
(2016) 01 KL CK 0015
In the High Court Of Kerala
Case No : WP(C).No. 11192 of 2015

Jerome Christudas

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 06-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Rules, 1969 — Rule 35A (3)(5)

Citation : (2016) 1 KLT 69

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : K.B. Pradeep and Ashok Suresh, Advocates. , Spl.Govt. Pleader,
A.J.Jose Aedaiddodi, for the Respondent

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J. - Seemingly in conflict are the legislative will and the executive will: which one should prevail? The legislative will. It needs no cogitation.

2. In its familiar fealty to the Rule of Law and its constitutional obligation to give effect to the legislative will -the statutory scheme-this Court has twice rendered judgments: directing the authorities to hold elections to a co-operative society within a strict time frame. Nevertheless, twice the directions were ignored.

3. The Court is, yet again, constrained to give directions-for the third time. It, however, has no illusion that it will not be ignored or flouted for the third time, too. The Court's anxiety and apprehension are well founded for the learned Government Pleader has represented that it is neither for the Court nor the Election Commission to fix the date of election-it is for the administrative committee. In support of his submissions, the learned Government Pleader has placed reliance on a judgment of the learned Division Bench of this Court. It will be referred to in due course.

4. The facts which are not in dispute are that the petitioner is a member and former President of the fourth respondent society. The term of the managing committee headed by him having come to an end on 25.04.2012, the society passed a resolution to hold elections. The said resolution resulted in Exhibit P1 notification issued by the Fisheries Department, the proposed date of the election being 19.04.2012.

5. In terms of Exhibit P1 notification, 29.03.2012 was the date for considering the objections concerning the preliminary voters' list. However, on that particular date, owing to what was said to be law and order problems that had arisen on account of the unruly behaviour of certain members of the society, the authorities abandoned the process of election. In fact, the authorities postponed the elections sine die.

6. Aggrieved, the petitioner along with certain other members of the then managing committee, filed W.P.(C) No.8324/2012 and invited Exhibit P2 judgment. Though this Court in Exhibit P2 judgment permitted the petitioners to represent before the Government to have its term extended, the Government was not inclined. Under those circumstances, the department issued Exhibit P3 election notification. It is pertinent to observe that in compliance with the direction of this Court in Exhibit P2 judgment, the authorities have proposed to resume the process of election from the stage it had been left of: the publication of draft voters' list.

7. A member of the society filed W.P.(C)No. 20005/2014 assailing Exhibit P3 notification, inter alia, on the premise that it was issued by the department rather than by the Election Commission. This Court rendered Exhibit P4 judgment providing elaborate directions to the authorities to conduct elections expeditiously.

8. In terms of Exhibit P4 judgment, the Election Commission issued a fresh notification on 20.12.2014 proposing to hold election on 31.01.2015. As can be seen from the record, once again, certain members of the Society, who ostensibly did not have their names reflected in the voters' list, took recourse to violent protests. As a result, the Returning Officer is said to have submitted a report to the Election Commission opining that it would not be feasible to conduct election peacefully unless the issue of permitting certain members to remit the deficit share value was resolved. Consequently, the Election Commission withdrew the election notification necessitating the appointment of an administrative committee. Indeed, an administrative committee was appointed.

9. Under these circumstances, aggrieved by what is said to be inordinate delay in having the elections conducted to the respondent society, the petitioner, its erstwhile President, approached this Court for the second time by filing the present writ petition.

10. Sri.P.C. Sasidharan, the learned counsel for the petitioner, has taken me through the entire record to hammer home his contention that the authorities

have no justification to postpone the election repeatedly. He has laid much emphasis on the directions issued by this Court in Exhibit P4 judgment.

11. The learned counsel has specifically contended that both in Exhibits P2 and P4 judgments, this Court has held that the election process has to be resumed from the stage it had been left off pursuant to the initial notification. He has also contended that the voters' list as was provided by the then managing committee alone should be taken into account.

12. As regards the grievance of certain other members who are said to have not paid the deficit share value, the learned counsel would contend that the bye-laws were amended and those members had ample opportunity to make good the deficit share value. According to him, they were indolent. The learned counsel has drawn my attention to the observation in Exhibit P4 judgment that only the petitioner and the additional eighth respondent therein should be allowed to pay the deficit share value, for others have not come before the court ventilating their grievance.

13. Summing up his submissions, the learned counsel has submitted that unless the authorities expedite the process and conduct the election forthwith, the interest of the society will suffer. According to him, the democratic process of having an elected managing committee at the helm of the society's affairs cannot be jettisoned under any circumstance.

