
(2008) 07 KL CK 0026

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20751 of 2008

Abu, M.K.

APPELLANT

Vs

State Co-operative Election Commission and Others

RESPONDENT

Date of Decision : 15-07-2008

Acts Referred:

Citation : (2008) 07 KL CK 0026

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; Anu Sivaraman, Sr. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—Heard the learned Counsel for the Petitioner and the learned Senior Government Pleader appearing on behalf of the Respondents.

2. On 14-6-2008, the committee of the co-operative bank represented by the Petitioner resolved fixing 17-8-2008 as the date for election of the successor committee. That was forwarded to the first Respondent, the State Co-operative Election Commission along with Ext. P-1 letter stating that the term of the committee in office would expire on 16-10-2008 and it has been decided to hold the election on 17-8-2008 within two months before because, nearly 70% of the members of the bank belong to Muslim community and that during September and October, they have to be deeply involved in the religious fasting and prayers during the Ramzan period and therefore to obtain the co-operation of all the members, the election is fixed in August, 2008 and since the place of election, namely, the school, being not available on any other sundays, the date is fixed as 17-8-2008.

3. This writ petition is filed on the apprehension that the first Respondent is not likely to act on Ext. P-1 request and resolution. Directions are therefore sought for to compel the first Respondent to act in terms of Ext. P-2.

4. Learned Senior Government Pleader pointed out that the statutory provision that a resolution be drawn up by the committee at least 60 days before the date of expiry of the term of the committee in office means "within a short time above 60 days of such expiry of the term of office", as enunciated by this Court in *Sugathan v. Joint Registrar*(1). Though not particularly specific in that point, the decision of this Court in *Thodupuzha Taluk Co-op. Marketing Society v. Joint Registrar of Co-op. Societies* [2002 (1) KLT 638] was also cited in support of that proposition, which decision, I may at once notice, was one rendered also in the backdrop of the fact that there was an earlier judgment of this Court inter partis directing that the committee could continue in office till a particular date.

5. Section 28B of the Kerala Co-operative Societies Act, 1969, the "Act", for short, provides for the constitution of the State Co-operative Election Commission for the superintendence, directions and control of the conduct of election to the committee of the society. The election in question is governed by Rule 35A of the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as the "Rules". That Rule provides the manner in which the election to the members of the committee shall be conducted by the State Co-operative Election Commission. Sub-rule (1) thereof provides, among other things, that the committee shall meet at least 60 days prior to the date of expiration of the term and pass the resolution fixing the date, time and place for the conduct of the election to the new committee. Rule 35(1) enjoins and empowers the committee to fix the date for the conduct of the election. Adverting to Section 28(1) of the Act, it can be noticed that the committee is constituted by the general body of the society for the purpose of being entrusted with the management on the affairs of the society. It is therefore explicitly clear that the democratic right of the general body of a co-operative society to elect its committee is exercised by having the date of election fixed by the committee, which is in office by a democratic process.

6. The wisdom to fix the date for the election is of the committee. It is a democratic process. Unless it is shown to be in violation of any prescription of law, the same has to be recognized. This principle is well laced into the manner in which Sub-rules 1, 2 and 4 of Rule 35A are couched.

7. Applying the law as laid by this Court in *Sugathan's* case (supra), it needs to be understood that the concept of the period of "at least 60 days" in Rule 35A(1) of the Rules cannot be put in any straight formula. It has to be understood and applied in the context in which its application is called for, on the facts and in the circumstances of a given case. In *Sugathan's* case (supra), this Court did not approve the endeavour to prepone the election by 180 days, which attempt was not supported by any reasons.

8. In the case in hand, the committee had, even in Ext. P-1 dated 14-6-2008, clearly spelt the reasons for its decision to schedule the election on 17-8-2008. Until the date of this writ petition and even as of now, the first Respondent has not communicated to the writ Petitioner society any decision impeaching the

committee's decision fixing the date as 17-8-2008 or challenging the reasons stated for such fixation of the date.

9. There is no specific power conferred on the State Co-operative Election Commission or any other authority under the Act, on whose permission or orders, would depend the date of conduct of the election. No such power is given under Rule 35A. The State Co-operative Election Commission is duty bound to appoint an Electoral Officer to give effect to the decision of the committee fixing the date, time and place for the conduct of the election to the new committee. This view is fortified by the decision of this Court in *Sudevan v. Joint Registrar*(2). The said decision applies notwithstanding the fact that by subsequent amendments, the powers, including, to appoint the Returning Officer, have moved on from the Registrar to the State Co-operative Election Commission. There is no sustainable reason to refuse to conduct the election in terms of the request of the Petitioner as contained in Ext. P-I supported by Resolution No. 142 taken on 14-6-2008.

For the foregoing reasons, the first Respondent is directed to duty bound to have the election conducted to the committee of the Edathala Service Co-operative Bank Ltd. No. 430 on 17-8-2008 by taking the necessary steps in terms of Rule 35A of the Rules. It is so directed and the writ petition is allowed accordingly.