
(2010) 01 KL CK 0012
In the High Court Of Kerala
Case No : W.A. No. 2392 of 2009 (E)

George Kuruvilla and Others

APPELLANT

Vs

Kerala State Co-operative Election Commission and Others

RESPONDENT

Date of Decision : 22-01-2010

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 35A(3)

Citation : (2011) 4 KLJ 224

Hon'ble Judges : V.K. Mohanan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : N.N. Sugunapalan and S. Subhash Chand, for the Appellant; T.K. Vipin Das (G.P.) and P. Ravindran (Sr.), for the Respondent

Final Decision : Allowed

Judgement

Ramachandran Nair, J.—Since related issues are involved in the connected writ appeals and writ petitions, we have grouped the matter together and heard counsel appearing for the appellants in the writ appeals, petitioners in the writ petitions, Government Pleader and counsel appearing for the other respondents and additional respondents impleaded under interim orders. The State Co-operative Election Commission issued notification on 23.09.2009 for holding election to the Board of Directors of the Thiruvalla East Cooperative Bank Ltd.No.3260 The election was fixed on 24.10.2009. The tenure of the then existing Board was expiring on 8.11.2009. However, the above writ petitions were filed in this Court slating that there was irregularity in the maintenance of Form 6B Register of members and issuance of election identification cards with photographs of the members. The allegation made by some of the members in the writ petitions was that all members, who were issued with photo identification cards, do not find their names in the register of members maintained by the Bank and so much so, at least some members will not be allowed to vote. In fact, pursuant to appointment of Chief Electoral Officer by the State Cooperative Election Commission, enquiry was conducted and report was

filed by him to the Election Commission stating that there is irregularity in the maintenance of Form 6B register of the members and issuance of photo identification cards to members to make them eligible to vote in the election. Rightly or wrongly, the Election Commission postponed the election by its order dated 21.10.2009 and the same was published in all newspapers on 23.10.2009, i.e. one day prior to the date on which poll was fixed under the first notification. However, some of the contesting candidates moved this Court for orders for holding the election on the date fixed earlier i.e., 24.10.2009. This Court, taking note of an earlier Division Bench order on 30.9.2009 directing the Election Commission to proceed with holding of the election on the date notified, found that the postponement of election was against Division Bench orders of this Court. Therefore, under interim orders issued, on 23.10.2009, the learned single Judge directed the society to proceed with the conduct of the poll on 24.10.2009 ignoring the postponement notified by the Election Commission and published in newspapers. This Court issued follow up interim orders appointing an Advocate Observer to oversee the election and directed the Police to provide protection for peaceful election. In the election so held, only 4,416 members participated and cast their votes. There are total 68,000 members in the Bank out of which at least around 25,000 have been issued with photo identification cards for the election. Pursuant to the holding of election and declaration of election results under interim order in W.P(Cs), the successful candidates have constituted the Board and they are provisionally managing the affairs of the Bank. This Court has, under interim orders, permitted the Board only to deal with routine matters and not to take decision on major policy matters without prior approval of this Court. The interim orders issued by the learned single Judge to hold election on 24.10.2009 even after publication of postponement of election in newspapers by the Election Commission was taken up in appeal before the Division Bench. However, the Division Bench did not interfere. The matter was taken to the Supreme Court as well and the Supreme Court; leaving all the matters to be decided by the Division Bench of this Court, closed the SLP. The only question to be considered in the writ appeals is whether the learned single Judge was justified in directing holding of election on 24.10.2009, after the Election Commission issued orders postponing the election on 21.10.2009 and the same was published in the newspapers on 23.10.2009. Counsel appearing for the Bank represented by its present Board constituted after the election conducted under the interim orders of this Court contended that postponement of election was mala fide and the same was in violation of Division Bench orders of this Court on 30.9.2009. On the other hand, counsel appearing for the appellants in the writ appeals and the petitioners in the writ petitions contended that the election was postponed only because the Chief Electoral Officer was satisfied about the irregularities in Form 6B register of members to whom election identification cards were issued and pending sorting out of the issues on membership, the Election Commission postponed the election and this Court need not have interfered with the postponement of election. Even though the postponement of election was not justified and the identification of members could have sorted out

