

(2014) 09 KL CK 0013
In the High Court Of Kerala
Case No : W.P.(C). No. 23903 of 2014 (K)

B. Jayakumar

APPELLANT

Vs

The Registrar of Co-Operative Societies

RESPONDENT

Date of Decision : 20-09-2014

Acts Referred:

Citation : (2014) 09 KL CK 0013

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : George Poonthottam, Advocate for the Appellant; D. Somasundaram, Special Government Pleader, K.R. Sunil, P.K. Pamala, Thomas Abraham, Merciamma Mathew, Aswin. P. John, Prasanna Kumar T.S. and K.S. Haridas, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is aggrieved with the election notification at Exhibit P2, issued by the 2nd respondent, Election Commission.

2. Normally this Court would not have interfered with an election scheduled and proceeded with, under the Kerala Co-operative Societies Act, 1969 and the Rules framed thereunder; and in this case, on the specific directions issued by this Court in Exhibit P1.

3. At the earlier instance, the 5th respondent-Society represented by the Managing Committee, was before this Court challenging the cancellation of an election which was constituted by the Election Commission. The petitioner herein impleaded himself as additional 5th respondent in the earlier writ petition and raised serious objections with respect to the preparation of the voters list; which led to the eventual cancellation of election. The objections were with respect to inclusion of members who were not within the area of operation of the Society and who were no more.

4. Looking at the totality of the circumstances as also the fact that the Managing Committee's term was getting over and considering the rival contentions on

either side, this Court directed the Joint Registrar of Co-operative Societies (General) to appoint an Administrative Committee with two members of the outgoing Managing Committee and an Officer of the Department, as the Chairman. Since contentions were raised with respect to the efficacy of the voters list, the Chairman of the Committee was specifically directed to prepare the voters list by himself and not with the involvement of any other person; even, the members of the Administrative Committee. The proposed election in Exhibit P2, purportedly was one to be carried out under the said direction and the preparation of the voters list was also as per the above direction.

5. The learned counsel for the petitioner specifically points out that, in fact the area of operation of the Society is in two Panchayats, Panavoor and Anad, wherein the number of persons included in the voters list prepared by the Election Commission of India itself is 40000 [Forty thousand], whereas the present voters list prepared includes 38000 [Thirty eight thousand] persons, which would indicate that more than 90% of the major citizens, within those two Panchayat areas, are members of the Society, which, according to the learned counsel, is down-right impossible. The learned counsel appearing for the additional 6th respondent, however, raised serious objections with respect to the number of members mentioned in the writ petition and relies on the specific documents produced in the impleading petition.

6. The further contention raised by the learned counsel for the petitioner is with respect to Section 16A of the Kerala Co-operative Societies Act, 1969 [for brevity "the Act"], which disables any member who is not using the services of the society from being included in the voters list. The said submission is met by the learned Special Government Pleader (Co-operation) on the ground that sub-clause (a) of sub-section (1) of Section 16A clearly speaks of prescription by the Government as to the minimum level of service; which as of date has not been prescribed.

7. Apart from this, the compelling argument placed on record is with respect to the illegality which vitiates the notification, insofar as the Chairman of the Committee himself having been appointed as Electoral Officer, as per Exhibit P2. As per Rule 35A of the Kerala Co-operative Societies Rules, 1969 [for short "the Rules"], the duty with respect to preparation of voters list is one which is conferred on the Society, under sub-rule (4), which does so through the Managing Committee or an Administrative Committee or an Administrator in charge of the affairs of the society as validly appointed. The voters list so prepared is handed over by the Society to the Electoral Officer appointed, who in fact publishes the draft voters list as also considers the objections submitted with respect to the draft voters list; so as to finalise the same.

8. In the present case, the contention of the petitioner is that by Exhibit P2 the Chairman of the Committee, who was specifically entrusted with the task of preparing the voters list, was himself appointed as the Electoral Officer. True, by the time of the consideration of the objections, the officer was changed and

another officer was appointed in the status of the Electoral Officer, who had considered the objections. The publication of the draft voters list even then was done by the Chairman itself. This, according to this Court, is a fundamental illegality vitiating the election itself.

9. This Court had, in fact, in Exhibit P1 judgment directed finalisation of the election proceedings within a period of six months from the date of appointment of the Administrative Committee. The present situation has occurred only because of the manner in which the appointment of the Electoral Officer was made, thus vitiating the entire election process which had to be concluded within the time specified in Exhibit P1 judgment.

10. This Court, hence, enquired with the learned Special Government Pleader (Co-operation) as to how it transpired that the Election Commission appointed the very same person who was appointed as the Chairman of the Administrative Committee; as the Electoral Officer. The learned Special Government Pleader would submit, on instructions, that it was only because the Chairman of the Committee was the Assistant Registrar of the area and he had in fact forwarded the election resolution passed by the Administrative Committee to the Election Commission proposing his own name as the Electoral Officer. On the appointment made by the Election Commission, the Chairman of the Committee, the Assistant Registrar, who forwarded the resolution to the Election Commission and the officer who was appointed as the Electoral Officer by the Election Commission was the very same person. It is submitted on behalf of the Election Commission that the appointment of Electoral Officer was only a bona fide mistake on the part of the Election Commission, which occurred due to the aforesaid action of the person who was the Assistant Registrar who was also appointed as the Chairman of the Committee.

11. It cannot but be said that the Chairman of the said committee, who was the Assistant Registrar, ought to have acted with more responsibility and should have been more careful in dealing with an election process, which is a statutory duty cast on him. In any circumstance, the said person cannot be allowed to continue as the Chairman; nor could he be appointed as the Electoral Officer in the present case.

12. With respect to the other contentions raised on behalf of the petitioner and seriously disputed by the learned counsel appearing for the additional respondents, as also the learned Special Government Pleader (Co-operation), for the present the same need not be looked into. However, the voters list having been prepared by a person who has been specifically removed from the post of Chairman, necessarily there should be a preparation of a fresh voters list.

13. Therefore, the Administrative Committee has to continue in office with another officer of the Department appointed as the Chairman, who shall not be the Assistant Registrar of the area, but an officer who holds the rank of an Assistant Registrar or equivalent rank in the Department. The said officer shall be

appointed within a period of two weeks from today and the said officer shall expeditiously consider the issue of preparation of preliminary voters list and shall see to it that the resolution is passed at any rate within a month from the date of his appointment, ensuring that the elections are held on or before 30th of December, 2014. It is also made clear that the term of the Administrative Committee shall not be extended beyond 31.12.2014, unless orders are obtained from this Court.

Writ petition is allowed. Election notification, Exhibit P2, is set aside in the peculiar circumstances coming to fore in the present case and Registrar of Co-operative Societies shall comply with the directions as indicated above. Parties are left to suffer their respective costs.