

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A NO. 142/2006

MONDAY THIS THE 22nd DAY OF MAY, 2006

C O R A M

**HON'BLE MRS SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

**Raju Narayana Swamy S/o KSV. Iyer
Director, ANERT, Thiruvananthapuram
residing at H.No. 27, Udaya Gardens
Neerazhi, Ulloor, Thiruvananthapuram.**

... **Applicant**

By Advocate Mr.T.A. Shaji

Vs.

- 1 Election Commission of India
represented by its Secretary,
Nirvacahan Sadan
New Delhi**
- 2 State of Kerala rep. By the Chief Secretary
Government of Kerala, Secretariat
Thiruvananthapuram.**
- 3 Additional Chief Secretary and Principal Secretary
Revenue Department, Secretariat
Thiruvananthapuram.**
- 4 Smt. Nalini Netto,
Principal Secretary & Chief Electoral Officer
Legislative Complex
Thiruvananthapuram.**
- 5 Sri; B. Srinivas,
District Collector
Kollam**
- 6 Union of India represented by Secretary
Ministry of Home affairs,
New Delhi.**

...**Respondents**

**By Advocate Mr. TPM Ibrahim Khan, SCGSC for R-6
Advocate Mr. Murali Purushothaman for R 1 & 4
Advocate Mr. Renjith A, Govt. Pleader for R-1 & 3**

ORDER**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

The applicant is a 1991 batch IAS officer who is working as Director ANERT. By Annexure A-1 dated 27.2.2006 the applicant was posted as District Collector, Kollam w.e.f. 28.2.2006. He joined duty on 1.3.2006 F.N as evident from Annexure A-2. The schedule of Kerala Legislative Assembly elections was announced later in the evening of 1.3.2006. Since the applicant had already taken charge the Government issued status quo order so far as the applicant and his counterpart officer were concerned. However, later by Annexure A-4 order dated 3.3.2006 he was posted back as Director, ANERT purportedly on the basis of a letter received from the Election Commission of India, New Delhi. The applicant was forced to handover charge to the 5th respondent on 4.3.2006 as directed in Annexure A-4 letter. The applicant filed an appeal before the second respondent requesting for review of Annexure A-4 order. Since the Government did not pass any order the applicant approached the Hon'ble High Court in WP(C) 6628/2006. However, the Hon'ble High Court by judgment dated 7.3.2006 closed the WP without prejudice to the contentions of the applicant and his right to approach the Central Administrative Tribunal for appropriate reliefs. It is against this background that the applicant has filed this O.A. seeking the reliefs.

2 The main contentions raised in the Application are that the applicant had joined duty as District Collector of Kollam on the


afternoon of 1.3.2006 well before the announcement of the elections by the Election Commission and taking note of this the Government had specifically declared status quo with reference to the posting of the applicant for the reason that he had already joined duty. Therefore the action of the Election Commission is arbitrary and unwarranted and devoid of jurisdiction. The applicant had thereupon filed an appeal petition before the third respondent which required consideration dehors the directions of the Election Commission and the delay caused in the issue of final order on the appeal petition has caused unnecessary hardship and prejudice to the applicant.

3 Reply statements have been filed by the first respondent the Election Commission of India and the second respondent the Government of Kerala. Initially a counsel statement was filed by the first respondent.

4 In its comprehensive reply, the Election Commission submitted that the revision of electoral rolls in the State of Kerala commenced in October, 2005 and the Government vide letter No. 96187/Spl.A1/05/GAD dated 8.12.2005 had sought concurrence of the Election Commission of India through the Chief Electoral Officer for shifting two District Collectors namely District Collectors of Kottayam and Malappuram. Since the review of electoral rolls in the State was in progress, the Commission did not agree to the proposal of transfer and by letter No. 434/KL/1/2005 dated 15.12.2005 informed the Chief Electoral Officer about the denial of concurrence. The review of electoral rolls got completed on 27.2.2006 in all

