

(2011) 01 KL CK 0138

In the High Court Of Kerala

Case No : Writ Petition (C) No. 37834 of 2010 (D)

C. Babu

APPELLANT

Vs

Kerala State Co-Operative Election, Returning Officer,
Electoral Officer and Vaikom Taluk Co-Operative Agricultural

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Citation : (2011) 01 KL CK 0138

Hon'ble Judges : P.N.Ravindran, J

Bench : Single Bench

Advocate : D. Somasundaram, for the Appellant; George Poonthottam, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Ravindran, J.—The Petitioner is a member of the Board of Directors of the fourth Respondent bank. The term of the Board of Directors of the fourth Respondent bank presently in office expires on 9.1.2011. The fourth Respondent bank was formed by bifurcating the Kottayam Co-operative Agricultural and Rural Development Bank Limited and by division of its assets and liabilities. The Kerala State Co-operative Election Commission has on noticing the fact that the term of the present Board of Directors expires on 9.1.2011, issued Ext.P1 election notification dated 2.12.2010, as per which the elections are to be held on 9.1.2011. In this writ petition the Petitioner challenges the election notification and seeks postponement of the election on various grounds. The first contention raised is that in the election notification, the date of the proposed election is given as 9.1.2010, thereby violating Rule 35 A (3)(viii) of the Kerala Co-operative Societies Rules, 1969. It is contended that the election notification should disclose the date on which the polling, if necessary, will take place and that as the notification sets out the date of poll as 9.1.2010, the notification is not in accordance with the rules. The second contention raised by the Petitioner is that the constituencies as specified in the bye laws from which the members

are to be elected, are not incorporated in the election notification, thereby violating the stipulations in Rule 35 A (3)(ii) of the Kerala Co-operative Societies Rules, 1969. The third contention raised is that, the members of the Kottayam Co-operative Agricultural and Rural Development Bank have not paid the share value of Rs. 25/- or admission fee of Rs. 5/- and therefore they are not entitled to vote in the ensuing elections. Reliance is placed on Section 19 of the Kerala Co-operative Societies Act and Rule 28 of the rules, in support of the said contention.

2. I heard Sri. D. Somasundaram, the learned Counsel appearing for the Petitioner, Smt. Anu Sivaraman, the learned Special Government Pleader appearing for Respondents 1 to 3 and Sri. George Poonthottam, the learned Counsel appearing for the fourth Respondent bank. I have also considered the pleadings and the materials on record. The learned special Government Pleader and the learned Counsel appearing for the fourth Respondent bank submitted that, from the recitals and statements in Ext.P1 notification it is evident that the election is proposed to be held on 9.1.2011 and not on 9.1.2010 and that the wrong mentioning of the date of the poll is only an inadvertent error, which does not vitiate the election notification. The learned Counsel also submitted that on noticing the inadvertent error an erratum notification was issued on 24.12.2010, to the effect that the polling if necessary, will be held on 9.1.2011. As regards the non-mentioning of the details regarding the constituencies, from which members are to be elected, in the election notification, the learned Counsel appearing for the Respondents submitted that the details regarding the constituencies from which the members are to be elected, as specified in the bye laws were published simultaneous with Ext.P1 notification, in the notice board of the bank and that there is substantial compliance with the statutory provisions. They also contended that pursuant to the election notification, the Petitioner submitted a nomination paper as a candidate and that it was rejected on 27.12.2010 after scrutiny. The learned Counsel for the Respondents contended that the Petitioner who participated in the election process and submitted a nomination also, pursuant to Ext.P1 election notification, cannot be said to be in any way prejudiced as a result of non mentioning of the details regarding the constituencies from which the members have to be elected. The learned Counsel also submitted that there are 23 candidates in the fray, that one among them got elected unopposed and that in the absence of the contesting candidates in the party array no relief can be granted to the Petitioner. Lastly, it was contended that the payment of the membership fee and admission fee in terms of the bye laws apply only to persons seeking admission as members after the formation of the fourth Respondent bank and that members of the Kottayam Co-operative Agricultural and Rural Development Bank are not bound to pay admission fee or membership fee. Reliance is placed on Ext.R4(a) order dated 9.6.2005, issued by the Joint Registrar Co-operative Societies (General), Kottayam, to contend that the members of the Kottayam Co-operative Agricultural and Rural Development Bank who are residing within the area of operation of the fourth Respondent

bank have the right to continue as members of the newly formed Vaikom Taluk Co-operative Agricultural and Rural Development Bank.

