

CASE NO.:
Appeal (civil) 1250 of 2007

PETITIONER:
M.J. JACOB

RESPONDENT:
A. NARAYANAN

DATE OF JUDGMENT: 20/02/2008

BENCH:
A.K.MATHUR & ALTAMAS KABIR

JUDGMENT:
JUDGMENT

CIVIL APPEAL NO.1250 OF 2007
O R D E R

We have heard learned counsel for the parties.

The application for impleadment is allowed.

This appeal is directed against the final judgment and order passed by the learned Single Judge of the Kerala High Court dated 2nd February, 2007 in Election Petition No.2 of 2006 whereby the learned Single Judge after conclusion of the trial has recorded a finding in para 70, which reads as under :-

"On the basis of the aforesaid findings, it has to be held that the respondent has committed the corrupt practice in terms of Section 123(4) of the Act and his election is, therefore, liable to be declared void as per sub-section (1)(b) of Section 100 of the Act. It is so held."

In the light of the aforesaid finding, the learned Single Judge issued a notice to R.W.1 \026 Shri O.N.

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Vijayan, R.W.2 \026 Sri Jinson V. Paul and R.W.3 \026 Sri P.G. Manu under Section 99 of the Representation of the Peoples Act, 1951 (hereinafter referred to as the 'Act'). Aggrieved against this order, the present appeal was filed. This appeal was entertained by this Court and an interim order was passed on 23rd March, 2007, which reads as under :-

"Operation of the impugned judgment of the High Court is stayed but the appellant is only permitted, pending decision of the appeal, to take part in the proceedings of the House but he will not vote or draw emoluments. It is, however, made clear that proceedings under Section 99 of the Representation of the People Act, 1951 may go on."

Now the appeal has come up for final disposal.

Mr. F.S. Nariman, learned senior counsel appearing on behalf of the appellant has submitted that the learned Single Judge should not have passed this order holding that the appellant (herein) is guilty of corrupt practice and then proceeded to issue notice to the aforesaid three persons. This approach of the learned Single Judge is not correct and not in consonance with the decision of this Court in the case of Manohar Joshi versus

Nitin Bhaurao Patil and another reported in 1996 (1) SCC 169.

As against this, Mr. K.K. Venugopal, learned senior counsel appearing on behalf of the respondent has seriously contested the matter and submitted that the interim stay order may be vacated and the papers which have been retained in this Court may be sent back to the High Court for proceeding against the aforesaid three persons under Section 99 of the Act.

Having heard learned senior counsels for both the parties at length, we are of the opinion that, in fact, the learned Single Judge should have proceeded with the matter in one go instead of segregating into two parts. The learned Single Judge

has found the appellant guilty of corrupt practice under Section 123(4) of the Act. The learned Single Judge should not have given a categorical finding but should have observed prima facie finding of guilt.

Having regard to the facts and circumstances of this case and after going through the judgment, we are of the opinion that in fact the intention of the learned Single Judge was that this was a prima facie finding which he has arrived at. It is a matter of expression in which

he has said that having found them guilty, he has issued notice to three persons for proceeding under Section 99 of the Act. It has to be treated to be a prima facie finding only.

Therefore, in this background the finding recorded by the learned Single Judge is a prima facie only and the learned Single Judge will give an opportunity to these three persons before deciding the matter. We may observe that these three persons are not parties before us and we have not heard them in the matter.

Hence, we are of the opinion that the finding recorded by learned Single Judge shall be treated to be a prima facie finding and the learned Single Judge may now proceed and decide the matter in accordance with law with reference to Sections 98 and 99 of the Act.

Accordingly, we remit this case back to the learned Single Judge to proceed and decide the matter finally as far as possible within a period of three months.

The interim order passed by this Court on 23rd March, 2007 shall stand vacated.

The Registry is directed to send back all the record which has been summoned forthwith to the High Court

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of Kerala so that the learned Single Judge shall proceed with the matter and dispose it of within a period of three months as far as possible.

The appeal is accordingly, disposed of. No order as to costs.