
(2022) 03 KL CK 0125

In the High Court Of Kerala

Case No : Writ Petition (C) Nos.3063, 7205, 8514 Of 2022

Balakrishnan Kartha

APPELLANT

Vs

Indian Red Cross Society

RESPONDENT

Date of Decision : 16-03-2022

Acts Referred:

Constitution of India, 1950 — Article 226

Indian Red Cross Society Act, 1920 — Section 5(1), 5(1)(d), 5(1)(j)

Citation : (2022) 03 KL CK 0125

Hon'ble Judges : N.Nagaresh, J

Bench : Single Bench

Advocate : P.Vandana, V.K.Shyam, G.Sreekumar, Babu Joseph Kuruvathazha, Mohammed Shafi.K, George Poonthottam, P.N.Mohanan, K.S.Archana

Final Decision : Disposed Of

Judgement

N. Nagaresh, J.

1. All these three writ petitions relate to election to the Ernakulam District Managing Committee of the Indian Red Cross Society. Hence they are heard together and being disposed of by a common judgment.

2. WP(C) No. 3063/2022 has been filed by a Life Member of the Ernakulam District Branch of Indian Red Cross Society, aggrieved by the attempts made by the existing District Managing Committee to conduct election to the Managing Committee flouting the specific rules and mandates issued by the 1st respondent-Indian Red Cross Society, New Delhi. The petitioner seeks to direct the 2nd respondent-Indian Red Cross Society, Kerala State Branch to conduct elections to the Ernakulam District Managing Committee in tune with Ext.P4 Guidelines and Exts. P2 and P3 bylaws.

3. WP(C) No.7205/2022 has been filed by the Indian Red Cross Society, State Branch represented by its General Secretary seeking to quash Exts.P4 and P5 and to command the 5th respondent not to function as office bearer of the

Ernakulam District Branch, till elections are over. WP(C) No.8514/2022 has been filed by six members of the Managing Committee of Ernakulam District Branch of the Red Cross Society seeking to quash Ext.P9 Election Notification and to direct the 1st respondent to appoint a Returning Officer with directions to conduct elections in compliance of the terms of Ext.P1 Rules including revision of final list of voters.

4. Chronological facts emerging from the pleadings in these writ petitions, which are relevant and necessary to decide the issues involved, are as follows:

5. The tenure of the District Managing Committee of the Indian Red Cross Society, Ernakulam District Branch was to expire on 09.02.2022. The District Managing Committee proposed to hold a meeting on 06.01.2022. The Secretary in charge of the Indian Red Cross Society, Kerala State Branch requested the Chairman of the Ernakulam District Branch to temporarily adjourn the meeting since he was of the prima facie opinion that the meeting is being convened without proper notice. On 10.01.2022, the Chairman of the State Managing Committee pointed out to the Chairman of the District Managing Committee that the functioning of the District Committee is in a standstill, and therefore required the Chairman of the District Managing Committee to convene a Managing Committee meeting with due notice to the members, after intimating the State Branch in advance.

6. On 28.01.2022, the Chairman of the District Managing Committee issued notice to the members proposing to hold a meeting of the District Managing Committee on 07.02.2022. The State General Secretary required the Chairman of the District Managing Committee to adjourn the meeting scheduled to be held on 07.02.2022. The District Managing Committee however proceeded with the meeting on 07.02.2022 and decided to hold elections to the District Managing Committee for the tenure 2022-2025. The District Managing Committee appointed Advocate R. Muraleekrishnan as Returning Officer.

7. In the aforesaid circumstances, finding that the District Managing Committee is not functioning properly, the Executive Committee of the State Branch held an emergency meeting and directed the State General Secretary to take over the District Branch administration from 10.02.2022. The District President of the Ernakulam District Branch was informed of the decision and also the decision to conduct elections to the District Managing Committee.

8. Nevertheless the District Managing Committee whose tenure had expired, published election notification dated 09.02.2022 in three prominent newspapers on 11.02.2022. The election is scheduled to be held on 17.02.2022. On 14.02.2022, the State General Secretary of the Indian Red Cross Society, State Branch told Advocate R.Muraleekrishnan that he has not been appointed as Returning Officer by the State Branch.

