

(1994) 01 KL CK 0058
In the High Court Of Kerala
Case No : O.P. No. 879 of 1994

Alleppey Dist. Co-operative Dept. Staff Co-operative Socceity and Another APPELLANT

Vs

Joint Registrar and Others RESPONDENT

Date of Decision : 31-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 1 KLJ 575

Hon'ble Judges : G.H. Gattal, J

Bench : Single Bench

Advocate : P.G.K. Warriyar and K.K. Ravindranath, for the Appellant; D. Somasundaram, Senior Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

G.H. Gattal, J.—Does the Returning Officer appointed under sub-rule (2) of Rule 35 of the Kerala Co - operative Societies Rules, have, in the process of considering objections to a voters" list, the authority to return the Hit to the Managing Committee of the Society for reconsideration ? This is the question raised In this petition under Article 226 of the Constitution of India. The petitioner No. 1 Is the Managing Committee /Board of Directors of the Alleppey District Co - operative Departmental Staff Co - operative Society Ltd the petitioner No. 2: In this judgment the petitioner No. 1 is referred to as the committee. and the petitioner No. 2 as the society. The Joint Registrar of Go - operative Societies, Alleppey, Is the respondent No. 1. The Assistant Registrar the respondent No. 2 is the Returning Officer for the election due on 30-1.1994. The term of the Committee expires on 4-2-1994. On 30-U-1993 the Committee resolved under sub- rule (I) of Rule 35 of the Kerala Co-operative Societies Rules - the Rules for short - that the elections to the committee be held and requested the Joint Registrar to appoint the Returning Of floor. The respondent No. 2 was appointed Returning Officer on 15-12-1993. The Committee acting under clause

(b) of sub - rule (3) of Rule 33 prepared a list of members "qualified to vote and sent It to the Returning Officer on 24-12-1993. The preliminary list of members was published on 27-12-1993. The Returning Officer called upon the members to submit their objections before 3.00 pm. on 3-1-1994. K. Sivankutty a member filed objections on 1-1-1994. The objection was that the list of members sent by the committee did not comply with the requirements of Clause (b) of sub-rule (3) of Rule 35, In as much as (a) In the case of many members name of father or husband and the correct address had not. been supplied making identification of member difficult, and (b) the list Included 76 persons, -who had ceased to be members In accordance with Bye-law No. 6. The Returning Officer verified the list and found that (i) many members who had been transferred were named in/ the list, (ii) Their current place of work was not stated. (iii) Forty nine retired employees were named in the list, (iv) Full names father's or husband's names were not stated, (v) The Joint Registrar by his letter dated 28-10-1993 had directed the committee to remove the Ineligible members from the roll of membership. But the Committee did not take steps to remove such member from the list, and (vi) the number of Ineligible members constitutes 26% of the total membership.

In view of these findings (he Returning Officer by his order No. R. O. 1/93 dated 3-1-1994 (Ext. P6) Impugned In this petition, returned the list to the committee to enable it to prepare and furnish the correct voters list which Includes only eligible members. The committee was directed to do so on 8-1-1994.

2. The first submission advanced by Learned Counsel for the petitioner Is that having regard to the judgment of my learned brother K. P. Balanarayana Marar, J. In M. 9, Mathew & another vs. State of Kerala & others (1992 12) K. L. J. 91) the Returning Officer has no authority to remove ineligible members from the list supplied to him by the Mar aging Committee. The submission is misconceived. The Returning Officer has not even attempted to remove from the list submitted by the committee, any member on the ground of his ineligibility. He merely drew the attention of the committee to the requirement of Rule 33 and asked them to submit a; list of eligible members. The judgment has no application to the facts of this case.

3. The next submission is that the Returning Officer has no authority to return the list sent to him by the committee. According to the petitioners, the only course the Returning Officer has to follow is to accept the list as It Is and proceed to held the election.

