

(2015) 03 KAR CK 0270

In the Karnataka High Court

Case No : Writ Petition Nos. 102416-102420/2015 and 102428/2015 (CS-EL/M)

Andanappa and Others

APPELLANT

Vs

The Karnataka State Co-operative Election Commission and
Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Karnataka Co-operative Societies Act, 1959 — Section 2(b-5)
Representation of the People Act, 1951 — Section 58, 64A

Citation : (2015) 03 KAR CK 0270

Hon'ble Judges : B. Manohar, J.

Bench : Single Bench

Advocate : Mrutyunjay Tata Bangi, for the Appellant; Hemanthkumar L. Havaragi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—The petitioners, in these writ petitions, have sought for quashing the order dated 20.02.2015 passed by the 1st respondent and also a writ of mandamus directing respondent Nos. 1 and 3 to hold fresh elections to the Board of Management of Sri Gavisiddheshwar Pattan Sbahakar Bank Niyamith, Koppal (hereinafter referred to as "the Bank", for short), and also for other reliefs.

2. In the writ petitions, it is contended that the petitioners are the Members and also the shareholders of the Bank. For the purpose of conducting election of the Board of Management, the 3rd respondent was appointed as the Returning Officer. The 3rd respondent issued calendar of events on 30.01.2015 fixing the date for filing nomination, scrutiny of nomination, withdrawal of nomination, the date of election and also the date of counting and declaration of results. In pursuance of the calendar of events, petitioners and others filed nomination papers. As per the calendar of events, election to the Bank was held on 14.02.2015 between 9.00 a.m. to 4.00 p.m., at Kuvempu Primary and High School, Koppal. The allegation of the petitioners is that after completion of

election, the 3rd respondent unilaterally took a decision to shift the ballot boxes from the place where the election was conducted to the office of the Bank for the purpose of counting inspite of strong protest by the petitioners. After the counting of 1st ballot box was completed, the 2nd ballot box (Booth No. 2) was taken for counting. The petitioners noticed that counting of 2nd ballot box (Booth No. 2) was not conducted in accordance with the procedure prescribed under the Karnataka Co-operative Societies Act, 1959 (hereinafter referred to as "the Act", for short) and the Rules made thereunder, some of the candidates objected to the manner of counting. In view of the hue and cry raised during the counting of ballot papers, 16 ballot papers in respect of Booth No. 2 were found missing and the same came to the notice of the Returning Officer after the counting of ballot box of Booth No. 2 was completed. Immediately thereafter, a search for ballot papers was made and it was noticed that one of the members had taken out the ballot papers from the table and were torn out. A complaint was lodged to the police. It appears that the Returning Officer made a complaint to the 1st respondent. Further, the District Election Officer also submitted a report regarding missing of 16 ballot papers. The petitioners also lodged a private complaint against the Returning Officer before the jurisdictional police and also filed objections. They also made a complaint to the 1st respondent alleging irregularity in conducting the elections and also in counting the ballot papers. Though specific allegations were made with regard to conduct of elections to the Board of Management, the Co-operative Election Commission, without considering the objections filed by the petitioners, but accepting the report submitted by the Returning Officer as well as the District Election Officer, passed the order dated 20.02.2015 directing to hold re-poll in respect of Booth No. 2 only, without ordering fresh election to the Bank, and the same is contrary to law. Hence, these writ petitions to quash the order dated 20.02.2015 and other-reliefs.

3. Shri Mrutyunjaya Tata Bangi, learned advocate appearing for the petitioners, contended that the order passed by the Co-operative Election Commission is contrary to law. The order impugned is not the one passed by the Co-operative Election Commission, as stated, but it is passed by the Secretary of the Co-operative Election Commission, who has no jurisdiction or competence to pass such an order for holding of re-polling in respect of Booth No. 2. Further, the Returning Officer, without authority of law, changed the venue of counting of ballot papers without informing the same to the petitioners, in order to favour the respondents. Further, the Co-operative Election Commission has not given any opportunity to the petitioners before passing the order impugned though the petitioners had filed objection to the manner of conducting election. In support of his contention, he contended that under the scheme of the Act, only the Co-operative Election Commission was the competent authority to have passed the order for re-polling in respect of Booth No. 2. Further, under Rule 14-I of the Karnataka Co-operative Societies Rules, 1960 (hereinafter referred to as "the Rules", for short), in the event of destruction of ballot papers or boxes or in the

