
(1998) 12 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 23699 of 1998

Gopalakrishna Pillai and Anr

APPELLANT

Vs

Returning Officer and Ors

RESPONDENT

Date of Decision : 08-12-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 353, 420, 468, 471

Citation : (1999) 1 KLJ 689

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : D. Somasundaram, for the Appellant; K. Radhakrishnan, Sajeevkumar K. Gopal and N. Reghu Raj, Govt. Pleader, for the Respondent

Judgement

K.S. Radhakrishnan, J.—This is a case where Returning Officer found it difficult to proceed with the election. Complaints have been raised by polling agents that large number of persons are attempting to cast votes on the basis of fake identity cards. Returning Officer compared the identity cards objected to by the polling agents with copy of the identity cards kept in the society as well as in the admission register and was satisfied that many of the identity cards produced by voters were fake identity cards. When more and more complaints were received by the Returning Officer objecting to the casting of votes by several persons with fake identity cards, Returning Officer found it difficult to proceed with the election. Eventhough Returning Officer wanted to continue with the election after pacifying the objectors the same could not be done. Returning Officer also complained that Secretary of the society did not co-operate with her by producing all relevant records to identify the voters. Consequently, she stopped the election at about 12.45 PM. Returning Officer then sealed eight ballot boxes containing votes cast by various persons along with other relevant papers and kept them at the office of the Assistant Registrar (General), Keezhancherry, and drew up proceedings dated 28-11-1998. First petitioner is the President of the Managing Committee and second petitioner is the Secretary of the Society. They have approached this Court challenging the action of the Returning Officer and

also seeking a direction to the first respondent to proceed with the election from the stage at which it was stopped. They also sought for a declaration that the postponement of election by the first respondent-Returning Officer is illegal and arbitrary. They have also sought for a direction to the fourth respondent to appoint another Returning Officer so as to conduct the election smoothly. The period of the man going committee expired on 7-2-1998. Consequently petitioners wanted to continue in office till the election is over. According to them, the attempt of the respondents is to see that election is disrupted and the man going committee is kept out of office, so that the administrator could appoint his nominee to the State Agricultural and Rural Development Bank, which is the apex bank. Petitioners attributed political motive against the respondents. Petitioners have no case that police have disobeyed the orders of this Court and have not given adequate and effective police protection. Election was evidently disrupted due to objections raised by certain polling agents with regard to fake identity cards.

2. Counsel for the petitioners, Sri. D. Somasundaram, contended that a statutory duty is cast on the Returning Officer to conduct election without any interruption. According to him, if any identity card is fake, the Returning Officer could have ascertained the same in exercise of the powers conferred under R.35(3)(e) of the Kerala Co-operative Societies Rules.

3. Learned Government Pleader, Sri. N. Reghu Raj, on instructions submitted that fake identity cards were supplied from a room near a school at T.V. Junction, which is under the control of One S.V. Prasanna Kumar, a candidate for the election. When police got information and they raided the said place and recovered several identity cards of persons who are not members of the society. It was noticed that some of the identity cards were signed by the Secretary. It is also submitted by learned Government Pleader when police raided the place several persons fled from the place, and later police registered crime No. 734 of 1998 of Pathanamthitta Police Station, against the Secretary of the Bank under Secs. 420, 468, 471 and 353 IPC.

4. Addl. third respondent filed a detailed affidavit along with impleading petition. He also stated that no election could be conducted under law due to large number of fake identity cards produced by persons who are not members of the society. Reference was also made to certain instances as well. Sri. K. Radhakrishnan, counsel, who appeared for additional third respondent contended that Returning Officer is justified in stopping the election, since Returning Officer was convinced of the large number of fake identity cards. Counsel contended that since fake identity cards are so large, the election could not be proceeded with.

