



IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S) .11183 OF 2018

K.M. SHAJI

APPELLANT(S)

VERSUS

M. V. NIKESH KUMAR & ORS.

RESPONDENT(S)

WITH

CIVIL APPEAL NO(S) .249 OF 2019CIVIL APPEAL NO(S) .1230 OF 2019J U D G M E N TNAGARATHNA, J.CIVIL APPEAL NO.11183 OF 2018:

This civil appeal arises out of impugned order dated 09.11.2018 by the High Court of Kerala at Ernakulam in Election Petition No.11 of 2016.

2. Briefly stated, the facts of the case are that the appellant was the successful candidate in the elections to the Kerala Legislative Assembly from the (10) Azheekode Assembly Constituency, held on 16.05.2016. Respondent No.1 herein challenged the election before the High Court of Kerala at Ernakulam through Election Petition No.11 of

2016, alleging commission of corrupt practices under Sections 123(2)(a)(ii), 123(3) and 123(4) of the Representation of the People Act, 1951 (for short, "RP Act, 1951").

3. By the impugned order dated 09.11.2018, the High Court partly allowed the Election Petition, declaring the election of the appellant void, and setting it aside under Sections 100(1)(b) and 100(1)(d)(ii) of the RP Act, 1951, for the commission of corrupt practices under Sections 123(3) and 123(4) of the RP Act, 1951. Further, the High Court disqualified the appellant from contesting in any election for a period of six years. Hence, the present appeal.

4. We have heard learned senior counsel and learned counsel appearing for the respective parties.

5. The main grievance of the appellant is with regard to paragraph 2 of the operative portion of the impugned order. Apart from this, there is a grievance with regard to the setting aside of the election of the appellant herein.

6. For ease of reference, the operative portion of the impugned order is extracted as under:

"In the result, the election petition is partly allowed as follows:-

(1) The election of K.M.Shaji to the (10) Azheekode Assembly Constituency is declared void and set aside under Section 100(1)(b) and under Section 100(1)(d)(ii) of the R.P. Act 1951 for having committed corrupt practice under Section 123(3) and 123(4) of the R.P. Act 1951.

(2) He is also disqualified from contesting in any election for a period of six years from today. This finding of the corrupt practice of the first respondent shall be forwarded to the President of India for appropriate action under Section 8A of the R.P. Act, 1951.

(3) To declare the election of the first respondent as void for the corrupt practice under Section 123(2)(a)(ii) of the R.P. Act 1951 is hereby dismissed.

(4) The grant of further relief to declare M.V. Nikesh Kumar to have been duly elected is hereby rejected.

(5) The first respondent K.M. Shaji shall pay a cost of Rs.50,000/- to the petitioner, M.V. Nikesh Kumar.

The High Court shall intimate the substance of the decision to the Election Commission and the Speaker of the Kerala Legislative Assembly and send a copy of the decision to the Election Commission forthwith."

7. On perusal of the same, we note that the election of the appellant to the (10) Azheekode Assembly Constituency

was declared void and set aside by the High Court. The tenure of office of the appellant as a Member of the Legislative Assembly was for the period 2016 to 2021. The said period has lapsed. The appellant however, continued to participate in the proceedings of the Legislative Assembly by virtue of the interim order dated 27.11.2018 granted by this Court whereas the impugned order was passed by the High Court on 09.11.2018.

8. For immediate reference, interim order dated 27.11.2018 is extracted as under:

"Admit.

The appellant shall be allowed to participate in the proceedings in the Legislative Assembly and sign the Register but not allowed to Vote as well as financial benefits.

List the matter in the last week of January, 2019 on a non-miscellaneous day."

9. It is also brought to our notice that apart from the period for which the appellant was elected to the Legislative Assembly from 2016-2021, for the subsequent term, the appellant was unsuccessful in the election. However, learned senior counsel submitted that having regard to Sections 98 and 99 read with Section 8A of the RP Act, 1951, the High Court could not have issued the

direction in Clause 2 of the operative portion of the impugned order as it is within the powers and jurisdiction of the President of India to issue such a disqualification on the basis of the order of the High Court. However, in the instant case, the High Court itself has disqualified the appellant herein for a period of six years by which the powers of the President of India have been exercised by the High Court, which it could not have done. In the circumstances, Clause 2 of the operative portion of the impugned order may be set aside.

10. Learned senior counsel appearing for the contesting respondent (election petitioner before the High Court) submitted that having regard to the fact that the respondent herein was successful in proving the corrupt practice, the High Court rightly issued such a direction for disqualification under Sections 123(3) and 123(4) of the RP Act, 1951 and therefore, the impugned order would not call for any modification.

11. On a consideration of the respective submissions, we find that having regard to the specific provisions of the RP Act, 1951, the power to pass an order of disqualification rests with the President of India and not

with the High Court which has set aside the election of a successful candidate. Section 8A of the RP Act, 1951 reads as under:

"8A. Disqualification on ground of corrupt practices.—(1) The case of every person found guilty of a corrupt practice by an order under section 99 shall be submitted, as soon as may be within a period of three months from the date such order takes effect, by such authority as the Central Government may specify in this behalf, to the President for determination of the question as to whether such person shall be disqualified and if so, for what period:

Provided that the period for which any person may be disqualified under this sub-section shall in no case exceed six years from the date on which the order made in relation to him under section 99 takes effect.

(2) Any person who stands disqualified under section 8A of this Act as it stood immediately before the commencement of the Election Laws (Amendment) Act, 1975 (40 of 1975), may, if the period of such disqualification has not expired, submit a petition to the President for the removal of such disqualification for the unexpired portion of the said period.

(3) Before giving his decision on any question mentioned in sub-section (1) or on any petition submitted under subsection (2), the President shall obtain the opinion of the Election Commission on such question or petition and shall act according to such opinion."

On that short ground alone, Clause 2 of the operative portion of the impugned order is set aside.

12. We have also noted that if the said portion of the impugned order is set aside, the consideration of the question as to whether the High Court was justified in setting aside the election of the appellant would not remain a live issue as of now, having regard to the fact that the tenure of office from 2016-2021 has lapsed and the impugned order setting aside the election of the appellant would not come in the way of the appellant contesting elections in accordance with law.

Hence, this Appeal is allowed in part in the aforesaid terms.

CIVIL APPEAL NO(S).249 OF 2019:

13. This civil appeal arises out of impugned order dated 20.12.2016 by the High Court of Kerala at Ernakulam in Election Petition No. 12 of 2016, filed by respondent No.1 (a voter), challenging the election of the appellant K.M. Shaji. By impugned order dated 20.12.2016, the High Court declared the election of the appellant void on account of the commission of corrupt practices under Sections 123(2) (a) (ii), 123(3) and 123(4) of the RP Act, 1951. Hence, the present appeal.

14. Having regard to the order passed in Civil Appeal No.11183 of 2018, this appeal also stands disposed of in the aforesaid terms.

CIVIL APPEAL NO(S).1230 OF 2019:

15. This civil appeal arises out of the same impugned order as in Civil Appeal No.11183 of 2018. This appeal is filed by the election petitioner, challenging the decision of the High Court to reject the following reliefs - to declare that the election of respondent No.1 - K.M. Shaji was void on account of corrupt practices under Section 123(2) (a) (ii) of the RP Act, 1951, and to declare that the appellant herein was the duly elected candidate.

16. In view of the aforesaid order passed in Civil Appeal No.11183 of 2018, the appeal filed by the election petitioner before the High Court stands disposed of.

.....J.
[B.V. NAGARATHNA]

.....J.
[UJJAL BHUYAN]

NEW DELHI;
JANUARY 29, 2026