event of ballot papers being unlawfully taken out from the custody of the Returning Officer with a view to destroy the same, the Returning Officer has to report the same to the Co-operative Election Commission and a report has to be obtained from the police or Tahsildar to the effect that polling cannot be continued or counting of votes is rendered impossible. On the basis of the said complaint Co-operative Election Commission taking into consideration the material produced by the Returning officer and other relevant material, ordered for re-polling fixed the date for fresh polling in respect of Booth No. 2. In the instant case, the satisfaction of the Co-operative Election Commissioner has not been recorded in the order impugned. On the other hand, the order impugned has not been passed by the Co-operative Election Commissioner, but it has been passed by the Secretary, who is in the rank of Additional Registrar of Co-operative Societies. Hence, the order impugned in these writ petitions cannot be treated as one passed by the Co-operative Election Commission. Several irregularities have been made in conduct of the election and also counting of ballot papers. Hence, Cooperative Election Commission ought to have ordered for holding of fresh elections to the Bank. Hence sought for setting aside the impugned order and directing the respondent-authorities to hold re-polling in respect of all Booths.

4. Shri Hemanth L. Havaragi, learned advocate appearing for respondent Nos. 1 and 2, has filed statement of objections. He argued in support of the impugned order passed by the Co-operative Election Commission contending that the elections are conducted as per the calendar of events issued by the Returning officer; nobody had objected for conducting of elections; the elections went on smoothly on 14.02.2015 at Kuvempu Primary School; that since the class-room was very small and there was no adequate lighting arrangement as well as the generator set, the Returning Officer called for a meeting of the contested candidates and with their consent, the venue for counting ballot boxes was changed from Kuvempu Primary School to the Bank premises, where big rooms with adequate lighting facility and generator sets were available; that none of the contesting candidates had objected to shifting of the ballot boxes to the new venue of counting. He further contended that during the counting of the ballot box of Booth No. 2 some of the members and their followers created problems and started to beat the counting staff and in the said circumstance, 16 ballot papers in respect of Booth No. 2 were missing and after re-counting, the Returning Officer ascertained that 16 ballot papers were missing Subsequently, it was found that the ballot papers were torn out into pieces which were available near the toilet. Immediately, thereafter the Returning Officer lodged a complaint to the jurisdictional police and a FIR was registered against the accused person. The counting of votes in respect of other ballot boxes was stopped, and immediately on 15.02.2015, as the incident had happened on the night of 14.02.2015, was reported to the Election Commission. The District Election Officer also furnished his report regarding the incident and requested for re-polling in respect of Booth No. 2. The Co-operate Election Commission, after

considering the matter, in detail, taking into consideration the report submitted by the Returning Officer as well as the District Election Officer, directed re-polling in respect of Booth No. 2. There is no infirmity or irregularity in the order passed by the Election Commissioner.

5. The learned counsel for respondent Nos. 1 and 2 further, he contended that Section 2(b-5) defines "Co-operative Election Authority which means the Co-operative Election Authority constituted under Section 39-AA of the Act. As per Section 39-AA of the Act "Co-operative Election Commission" consists of a Co-operative Election Commissioner and a Secretary. Hence, the Secretary also being a competent person has passed the order. Under Rule 14-I of the Rules, the Co-operative Election Commission has got the power to issue order for conducting re polling, if there is any destruction of ballot papers. As per sub-rule (2) of 14-I of the Rules, the Co-operative Election Commission has power to declare the poll at particular to be void and hold fresh poll, and if there is any irregularity in that particular booth, the entire election need not be set aside and re-polling can be ordered only for a particular place/booth where is discrepancy and that this what sub-rule 2(ii) provides for and therefore, sought for dismissal of the writ petitions.

6. Shri B. Sharanabasawa, learned counsel appearing for respondent Nos. 5 to 15 contended that under Rule 14-I(2) of the Rule, the Co-operative Election Commission if satisfied that the ballot papers were unlawfully taken out of the custody of the Returning Officer or it was destroyed or lost, or damaged, result of the polling station or booth will be void and fresh polling can be ordered. In the instant case, on the basis of the report submitted by the Returning Officer as well as the District Election Officer, the Co-operative Election Commission has taken the decision to conduct re-poll in respect of Booth No. 2. There is no allegation with regard to conduct of the election, the only allegation is with regard to counting of the ballot papers of Booth No. 2 and the theft of 16 ballot papers by some miscreants. After noticing the same, on the basis of the report submitted by the Returning Officer, the Co-operative Election Commission has ordered for re-poll. In pursuance of the order passed by the Cooperative Election Commission, re-polling has been held. The Secretary, who is the part of the Co-operative Election Commission, is competent to pass the order for re-poll. The order impugned is the order passed by the Co-operative Election Commission for all practical purposes. He further contended that before shifting the venue of counting ballot papers, a meeting was held on 13.02.2015 and with the consent of the candidates who contested the elections, and since there was no lighting arrangement in the said school. There is no infirmity or irregularity in the order passed by the Co-operative Election Commission and sought for dismissal of the writ petitions. He also contended that the society was not made a party; that, in the absence of the same, the writ petitions filed by the petition is not maintainable and the same is liable to be dismissed for non-joinder of necessary parties.

