

Kerala High Court

Rasiya Ibrahim vs The Secretary on 22 November, 2006

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C) No. 29144 of 2006(T)

1. RASIYA IBRAHIM, W/O. IBRAHIM,
... Petitioner

Vs

1. THE SECRETARY,
... Respondent

2. THE KERALA STATE ELECTION COMMISSION,

For Petitioner :SRI.K.K.MOHAMED RAVUF

For Respondent :SRI.MURALI PURUSHOTHAMAN, SC,K.S.E.COMM

The Hon'ble MR. Justice PIUS C.KURIAKOSE

Dated :22/11/2006

O R D E R

PIUS C.KURIAKOSE, J.

W.P.(C)NO. 29144 & 30881 of 2006

Dated this 22nd day of November, 2006

JUDGMENT

W.P.(C) No.30881/2006 is filed by a voter in Ward No.20 of Koduvally Grama Panchayat and Division No.10 (Nellamkandi) in Koduvally Block Panchayat. He is also a member of the Koduvally

Block Panchayat committee representing Ward No.19, North Koduvally. He submits that one Smt.Rasiya Ibrahim was elected from Nellamkandi, in Division No. 10 of Koduvally Block Panchayat in the election held during September 2005. The 3rd respondent Koduvally Block Panchayat represented by its Secretary issued notice to Smt.Rasiya intimating her that she is disqualified under Section 35(k) of the Kerala Panchayat Raj Act 1994 on the ground that she has failed to attend the meeting of the Block Panchayat Committee scheduled on 23.3.2006, 24.4.2006, 22.4.2006 and 17.5.2006. It is submitted that on verification of the records it is revealed that Smt.Rasia Ibrahim attended the meetings convened with notice to her within the period from 28.2.2006 to 24.5.2006. The petitioner alleges that the aforesaid action of the 3rd respondent is only the result of the political vengeance and the grounds stated for disqualification in the notice are totally incorrect and without bona fides. The petitioner points out the strength of the Panchayat committee is 16 and due to the demise of the then President the existing strength is 15. If Smt.Rasiya Ibrahim is not permitted to vote for the elections scheduled as per Ext.P1 it would adversely affect the voters in Ward No.10 including the petitioner. The petitioner filed a petition before the 2nd respondent -State Election Commission under Section 36(1) read with Section 37 (2) of the Panchayat Raj Act to adjudicate and decide for the validity of Ext.P2 notice. Ext.P3 is a copy of that petition . If the election scheduled as per Ext.P1 is not stayed pending consideration of Ext.P3, the petitioner will be put to irreparable loss. on the above grounds, the petitioner prays for following reliefs:

a). Issue a writ of mandamus or any other appropriate writ, order or direction, directing 2nd respondent to permit smt.Rasiya Ibrahim to continue in office till a decision is taken on Ext.P3.

b). Issue a writ of mandamus or any other appropriate writ, order or direction, directing respondents to postpone elections scheduled as per Ext.P1 till a decision is taken on Ext.P3.

2. The first respondent is the State of Kerala and the 4th respondent is the Returning Officer. Notices were taken on behalf of the Government by the Government Pleader and on behalf of the 2nd respondent State Election Commission by Sri.Murali Purushotaman, the learned Standing Counsel.

3. W.P.(C) No.29144/2006 has been filed by Smt.Rasiya Ibrahim herself and the respondents respectively are the Secretary of the Koduvally Grama Panchayat and the Kerala State Election Commission. The petitioner states that she is the returned candidate from Nellamkandi, Ward No.X of Koduvally Block Panchayat as an official candidate of Muslim League in the U.D.F. Thereafter she was elected as a member of the Welfare Standing Committee also. She was never given notice by the Secretary of the Block Panchayat Committee for the meetings held on 23.3.2006 24.3.2006, 22.4.2006 and 17.5.2006. Therefore, she did not participate in the meetings held on those dates. Even during that period, in the meeting of the standing Committee she had attended. Ext.P1 notice produced by her, she contends, is proof positive of the fact that even during the alleged period of her not attending the committee meetings she had attended meetings for which she had received notice. Thus Ext.P1, according to her, will fortify the fact that if she had been issued notice of the meetings, she would have certainly attended the same. Even on 17.5.2006, the alleged date of non attendance she had participated in the Standing Committee meeting. According to her what really happened is that on 21.6.2006 the President of the Block Panchayat, talked to her over telephone and stated that