4. The Returning Officer's findings summarized at (I) to (vi) In paragraph 2 above are not seriously disputed. In order to judge the correctness of the submission, the nature and scope of the duties and authority of the Committee and the Returning Officer need to be understood. Election Is a process which takes In Its scope the composite functions of the members, the Committee and the Returning Officer. It Is not a process which calls upon one of the three alone to perform duties enjoined and authority created, by the Kerala Co-operative

Societies Act and the Rules. Clause (b) of sub-rule (3) of Rule 35 has used words which have significance. Words have meanings and those meanings have to be given effect to. The committee shall prepare a list of members qualified to vote. This is the step which sets in motion the process of preparing a valid list of voters. The legislature has deliberately and wisely used the words "qualified to vote". These words qualify the word members. What the committee is enjoined to do is to ascertain whether the members to be listed are "qualified to vote". The committee which performs a central role in starting off the election is required to ensure that the members whose list it prepares are qualified in accordance with the provisions of the Act, these Rules and the byelaw. It follows therefore, that if a deceased member or a member who has ceased to possess the qualifications for admission to membership cannot be included in the list in ordinary circumstances it may be assumed that the committee prepares the list with a sense of responsibility, with due regard to the sanctity of elections and to the Act, Rules and the byelaws. The committee in possession of the records of the society is expected to be in the know of the deaths of its members, the disqualifications incurred by members and every other fact which may take members out of the category of "members qualified to vote". The Returning Officer is not a part of the society or its committee. He comes on the scene to perform the statutory function of conducting the elections.

The list which the committee prepares is required to contain not merely the names but "admission number, name of the member, name of the father or husband and address of such member."

5. The facts set out in the last paragraph are essential for the purpose of conducting a fair election. If the voter's complete name is not mentioned it is difficult to identify who the member is. For example a member's name, is John. There may be two or more persons by the same name. They can be distinguished only by reference to their father's name, or their family name. Therefore there is a duty on the committee to prepare such a list of members which enables the Returning Officer and the candidates to identify the voter.

6. After receiving the list the Returning Officer publishes it and hears objections. The Returning Officer is not expected to act mechanically and accept every person listed as eligible to vote. That is why he is called upon to prepare a final list after considering the objections. The process of "considering" assumes that he takes into account the facts in favour and against the objector's contention and then decides to prepare the final list. Note the words used in clause (b) of sub-rule (3) of Rule 35. The Returning Officer shall publish a final list not of "voters" but of "eligible voters." In view of the judgment of this Court in *State of Kerala & Others (1992) 2 ILJ 91* the Returning Officer may not be able to remove from the list the names of ineligible members. But that does not mean that the returning Officer is enjoined by law to accept the members who have been shown to him to be ineligible. The authority of the Returning Officer to remove from the list the names of ineligible members is one thing. It is quite

another to suggest that he cannot consider whether any members in the list are ineligible. The use of the words "eligible voters" aid the words "after considering the objections necessarily postulates that the Returning Officer Is expected to consider the question of eligibly of the voters named in the list. This Is different from removing the Ineligible members from the list. I am not oblivious to the fact that in M.J. Mathew and Another Vs. State of Kerala and Others, it has been held that. the Returning Officer has no jurisdiction to removes the names on the ground that the persons concerned are Ineligible as members. But in this case the question Is of the authority of the Returning Officer to consider the question of eligibility and draw the attention of the committee to his tentative finding. In my opinion therefore? the Returning Officer does possess the authority to decide whether numbers listed by the committee ere eligible to vote. Be acts within his authority when be returns the list of voters to the committee for reconsideration.

7. As already stated, the process of election assumes that the committee performs Us duty of preparing a list of members "qualified to vote" by excluding from the list members who were ineligible at the time of admission, members who became Ineligible later on and the members who have ceased to be members. It is upon fulfillment of this obligation that the committee transforms its roll of numbers into a list of "members qualified to vote. The committee has to prepare the list "in accordance wish the provisions of the Act, the rules and bye-laws." The committee cannot spark its responsibility of examining whether the members proposed to he listed by it are qualified to vote. Nor can the committee be permitted to send a list of unqualified and Ineligible members and then turn round and urge that the Returning Officer has no authority to return the list for reconsideration.

8. If the proposition propounded by the petitioners Is accepted, disastrous consequences will follow. No election process can be clean. The committee in power who may have enrolled ineligible members or may have continued deceased members as member, may force the Returning Officer to proceed with the elections on the basis of a list of unqualified members. What is held on the basis of such a list would not be an election. For the reasons stated above the O.P. is dismissed.