

Kerala High Court

Devikamani.K.N vs The Tahsildar (Electoral ... on 24 January, 2011

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 38161 of 2010(U)

1. DEVIKAMANI.K.N, W/O. P.K. MONY
... Petitioner
2. P.K. MONI, S/O. KRISHNAN,
3. MOTHY MONY, S/O. MONY,

Vs

1. THE TAHSILDAR (ELECTORAL REGISTRATION
... Respondent

2. STATE ELECTION COMMISSION,

For Petitioner :SRI.RINNY STEPHEN CHAMAPARAMPIL

For Respondent :SRI.MURALI PURUSHOTHAMAN, SC,ELE.COMMN.

The Hon'ble MR. Justice ANTONY DOMINIC

Dated :24/01/2011

O R D E R

ANTONY DOMINIC, J.

W.P (C) No.38161 of 2010

Dated this the 24th January, 2011

J U D G M E N T

The writ petition has been filed seeking a direction commanding the 1st respondent to allow Exts.P8 to P10 applications by including the name of the petitioners in the Electoral Roll of the Peermedu Assembly Constituency. Consequential reliefs are also sought for. According to the petitioners, they submitted Exts.P8 to P10 applications before the 1st respondent producing Exts.P1 to P7, seeking their inclusion in the voters list. It is stated that though they were called for hearing, orders were not passed for their inclusion. It is complaining of the above, the writ petition has been filed.

2. A statement has been filed on behalf of the 1st respondent which says that Exts.P8 to P10 applications submitted by the petitioners were rejected by the Electoral Registration Officer on 17.12.2010 for the reason that the petitioners did not produce the residential certificate, ration card or other relevant documents to prove that they were ordinarily residents of the Peerumedu Assembly W.P (C) No. 38161 of 2010 Constituency. Reference is also made by Ext.P6. Further the claim made by the petitioners that by Exts.P11 to P13 notices of hearing were served at the addresses furnished by the petitioners is also disputed. It is stated that now the remedy available to the petitioners is either to make fresh applications in Form No.6 of the Registration of Electors Rules 1960 by producing necessary documents to prove that they are ordinarily residents of Peerumedu Constituency or to file appeal before the District Collector under Rule 23 of the said Rules. The allegation that the application has been rejected under the influence of one Jeswant Lal is also denied by the 1st respondent.

3. Learned standing counsel appearing of the 1st respondent produced before me the applications made by the petitioners duly endorsed by the 1st respondent to the effect that petitioners could not produce the documents to substantiate their claim.

4. Pleadings in the writ petition show that what was relied on by the petitioners to substantiate their claims was Exts.P1 to P6. These documents are the extracts of W.P (C) No. 38161 of 2010 the bank passbook, LPG Diary, residential certificate issued by the Sub Inspector of Police, order issued by the Peruvanthanam Grama Panchayat etc. However, from the endorsement on the applications what is seen is that these documents were not produced by the petitioner. On the other hand, according to the 1st respondent, petitioners did not produce the ration card or residential certificate issued by the competent authority. Further, referring to documents available with him, the standing counsel further submits that the residential certificate earlier issued by the Secretary of the Panchayat was cancelled by the Panchayat itself.

5. Evidently therefore, petitioners can succeed only if they succeed in proving the factual issue that they are the residents of the place as claimed by them. On appreciation of the materials produced if the 1st respondent has rejected the said contention, the remedy available to the petitioners is to prefer an appeal against such an order. I take this view for the further reason that it is not possible for this Court to appreciate the factual W.P (C) No. 38161 of 2010 contentions raised by the petitioners in a proceedings under Article 226 of the Constitution of India.. Therefore, leaving it open to the petitioners to place their statutory remedy or to file fresh applications as stated above, the writ petition is disposed of.

Sd/-

ANTONY DOMINIC JUDGE ma /True copy/ P.A to Judge W.P (C) No. 38161 of 2010