5. Large number of cases are being filed before this Court raising disputes with regard to the manner in which elections are being conducted in the co-operative societies. Invariably one group attributes political motives on others in the matter of election. Some of the voters have no political lines. There may be

voters who have no political allegiance to any political party. Complaints are many stating that large number of person are coming to vote in the election to a co-operative society with fake identity cards. Returning Officer find it difficult to ascertain their identity. Of course, to tide over those situations, Government have decided to introduce certain safeguards. Accordingly Rules 16A to 16D were served by notification dated 7-7-1992. Rule 16A says that a person admitted as a member of the society shall be issued with an identity card in form 6A which shall be conclusive evidence to prove his membership in the society. The member shall furnish two copies of his recent photograph of passport size to the society. Copies of the photograph shall be attested by the Chief Executive of the society or an officer specifically empowered in this behalf by the committee of the society and one copy of the duly attested photograph shall be affixed in the identity card and the other copy shall be affixed in the Register in Form 6B maintained for the purpose. The identity card shall also bear the seal of the society. The identity card shall be issued direct to the member concerned after obtaining his acknowledgement in the Register in Form 6B and shall not be supplied to any other person on his behalf. If any society refuses to issue identity card to any member the aggrieved person may appeal to the Registrar within fifteen days from the date of receipt of the order of such refusal and the Registrar, shall dispose of such appeal within thirty days of receipt of the appeal. A voter can go to the polling booth only with the identity card issued by the society. Under Rule 35(3)(o), no ballot paper shall be issued to a member unless he produces his identity card and the polling officer is satisfied that the member concerned is the same person as noted in the list furnished to him. When a ballot paper is issued, the serial number of the ballot paper issued will be noted against the name of the member in the voters list. It is always open to the Returning Officer to determine the identity of a person, if objection is raised, with reference to Form 6B register kept in the society.

6. This is a case where Returning Officer had to stop the election, since several persons came to the polling booth with fake identity cards. Who printed these identity cards? Who supplied them, and who are all the persons who come with fake identity cards, are all matters for enquiry. First respondent maintained the stand that this was done at the instigation of second petitioner with one Prasannakumar, who is also a candidate for election. Petitioners have got another version. I am not expressing any opinion with regard to that contention, since a crime has been registered by the police and the matter is under investigation. In any view of the matter it is imperative that the election is to be conducted in a democratic way. This is necessary to safeguard the interests of others. Only a member of the society who is legally entitled to vote can vote. If any person who is not a member of the society comes to vote with fake identity card, he has to be dealt with seriously, In very many cases we find that allegations are made against the Returning Officers stating that they are siding with one political party, which is in power. In order to avoid those allegations, Government may think of constituting an independent body, in the nature of Election Commission, for

conducting election to various co-operative societies in the State, so that rooms for such complaints will be avoided.

7. Counsel for the petitioners submitted eventhough the term of the present committee expired on 6-12-1998, the present committee may be allowed to continue in office till the election is over. I am of the view, this contention cannot be acceded to. A Division Bench of this Court in Board of Directors of Kottappady Vs. Joint Registrar and others Service Co-op Bank, held that once the term of the committee expired, they have no legal right to insist that they should be permitted to continue. In the said circumstances, the request of the petitioners cannot be acceded to. However, it is imperative that election should be proceeded with from the stage at which it was stopped. Under the above mentioned circumstances, I am inclined to give following directions:

(1) Respondents 1 and 4 would see that election is conducted properly with proper identity cards issued by the society itself. They should also see that election is conducted with the voters" list already approved, from the stage at which it was stopped.

(2) Fourth respondent will oversee the election. Returning Officer will see that only those persons who come with proper identity cards be allowed to cast their votes. Returning Officer will also compare the identity cards with Form 6B register and also with the voters" list already approved.

(3) Administrator, if any, appointed will not take any policy decision, and see that all arrangements be made to conduct a fair and proper election by respondents 1 and 4.

(4) Counsel for the petitioners submitted that election should be conducted on 13-12-1998 itself. All possible steps will be taken by the Administrator, if any, appointed, and respondents 1 and 4 to see that election is conducted on the said date. If due to any reason, it could not be conducted on 13-12-1998, the same should be conducted on or before 20-12-1998 after making all arrangements. Respondents 1 and 4 would make appropriate request to respondents 2 and 3 to give adequate and effective police protection, in the event of which respondents 2 and 3 would see that adequate and effective police protection is given to conduct the election smoothly.

(5) Respondents would file a report before this Court after the conduct of election.

Original Petition is disposed of as above.