
(2008) 08 KL CK 0051

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22511 of 2008

Bhaskaran Pillai K.

APPELLANT

Vs

Nediyavila Milk Producer's Co-op. Socy. Ltd.

RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

General Clauses Act, 1897 — Section 9

Kerala Co-operative Societies Act, 1969 — Section 32, 32(1), 69

Citation : (2008) 4 ILR (Ker) 130 : (2008) 3 KLJ 539 : (2008) 4 KLT 271

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : K. Divakaran Nair, for the Appellant; Anu Sivaraman (GP), V.V. Nandagopal Nambiar, V.G. Arun and T.R. Hari Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Thottathil B. Radhakrishnan, J.—Petitioner, a member of the first respondent, a Milk Producers' Co-operative Society challenges Ext.P2 notice issued scheduling the election to the committee of that society and Ext.P4 voters' list. The plea of the petitioner in the writ petition is that Ext.P2 notice is invalid, it having been issued in violation of Rule 35(3)(a)(iii) of the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as the "Rules" and Clause 5.1(a)(i) of the bye-laws of the first respondent society. It is also contended that the fixation of 14-7-2008 as the date for consideration of objections to the voters list is in violation of natural justice since Ext.P2 notice was served on the petitioner through post only on 15-7-2008, owing to which he could not file objections on or before 14-7-2008. It is contended that many eligible persons are excluded from Ext.P4 list while different ineligible persons are included therein. The petitioner seeks a further direction to respondents 1 and 2 to prepare voters list afresh after giving fresh notice of not less than seven days. This relief is sought on the assumption that Rule 35(3)(iii) enjoins a notice period of seven days for such purpose. The first respondent society has filed a counter affidavit contending, among other things, that the petitioner cannot make out any personal grievance as his name

is included in the final list of voters and the petitioner is not a candidate contesting in the election. It is further pleaded by the first respondent that as per Clause 3.3.(b)(iii) of Ext.R1(a) bye-law, only those persons who have either measured milk for 180 days in the previous year or had measured milk of a total quantity of not less than 500 litres during that period would be eligible to vote and that Ext.R1(b) list has been prepared in terms thereof and such list was submitted along with the resolution to the Returning Officer.

2. On his application, additional third respondent was impleaded. He is also a member of the society and supports the plea of the first respondent.

3. The second respondent Returning Officer has filed counter affidavit stating that the committee of the first respondent forwarded the resolution dated 12-6-2008 to the competent authority, following which the second respondent was appointed as the Returning Officer and Ext.R2(a) (Ext.P1) election notification was issued. The committee in office had prepared the voters list and had approved the same on 12-6-2008 and that the action of publishing and hearing the objections to the voters list had been done in conformity with the statutory provisions. It is stated that no objections to the draft voters list was received while 22 nominations were received for nine seats. Three nominations were withdrawn and final list of 19 candidates was published as per Ext.R2(b) on 20-7-2008.

4. Petitioner filed reply affidavit controverting also another plea of the respondents that the issue in hand could be the subject-matter of an arbitration u/s 69 of the Kerala Co-operative Societies Act, 1969, hereinafter referred to as the "Act". Different contentions are raised in the reply affidavit regarding the credibility of the voters' list. It is also further contended that action was taken against the committee in office by issuing notice u/s 32(1) of the Act and therefore such persons have to be avoided from the administrative body in terms of the provisions of the bye-law.

5. If nominations have been received contrary to law or the bye-laws and if any person who succeeds in the election was disqualified, that is a matter that can be agitated in an election dispute u/s 69 of the Act. There could be no dispute on this. Therefore, any disqualification or incompetence of any candidate, including on any ground referable to any proceeding u/s 32 are matters that could be raised only after the election and is not a matter germane for decision in this writ petition.

6. The only question that falls for consideration is as to whether the second respondent acted contrary to the Act, Rules and the bye-laws in publishing the preliminary voters list at 10 a.m. on 11.7.2008 fixing 2 p.m. to 5 p.m. on 14-7-2008 as the time for considering the objections to the draft list of voters.

7. At the outset, I may notice that Clause 6 among the different terms stated in Ext.P2 itself would show that even if there was any intervening holiday, the office of the society would remain open.

8. Rule 35(3)(b) deals with publication of the voters' list and inviting objections thereto. It is not Rule 35(3)(a)(m), referred to by the petitioner, that applies. Therefore, the prime contention in the writ petition that the petitioner was entitled to seven days' time to file objections is baseless and is rejected.

