

(2016) 01 KL CK 0052
In the High Court Of Kerala
Case No : W.P. (C) No. 37383 of 2015

Govindan

APPELLANT

Vs

Joint Registrar of Co-operative Societies (General)

RESPONDENT

Date of Decision : 15-01-2016

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 33

Citation : (2016) 2 ILRKerala 755 : (2016) 1 KLT 905

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : B.S. Swathy Kumar, Remya Murali, A.K. Rajesh, T. Reshma and Linta Varghese, for the Appellant; M. Sasindran and V. Vijulal, Sr. Government Pleader, for the Respondent

Final Decision : Disposed off

Judgement

Dama Seshadri Naidu, J.—1. Co-operative Societies are supposed to showcase the spirit of co-operation among the people, even at the grassroots, to come together and organize themselves for mutual benefit or the common good. Unfortunately, they have become miniature training grounds for deception, simulation, and abuse of power—atleast, this case demonstrates thus. For the eleven seats in the Managing Committee, the Society had intended to hold elections as the term of the then Managing Committee was coming to an end soon. Accordingly, the Committee at the helm of the affairs passed a resolution proposing to hold an election on 30.06.2015. Only eleven nominations were filed—obviating any contest.

2. During the scrutiny of nominations, among eleven persons, one person was found disqualified. There could have been election or confirmation of the remaining ten candidates in the absence of any contest, but that was not to be. The moment one of the persons was found to have been disqualified, all the rest of the persons withdrew their nominations. Perhaps, with the colossus fell the columns, too.

3. In the interim, as the term of the incumbent Society came to an end, the Joint Registrar of the Co-operative Societies (General), Kannur, the first respondent, appointed an Administrative Committee exercising his powers under S. 33 of the Kerala Co-operative Societies Act ("the Act" for brevity).

4. If we examine the composition of the Committee, we shall wonder what extent the literal application of law sans its guiding spirit could be taken to. The Administrative Committee comprised three persons; they included two persons who withdrew their nominations--respondents 4 and 5.

5. I wonder how the persons who never had any inclination to be at the helm of the affairs of the Society as the members of the Committee, even without any contest, could still be made members of an Administrative Committee. And the Committee is to administer the Society with the most unwilling persons as its constituents.

6. At any rate, since S. 33 of the Act, especially, does not seem to have imposed any such restrictions--atleast, the respondents have us believe that way--the Administrative Committee continued to hold the reins for the initial period of six months. Indeed, within the said period, the Administrative Committee, which is an ad hoc agency, is expected to, nay required, take effective steps to conduct elections within the said period.

7. It is pertinent to observe that before the elected Managing Committee's term came to an end, the petitioner, a member of the Society, filed the Writ Petition seeking, inter alia, the following relief: To appoint an Administrative Committee with members who are not legally disqualified from being members of the Managing Committee and who have not withdrawn their nominations.

8. The petitioner has also sought relief, in the alternative, that instead of an Administrative Committee, an Administrator may be appointed to ensure that the election to the Managing Committee is conducted within two months. The petitioner's apprehension came true: Soon thereafter, the first respondent appointed two of the persons who withdrew their nominations along with another person, the fifth respondent, who does not possess a sufficient number of shares to contest the election, in the first place.

9. Initially, this Court issued an interim direction on 10.12.2015 to the effect that the appointment of any Administrative Committee, as had been apprehended by the petitioner, shall be subject to the result of the Writ Petition.

10. The Administrative Committee appointed by the first respondent, not surprisingly, did not take any steps within six months to hold the election. Their inaction has, in fact, been rewarded by the first respondent: further extension of the period for six more months. The defence on the part of the first respondent, expectedly, is that S. 33 provides for such an extension.

11. In the above factual background, the learned counsel for the petitioner has submitted that the action of the respondent authorities has been infused with

mala fides and it is nothing but gross abuse of power. He has submitted that the first respondent ought not to have appointed persons who withdrew their nominations to be the members of the Managing Committee even without any contest. In elaboration, the learned counsel has submitted that the person whose nomination was initially rejected is the leader of the group. In the face of the disqualification he suffered, the other persons who initially submitted their nominations being part of his panel, along with the officials, have been hell-bent on ensuring that no election would be conducted until the said leader of the group had his disqualification removed.

12. The learned counsel has submitted that the third respondent does not, in the first place, have sufficient number of shares to contest the election. According to him, it is a mockery of due process to nominate persons who either withdrew their nominations or not even qualified to contest the election.

13. The learned counsel has also drawn my attention to Exhibit P2 complaint said to have been submitted by the Secretary of the Society to the first respondent as regards the sorry state of affairs in the Society.

14. Eventually, the learned counsel has urged this Court to replace the present Administrative Committee with an Administrator, preferably a senior official of the department, and further direct the authorities to hold the election, at the earliest.

15. The learned counsel for the respondents 3 to 5, on the other hand, has laid singular emphasis on S. 33 of the Act. According to him, S. 33 does not impose any embargo on appointing an Administrative Committee comprising members who may have withdrawn their nominations or who may not have a sufficient number of shares to contest the election. The learned counsel has specifically contended that once the statute provides for the appointment of even strangers to the Administrative Committee, the limitations sought to be highlighted by the petitioner cannot be taken into account for whatever purpose.