no proper register for service of notice of meetings were kept in the office and the officer concerned will be facing disciplinary action, if such a register is not maintained and therefore a fresh register now made in which she may acknowledge the receipt of the notices by putting her signature for meetings which she had not received notice. Accordingly, she went over to the office and put her signatures in the register and before she could write the dates on which she had received the notice, the register was snatched away from her. It appears to her that it was thereafter that receipt of the notices for the meetings held on 23.3.2006, 24.3.2006, 22.4.2006 and 17.5.2006 were put in the register. She points out even in the meeting held on 22.6.2006, she was allowed to participate and thus even after 17.5.2006 she was functioning as a member and the member of Welfare Standing Committee. She submits that immediately thereafter i.e. on 24.6.2006, she along with another lady member by name Thankamani went to the office of the President and requested him to allow her to put dates on which she had received notice. However, the President and another member by name N.C.Mohammed misbehaved and the petitioner had submitted a complaint against the President and the member before the Koduvally Police and the matter is being investigated. On the same day, the petitioner had made a request to the Secretary to allow her to put her dates of receipt of notices of meetings against her signatures. But she was shocked to receive a letter from the first respondent intimating her that by not attending the meeting held on 23.3.2006, 24.3.2006, 22.4.2006 and 17.5.2006 she will forfeit her membership under Section 35 (k) of the Kerala Panchayat Raj Act. The petitioner had submitted her explanation to the effect that she had attended all the meetings which she had been actually given notice and that notice issued by the Secretary is politically motivated and issued as a design to keep her off the next meetings. Ext.P1 is a copy of the minutes of the Welfare Standing Committee dated 17.3.2006. Ext.P2 is a copy of the request made by the petitioner to the Secretary to allow her to put dates of receipt of notices of the meetings against her signature. Ext.P3 is a copy of the letter of intimation sent by the first respondent to the petitioner. Ext.P4 is a copy of the explanation submitted by the petitioner to Ext.P3. Ext.P5 is a copy of O.P.No.45/2006 which the petitioner has submitted before the f Election Commission. Ext.P6 is a copy of I.A. No.32/2006 submitted by the petitioner before the Election Commission for permission to the petitioner for continuing as a member. Ext.P7 is a copy of the counter affidavit submitted by the first respondent to Ext.P6. It is noted that in Ext.P7 the statement of the petitioner that she had attended meetings of standing committee held on 10.4.2006 and 17.5.2006 is not denied. Ext.P8 is a copy of the minutes of the meeting of the Standing committee held on 8.5.2006. Ext.P9 is a copy of the order of the Election Commissioner dismissing Ext.P6 I.A. It is challenging Ext.P9 order on various grounds that the petitioner has filed this writ petition seeking the following reliefs:

- i). To call for the records leading to Ext.P9 order passed by the second respondent and to quash the same by issuing a writ of certiorari or any other appropriate writ order or direction.
- ii). To declare that the petitioner is not disqualified to be a member by virtue of Section 35 (k) of Panchayat Raj Act.
- iii). To allow I.A. No. 32 of 2006 in O.P.No.45 of 2006 before the second respondent.
- iv). To direct the respondents to allow the petitioner to continue as a member of Koduvally Block Panchayath and to keep in abeyance all proceedings relating to declaration of election in the

Panchayat pending disposal of the Ext.P5 Original Petition before the second respondent by issuing a writ of mandamus or any other appropriate writ direction or order.

4. On behalf of the State Election Commission a statements have been filed by the Standing Counsel in both these cases. In W.P.(C) No.29144/2006 a reply affidavit has been filed. Along with the reply affidavit, the petitioner has produced Ext.P10, a copy of the order in I.A. No. 14/2006 in O.P. No.4/2006 passed by the State Election Commissioner. It is stated that in Ext.P10 that the Election Commission had, on considerations of balance of convenience, permitted the petitioner therein to continue in the office. It is without considering Ext.P10, which has been approved by this court vide Judgment in Giji Mathew v. Kerala State Election Commission (2006 (3) KLT 141) that Ext.P9 (in W.P.(C) No.29144/2006) has been passed.

5. I have heard the submissions of Sri.T.G.Rajendran, the learned counsel for the petitioner in W.P.(C) No.30881/2006, Sri.Mohamed Rovuf K.K., the learned counsel for the petitioner in W.P.(C) No. 29144/2006, Sri.Mathew G.Vadakkal, the learned Government Pleader and also those of Sri.Murali Purushothaman, the learned Standing Counsel for the Election Commission. My attention was drawn by the Sri.Mohamed Rovuf to the judgment of this court in Gigi Mathew's case(supra).

6. I have considered the rival submissions in the light of the pleadings and the ratio which emerges from the judgment of this court in Gigi Mathew's case (supra). It is true that this court in Gigi Mathew's case(supra) has held that the State Election Commission has power to pass an order to put back a person, who by the happenings of the event provided for by Section 35

(k) followed by intimation given to him under Section 37 (2) has ceased to hold office. But however, on account of the reasons stated in the statements filed on behalf of the State Election Commission, which were urged before me by Sri.Murali Purushothaman and supported by the documents produced by the Election Commissioner and also the reasons stated in the judgment of this court in Shaila v. Kerala State Election Commission (2002 (3) KLT 857), I am not inclined to grant relief to the petitioners in either of the petitions. But as far as W.P.(C) NO.29144/2006 is concerned, I record the assurance given by Sri.Murali Purushothaman that till final orders are passed in the O.P. Which is pending before the State Election Commission, the Election Commission will not take any steps for conducting Election in Ward No. X of Kuduvally Block Panchayat.

Both the writ petitions are dismissed without granting reliefs. But the undertaking given by the Standing Counsel for Election Commission in W.P.(C) No. 29144/2006 shall be honoured by the Election Commissioner.

PIUS C.KURIAKOSE Judge dpk