

(2013) 06 KL CK 0011

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15357 of 2013

Bijukumar

APPELLANT

Vs

Co-operative Election Commissioner

RESPONDENT

Date of Decision : 21-06-2013

Acts Referred:

Citation : (2013) 4 ILR (Ker) 492 : (2013) 3 KHC 650 : (2013) 4 KLJ 297 :
(2013) 3 KLT 963

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : R. Gopan, for the Appellant; K. Ramakumar, Smitha George and D. Somasundaram, Spl. Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Surendra Mohan, J.—The question that arises for consideration in this Writ Petition is whether, in an election to constitute the Managing Committee of a Co-operative Society, the polling should also be conducted on ward basis? The petitioners are A class members of the fourth respondent society. An election to the Managing Committee of the fourth respondent has been notified as per Ext.P4. All the procedures relating to the conduct of the election are complete and what remains is only the actual polling, that is scheduled to be held on 23.6.2013. The petitioners are contesting the election. The first petitioner is contesting from ward No. 3 while the second petitioner is contesting from ward No. 5.

2. According to Adv. R. Gopan who appears for the petitioners, the Co-operative Societies Act, 1969 (the "Act" for short) has been amended by Act 8/2013 providing that election to the Managing Committee of societies like the fourth respondent be conducted only on ward basis. Accordingly the bye laws of the fourth respondent society have been amended to provide for election on ward basis, as evident from Ext. P3. It was thereafter that Ext. P4 notification was issued. Ext. P4 notification though it states that the election shall be conducted

on ward basis, does not provide that voting shall also be on ward basis. It is contended that unless the voting is also conducted on ward basis, the desired objective of the amendments now introduced would not be achieved. It is pointed out that some of the wards have more than 2000 members and therefore the votes of the members of the said wards would be decisive in the choice of representatives from the other wards also. Consequently, it is contended that a situation would be created where wards having lesser number of members would be denied the right to choose representatives of their choice. Or in other words, members of wards with more members would decide who should represent the wards with lesser members also. Therefore, it is contended that appropriate directions for conduct of the election insisting on conduct of the voting also on ward basis should be issued. An interim order of stay of further proceedings is also sought.

3. A statement has been filed by the second respondent. According to the statement, the contention of the petitioners are untenable in view of the provisions of the Act and the Rules thereunder. S. 28 mandates constitution of the Managing Committee by the General Body of the Society and therefore, voting on the basis of wards would curtail the rights of a section of the members, thereby violating S. 28. The election is being conducted on ward basis for the purpose of ensuring that every ward is represented in the Managing Committee. Nominations for the election have not been submitted on panel basis. Individual candidates who are contesting the election are entitled to the votes of each member of the Society, irrespective of the wards.

4. Senior counsel Shri. K. Ramakumar appears for the fourth respondent. According to the counsel, the present contention of the petitioners is in direct conflict with the mandate of the Act and the Rules. Every member of the Society has a right to be part of the process of constitution of a Managing Committee, in accordance with the Act. Therefore, confinement of the right to vote to the members of a particular ward alone would violate the provisions of the Act. Apart from the above it is pointed out that the process of election having progressed considerably, the same is not liable to be interfered with, at this stage. The decision of the Apex Court in Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, is also pressed into service.

5. Heard. Section 28(1) of the Act reads as follows:-

Appointment of committee.-- (1) The general body of a society shall constitute a committee, for a period not exceeding {five years}, in accordance with the bye-laws and entrust the management of the affairs of the society to such committee.

Provided that in the case of society registered after the commencement of this Act, the persons who have signed the application to register the society may appoint a committee to conduct the affairs of the society for a period of three months from the date of registration or for such further period as the Registrar

may consider necessary; but the committee appointed under this proviso shall cease to function as soon as a committee has been constituted in accordance with the bye-laws:

Provided further that where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the first committee, including the President or Chairman, for a period not exceeding {twelve months}.

(emphasis supplied)

The above provision makes it clear that it is the general body of the Society that "shall" constitute a committee, for being entrusted with the management of the affairs of the society. Therefore, it is the general body that is conferred with the power to elect a Managing Committee. The amendment that has been introduced only provides for an election on ward basis. The obvious object being to ensure that every ward so constituted is represented effectively. Apart from the above, reservation of certain seats for women as well as members of Scheduled Castes and Scheduled Tribes are also contemplated. In a society, irrespective of whether a seat belongs to a reserved or general category and irrespective of the ward, every member of the society has a right to vote. Sub-section 1A stipulates the number of representatives who are to constitute the Managing Committee. The said provision reads as under:

Notwithstanding anything contained in the bye laws of the Society, the number of the members of the committee shall not be less than seven and shall not exceed thirteen in the case of primary Co-operative Societies and twenty five in the case of all other types of co-operative societies:

Provided that in the case of committees of Primary Co-operative Societies constituted prior to the commencement of the Kerala Co-operative Societies (Amendment) Act, 2010 the maximum number of members shall be fifteen.

The above provision clearly shows that the choice of representatives is to be made by the members in general, of the homogeneous general body of the society, without any differentiation on the basis of wards. To introduce a differentiation on the basis of wards would amount to bifurcation of the general body itself, which is not contemplated by either the Act or the Rules. The learned senior counsel Shri. K. Ramakumar has drawn my attention to R.35 of the Rules which lays down the procedure for conduct of election to the Managing Committee. The said provision further makes it clear that the election should be conducted from among the members of the general body, voting as a unit. The said provision also shows that only a single voters list is to be prepared. If the voting is to be conducted separately for each ward, preparation of separate voters' lists on ward basis would also have to be undertaken. Such a procedure is not contemplated by the Rules. Therefore, I do not find any justification for the contention of the petitioners that the voting has to be conducted on ward basis.

Apart from the above, as rightly pointed out by the learned senior counsel Shri.

K. Ramakumar, the procedure for the conduct of election has progressed substantially and up to the point where just the polling remains to be completed. The polling is scheduled to be conducted day after tomorrow. There are absolutely no grounds to interfere with the election process, at this stage.

For the above reasons this Writ Petition fails and is accordingly dismissed.