

(2014) 12 KL CK 0114
In the High Court Of Kerala
Case No : WP(C). No. 33339 of 2014 (N)

Johny George

APPELLANT

Vs

The State Co-Operative Election Commissioner Co-Bank
Towers

RESPONDENT

Date of Decision : 15-12-2014

Acts Referred:

Citation : (2014) 12 KL CK 0114

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Mathew Kuriakose, Advocate for the Appellant; V.K. Rafeeq, Government Pleader, T.B. Hood, M. Isha and P.C. Sasidharan, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—Petitioners were aggrieved by the election to be held on 13.12.2014. Petitioners challenged the election notification, produced at Ext. P2, on the ground that they were not issued with notice as provided in the Kerala Co-operative Societies Act and the Rules. Ext. P2 is the election notification issued by the Election Commission on 27.10.2014. The election procedure was to start on 10.11.2013 by the publication of the draft voters' list. The specific contention raised by the petitioners was that, Ext. P3 notices issued to the petitioners, would indicate that, the same were despatched only on 24.11.2014 and 25.11.2014 from the Kalpetta Post Office, as is evidenced from Ext. P3 series. The said date happens to be after the finalisation of the voters' list on 19.11.2014, is the specific contention raised.

2. When the matter came up before this Court on 12.12.2014, the fifth respondent had appeared through counsel. It was admitted that no publication was made in any vernacular newspaper. Learned counsel for the petitioners and learned counsel for the fifth respondent were elaborately heard. The Learned Special Government Pleader for Cooperation, was specifically requested to address submissions, on the aspect of notice as specified under sub-clause (3)

and (3A) of Rule 35A.

3. The learned counsel for the fifth respondent submitted that, there was no challenge against the provision and clause (3A) of Rule 35A specifically provided for a notice by post in the case of societies with less than 1000 members, that too, after the final voters' list was published. It was also submitted, on facts, that the first petitioner had seconded a nomination and he cannot feign ignorance of the notification. Both the petitioners, in fact, received notice, prior to the date of filing of nomination and no prejudice was caused to the petitioners was the contention. It was also argued that Clause (3A) is in substitution of Clause (3) of Rule 35 and that in any event, the petitioners had transacted business with the Society at the premises of the Society and would have definitely seen the election notification displayed in the Notice Board.

4. Learned Special Government Pleader contended that, what is intended by clause (3) has to be scrupulously followed and if at all notice, as provided under clause (3A) has to be issued, then the same should contain all the particulars indicated in clause (3) and should also be communicated prior to the commencement of the election procedure.

5. The election was to be held on the next day, ie: 13.12.2014. This Court, though inclined to interfere with the election, felt that polling should be continued and the counting also completed, since, a judgment passed on 12.12.2014 would be a fait accompli and the respondents would be interdicted from filing appeal, if election itself was interfered with at that point of time.

6. Today, when the matter was posted, there was an impleading petition filed by a candidate in the election and another member, which was allowed. I have heard the learned counsel for the additional respondent, since, he has come to the scene, only on today. Learned counsel for the additional respondents would submit that, Rule 35A, specifically Clause (3) incorporated sub clauses (iii) to (v) in 2003 and hence, the requirement of a communication, under Clause (3A), prior to the issuance of the draft voters' list, was not contemplated, prior to such amendment made in clause (3) in the year 2003. The fact that Clause (4) of Rule 35 was kept in tact even after the amendment, would indicate that the legislature intended clause (3A) to be a specific discretion conferred on the State Co-operative Election Commission to carry on with the election, after issuing individual notices, as contemplated in clause (3A) of Rule 35A, is the argument.

7. Learned counsel appearing for the fifth respondent, submitted that he has filed a counter affidavit and he should be permitted to argue on that aspect. However, the arguments, having been heard completely on 12.12.2014, this Court was not inclined to hear the additional fifth respondent again. Neither the petitioner nor the Special Government Pleader for Co-operation was heard today. Learned counsel for the additional respondent alone was heard on today.

8. Looking at clause (3) of Rule 35A, there is a specific mandate provided to the State Election Commission to notify the details of the election to the Committee,

which shall be published in two vernacular newspapers, having wide circulation in the area. A copy of the notification also has to be affixed on the Notice Board of the Head Office and the branches. In this context, it has to be noticed that, the learned counsel for the fifth respondent and the additional respondent, have specifically contended that, the second petitioner has come to the premises of the fifth respondent for carrying on certain transactions, the document evidencing which has been produced. The notification, having been published on the Notice Board on 6.11.2014, prior to the date of even publication of draft voters" list, necessarily, the petitioners would have seen the same on the Notice Board, is the contention.

9. The mere fact that the petitioners had come to the premises of the fifth respondent for receiving payment of milk supplied or for purchasing cattle feed, cannot be a reason to assume that the petitioners would have seen the notification of election on the Notice Board.

10. In any event, that cannot be taken as a presumed factual situation, which would absolve the State Election Commission and the committee from following the statutory mandate. The document produced by the additional respondent as Ext. R6(b) would only indicate that the petitioners came to the premises of the 5th respondent on 11.11.2014. The date of publication of draft voters" list and the time for filing objections to the same expired on 10.11.2014. Ext. R5(a) also indicates that the 5th respondent sent 150 notices; out of the 300 members, only on 22.11.2014, while Ext. P3 indicates the despatch of the same only on 24.11.2014 and 26.11.2014; while the last date for filing nomination was on 27.11.2014. The 1st petitioner is said to have seconded a nomination, but that alone cannot be a reason for perpetuation of an illegality, if the same is found.

11. It cannot also be said that, for the mere reason of clause (4) of Rule 35A being retained as such, that would enable the Election Commission to exercise discretion as is allegedly conferred under clause (3A). Going by the specific provision of clause (3) of Rule 35A, it has to be held that, the State Election Commission, through the committee, has to notify the details of the election in two vernacular newspapers, having wide circulation in the area. That is the mandate and it cannot be subverted in any manner.

12. True, if such a view is taken, clause (3A) would be rendered otiose, insofar as the State Election Commission would not have any discretion, as far as issuing notice by post in the case of societies with less than 1000 members in the voters" list are concerned. The provision is rendered otiose only in the circumstances of the provision mandating such notice by post or by acknowledgement, to each of the members, after the publication of the final voters" list. Definitely, there is an anomaly discernible in clause (3A). However, till such anomaly is removed by the Government by making suitable amendments to the Rule, this Court cannot assume that the Government had intended the State Co-operative Election Commission to exercise discretion in the case of certain societies, considering the number of members in such societies,

especially since; consciously by amendment, sub clauses (iii) to (v) were brought into clause (3) of Rule 35A.

13. Further, looking at the language employed in clauses (3) and (3A) of Rule 35A, the latter cannot be said to be in substitution of the mandate in clause (3). Clause (3) uses the word "shall" while clause (3A) employs "may". A notification for election either way, should contain the particulars enumerated in sub-clauses (i) to (viii) of clause (3) of Rule 35A and the intention is to inform the members about the dates on which the various procedures for election are fixed.

For all the above reasons, the writ petition is allowed. The election convened is found to be against the statutory prescription as to notice, and hence declared illegal. The results of the election shall not be declared. Learned counsel for the additional respondents submitted that, at least the persons who had obtained maximum number of votes in the election, may be appointed to the administrative committee. This Court is not inclined to give any direction to that end, since the election itself was not convened properly as per the dictates of the statute. However, three members of the outgoing managing committee would be appointed as a Administrative Committee and the Deputy Director of Dairy Development would ensure that the newly elected managing committee comes into office, within a period of three months from today, after convening a proper election.