3. It is evident from the pleadings and the materials on record and from the submissions made at the Bar, that the reference in Ext.P1 notification to the date 9.1.2010 as the date on which the polling will be held if necessary, is an inadvertent mistake which does not materially affect the electoral process. As per Ext.P1, the last date for withdrawal of nominations was 29.12.2010. Necessarily therefore the election can be held only thereafter. In such circumstances, it can not be said that the wrong mentioning of the date of the polling as 9.1.2010 in Ext.P1 notification will vitiate the election process. Further the Respondents have also issued and published an erratum notification on 24.12.2010 to the effect that the polling will be held, if necessary, on 9.1.2011. I accordingly hold that the mentioning of the date as 9.1.2010 as the date on which polling will be held if necessary, does not vitiate Ext.P1 notification.

4. I shall now deal with the contention of the Petitioner that the failure to mention the constituencies from which the members are to be elected as specified in bye laws vitiates the election notification. Rule 35A(3)(ii) of the Kerala Co-operative Societies Rules, stipulates that the notification regarding the election shall contain the particulars regarding the constituencies from which the members have to be elected as specified in the bye laws. Note (2) to Ext.P1 notification states that the said details have been published on the notice board of the bank. Ext.P2 is a copy of the said notification. The Petitioner has no case that the particulars regarding the constituencies were not published on the notice board of the bank as stated in Ext.P1. His case is that it should have formed a part of Ext.P1 notification. In my opinion, the Petitioner who participated in the election process and submitted his nomination, even after noticing the alleged deficiency in Ext.P1 notification, cannot be heard to contend that he has been in any way prejudiced by the omission to mention the particulars regarding the constituencies in Ext.P1 notification itself. Similarly, the challenge to the right of the members of the Kottayam Co-operative Agricultural and Rural Development Bank to cast votes in the ensuing elections is also without any merit. The fourth Respondent bank was formed by bifurcating the Kottayam Co-operative Agricultural and Rural Development Bank in the year 2005. The Petitioner was elected as a member of Board of Directors of the newly constituted bank after the bifurcation. The members of the Kottayam Co-operative Agricultural and Rural Development Bank voted in the said election and many among them would have also voted in favour of the Petitioner. Under the provisions of Section 14 of the Kerala Co-operative Societies Act, if those members had not objected in writing to their become members of the newly formed Vaikom Taluk Co-operative Agricultural and Rural Development Bank, they would become members of the newly formed Vaikom Taluk Co-operative Agricultural and Rural Development Bank. The provisions in the bye laws regarding payment of admission fee and membership fee would apply only to persons who seek admission as members of the Vaikom Taluk Co-operative Agricultural and Rural Development Bank, after

the bifurcation. Further the Joint Registrar of Co-operative Societies, had in his Ext.R4(a) order dated 9.6.2005 directed that, the members of the Kottayam Co-operative Agricultural and Rural Development Bank will have all rights including the right to vote as members of the Vaikom Taluk Co-operative Agricultural and Rural Development Bank. In such circumstances, the objection raised by the Petitioner that the members of the Kottayam Co-operative Agricultural and Rural Development Bank cannot vote in the ensuing elections, is without any merit. The Petitioner who participated in the election process by submitting a nomination, cannot in my opinion be heard to contend that the election notification is not in accordance with the rules or that persons who are ineligible to vote have been included in the electoral roll. In the view that I have taken, it is not necessary for me to decide whether Rule 35 A (3)(ii) of the Kerala Co-operative Societies Rules, 1969, is mandatory or only directory.

I accordingly hold that there is no merit in the writ petition. The writ petition fails and is dismissed.