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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 29TH DAY OF JANUARY 2024 / 9TH MAGHA, 1945

WP(C) NO. 42965 OF 2023

PETITIONER/S:

DEEKSHITH V.R.,



BY ADVS.
T.MADHU
C.R.SARADAMANI
VRINDA T.S.
RENJISH S. MENON

RESPONDENT/S:

- 1 THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, LOCAL
SELF GOVERNMENT INSTITUTIONS DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN -
695001
- 2 THE DIRECTOR OF PANCHAYATS,
THIRUVANANTHAPURAM, PIN - 695001
- 3 THE DEPUTY DIRECTOR OF PANCHAYATS,
KASARGOD, PIN - 671121
- 4 THE MOGRAL PUTHUR GRAMA PANCHAYAT,
REPRESENTED BY ITS SECRETARY,MOGRAL PUTHUR P.O.,
KASARAGOD DISTRICT, PIN - 671124
- 5 THE SECRETARY, MOGRAL PUTHUR GRAMA PANCHAYAT,
MOGRAL PUTHUR P.O., KASARAGOD DISTRICT, PIN -
671124



2024/KER/7895

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- 6 STATE ELECTION COMMISSION, KERALA,
JANAHITHAM, T.C.27/6(2), VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM, PIN - 695033
- 7 THE STATION HOUSE OFFICER,
KASARAGOD POLICE STATION, KASARAGOD DISTRICT, PIN
- 671123
- BY ADVS.
M.MUHAMMED SHAFI
SHRI.DEEPULAL MOHAN, SC, STATE ELECTION
COMMISSION, KERALA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 29.01.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



' CR '

P.V.KUNHIKRISHNAN, J**-----
W.P.(C.) No. 42965 of 2023
-----****Dated this the 29th day of January, 2024****JUDGMENT**

The petitioner herein was the returned candidate in the election to Ward No.14 of Mogral Puthur Grama Panchayat held on 14.12.2020, the result of which was declared on 16.12.2020. Challenging the election of the petitioner, an Original Petition was filed before the Munsiff's Court, Kasaragod as O.P.No.5/2021. The Original petition was dismissed, as evident by Ext.P1 order.

2. It is submitted that the petitioner belongs to Mogar Caste of Hindu Religion which is included in the list of Scheduled Castes in the State of Kerala and he contested in the election in a seat reserved for Scheduled Caste candidates. It is also submitted that the mother tongue of



the petitioner is Kannada and he does not know to read and write Malayalam. It is further submitted that, on 12.10.2023, the signature of the petitioner was obtained in a paper under threat and he was made to accompany a group of persons to the office of Mogral Puthur Grama Panchayat to hand over the same to the Secretary of the Panchayat. Later, it was submitted that the petitioner realised that it was a resignation letter. According to the petitioner, the entries in the above form were made by someone else as the petitioner cannot read and write Malayalam. On accepting the above form, a copy of which was subsequently obtained by the petitioner under the Right to Information Act, the Secretary issued a receipt to the persons who accompanied the petitioner. Ext.P2 is the letter of resignation obtained by the petitioner under the Right to Information Act. The Secretary of the Panchayat, on accepting Ext.P2, forwarded it to the State Election Commission, on the same day itself, as evident by Ext.P3. The true copy of the intimation dated 12/10/2023



issued to the State Election Commission by the fifth respondent is produced as Exhibit P3 in the writ petition. Immediately thereupon the petitioner submitted a detailed representation before the State Election Commission, as evident by Ext.P4. It is submitted that P4 representation was submitted by the petitioner in accordance with Rule 5 of the Kerala Panchayat Raj (Resignation of President, Vice President or Members) Rules 2000, [for short, Rules 2000], which stipulates that any person having a dispute regarding the resignation of the President or the Vice President or the Member may within 15 days from the date on which the resignation is deemed to have taken effect prefer a petition before the State Election Commission for its decision and the decision of the Commission thereon shall be final. It is the case of the petitioner that he had submitted a complaint before the Station House Officer, Kasaragod, as evident by Ext.P5, stating that he was forced to submit the resignation letter without understanding the contents of the same.