9. The learned counsel for the petitioner in WP(C) No.3063/2022 argued that the term of the present District Managing Committee expired on 09.02.2022. Going

by the rules for conducting election to the District Managing Committee, the Committee should pass a resolution for conducting election 30 days prior to the date of expiry of the tenure of the existing committee and forward the resolution to the State Branch. The Returning Officer is to be appointed by the State Branch. The persons who are in affairs of the Ernakulam District Branch are proceeding to conduct elections themselves illegally. The existing District Managing Committee is unauthorisedly continuing in position and are misusing the accounts of the District Branch. The Chairman and Treasurer of the District Managing Committee resigned from the posts on 27.11.2021. The present office bearers are unauthorisedly using the accounts of the District Branch and are misusing and misappropriating the funds, contended the learned counsel for the petitioner. Therefore, this Court should direct the conducting of elections to the Ernakulam District Managing Committee in accordance with Ext.P4 election procedure prescribed by the Indian Red Cross Society, New Delhi.

10. The petitioner in WP(C) No.7205/2022 is the Indian Red Cross Society, State Branch. The learned counsel for the petitioner in WP(C) No.7205/2022 argued that the election proposed to be conducted on 17.03.2022, is illegal. Ext.P3 election procedure contemplates that the Managing Committee should pass a resolution for appointment of a Returning Officer and forward to the next Superior Branch 30 days prior to expiry of the term. The Chairman of the Managing Committee who receives the resolution shall appoint a person who is not a voter of the Branch, as Returning Officer. Elections can be conducted only by a Returning Officer who is appointed by the Chairman of the Managing Committee which receives the resolution.

11. The learned counsel for the petitioner submitted that in the case of the Ernakulam District Branch, the resolution is to be sent to the State Branch and it is the Chairman of the Managing Committee of the State Branch who should appoint a Returning Officer. The action of the persons in the helm of affairs in the District Branch now, of appointing Returning Officer themselves and proceeding with the election, is highly illegal and arbitrary. The Ernakulam District Branch is embroiled in a lot of issues. Duly elected office bearers have resigned. There are allegations of issuance of bogus membership in Ernakulam District Branch. The conduct of elections by the persons whose term expired, would cause serious damage to the democratic process of election.

12. The learned counsel for the petitioners in WP(C) No.8514/2022 pointed out that the meeting is being held so as to defeat the interest of several of the members. The District Managing Committee is required to pass a resolution requesting the State Branch to appoint a Returning Officer and the State Branch is required to appoint a Returning Officer. The District Managing Committee has no power to appoint its own Returning Officer. In fact, the meeting of the District Managing Committee held on 07.02.2022, is illegal as the same is against the specific directions issued by the State Branch. The said meeting is void ab initio and consequently the election notification is also bad in law, contended the

counsel for the petitioners.

13. The learned counsel for the Ernakulam District Branch and Ernakulam District Managing Committee of the Indian Red Cross Society resisted the writ petitions. The learned Senior Counsel assisted by the counsel for the respondents submitted that this Court as per judgment in WP(C) No.3931/2022 dated 07.02.2022 directed the Ernakulam District Managing Committee to forward the list of the new members along with due share of the subscription fee to the State Branch within a period of two weeks. In the light of the said judgment, the prayer of the petitioner in WP(C) No.3063/2022 relating to admitting of new members, has become redundant.

14. The learned Senior Counsel urged that on 07.02.2022, the District Managing Committee resolved, on account of completing its expiry of tenure on 09.02.2022, to conduct the general election for 2022–2025 in a democratic manner. Accordingly, Advocate R. Muraleekrishnan was appointed as Returning Officer. The Returning Officer notified the election in three prominent newspapers. The respondents will be taking steps to send the election notification to all the life members by individual notice by post. The decision was duly communicated to the State Branch of the Indian Red Cross Society. The District Managing Committee is continuing as caretaker administrative body.