7. I have carefully considered the arguments addressed by the advocate appearing for the parties and perused the impugned order and other relevant records.

8. In pursuance of the calendar of events issued by the 3rd respondent, election to the Board of Management of the Bank was held on 14.02.2015. At 5.15 p.m. on the same day, counting started. While countering the ballot box of Booth No. 2, one Kotrappa Kori and his brother started creating problem and interfering with the process of counting. There was chaos in the counting room. In that process, 16 ballot papers were missing on re-counting the ballot box of Booth No. 2, the Returning Officer found that 16 ballot papers were missing. While searching, the Returning Officer found the said ballot papers in the toilet and they were completely torn and further counting process of counting was stopped and a complaint was lodged before the jurisdictional police in Crime No. 35/2015 and brought to the notice of the District Election Officer. The incident was also brought to the notice of the Co-operative Election Commission on 15.02.2015 by both the Returning Officer as well as the District Election Officer. The District Election Officer recommended for the re-poll in respect of Booth No. 2. The Co-operative Election Commission, after considering the report submitted by the Returning Officer and also District Election Officer, was satisfied that there was interference with the counting of the ballots and 16 ballot papers were missing, and also taking into consideration the recommendation made by the District Election Officer and the particulars furnished by the authorities, the Co-operative Election Commission by exercising its powers under Rules 14-I of the Rules, by its order dated 20.02.2015 directed to hold re-poll in respect of Booth No. 2.

9. Rule 14-I of the Rule reads as under:

14-I. Fresh poll in the case of destruction, etc., of ballot boxes.-(1) If at any election.-

(i) any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the Presiding Officer or the Returning Officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station or place cannot be ascertained; or

(ii) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll; the Returning Officer shall forthwith report the matter to the Co-operative Election Commission:

Provided that a report or certificate shall be obtained from the police or Tahsildar to the effect that the polling cannot be continued or counting of votes is rendered impossible.

(2) Thereupon the Co-operative Election Commission shall, after taking all material circumstances into account, either.-

(i) declare the poll at that polling station or place to be void, appoint a day, and

fix the hours, for taking a fresh poll at that polling station or place and notify the day so appointed and the hours so fixed on the notice board of the returning officer or the assistant returning officer if any, and on the notice board of the society; or

(ii) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election or that the error or irregularity in procedure is not material, issue such directions to the Returning Officer as it may deem proper for the further conduct and completion of the election."

A reading of the above Rule makes it clear that the Co-operative Election Commission, after taking into consideration the material circumstances, declare the poll at a particular polling station or a place be void and order for re-poll for a particular polling station. The Co-operative Election Commission in exercise of its powers under Rule 14-I(2)(i) and (ii) directed the Returning Officer to hold re-poll in respect of Booth No. 2. There is no allegation with regard to the conduct of election to the Board of Management of the Bank. Hence, the question of holding fresh poll does not arise. I do not find any infirmity or irregularity in the impugned order directing conducting of re-poll in respect of Booth No. 2.

10. The main contention of the petitioners is that the impugned order is passed by the Secretary who has no power or authority to order for re-poll and hence the impugned order passed by the Secretary is contrary to law. Section 2(b-5) of the Act defines "Co-operative Election Commission" as one constituted under Section 39-AA of the Act. Section 39AA empowers the State Government to constitute a Co-operative Election Commission consisting of a Co-operative Election Commissioner and a Secretary. Section 39AA of the Act makes it clear that Co-operative Election Commission consists of two persons i.e., the Commissioner and the Secretary. The cooperative Election Commissioner shall be an officer of the rank of Principal Secretary or Secretary to the State Government and the Secretary shall be an Officer of the rank of Additional Registrar of Co-operative Societies. Any one of the Officers can sign the orders and those orders become the orders passed by the Co-operative Election Commission. In the instant case, the Cooperative Election Commission was appraised of the facts and the Commission was fully satisfied that re-poll has to be held in respect of Booth No. 2 and accordingly, the Co-operative Election Commission took a decision to order for re-poll in respect of Booth No. 2. However, it is to be noticed that the Secretary of the Co-operative Election Commission has signed the impugned order. Since, as per Section 39-AA of the Act, Co-operative Election Commission consists of Co-operative Election Commissioner and Secretary and any one of the Officers can sign the order, the order impugned has to be treated as one passed by the Co-operative Election Commission. The impugned order cannot be said to have been passed by an incompetent person. Therefore, the contention of the learned advocate appearing for the petition that the order impugned is passed by an incompetent person cannot be accepted.