Ext.P5(a) is the receipt issued by the officer concerned on getting Ext.P5. It is also submitted that the petitioner filed a complaint before the Secretary of the Mogral Puthur Grama Panchayat on 16.10.2023 as evidenced by Ext.P6.

3. Subsequently, the petitioner was called upon for a hearing by the 6th respondent and the 6th respondent now passed Ext.P7 order by which Ext.P4 application is dismissed. Aggrieved by the same, this writ petition is filed.

4. Heard the learned counsel for the petitioner and the learned Standing Counsel appearing for the 6th respondent. I also heard the learned counsel appearing for the Panchayat.

5. The short point raised by the petitioner is that Ext.P7 is an order passed without adverting the contentions of the petitioner. But the Standing Counsel appearing for the 6th respondent made available the statement given by the petitioner and the Secretary of the Panchayat.

6. Sec.155 of the Panchayat Raj Act (for short 'the



Act, 1994') deals with the resignation of the President, Vice President or members. It will be better to extract Sec. 155 of the Act, 1994.

"155. Resignation of President, Vice-President or members. -

(1) The President or Vice President or any other member of a Panchayat may resign his office by tendering his resignation in the prescribed form to the Secretary and the resignation shall take effect from the date on which it is received by the Secretary and the Secretary shall immediately report the fact to the Panchayat and the State Election Commission.

(2) The President, the Vice-President or the member who resigns shall either in person or, if such resignation letter has been attested by a Gazetted Officer, by registered post, tender or send as the case may be, his resignation to the Secretary and the Secretary shall give acknowledgement for the receipt of the same.

(3) If any dispute regarding any resignation arises, it shall be referred to the State Election Commission for decision and its decision thereon shall be final:

Provided that no dispute, referred after the expiry of fifteen days from the date on which the resignation takes effect, shall be entertained by the State Election Commission."

7. As per Sec.155(3) of the Act, 1994, If any dispute



regarding any resignation arises, it shall be referred to the State Election Commission for decision and its decision thereon shall be final. Rule 5 of Rules, 2000 deals with the settlement of dispute regarding the resignation. It will be better to extract Rule 5 of the Rules, 2000.

"Settlement of dispute regarding resignation – (1) *Any person having a dispute regarding the resignation of the President or the Vice-President or the Member may, within fifteen days from the date on which the resignation is deemed to have taken effect, prefer a petition before the State Election Commission for its decision and the decision of the Commission thereon shall be final.*

(2) *Every petition filed before the State Election Commission under sub-rule (1) shall be disposed of by the Commission as early as possible."*

8. There is no dispute for the fact that the petitioner raised a dispute before the 6th respondent within the time stipulated in Rule 5 of the Rules, 2000. Sec.155 of the Act, 1994 or Rule 5 of the Rules, 2000 does not provide any procedure to be followed while deciding the matter. The standing counsel appearing for the 6th respondent submitted



that the commission is following its own procedure while dealing with such applications. The Election Commission recorded the statement of the Secretary of the Panchayat and also that of the petitioner. Based on the statement of the Panchayat Secretary and the petitioner, the Election Commission passed Ext.P7 order. When an Election Commission considers an application under Sec. 155 of the Act, 1994 r/w Rule 5 of the Rules, 2000, I am of the considered opinion that the Commission should follow a transparent procedure. A perusal of Sec. 155 of the Act, 1994 would show that there is a specific role for the Secretary of the Panchayat in accepting a resignation letter of the President, Vice-President, or members of a Panchayat. Sec. 155(1) says that the President or Vice-President or any other member of a Panchayat may resign his office by tendering his resignation in the prescribed form to the Secretary and the resignation shall take effect from the date on which it is received by the Secretary and the Secretary