15. The learned Senior Counsel pointed out that there is nothing in the rules which insist that the Returning Officer can be appointed by the State Branch alone. As long as the District Managing Committee is following the democratic process in conducting elections, this Court shall not interfere in the matter. The learned Senior Counsel relied on the judgments of the Apex Court in *Shri Sant Sadguru Janardan Swamy (Moingiri Maharaj) Sahakari Dugdha utpadak Sanstha and another v. State of Maharashtra and others* [(2001) 8 SCC 509] and in *Shaji K. Joseph v. Viswanath and others* [(2016) 4 SCC 429] and urged that once the election process is set in motion, the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. All disputes with regard to election should be dealt with only after completion of the election.

16. The learned Senior Counsel further urged that the State Branch has approached this Court suppressing material facts. Life Members of the IRCS had approached the Munsiff's Court, Ernakulam filing O.S. No.153/2022 challenging the authority of the State Branch to appoint an Administrator and they had obtained an ad interim injunction restraining the Administrator from assuming the office as Administrator and interfering in the election process. This material fact is suppressed by the petitioner in WP(C) No.7205/2022.

17. The learned Senior Counsel relied on the judgment of the Apex Court in *Shri K. Jayaram and others v. Bangalore Development Authority and others* (Civil Appeal Nos. 7550–7553 of 2021) and in *Meghmala and others v. G. Narasimha Reddy and others* [(2010) 8 SCC 383] and argued that the jurisdiction exercised

by this Court under Article 226 is extraordinary, equitable and discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court without concealing or suppressing anything. If he withhold some vital or relevant material in order to gain advantage over the other side, then he would be guilty of playing fraud with the court as well as with the opposite parties which cannot be countenanced.

18. The learned Senior Counsel pointed out that section 5(1)(d) of the Indian Red Cross Society Act, 1920 empowers the managing body to frame rules for the procedure of election of members by States Branch Committee alone. Therefore, the State Branch cannot frame rules governing elections to the District Managing Committees. The State Branch has no power to direct the District Branches to conduct election in a particular manner. The learned Senior Counsel insisted that there is no provision in the rules or bylaws governing elections to the District Branches and therefore the State Branch cannot dictate the District Branches in the matter of elections to District Managing Committees.

19. I have heard the learned counsel for the petitioners and the learned counsel representing the respondents.

20. The prime issue arising for consideration in these writ petitions is whether elections to Indian Red Cross Society District Managing Committees are to be conducted by Returning Officer appointed by the State Branch or whether the District Managing Committees are competent to appoint Returning Officers on their own and proceed themselves to hold elections.

21. Section 5(1) of the Indian Red Cross Society Act, 1920 provides that the Managing Body with the approval of the President may make rules for the management, functions, control and the procedure of the Society. The rules may provide for the procedure of election of members by State Branch Committee. The section 5(1)(j) also provides that the rules may provide for the regulation of the procedure generally of the society and the Managing Body. Therefore, it is evident that the Managing Body of the Indian Red Cross Society can frame rules for conduct of elections to the District Managing Body.

22. The supervisory role of the National Headquarters of the Indian Red Cross Society is evident from Rule 1(f) of the uniform rules for state/UT Red Cross Branches of Indian Red Cross Society, exhibited as P2 in WP(C) No.7205/2022. It provides that the National Headquarters shall, in consultation with the State Branches, develop policies and strategies for the better functioning of the Branches keeping in mind the principle of unity. All Branches shall work within these guidelines, framework and strategic directions agreed with the National Headquarters.

23. Chapter III, Rule G(e) provides that the Managing Committee of the National Headquarters has the power to make rules for the management, functions, control and procedure of the state/ UT/District Branch (including the service rules for the staff). Chapter VI, Rule 1(a) provides that the Managing Committee of

the State/UT Branches shall form District Branches and that all the District Branches shall be under the control of the respective State/UT Branch.