11. Rule 14-I of the Rules is in pari materia with Section 58 of the

Representation of Peoples Act, 1951. Similar provision has been incorporated in the Karnataka Co-operative Societies Act also. Further, Section 64A of the Representation of Peoples Act contemplates that, if at any time before the counting of votes is completed any ballot papers used at a polling station or at a place fixed for the poll are unlawfully taken out of the custody of the returning officer or are accidentally or intentionally destroyed or lost or are damaged or tampered with, to such an extent that the result of the poll at that polling station or place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission. In those circumstances, the Election Commission may hold a fresh poll under Section 58 of the Act. Rule 14-I(2)(i)(ii) is similar to Section 64A. If there is any discrepancy in a particular booth, election can be held to a particular booth only; re-poll need not be held for the entire constituency. In the instant case, while counting ballot papers of Booth No. 2 there was some discrepancy i.e., due to some disturbance 16 ballot papers were missing. On the complaint made by the Returning officer and the District Election Officer, the Co-operative Election Commission has taken a decision to conduct re-poll in respect of Booth No. 2. The contention of the petitioner is that in view of the missing of 16 ballot papers of Booth No. 2 the entire election has to be declared as void and re-poll has to be held to all the booths. The said submission cannot be accepted. Under the Representation of People's Act and as also under Rule 14-I(2)(i)(n) of the rules, in such a contingency, the Election Commission may order for re-poll in a particular polling station. In the instant case, the allegation is that, while counting ballot papers of Booth No. 2, 16 ballot papers were missing. Subsequently, it was destroyed and on the report submitted by the Returning Officer and the District Election Officer, the Election Commission has taken a decision to hold re-poll in respect of Booth No. 2 only. As there is no complaint with regard to the conduct of election and there is no rigging in the election and that the discrepancy arose only during the counting of ballot papers of Booth No. 2, there is no need for holding fresh poll in respect of all the Booths. Therefore, I find no infirmity or illegality in the impugned order directing to hold re-poll in respect of Booth No. 2.

12. One of the contentions urged by the petitioners is that the Returning Officer unilaterally shifted the venue of the counting from Kuvempu Primary and High School to the Bank premises with an intention to help others. The said contention has been met with by the respondents in their statement of objections stating that the class rooms in the said school were very small, that there was no lighting arrangement and generator sets. The counting commenced only after the conclusion of the election. In view of that the Returning Officer taken a decision in consultation with the candidates to shift the venue from the Kuvempu Primary and High School to the Bank premises, where spacious hall was available with adequate electricity facility and generator set. I find no infirmity or irregularity in the same and no motive can be attributed in the matter of shifting the venue from the primary school premises to bank premises.

13. The other contention of the petitioners is that while the Election Commission

ordered for re-poll in respect of Booth No. 2, the Election Commission ought to have given an opportunity of hearing to the petitioner in the matter and that the principles of natural justice has not been followed. In support of his contention, he relied upon the judgment of the Hon"ble Apex Court in the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

14. A reading of Rule 14-I(2)(i)(ii) referred to above makes it clear that the Co. operative Election Commission, if it is satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election or that the error or irregularity in procedure is not material, it can a take decision and issue such directions to the Returning Officer as it may deem proper for the further conduct and completion of the election. The Rule nowhere contemplates providing an opportunity of being heard to the petitioner and the violation of principles of natural justice does not arise. On the basis of the report submitted by the Returning Officer, the Election Commission, being satisfied that in view of missing of 16 ballot papers would not affect the result of the entire election, ordered for re-poll only in respect of Booth No. 2. Hence, the question of giving opportunity of hearing in making a decision does not arise. The judgment relied upon by the advocate for the petitioner does not contemplate a personal hearing in the matter.

15. I find no infirmity or irregularity in the procedure adopted by the Election Commission. The petitioners have not made out a case to interfere with the impugned order. The democratic process has to be continued and the elected body has to come to power. Accordingly, I pass the following

ORDER

The writ petitions are dismissed with a direction to the respondents to count the ballot papers and declare the results of the elections conducted on 14.02.2015 and 01.03.2015, in accordance with law.