
(1984) 08 KL CK 0035
In the High Court Of Kerala

Varkey Maruthanamkuzhi

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 01-08-1984

Acts Referred:

Constitution of India, 1950 — Article 14, 19

Citation : (1985) CriLJ 719

Hon'ble Judges : K. Bhaskaran, Acting C.J.; M.P. Menon, J

Bench : Division Bench

Judgement

K. Bhaskaran, Actg. C.J.

1. The petitioner is stated to be the former President of the Chunkathara Panchayat and Chairman of the Chunkathara Panchayat Vikasana Samithi. He is also stated to be the Vice-Chairman of the Bharanaparishkara Vedi, a voluntary organisation concerned among other things about the weeding out of corruption from various places of social life. The petitioner, who claims to be a socio-political activist, filed this writ petition to challenge certain provisions of the Kerala Public Men (Prevention of Corruption) Act, 1983 (Act 6 of 1984), (the Act).

2. It was submitted by Dr. Vincent Panikulangara, the learned Counsel for the petitioner, that the petitioner had already filed a complaint before the Commission constituted under the Act against the 3rd respondent ; that it had come up before the Commission on 31-7-1984 for preliminary investigation u/s 10 of the Act ; and that it now stood adjourned to a subsequent date. One of the grievances of the petitioner is that he is considerably handicapped in collecting evidence against the 3rd respondent, with respect to the allegations made by him in his complaint to the Commission, inasmuch as Sub-section (4) and (5) of Section 8 of the Act contain constraints with respect to the publication of the contents of the complaint. For the sake of convenience, we would extract Sub-section (4) and (5) of the Act ;

(4) The person who presents a petition under Sub-section (1) or any other

person shall not publish or cause to be published the contents of the petition in any manner whatsoever.

(5) Any person who contravenes the provisions of Sub-section (4) shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

According to Dr. Panikulangara it was with the information available with him or he was able to gather that he had filed the complaint ; and if wide publicity was given to the contents of the complaint, it would attract the attention of very many public spirited men who might be having the necessary information to supplement the evidence, which the petitioner was having, in order to successfully prosecute the matter before the Commission. He would argue that these provisions are unconstitutional, and are liable to be struck down as they infringe the fundamental right of the petitioner in regard to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution. We do not understand the Constitutional provision under Article 19(1)(a) as one guaranteeing unrestricted right to make allegations in, public against any individual, much less against a public man. It is well settled, and is beyond doubt, that fundamental rights guaranteed under Article 19 are subject to reasonable restrictions. It has also to be noticed that this Writ Petition has been filed, after the filing of the petition invoking the provisions contained in the very Act. In this context, we may notice the provisions contained in Sub-section (3) of Section 10 of the Act, which reads :

Every preliminary investigation under this Section shall be conducted in private and in camera and in particular the identity of the petitioner, if any, or the public man affected by such investigation shall not be disclosed to the public or the press whether before, during or after such investigation.

The purpose of this provision is evident. The Legislature in its wisdom thought that in order that the provisions of the Act are successfully implemented, the identity of the person who makes the allegation as also of the person against whom such allegations are made are not disclosed to the public or to the press. The object of the provision is to keep the identity of the petitioner, the public man concerned, and the contents of the petition secret not only during, but also before and after the investigation. This is a mandate to the Commission, providing a safety valve against the adverse effect of publication not only with respect to the public man concerned, but also to the very petitioner who sets the proceedings in motion. It is not definitely to curtail the right of the person who makes the complaint that this provision has been engrafted in the Act. Even otherwise, when the matter is pending before a Tribunal, it is only reasonable and fair that to preserve the independence of the Tribunal and to give an unbiased and detached view of the matter in issue, undue publicity is not given either by giving various versions including distorted versions of events, which sometimes by recent trends, prevent the free flow of justice, about which, of late, certain comments have already been made in judicial pronouncements.

Looked at from that angle also, we find little merit in the contention, of the petitioner that because of Sub-section (4) and (5) of Section 8 of the Act, his fundamental rights have been infringed.

3. Dr. Panikulangara also submitted that the provisions contained in Sub-section (4) and (5) of Section 8 of the Act are inconsistent with what is seen stated in the preamble of the Act. It is a well-known proposition that preamble normally does not control the provisions of an enactment, and as such this argument does not merit any detailed discussion.