16. As regards the allegation as has been reflected in Exhibit P2 that the third respondent has taken away the records of the Bank to his residence and that the Secretary was made to go to the third respondent's house for conducting the affairs of the Bank, the learned counsel has drawn my attention to Rule 47(d) of the Kerala Co-operative Societies Rules (for short the "Rules"). He tries to hammer home his contention that the Committee can possess the records. At any rate, he has submitted that the members of the Administrative Committee are regularly attending the Bank and are discharging their functions as Administrators.

17. In the end, the learned counsel has submitted that the Administrative Committee has already passed a resolution proposing to hold the election on 28.02.2016 to the Managing Committee of the Society. According to him, it has already forwarded its recommendation to the Election Commission through proper channel.

18. Heard the learned counsel for the petitioner and the learned counsel for the respondents, as well as the learned Government Pleader, apart from perusing the record.

19. While adjudicating, sometimes we feel delight at the diligence of officials who are entrusted with the task of guarding the Rule of Law and upholding the spirit of Constitution or the Statute as the case may be. Sometimes--more often than not, unfortunately--we feel depressed and despondent at the ways and means adopted by the officials who are expected to be neutral without any political taint. And they are expected to function with their declared fealty to fairness, though. The ability they have; the will they may not, perhaps.

20. In this instance, one out of eleven nominees was found disqualified. As a consequence, even in the absence of any contest, the rest of the nominees simply withdrew their nominations signifying a domino effect: a situation in which one event causes a whole series of other events to happen one after the other--like a falling domino causing a whole row of upended dominos to fall.

21. Indeed, S. 33 does not in express terms impose any restrictions on the composition of the Administrative Committee, barring the maximum number of members that could be present on the Committee. Even strangers could be appointed. That is the letter of the law. Now, let us examine its spirit as well.

22. Evidently, respondents 4 and 5 were unwilling to be in the fray to be the members of the Managing Committee even in the absence of any contest. Since the term of the incumbent Committee came to an end, the first respondent was statutorily obligated to put some legal mechanism in place to oversee the administrative affairs of the respondent Bank. As a result, he supposedly exercised his powers under S. 33 of the Act.

23. Among the thousands of people, members and strangers included, the first respondent has handpicked only those persons who initially were not interested in being the members of the Managing Committee: Those members who withdrew their nominations; another person, not even qualified to contest though a member of the Society.

24. As has been rightly contended by the learned counsel for the petitioner, that a stranger can be appointed does not mean that persons who have been disqualified could as well be appointed. In other words, S. 33 in its true import mandates that the Society should be administered in the interim, before a democratically elected Committee could assume office, by persons of integrity and efficiency.

25. In that context, the legislature in its wisdom has not imposed any fetters on the discretion of the Registrar or Joint Registrar in appointing even strangers on the Committee. Strangers means persons with experience or persons with proven integrity; strangers does not mean faceless interlopers.

26. At the same time, once certain persons have deliberately wrecked the

democratic process of election and the chance of the Society having an elected Managing Committee, they should not be rewarded for their deception or deviance by nominating them to be the Administrators. It is trite to observe that what cannot be achieved directly cannot be, equally, achieved indirectly either.

27. Further woeful is the situation going by Exhibit P2 representation of none other than the Secretary of the Society. He complains that the third respondent has taken away all the records and kept them in his house. The Secretary is made to go to his house for transacting the business. Accordingly, he complained to the first respondent on 02.12.2015. The said representation seems to have been blissfully ignored.

28. At this juncture, the learned counsel for the respondents 3 to 5 has vehemently contended that Exhibit P2 has been considered and the term of the Administrative Committee has been extended. In my considered view, given the nature of Exhibit P2 complaint, which speaks very adversely against the members of the Administrative Committee, the extension of its term is only a reward for maladministration.

29. A statement filed on behalf of the first respondent reads to the effect that the Administrative Committee did not take any steps in the first six months to hold elections; as a consequence, its term has been extended. I further wonder at the sagacity of the first respondent, who has faithfully gone on record submitting that the Administrative Committee did not take any steps to conduct elections within six months. But he has further extended the Committee's term.

30. Indeed, S. 33 of the Act contemplates that the initial term of the Administrative Committee shall be six months extendable by six more months. The extension, in my view, is neither mechanical nor mundane. In other words, the Administrative Committee must be in a position to earn the extension: It has to demonstrate that despite its best efforts, it could not hold elections within six months.

31. Continuing in the same vein, I may observe that it is not the question of their not taking steps to hold the election, but it ought to be their inability, despite their best efforts, to hold the election. In the present instance, I am constrained to observe that despite the Administrative Committee's gross inaction, the first respondent has mechanically extended its term thus rewarding the Committee's inaction and inefficiency, too.

32. Be that as it may, the fact remains that, at last, the Administrative Committee passed a resolution proposing to hold the election on 28.02.2016, which is not far off. It is already said to have forwarded its recommendation to the Election Commission as well.

33. Under the above circumstances, despite the Court's despair and disappointment, I feel it inappropriate to disturb the present administrative setup just days prior to the Society having its election for the Managing Committee.

Placing on record its unhappiness, especially vis-a-vis. the first respondent's handling the whole affair, this Court further observes that for whatever reason if the election could not be held as planned on 28.02.2016, the first respondent, in such an eventuality, shall replace the present Administrative Committee, notwithstanding the fact that their extended period would last up to 12.06.2016, with an Administrator who is to be an experienced official of the rank of an Assistant Registrar.

With the above observations, the Writ Petition stands disposed of. No order as to costs.