said decision is of no assistance to the Petitioner as the Privy Council in that case interpreted the word "resides" occurring in Section 33 of the Registration Act, 1908. While so interpreting the word, "resides", it has been held that it does not exclude temporary residence. Here I am construing the expression "normally resident" and not mere "residence". Reliance was placed on the decision of the Supreme Court reported in Sri Sri Sri Kishore Chandra Singh Deo Vs. Babu Ganesh Prasad Bhagat and Others, . There, the Supreme Court on interpretation of Section 33(1) (a) of the Registration Act, held that even temporary residence at a place is sufficient to clothe the Registrar of that place with jurisdiction under the Act. Here again the decision is not of any assistance to the Petitioner as the court has not pronounced on the meaning of expression "normally resident". Reliance was placed on the decision of the Supreme Court in Jagir Kaur and Another Vs. Jaswant Singh, , where the Supreme Court was interpreting the meaning of the word "resides" occurring in Section 488(8) of the code of Criminal Procedure and the said decision is of no assistance to the Petitioner in interpreting the expression "normally resident". Further, reliance was placed on the Full Bench decision of this Court in T.J. Poonen v. Rathi Varghese AIR 1967 Ker 18. Interpreting the expression "reside or last reside" in Section 3(3) of the Divorce Act, 1969, it has been held that where there has been residence together of a more permanent character and a casual or brief residence together it is only the former that can be considered as "residence together" for determining the jurisdiction. Here again, the expression that was interpreted was "residence" and not "normally resident". Other decisions on which reliance placed are Ratanlal v. S.T.A. Authority AIR 1969 M.P. 204, which was a decision under the Kerala Motor Vehicles Act and Smt. Jeewanti Pandey Vs. Kishan Chandra Pandey, , a decision under the Hindu Marriage Act. The said decisions are also not applicable to the present case.

In the light of the above discussion, I have no hesitation in holding that the Petitioner is not a "normal resident of the locality" (Vennikkulam) and as such he is not eligible to hold an authorisation to run an A.W.D. at that place. The impugned orders therefore do not call for interference and the Original Petition is liable to be dismissed which is accordingly dismissed.

There shall be no order as to costs.