14. Sri.K.B.Pradeep, the learned counsel for respondents 6 to 8, has submitted that the administrative committee has always been ready and willing to hold elections, at the earliest. He has, nevertheless, submitted that the authorities themselves have found that there have been large scale irregularities in the admission of members and maintaining of the records by the previous managing committee. In that context, the learned counsel would contend that if steps were taken to rectify the defects, the election could as well be held anytime. He has also submitted that the term of the administrative committee also came to an end and presently the society is without any proper administrative setup.

15. The learned Government Pleader, on the other hand, has submitted that Rule 35A of the Kerala Cooperative Societies Rules ("the Rule") mandates the procedure how the election should be conducted. In elaboration, he has submitted that the Government is in the process of extending the term of the administrative committee, which in due course could take a decision regarding the timing of the election.

16. Placing reliance on *State of Kerala v. Thilothaman*, 1992 (2) KLT 220, the learned Government Pleader has submitted that it is for neither the Court nor the Election Commission to fix the date for the election. According to him, in the light of the large-scale irregularities in the admission of members and also the maintenance of records, it is inevitable for the authorities to review the situation and take a decision concerning the appropriate time to hold the election. Eventually, he has, indeed, submitted that the respondent officials have been

making every effort to hold the election at the earliest, provided the administrative committee sends the proposal for holding the election.

17. Heard the learned counsel for the petitioner and the learned counsel for the respondents 6 to 8, as well as the learned Government Pleader, apart from perusing the record.

18. I have at the outset observed that the facts are not in dispute. Efforts have been made to hold the election and those efforts have been repeatedly stymied. This Court in Exhibit P2 judgment has observed that the election could not be held understandably because of the interference by certain unruly members of the Society with the work of the Returning Officer.

19. Under the above circumstances, this Court in Exhibit P2 judgment has observed that the Joint Director of Fisheries Department should take appropriate steps to conduct the election by resuming the process from where it stopped earlier. Indeed, the Court has specifically observed that the members of the society shall be given sufficient opportunity for filing their objections to the draft voters" list.

20. Once again, a member of the society questioned Exhibit P3 election notification issued subsequent to Exhibit P2 judgment. The principle contention of the said person is that the department itself, rather than the Co-operative Election Commission, issued the notification. And it is in violation of Section 28B of the Kerala Co-operative Societies Act.

21. This Court, while disposing of the writ petition through Exhibit P4 judgment, has given elaborate directions to the authorities as regards the manner and method of conducting the election. First, the Court has reiterated the directions contained in Exhibit P2 judgment that the election process should resume from the stage of considering the objections to the draft voters" list. Second, the Court has also observed that concerning the payment of deficit share value, the opportunity should be given only to the petitioner and the additional eighth respondent therein, for none else has approached the Court in that regard. Finally, this Court has also directed that the State Cooperative Election Commission shall ensure that the notification is published only from the stage of filing of objections to the voters" list.

22. It is apposite to observe that in Exhibit P4 this Court has specifically observed that the voters" list handed over to the Returning Officer by the committee then in office shall be the draft voters" list to be finalised. The Court has further made clear that the members or any other person as stated in Exhibit R5(e) (Exhibit P2) judgment shall have the right to file objections.

23. From the above directions as contained in Exhibit P4 judgment, it is evident that the authorities are mandated to resume the process only from the stage of considering the objections to the draft voters" list. It has been further made explicit that the voters" list handed over by the then managing committee should

alone be the basis for preparing the final voters" list.

24. The second respondent in its counter affidavit has set out elaborately the unruly situation that came to prevail after the issuance of the third notification dated 20.12.2014 by the Election Commission proposing to hold the election on 31.01.2015. According to the said authority, the Returning Officer has found that various members had threatened with self-immolation if they were not permitted to remit the deficit share value, so that they could be in the final voters" list.

25. As can be seen from the record, about 1245 members are said to have not paid the deficit share value or share money. Indisputable is the fact that this Court in Exhibit P4 has categorically observed that only the petitioner and the additional eighth respondent therein should be allowed to pay the deficit share value. That judgment has attained finality. It is further pertinent to observe that there could be even more than one thousand people clamoring to pay the deficit share value and thus get their names reflected in the final voters" list; however, beginning from 2000, they have not taken any steps to have their grievance redressed, except protesting rather violently whenever the authorities have proposed to hold election.