9. Rule 35(3)(b) deals with the preparation of the list of members qualified to vote. That duty is on the committee in office. That has to be done in accordance with the provisions of the Act, the Rules and the bye-laws. That list has to be prepared in terms of the bye-laws as it stood on a day thirty days prior to the date fixed for the poll. The committee has to supply that list of members to the Returning Officer. That list of members, who are qualified to vote, as prepared by the committee in office, has to be published by the Returning Officer not less than 15 days prior to the date fixed for election, inviting objections, if any, in the matter, within three days of publication. After considering the objections, if any, the Returning Officer shall publish a final list of eligible voters on the notice board of the society and in its branches, if any, not less than 10 days prior to the date fixed for the poll. It also provides for supply of copies of such list to any member on payment of such fee as may be prescribed by the committee. The provision in Rule 35(3)(b) does not prescribe any individual notice to the members calling for objections. When a list of members qualified to vote is prepared and published, objection thereto can be filed on the question of exclusion or inclusion. Therefore, the right to object cannot be controlled by any individual notice. Hence, no individual notice can be envisaged by any such rule. The plea in the writ petition is footed on Rule 35(3)(a)(iii) which relates to submission of nominations. The period prescribed thereby is irrelevant to decide the period during which objections could be filed in terms of Rule 35(3)(b) is undertaken. Sub rule 3(a) envisages individual notice to all members included in the final list of voters in the manner prescribed therein. The existence of such a provision in sub rule 3(a) in contra distinction to the absence of such provision in sub rule 3(b) is sufficient legislative material to support the conclusion that the delegate making Rule 35(3)(b) never contemplated any individual notice. Therefore, even the fixation of two dates in Ext.P1; one for publication of the draft list of voters and another for consideration of objections, is, strictly speaking, superfluous. Petitioner does not have a case that while publishing the list prepared by the committee, the Returning Officer had not invited objections. No number of the society can wait to be personally invited through individual notice, to file objections to the draft voters list. That is just not contemplated.

10. This leads to the only surviving contention regarding the manner in which the term "within three days of publication" occurring in the second sentence of Rule 35(3)(b) has to be interpreted. For appreciating the rival contentions in that regard, it is appropriate to extract the relevant portion of that sentence. It reads as follows:

The Returning Officer shall publish copies of the list by affixing them to the notice board at the head office of the society and its branches, if any, not less than

fifteen days prior to the date fixed for election inviting objections, if any, in the matter, within three days of publication.

11. The publication of the copies of the list has to be by affixture on the notice board. That has to be done not less than 15 days prior to the date fixed for election. Along with that, objections have to be invited. Therefore, such invitation of objections has to be by affixture in the notice board along with the publication of the list. The invitation has to be for objections, if any, within three days of publication. Thus, the same sentence uses the expressions "not less than 15 days prior to" and "within three days of". Different words, phrases and expressions in the same sentence would never be intended to convey the same meaning. Therefore, the use of the expressions "within three days of does not convey the same meaning as that of the expression "not less than 15 days prior to".

12. Sri. K. Divakaran Nair, the learned counsel for the petitioner, with reference to Section 9 of the General Clauses Act, 1897, dealing with the commencement and termination of time, argued that in different context, the expression "within 15 days" has been held to mean 15 clear days and that when a thing is permitted to be done "within a stated period", that act can be done only before the last day expires. Reference was made to the first edition of the AIR commentaries on the General Clauses Act by Sri. P.M. Bakshi. The provisions of the Travancore Cochin General Clauses Act does not provide a similar provision.

13. Per contra, Smt. Anu Sivaraman, the learned Senior Government Pleader referred to the judgment of this Court in Chekkutty Vs. Kunhavulla, to argue that where a time is stipulated within which an Act has to be done, it shall be so done and the concept of providing three clear days is not available in Rule 35(3)(b) of the Rulers. The Division Bench in that judgment affirmed the views of Velu Pillai, J. in Kandakka Sooppi Vs. Joseph, where the learned Judge observed as follows:

In my view, the decision of the case must turn on the meaning of the term "within any stipulated period" the word "within, pointing to an outer limit of a specified period, the fixation of an inner limit, if I may say so, by itself, being insufficient. The term "within according to dictionary, means "not beyond". I look in vain for such a limit in the relevant provision in Ext.B1 quoted above.

14. The learned senior Government Pleader also referred to the decision of the Division Bench of the Patna High Court in Chandra Shekar Prasad Singh and Another Vs. Jai Prakash Singh, to point out that in a similar situation relating to election, considering Rule 26 of the Representation of the people (Preparation of Electoral Rolls) Rules 1956, the Bench held that "within a period of seven days from"" does not mean that there should be seven clear days.

15. Adv. Sri. V.G. Arun on behalf of the impleaded additional respondent referred to a decision in Chandra Shekhar Prasad (Supra), namely, Commissioner of Income Tax Vs. Ekbal and Co., , contrasting the expressions "within 30 days" and "not less than 30 days", in a short and crisp enunciation. Stone, C.J. stated

therein as follows:

In my judgment expressions "within 30 days" and "not less than 30 days" are two quite different things. "Within 30 days" is within two points of time, one at which the period begins and the other at which it expires. On the other hand, "not less than 30 days" is outside these two points of time. There must be an interval of not less than 30 days and that means 30 days clear: See (1885) 29 Ch.D. 204. The period must continue beyond the expiration of the stated time. Whereas "within" the stated period must mean what it says, something less than the moment of expiration.

The concurring words of Kenya J., is as follows: It seems to be clear that when a party is called upon to do an act "within" a stated number of days he necessarily cannot get that number of days as "clear" days.

Following the aforesaid decisions of the Bombay High Court and Patna High Court with which I am in respectful agreement, it has to be necessarily held that the expression "within three days of publication" in the second sentence of Rule 35(3) (b) of the Rules does not provide for affording "three clear days" and therefore the publication of the preliminary voters list on 11-7-2008 and the listing of the matter for consideration of objections from 2 to 5 p.m. on 14-7-2008 is in terms of law as noticed above. The judgment in Chekutty and Kandakka Soopi above, though rendered in the realm of applying a legislation on the interpretation of a document, apply with full force, also on the interpretation of the statutory provision in hand. For the aforesaid reasons, this writ petition fails. The same is accordingly dismissed.