
(2014) 09 KL CK 0035

In the High Court Of Kerala

Case No : W.P. (C). Nos. 17243 of 2014-E and 18566 of 2014-U

C.G. Rajmohan

APPELLANT

Vs

State Co-Operative Chief Election Commissioner

RESPONDENT

Date of Decision : 18-09-2014

Acts Referred:

Citation : (2014) 09 KL CK 0035

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P.N. Mohanan, Advocate for the Appellant; D. Somasundaram, Special Government Pleader, S.P. Aravindakshan Pillay, N. Santha, K.A. Balan, Peter Jose Christo and S.A. Anand, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—An unique situation, in which the withdrawal of an election notification, by the Election Commission, has to be tested in the context of the intervening facts and the applicable statutory provisions, has arisen in the instant case.

2. Election to the Managing Committee of the Nadakkal Service Co-operative Bank Limited [hereinafter referred to as "the Society"] was scheduled on 20.07.2014 by an election notification issued on 17.06.2014. As per the notification, produced as Exhibit P2 in W.P. (C). No. 18566 of 2014, the preliminary voters list was to be published on 20.06.2014 and the objections were to be filed within 27.06.2014. The final voters list was to be published on 30.06.2014 and the nominations were to be submitted within 08.07.2014.

3. After the final voters list was published, but prior to the nominations were to be filed, W.P. (C) No. 17243 of 2014 was filed by a member of the Society, alleging grave irregularities and illegalities in the final voters list published. The petitioner therein specifically pointed to certain objections filed by other members, being Exhibits P3 and P5, against the voters list published, which, according to the petitioner, were not considered by the Electoral Officer. The petitioner therein urged before Court that the Election Commission, who was also

apprised of the illegalities and irregularities, had failed to take action.

4. This Court, on an appreciation of the contentions raised, by order dated 10.07.2014 in W.P. (C). No. 17243 of 2014, directed the Election Commission to take appropriate action in the matter within a period of two days from that date. It was specifically noticed in that order that, the contention of the petitioner was that despite a direction issued by the Election Commission as evidenced at Exhibit P2, being communication dated 17.06.2014 [W.P. (C). No. 17243 of 2014], the said direction has not been complied with. The Election Commission had directed the Electoral Officer to publish the final voters list only after rectifying the defects. Pursuant to that, the Election Commission is said to have conducted an inspection, which led to the issuance of Exhibits P7 and P8 cancelling the election notification, which are challenged in W.P. (C). No. 18566 of 2014 by two members of the Society.

5. The learned counsel for the petitioners in W.P. (C). No. 18566 of 2014 specifically points out that before the impugned orders in the said writ petition were passed, the Returning Officer had, by Exhibit P6, found that the surviving nominations in each and all of the constituencies were the same number as the total number of managing committee members. Hence, in each of the constituency to which election was scheduled; there was only one valid nomination and there was no contest at all. The statutory mandate, hence, was that there is no necessity for polling; which was followed by the Returning Officer in Exhibit P6. What remained was only the declaration, which again, as per the Kerala Co-operative Societies Rules, 1969 [for brevity "the Rules"], had to be made on the date of polling. The objections with respect to the voters list, hence, pales into insignificance and the cancellation of the election notification itself, subsequent to Exhibit P6, is urged to be a mala fide act on the part of the Election Commission, which is alleged to be politically motivated.

6. The learned counsel for the petitioner in W.P. (C). No. 17243 of 2014, however, points out that there are serious discrepancies in the voters list, which would vitiate the election notification itself and the apprehension raised by the various members before the Election Commission had resulted in the Election Commission issuing a clear direction dated 17.06.2014, to the Electoral Officer, to consider the objections before the voters list is finalised. It is only in the context of such objections having not been considered, the petitioner approached this Court and on being convinced of the contentions urged, this Court had issued an interim order, pursuant to which the cancellation has been effected. The fact that there was no contest, is of no consequence, is the contention of the learned counsel for the petitioner in W.P. (C). No. 17243 of 2014.

7. The learned Special Government Pleader (Co-operation) would seek to sustain the order of the Election Commission, specifically pointing to Rule 35A of the Rules, which confers supervisory jurisdiction over the officers appointed by the Election Commission to conduct the elections. The mere fact that a Returning Officer had issued Exhibit P6, does not preclude the Election Commission from

exercising his supervisory jurisdiction, is the contention urged. The learned Special Government Pleader would also rely on a decision of this Court in *N.M. Thankappan Vs. Mukundapuram Co-operative Society Ltd. and Others*, wherein Rule 35 was held to be mandatory and any violation, of any of the provisions, was declared to be a compelling aspect vitiating the election itself; making it void. The Election Commission had acted in tandem with the mandate in Rule 35A, which is in pari materia with Rule 35, as also in compliance of the orders of this Court. The voters list, being one of the fundamental aspects of the election, as contemplated under the Kerala Co-operative Societies Act, 1969 [for brevity "the Act"] and the Rules, if found to be illegal, the election itself has to be set aside. The notification itself having been withdrawn, there is no question of declaration of the results on the polling date. The learned Special Government Pleader would, again relying on the aforecited decision, distinguish between "polling" and the "election" pointing out that the former is only a part of the latter whole. That polling was not necessitated would not be of any relevance if the voters list is found to be defective, is the contention.

8. Considering the question of law raised by the learned Special Government Pleader (Co-operation), this Court cannot find that the voters list in the present context has any significance, since the valid nominations, after scrutiny of the same, were only of one single candidate in each of the constituencies; upon which no polling had to be carried out. If no polling had to be carried out, then the illegalities, if at all in the voters list, would pale into insignificance; except inter alia in cases where a person who was a member and not included in the voters list, was hence disabled from filing a nomination. It has to be noticed that there is no such contention raised in any of the objections made by the members before the Election Commission as produced in W.P. (C). No. 17243 of 2014 nor in the writ petition so filed.