shall immediately report the fact to the Panchayat and the State Election Commission. Sec. 155(2) of the Act, 1994 says that the President, Vice-President or the member who resigns shall either in person or, if such resignation letter has been attested by a Gazetted Officer, by a registered post, tender or send as the case may be, his resignation to the Secretary and the Secretary shall give acknowledgment for the receipt of the same. The Secretary of the Panchayat gave a statement before the State Election Commission in tune with Sec. 155 of the Act, 1994 and Rule 5 of the Rules, 2000 deposing that the petitioner submitted the resignation after putting signature. A reading of the statement of the Secretary of the Panchayat which is made available by the Standing Counsel appearing for the State Election Commission, it is clear that the Secretary gave a statement against the pleadings of the petitioner in the petition. In such circumstances, I am of the considered opinion that it is the duty of the State Election Commission to ask the petitioner



whether he intends to cross examine the Secretary who gave the statement. A perusal of the statement recorded by the State Election Commission would not show that any such question was put by the Election Commission regarding the right of the petitioner to cross examine the Secretary. When a quasi judicial authority wants to rely on a statement given by one party before that authority in a lis, it is the duty of that authority to ask the opposite party in that lis about their right to cross examine that party to rebut that statement. Relying on an uncontroverted statement of one party without giving an opportunity to the other side to cross examine cannot be relied on. The Election Commission relied on the statement of the Secretary also, while dismissing the petition. In such circumstances, I am of the considered opinion that if any dispute is raised as per Sec.155 (3) of the Act, 1994 and Rule 5 of the Rules, 2000, and if the statement of any witness is recorded, it is the duty of the Election Commission to request the opposite party about his



right to cross examine the witness and if he want to cross examine the witness, he should be allowed to cross examine the witness. Otherwise, it will be an oath against oath. Since, there is no procedure prescribed in the Act and Rules to be followed in a dispute regarding the acceptance of resignation letter of the President, Vice-President and member of a Panchayat in Sec.155 of the Act and Rule 5 of the Rules, 2000, the Election Commission should follow a transparent procedure with due regard to the principles of natural justice. Therefore, I am of the opinion that the Election Commission should give an opportunity to cross examine the witnesses who gave statements in such cases.

9. As far as this case is concerned, the petitioner should be given an opportunity to cross examine the Secretary who gave a statement about the acceptance of the resignation letter. Therefore, without expressing any opinion on merit, the impugned order can be set aside. The Election Commission will reconsider the matter and allow the



petitioner to cross examine the Secretary of the Panchayat, if he intends to do so and thereafter, decide the matter afresh in accordance with law.

Therefore, this writ petition is disposed of with the following directions :

- (1) Ext.P7 is set aside.
- (2) The 6th respondent is directed to reconsider the matter, in the light of the observations in this judgment as expeditiously as possible, at any rate, within one month from the date of receipt of a certified copy of this judgment.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

**APPENDIX OF WP(C) 42965/2023**

PETITIONER EXHIBITS

- Exhibit P1 THE TRUE COPY OF THE ORDER DATED 15/7/2023 IN O.P.NO.5/2021 ON THE FILES OF THE MUNSIF'S COURT; KASARAGOD
- Exhibit2 THE TRUE COPY OF THE LETTER OF RESIGNATION DATED 12/10/2023 OBTAINED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT
- Exhibit P3 . THE TRUE COPY OF THE INTIMATION DATED 12/10/2023 ISSUED TO THE STATE ELECTION COMMISSION MADE BY THE FIFTH RESPONDENT
- Exhibit P4 THE TRUE COPY OF THE REPRESENTATION DATED 18/10/2023 SUBMITTED BY THE PETITIONER BEFORE THE SIXTH RESPONDENT
- Exhibit P5 THE TRUE COPY OF THE COMPLAINT SUBMITTED BY THE PETITIONER BEFORE THE STATION HOUSE OFFICER, KASARAGOD POLICE STATION
- Exhibit P5(a) THE TRUE COPY OF THE RECEIPT DATED 15/10/2023 ISSUED BY THE STATION HOUSE OFFICER, KASARAGOD POLICE STATION
- Exhibit P6 THE TRUE COPY OF THE COMPLAINT DATED 16/10/2023 SUBMITTED BY THE PETITIONER BEFORE THE SECRETARY, MOGRAL PUTHUR GRAMA PANCHAYAT
- Exhibit P7 THE TRUE COPY OF THE ORDER NO.B1/65/2023-SEC DATED 8/12/2023 ISSUED BY THE 6TH RESPONDENT