

Kerala High Court

Moyan Kolakkadan vs Kerala State Election Commission on 19 October, 2010

IN THE HIGH COURT OF KERALA AT ERNAKULAM

WP(C).No. 31837 of 2010(D)

1. MOYAN KOLAKKADAN, S/O.USSAN, AGED 58
... Petitioner

Vs

1. KERALA STATE ELECTION COMMISSION,
... Respondent

2. THE DISTRICT COLLECTOR, KOZHIKODE - 1,

3. RETURNING OFFICER,

4. KUNNAMANGALAM BLOCK PANCHAYATH,

5. MOYIN KOTTAMMAL, S/O.KUTTI HASSAN,

For Petitioner :SRI.K.P.SUDHEER

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

The Hon'ble MR. Justice T.R.RAMACHANDRAN NAIR

Dated :19/10/2010

O R D E R

T.R.RAMACHANDRAN NAIR, J.

W.P.(C)No.31837 Of 2010

DATED THIS THE 19th DAY OF OCTOBER, 2010

J U D G M E N T

The 5th respondent is a candidate contesting in the same Ward wherein the petitioner is contesting. The petitioner's grievance is that in the ballot paper their names have been shown as Moyan Kolakkadan and Moyan Kottammal, though there is difference in their residential names. The

petitioner is seeking for a direction to the Returning Officer to publish his name as Moyan Kolakkadan and that of the 5th respondent as Moyin Kottammal. It is pointed out that the 5th respondent is mainly known as Moyin and not Moyan. In support of the above plea, Exhibit P4 voters list has been produced. Complaining about the action of the Returning Officer, the petitioner filed a representation before the District Collector and failing to get any positive action in the matter, this Writ Petition has been filed.

2. The 1st respondent has filed a statement, as directed by this Court. It is mainly contended that since the election to the local bodies is in progress, a Writ Petition under Article 226 of the Constitution of India cannot be entertained. Reliance is placed on various decisions of the Apex Court and that of this Court in N.P.Ponnuswami v. The Returning Officer, Namakkal Constituency (AIR 1952 SC 64), Mohinder Singh Gill v. Chief Election Commissioner and others (AIR 1978 SC 851), Anugrah Narain Singh v. State of UP(1996(6) SCC

303), Election Commission of India v. Ashok Kumar and others (2000 (8) SCC 216), Harnek Singh v. Charanjith Singh and others (2005 (8) SCC 383 and Kurapati Maria Das v. Dr.Ambedkar Seva Samajan and others (2009(7) SCC 387).

3. It is further pointed out in paragraph No.8 that Rule 28(4) of the Kerala Panchayat Raj (Conduct of Election)Rules, 1995 provides that if two or more candidates bear the same name, they shall be distinguished by the addition of their occupation or residence or in some other manner. The 5th respondent submitted an application on 7.10.2010 before the publication of list of contesting candidates to the Returning Officer that he is popularly known as Moyan Kottammal and his name in the ballot paper may be printed as Moyan Kottammal. Allotment of symbol also was made on the same date after the time fixed for withdrawal of candidature. On receipt of the complaint of the petitioner, the District Collector called for a report from the Returning Officer. Finally it is pointed out that the election process has reached an advance stage and the date of polling is on 23.10.2010. The printing of ballot papers are over and postal ballots have been despatched.

4. The learned counsel for the petitioner submitted that in the light of Section 52(4) of the Panchayat Raj Act, the Returning Officer had to verify the electoral roll to find out the description of the candidate also. It is therefore pointed out that herein the electoral roll has definitely given the name and the description of the 5th respondent as Moyin Kottammal instead of Moyan Kottammal and hence the action is unsupportable.

5. Evidently, the action was taken by the Returning Officer in the light of the application filed by the 5th respondent. Rule 28(4) enables the Returning Officer to consider that application.

6. As rightly pointed out by the learned Standing Counsel for the Election Commission, at this 11th hour, as the ballot papers have already been despatched, it may not be proper for this Court to interfere with the election process.

7. The learned counsel for the petitioner submitted that he is prepared to meet the expenses for printing the ballot papers again. But, still, as any direction will interfere with the progress of the

election and the process of the election and in the light of the facts pointed out by the learned Standing Counsel for the Election Commission, I refrain from issuing any such direction as sought for by the learned counsel for the petitioner.

The Writ Petition is accordingly dismissed without prejudice to the right of the petitioner to avail of the remedy under the Statute after the election is over.

T.R.RAMACHANDRAN NAIR, JUDGE.

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