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districts except Kasaragod and Palakkad Districts. On the last date of the electoral roll revision process, the Government issued G.O.NO. 1494/2006/GAD dated 27.2.2006 transferring and posting District Collectors of Kottayam, Wayanad, Kannur, Pathanamthitta and Kasaragod Districts stating that the orders have to take effect from 28.2.2006. Since the election was imminent and the District Collector is the District Electoral Officer the Government ought to have sought concurrence of the Election Commission while issuing the order. When the schedule was announced by the first respondent on 1.3.2006 the Model Code of Conduct came into effect and according to the orders issued by the Election Commission of India at Annexure R-1(b) there is total ban of transferring of all officers during the conduct of election which includes the District Collectors. Annexure A1 order was implemented only on 1.3.2006 and therefore it is hit by the above orders issued by the Election Commission, and therefore the applicant's taking charge as District Collector, Kollam on the forenoon of 1.3.2006 being against the order of the Election Commission, the same had to be interdicted in the interest of smooth and fair conduct of the elections. Annexure A-3 order of the Government was also issued after declaration of the Election. Therefore the Election Commission in exercise of power of Article 324 of the Constitution of India in the interest of fair conduct of elections have directed the Government to post back the fifth respondent as District Collector Kollam to restore status quo immediately.




5. The Tribunal by order dated 9.3.2006 had directed the second respondent to dispose of Annexure A-6 representation of the applicant within a period of three weeks and when the matter was pending before the Chief Secretary, the Government issued G.O. No. 2163/2006/GAD dated 24.3.2006 posting the applicant as District Collector, Kollam which again was also not in order as the model code of conduct was in force. Therefore the Election Commission had issued directions to the second respondent to keep the said order in abeyance till 27.3.2006 the date of posting of the Miscellaneous Application in the Tribunal. On 27.3.2006 this Tribunal disposed of the M.A. as infructuous. The election notification for 59 Legislative Assembly seats of Kerala State including Kollam District was published on 28.3.2006. Therefore the Commission was satisfied that the implementation of the above order on the eve of the election would have led to serious dislocation, confusion and disturbance in the election process in the District. Hence, in exercise of power under Article 324 of the Constitution read with section 13(AA) of Representation of the People Act 1950 and Section 20-A of the Representation of the People Act, 1951 the G.O. dated 24.3.2006 was kept in abeyance till completion of the election or till the Tribunal passed orders on the M.A. on 27.3.2006. The Election Commission further averred that the above orders were issued in good faith for the conduct of fair and smooth election. They have also further submitted that since Annexure A-4 order was superseded by subsequent orders the relief (i) sought for by the

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applicant has become infructuous. The relief No. (i) cannot be granted by the Tribunal so also relief No. (ii) and relief No. (iv) is also infructuous.

6 The second respondent the State Government submitted that its Order NO. 2163/2006/GAD dated 24.3.2006 is comprehensive and explains the entire sequence of events from the time the State Government took the decision on 7.12.2005 to post the applicant as District Collector, Kollam. It was only on the directions of the Election Commission that the State Government kept in abeyance the above Government order. The stand of the State Government is that since the government had already issued the orders posting the applicant as District Collector, Kollam to take effect from 28.2.2006 and the applicant had taken charge on the forenoon of 1.3.2006, no specific permission of the Election Commission was required to be taken. However, the Government had complied with the direction of the Election Commission by keeping the order in abeyance and thereafter the applicant had filed a representation before the Chief Secretary against the Government order and was not decided to post the applicant back by the above mentioned order dated 24.3.2006. It may be mentioned here that after filing of the O.A. the applicant moved M.A. 273/2006 on 22.3.2006 for a direction to the second respondent to issue posting order as District Collector, Kollam forthwith and it was in this context that the State Government had issued order NO. 2163/2006 /GAD dated 24.3.2006. The said M.A. was disposed of as infructuous on 27.3.2006 taking into




consideration the above self contained order posting the applicant as District Collector, Kollam.

7 It may be seen from the above sequence of events that certain orders were passed by the Tribunal at various stages of the case disposing of the MAs, etc. by the applicant and also by giving directions. As such, some of the reliefs sought for by the applicant have become infructuous and are no longer alive to be considered by us at this juncture. The applicant moved M.A. 353/2006 for early hearing of the O.A. as the case was listed for final hearing on 5.6.2006 which was allowed and it has come to be heard today.