24. Chapter VI, Rule 11(9) provides that District branches shall be subject to all rules and regulations issued from time to time by the National Headquarters of Indian Red Cross Society and from the State Branch. Rule 12 again provides that any District branch whose administration in the opinion of the State Branch Managing Committee has not been in accordance with the principles and policies laid down by the State Branches Committee, subject to the approval by the National Headquarters, may be taken over by the State Branch and any funds and property at their disposal added to the general funds of the State Branch. The afore provisions would undoubtedly establish the strong supervisory role of the State Branch and National Headquarters over the District Branches.

25. The Indian Red Cross Society headquarters has issued Circular dated 08.01.2013 (Ext.P3 in WP(C) No.7205/2022) providing for the manner in which elections are to be conducted in District branches. Clause 1 of Ext.P3 provides that the concerned Managing Committees are required to pass resolution for appointment of Returning Officer and forward to the next superior branch 30 days prior to expiry of the term. The Chairman of the Managing Committee who receives the resolution shall appoint a person who is not a voter of the Branch for which the election is to be conducted, as Returning Officer. As per Clause 3, the Returning Officer shall inform the election proceedings to the voter members either personally or through paper publication, at least 21 days before the election. As per Clause 4, it is for the Returning Officer to prepare the voters list of the Branch where the election is to be conducted and published the draft voters list, providing time for filing objections.

26. A reading of Ext.P3 would show that a District Managing Committee is required to pass a resolution for appointment of Returning Officer and forward the same to the State Branch 30 days prior to expiry of the term. It is the State Branch which receive the resolution, who should appoint the Returning Officer.

27. In the present case, the District Managing Committee has passed a resolution to conduct election. Instead of forwarding this resolution to the State Branch and seeking appointment of a Returning Officer, the District Managing Committee itself has appointed a Returning Officer without the approval of the State Branch. Going by the provisions contained in the Indian Red Cross Society Act, 1923, the draft uniform rules for States/UT Red Cross branches of IRCS and Ext.P3 Circular issued by the Indian Red Cross Society Headquarters it is evident that the action of the District Managing Committee of the Indian Red Cross Society, Ernakulam Branch, is grossly illegal and unsustainable. The election scheduled to be held on 17.03.2022 is therefore liable to be declared as illegal and ultra vires.

28. As regards the argument of the counsel for the District Managing Committee regarding suppression of material facts by the petitioner in WP(C) No.7205/2022,

from the pleadings, it appears that the Suit was filed against appointment of Arbitrator by the State Branch. There is nothing on record to show that the OS Pending before the Munsiff's Court, Ernakulam relates to the legality of the election to the District Managing Committee. Furthermore, it is not only the petitioner in WP(C) No.7205/2022, but the petitioners in WP(C) Nos. 3063/2022 and 8514/2022 have also filed writ petitions seeking to conduct elections in accordance with the rules of the Indian Red Cross Society.

29. As regards the argument that this Court should not interfere in election process, it is to be noted that under the Rules, it is the Returning Officer appointed by the State Branch who is competent to hold elections. Election conducted by any other person would be a farce and cannot be condoned.

For all the above reasons, it is declared that the election to the Ernakulam District Managing Committee of the Indian Red Cross Society scheduled to be held on 17.03.2022 is illegal and ultra vires. The respondents are desisted from conducting elections to the Indian Red Cross Society, Ernakulam District Managing Committee on 17.03.2022. The petitioner in WP(C) No.7205/2022 is directed to treat the resolution passed by the Ernakulam District Managing Committee on 07.02.2022 as a resolution to conduct election on a suitable and convenient date and proceed forthwith to hold elections to the Ernakulam District Managing Committee of Indian Red Cross Society, by appointing a Returning Officer. The election shall be held as expeditiously as possible and at any rate, within a period of three months. The Returning Officer appointed by the State Branch will be entitled to finalise the voters list in accordance with law. The members of the Ernakulam District Managing Committee whose tenure stands expired, shall extend all assistance and co-operation for the smooth conduct of election by the Returning Officer nominated by the State Branch.