4. It was further contended that Sub-section (4) and (5) of Section 8 restrict the petitioner's fundamental right under Article 19(1)(c) of the Constitution, inasmuch as it restricts the petitioner's right to form association or unions. No provision in the Act, which expressly or by necessary implications restricts the right of the individual to form an association has been brought to our notice. We do not understand Sub-section (4) and (5) of Section 8 as provisions intended to place any unreasonable restrictions on individual's right to form association or union. If the contention of the petitioner is that on receipt of a petition the Commission should give wide publicity to the contents thereof, or at least the petitioner should be at liberty to publicise it, with a view to attract the attention of like minded persons, who could form an association or union for gathering evidence for prosecuting the petition, we need only say that it has absolutely no legal basis whatsoever.

5. The next contention raised by Dr. Panikulangara relates to the limits in regard to the period within which the petition has to be presented to the Commission. Reference was made to Clause (c), (d) and (e) of Section 9 of the Act, which read as follows :

9. Commission not to initiate proceedings in certain cases : The Commission shall not conduct any investigation under this Act,--

X X X

(c) if the corruption is alleged to have taken place before a period of five years immediately preceding the commencement of this Act ; or

(d) if the petition u/s 8 has been presented after the expiry of a period of twenty-four months from the date on which the corruption is alleged to have taken place ; or

(e) in respect of corruption alleged to have taken place within a period of five years immediately preceding the commencement of this Act, if the presentation of the petition is after the expiry of a period of twenty-four months from the date on which the corruption is alleged to have taken place or six months from such commencement, whichever is later.

The submission made by Dr. Panikulangara is that by placing such restrictions, virtually the Legislature attempts to legalise corrupt practices indulged in by

public men before the cut-off date fixed in the Section. No doubt, in an ideal society which we profess to aim at, there should not be any practice of corruption ; and irrespective of the time of its commission it deserves to be condemned and put down with strong hands. All the same, the Legislature in its wisdom, as a matter of policy, has laid down that investigation under the Act need be confined to matters relating to certain periods as has been stated in Clause (c), (d) and (e) of the Section. The same argument could be advanced even if the period mentioned in the respective Clauses is extended further, as there could possibly be no time during which the society was absolutely and completely free from indulgence in corrupt practices. In other words, it could not be said that prior to certain periods, corrupt practices did not take place. Dr. Panikulangara also submitted that in some cases by the time material is gathered, the time limit prescribed for initiating action would be over. These are all incidents of a policy, which the Legislature in its wisdom has laid down ; and we do not think that it would be our function to interfere, with the fixation of such time limits in an enactment of this nature. Modification, if any, to these time limits prescribed, in the light of experience, or on a rethinking, is purely a matter of legislative exercise, not failing within the ambit of judicial review.

6. Lastly, it was contended that the provisions contained in Section 8(2) of the Act are arbitrary and unreasonable, and, therefore, are liable to be struck down. Section 8(2) reads as follows :

Every petition under Sub-section (1) shall be accompanied by an affidavit in support of the allegation contained therein and a treasury receipt evidencing the deposit of a sum of five hundred rupees ;

Provided that no such treasury receipt shall be necessary where the petition is presented jointly by not less than ten members of the Legislative Assembly.

The argument against the above provision is twofold : (1) The above Sub-section imposes an onerous responsibility and burden on the person who comes forward to make allegations against public men indulging in corrupt practices ; it is only a person having the resources who would be able to make use of the provisions of the Act. (2) It was contended that there is an amount of discrimination between an individual on the one hand and a group of Members of Legislative Assembly on the other. Both these contentions, according to us, are untenable. It is common knowledge that in matters of this nature in order to make sure that a person making the allegation did so in good faith and with earnestness, such deposits used to be insisted upon. For instance, to file a petition under the provisions of the Representation of the People Act, challenging the validity of a verdict in an election, amounts are directed to be deposited. These are measures meant for discouraging frivolous petitions without bona fides. Unless there are some safeguards made, there might be a tendency to abuse the well-meaning provisions of the Act.

7. So far as the second contention is concerned, our Constitution does not

prohibit classification altogether. The only inhibition in making the classification is that there should be intelligible rationale to differentiate one from the other, or that there should be a nexus to the object sought to be achieved by such classification. In this case, one cannot say that the differentiation between an individual and a group of ten Members of Legislative Assembly, who are elected representatives of the people, is bad. We are, therefore, of the opinion that the provisions contained in Sub-section (2) of Section 8 of the Act are neither arbitrary nor liable to be struck down as violative of Article 14 of the Constitution on the ground that these provisions impose an onerous and unreasonable burden on the person making the complaint by his being required to file an affidavit with a chalan for Rs. 500/- by way of security deposit or by exempting a group of 10 Members of Legislative Assembly making such a complaint from requiring to produce a chalan for such security deposit.

8. For the foregoing reasons, the Writ Petition is dismissed.