8 When the matter came up for hearing, the learned counsel for the applicant submitted that since the elections are over, the State Government should be directed to implement its order dated 24.3.2006 and the order passed by the State Government dated 24.3.06 is a speaking order clearly stipulating that it was kept in abeyance till the Assembly elections are over or till 27.3.2006 on which date the Tribunal passes final orders. Hence there should be no hesitation on the part of the State Government to implement the order.

9 The learned counsel on behalf of the Election Commission stated that the reliefs sought for by the applicant have now become infructuous as the elections are over and now the Election Commission has no locus standi in the posting of others and the State Government has to take action in the changed circumstances as they deem fit.



10 In the light of the above submissions we have examined the reliefs sought for by the applicant which may be reproduced below:

(i) To quash Annexure A-4

(ii) To direct the respondents 1 and 2 to produce the letter No. 437/KL-LA/1/2006 dated 3.3.2006 from the Deputy Election Commissioner, Election Commission India and quash the original of the same by the issuance of a Writ of Certiorari.

(iii) To direct the respondents 1-3 to allow the applicant to rejoin duty as District Collector, Kollam by ordering to maintain the status quo as on 1.3.2006 F.N and allow him to continue in service as District Collector Kollam.

(iv) To direct the 2nd respondent to consider and pass orders on Annexure A-6 on merits forthwith de hors the directions of the Election; Commissioner.

(v) grant such other relief as may be prayed for and as the Hon'ble Tribunal may deem fit to grant including cost of these proceeding.

11 We proceed to examine the above reliefs one by one. The first relief is to quash Annexure A-4 order which is the order of the State Government posting the 5th respondent as District Collector, Kollam and posting the applicant back as Director, ANERT. Though this was passed at the time of filing, after filing of the O.A it has been superseded by GO NO. 2163/2006/GAD dated 24.3.2006 (Annexure R-1(e) again posting the applicant back as District Collector, Kollam. Hence it is no longer necessary to quash Annexure A-4 order which has been superseded by another order.

12 The second relief is for a direction to the respondents to produce the letter dated 3.3.2006 which has now been produced along with the reply statement of the first respondent. This Tribunal has no power to issue a Writ of Certiorari as sought for by the applicant. Hence this prayer is liable to be rejected.

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13 The third prayer is to allow the applicant to discharge the duties as District Collector, Kollam by ordering status quo as on 1.3.2006. This prayer also cannot be granted at this stage.

14 The fourth prayer is to direct the respondents to pass orders on Annexure A-4 representation which had already been granted by the interim direction of this Tribunal dated 9.3.2006. Hence only part of relief (iii) is what remains in the O.A. As far as this relief is concerned also the position is that the State Government have already considering the averments in the representation and the Application filed before this Tribunal issued the Government order dated 24.3.2006 by which the State Govt. has taken a conscious decision to post the applicant as District Collector, Kollam with immediate effect. However, on the intervention of the Election Commission they had issued Annexure R-1(e) dated 27.3.2006 keeping the said order in abeyance subject to certain time limits. It may be fruitful to reproduce the same:

"Government hereby order that the implementation of the Government Order read as 1st paper above wherein Shri Raju Narayana Swamy IAS (KI.1991) was posted as District Collector, Kollam is kept in abeyance until completion of current general election in the State or till the Hon'ble Central Administrative Tribunal passes further orders in O.A.NO 142/2006(Shri Raju Narayana Swamy IAS Vs. Election Commission of India and Others)

By Order of the Governor

Mohammed Riazuddin
Chief Secretary to Government.

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15 As seen, it is a self contained speaking order. It states clearly that till the Legislative Assembly elections are over or the Tribunal passes further orders, the order will be kept in abeyance. Now that the general election in the State is over the order dated 24.3.2006 will automatically come into force and it is for the State Government to implement this order. We have no reason to doubt that the State Government will fail in its duty to implement its own order and no further directions are necessary from this Court. All other issues having come to a conclusion, the OA stands closed. No costs.

Dated 22.5.2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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