by directing them to produce some other acceptable identification, we feel, once the election is postponed by the competent authority, viz., the State Co-operative Election Commission and published it in the newspaper, election could not be validly held without a further publication about the date of holding the poll. Even though this Court was satisfied about the illegality, irregularity and impropriety in postponement of election, we feel, the court should have fixed the date of poll only after ensuring that the date of poll is published in advance for the members to participate in the election. Once the election is postponed by the State Co-operative Election Commission and the same was published in the newspaper on 23.10.2009, we feel, there was no justification for this Court to direct holding of election on the next date, i.e., 24.10.2009 without ensuring sufficient publicity of the date of poll for the members to participate in the election. Even though counsel appearing for the elected candidates produced newspaper reports published on the date of election i.e., 24.10.2009, where newspapers have published that the High Court has ordered holding of election by the society on 24th October itself, we do not think, this is sufficient notice for the members to get ready and participate in the election. In our view, the election held on 24.10.2009 under interim orders of this Court passed on the previous day i.e., on 23.10.2009 cannot be said to be a fair or proper election because members had no notice of it. In fact, it is the mandatory requirement of Rule 35A(3) of the Kerala Cooperative Societies Rules, 1969 that the Election Commission should notify the details of election to the Committee of the society, which certainly involves publication of date of poll which was in fact done by the Election Commission. However, once the Election Commission notified postponement of date of poll, then without publishing the next date of poll, no election could be held in a fair and proper manner under the Rules. On facts, we find that in the last election held to the Board on 6.11.2004, as many as 9200 members participated in the poll and cast their votes. On the other hand, in the election conducted under the interim orders of this Court, only 4416 members participated in the poll and out of whom, around 350 ballot papers are kept in separate box on account of controversy about their eligibility to vote. It is common knowledge that people take membership in Cooperative Banks to avail loans, because only members are entitled to take loan. Many of them may not be interested to cast their vote and therefore, polling may be of low percentage of members. However, we notice that at least around 25000 members have taken photo identification cards which means that at least so many of members are interested to participate in the election to the Board. Even though total membership of the society is stated to be around 68000 compared to even 25000 who have taken photo identification cards, we find that not even 20% of the members who have taken photo identification cards have participated in the election. The non-participation in the election by large number of members may be on account of a postponement of election published by the State Co-operative Election Commission on the date previous to the date notified for election. When this Court ordered advancement of election after postponement by the State Election Commission, we feel, this Court should have ordered holding of election

only after notifying the date of election at least in newspapers sufficiently early. Therefore, in our view, the election held under interim orders cannot be said to be a free and fair election and the representing character of the Board will be reflected only if sizeable number of members participated in the election. Of course, there is nothing in the statute and rules which prescribed minimum number of members to participate in the poll for the validity of the election. However, taking note of the total number of members who have obtained photo identification cards which is only for the purpose of participating in the election, we feel, the election of the Board by a little over 4000 members cannot be said to be free or fair election. Even though all the elected members are not parties in these cases, we do not think, there is any need to implead all of them before setting aside the election, because the election itself was held under interim orders of this Court and further, we notice that there is effective representation for the two rival groups. We therefore allow the appeals by vacating the interim orders of this Court and direct the State Election Commission to renotify the poll date and hold the election at the earliest. We do not think, there is any need to sort out the dispute on Form 6B register or the issuance of the photo identification cards before election because if members, who are issued by the society with photo identification cards, do not find their names in the register, can prove their identity with the help of the election identification card issued by the State Election Commission or even a passport or even a PAN Card with which the returning officer or polling officer can reconfirm their identity and permit them to participate in the election and cast their votes.

The Writ Appeals are allowed as above and Writ petitions are disposed of directing the State Election Commission to hold the election at the earliest. There will be a direction to the Superintendent of Police, Pathanamthitta District to ensure that sufficient police personnel are made available for holding free and peaceful election. In view of the past incidents, we make it clear that the Superintendent of Police should personally supervise the election and the law and order situation on the date of election. The present Board will continue to function until the new Board is constituted after the election is held as above. The Election Commission will only notify the date of polling after making arrangements in terms of the rules without any delay. The present Board will continue to function, but will not take any policy decision as they are allowed to hold the office until reconstitution of the New Board.