26. This Court in *M/s. Southern Granite Industries v. Pallichal Grama Panchayat* (W.P.(C)No.11011/2015 and Batch) has observed that the core constitutional principle of a Republic is the notion that a democratic government, paradoxical as it sounds, is a Government of laws, not of men of a majority. In *Marbury v. Madison* [5 U.S. 137, 163 (1803)], Chief Justice Marshall has, in unmistakable terms, echoed the words of John Adams that the Government of United States is a Government of laws and not of men. It rings true of any other democratic republic, not particularly the U.S.

27. As regards the threat of violent protests, this Court has quoted Erick J. Haynie from his book "Populism, Free Speech, and the Rule of Law" to the effect that under the rule of law, citizen behaviour is regulated not according to the passions and prejudices of human beings, but according to objective, published laws formally sanctioned by elected representatives through a pre-ordained process. After referring to various authorities on the issue, this Court has eventually held, under similar circumstances as are present now, as follows:

"19. Indeed, exalted as the right to protest is, as has been consecrated under Article 19(1)(a) and (b) of the Constitution, albeit subject to the restrictions under Article 19(2) thereof, the State is, equally under an obligation to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its people. So long as the democracy does not descend into mobocracy, the protest is paramount as a method of democratic discourse and also as a mode of dissemination of information. It is, to repeat, at best a method to exert pressure on the legislature or the executive to change or fine tune its legislative or administrative policies as the case may be. It is, without any cavil, to be asserted that however justified an instance of protest is, it cannot hold the

rule of law for ransom and negate the statutory mandate. Thus, the officials can hardly be heard saying that they could not discharge their statutory duties on a mere premise that there have been protests."

28. All these years, none of the members, save a couple of them, have taken any constructive steps to have their grievances redressed concerning either the omission of their names from the preliminary voters" list or the opportunity to pay the deficit share value. They are, nevertheless, by taking recourse to threats of violence, said to be stalling the statutory process of elections - despite the repeated directions from this Court. It is impermissible.

29. Under whatever circumstances, the Election Commission ought not to have withdrawn the third notification dated 20.12.2014, especially, on the premise that there were large scale protests. It is nothing but giving into lawlessness if it were to be true. The other objection that seems to have weighed with the authorities is that there have been large-scale irregularities in maintaining the records. I am afraid, this contention is only an afterthought, apart from being fallacious.

30. First, on earlier two occasions notifications were issued only after the society"s passing a resolution to hold elections. In statutory terms, it can be presumed that those election notifications were preceded by inspection of the records by the officials to ensure that everything was in order before the society could go for election. Further, through Exhibits P2 and P4 judgments, this Court has categorically held that the election process should be resumed only from the stage it had been left off: by hearing the objections concerning the preliminary voters" list.

31. Under these circumstances, any effort on the part of the officials to scuttle the election process on the premise that there had been irregularities in maintaining the records, it would amount to overturning Exhibits P2 and P4 judgments without any appeal. To put it bluntly, the officials cannot assume the role of an Appellate Bench vis-a-vis Exhibits P2 and P4 judgments.

32. It appears that the authorities have also been concerned about the non-issuance of identity cards to the voters. In fact, sub-rule (v) of Rule 35A of the Rules clearly states that the persons included in the voters" list should be supplied with identification cards, and this process shall be stopped two days before the date of polling. It is thus evident that the identification cards can be issued to the members till the penultimate day of the election. I am, therefore, of the view that the said objection concerning identity cards is rather premature.

33. In a conspectus, it can be seen that neither respondents 6 to 8 nor respondents 1 to 3 have any serious objections about conducting the election. They have, however, tried to take certain technical objections which cannot be sustained as has already been held above.

34. In the facts and circumstances, hoping that this Court will not have another

occasion to adjudicate the same issue as having already been seized of the issue three times, it issues the following directions:

- i. On its term being extended, the Administrative Committee; or the Registrar or his delegate, if the Committee's term is not be extended, shall pass a resolution and intimate the Election Commission, among other things, the next convenient date of polling.
- ii. The Election Commission shall issue a notification proposing to hold the election on the date recommended by the Administrative Committee or the Registrar, as the case may be, making it explicit that the process should be resumed only from the state of considering the objections that have already been filed regarding the preliminary voters' list.
- iii. As regards the payment of deficit share value, the direction given in Exhibit P4 judgment shall stand, namely that the petitioner and the additional eighth respondent therein alone be given the opportunity to make good the deficit.
- iv. The respondent authorities shall complete the entire process of holding the election as expeditiously as possible, at any rate, within eight weeks from the date of receipt of a copy of this judgment, which is not extendable. It is made clear, as a matter of abundant caution, that all other directions given in Exhibits P2 and P4 judgments shall stand undisturbed.

35. With the above observations, the writ petition stands allowed. No order as to costs.