9. As is pointed out by the learned counsel appearing for the petitioners in W.P. (C). No. 18566 of 2014, clause (h) of sub-rule (6) of Rule 35A specifically prescribes for the procedure to be followed, on the number of candidates, whose nomination papers declared valid, does not exceed the number of candidates to be elected from that area or constituency. In the instant case, admittedly there was only one candidate for every constituency and each of the constituencies for which election was to be held had one valid nomination. It cannot be disputed, in such circumstances that the polling was unnecessary. Clause (h) of sub-Rule (6) of Rule 35A also mandates that the Returning Officer, in the circumstance of there being no contest in any of the constituencies, shall announce the names of all such candidates whose nominations are found to be valid and declare them to have been duly elected to the committee.

10. Clause (h) specifically provides that only if the number of candidates whose nominations are valid exceeds the number to be elected for any area or constituency, the Returning Officer has to conduct a poll on the date fixed. Hence, by the specific mandate in the Rule, the Returning Officer is called upon

to declare the election on the date of polling, which is the purport of Exhibit P6 issued by the Returning Officer. This Court cannot find any conflict with the orders of the Election Commission and Returning Officer. The contention as to the Election Commission being controlled by the orders of the Returning Officer; when the former has specific supervisory control over the actions of the Returning Officer, also cannot be countenanced. No conflict between the authority of the Election Commission and the Returning Officer is discernible, since this Court is only examining as to the statutory mandate and if the Election Commission's order withdrawing a notification goes against such statutory mandate, which definitely the Election Commission cannot attempt to do, being itself, a creature of the statute.

11. On facts too, one has to look at the grounds on which W.P. (C). No. 17243 of 2014 was filed. True, at the stage of admission, this Court was promoted to pass an interim order directing the Election Commission to look into the matter; when, at the drop of a hat and for no discernible reason, notified elections are withdrawn with impunity. The interim order merely noticed the apprehension of the petitioner, which, as was noticed above, was compelling enough to pass such a direction at the stage of admission.

12. At the time of hearing the matter, the learned counsel for the petitioners in W.P. (C). No. 18566 of 2014 specifically points out certain discrepancies which cannot but be noticed. The W.P. (C). No. 17243 of 2014 itself is filed by one Rajmohan, who claims to be a member but does not anywhere in the writ petition claim to have filed a complaint before the Electoral Officer. The said Rajmohan relies on two objections filed, Exhibits P3 and P5, one before the Election Commission on 25.06.2014 [Exhibit P3], being a date on which a valid objection could have been filed before the Electoral Officer. Exhibit P5, is another objection filed before the Returning Officer on 27.06.2014, again on a date when a valid objection could have been filed before the Electoral Officer. It is trite that only on finalisation of voters list, the Electoral Officer would withdraw from the scene and the Returning Officer take over the mantle to proceed with the election process. The Returning Officer, hence, has absolutely no say in the issue of finalisation of voters list.

13. One other aspect which assumes significance is that Exhibits P3 and P5 are filed by two different individuals and not by the petitioner in the writ petition. As was noticed earlier, none of these persons who made complaints or the petitioner in W.P. (C). No. 17243 of 2014 has a contention that their names did not figure in the voters list and, hence, they were disentitled from submitting a nomination. Nor do they even express a desire to stand for the elections. It is also to be noticed that the learned counsel for the petitioners in W.P. (C). No. 18566 of 2014 has brought to the notice of this Court that there are 27 nominations filed and not one was rejected by the Returning Officer. However, many of those nominations have been withdrawn within the time stipulated. Only sufficient number of candidates to constitute a managing committee remained validly

nominated, thus effacing the requirement of a poll. Relevant also is the fact that there were no objections before the Electoral Officer with respect to the finalisation of voters list.

14. The learned Special Government Pleader had placed much reliance on the communication dated 17.06.2014, which was issued simultaneous to the election notification. One cannot but wonder what promoted such a communication when there is a clear statutory mandate that the Electoral Officer has to consider the objections before finalisation of the voters list. It is also not clear as to how and why; even before an election notification was published, complaints were registered before the Election Commission that, there would be illegality or irregularity in the finalisation of the voters list. Exhibit P2 speaks about an inspection conducted and that there were members outside the area of operation of the society; which finding is made even before the draft voters list was handed over to the Electoral Officer and even prior to the issuance of the Election Notification. These facts at best are curious and fails to inspire the confidence of this Court, to sustain the impugned actions.

15. The complaints, all of which, were not validly laid before the authority so constituted to decide the same, i.e., the Electoral Officer. Though the Election Commission has supervisory powers over the officers appointed by him, none can by-pass such authorities validly delegated to carry out the election. In any event, the complaints/objections raised emphatically confine the allegations to the voters list, which allegations are of no consequence on the facts disclosed; especially of there being no necessity to conduct a poll; in the event of which alone such objections would be required to be considered.

For all the reasons stated above, W.P. (C). No. 17243 of 2014 would stand dismissed. W.P. (C). No. 18566 of 2014 would stand allowed. Exhibits P7 and P8 orders of the Election Commission in W.P. (C). No. 18566 of 2014 shall stand set aside. The notification, produced as Exhibit P2 in W.P. (C). No. 18566 of 2014, would be, hence, rendered valid; but, however, the intervening circumstances had disabled the Returning Officer from declaring the result of the elections as provided in clause (h) of sub-rule (6) of Rule 35A of the Rules. The results of the election shall be declared within a period of three weeks from the date of receipt of a certified copy of this judgment, after publishing a notice to that effect. Parties are left to suffer their respective costs.