

(2015) 03 KL CK 0272

In the High Court Of Kerala

Case No : W.A. No. 33 of 2015 in WP(C). 21593 of 2014

K. Anil Kumar

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 06-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11, 9
Constitution of India, 1950 — Article 226, 243ZK, 243ZT
Kerala Co-operative Societies Act, 1969 — Section 69, 69(2)(c), 69(3)

Citation : (2015) 03 KL CK 0272

Hon'ble Judges : Antony Dominic, J; Alexander Thomas, J

Bench : Division Bench

Advocate : T.A. Shaji, Senior Advocate and M.A. Asif, for the Appellant; M.K. Aboobacker, Sr. Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J—The 4th respondent is a co-operative society registered under the Kerala Co-operative Societies Act, 1969, hereinafter, the "Act", for short, and the appellant is a member of that society. Ext. P1 is a resolution passed by the society resolving to conduct election to its Managing Committee on 22.6.2014. That resolution was forwarded to the third respondent, who is the Registrar in so far as the 4th respondent society is concerned. On receipt of the resolution, the third respondent passed Ext. P2 order notifying election on 22.6.2014 and appointing a Returning Officer. Accordingly, on 23.4.2014, the Returning Officer issued Ext. P3 election notification scheduling election on 22.6.2014, as resolved by the society.

2. When the election was about to takes place on 22.6.2014, the Indian Coffee House Employees Union whose district secretary is the appellant, along with a member, filed W.P(C).15684/14 before this Court. In that writ petition, the challenge was against the notice for the annual general meeting scheduled to be held on 22.6.2014. The election took place on 22.6.2014 as originally scheduled

and from the counter affidavit filed by the 4th respondent, it appears that the union of the appellant and the appellant supported a panel of 10 candidates who contested to the Managing committee. However, the panel did not succeed and it was the rival panel which was elected. Subsequently, on 3.7.2014, the Managing Committee of the society was reconstituted by Ext. P4. Still later, on 17.7.2014, the appellant submitted Exts.P6 and P7 complaints to the third respondent and the Director of Industries respectively, alleging that the election conducted on 22.6.2014 was illegal. According to him, he did not get any response to the complaints and therefore, on 18.8.2014, he filed W.P(C).21593/14.

3. In W.P(C).21593/14, for the first time, the appellant raised the contention that in view of the provisions contained in section 28B of the Act, only the Co-operative Election Commission constituted thereunder could have taken further steps on the basis of the resolution passed by the society for the conduct of election and that therefore, the election held on 22.6.2014 is a void one. However, learned single Judge in the judgment under appeal declined to entertain the plea and took the view that the remedy of the appellant lies before the statutory authority provided under section 69(2)(c) of the Act. It is this judgment which is under challenge before us.

4. We heard learned counsel for the appellant, learned Government Pleader appearing for respondents 1 to 3 and Adv. V. Rajendran appearing for the society and the party respondents, except the 6th respondent who was represented by Adv. P.V. Baby.

5. Learned counsel for the appellant contended that everything pursuant to the resolution passed by the society was based on Ext. P2 order passed by the third respondent, notifying election and appointing the Returning Officer and on account of his total incompetency for doing so in view of section 28B of the Act, the election held on 22.6.2014 is a void one. Therefore, according to him, he was entitled to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. In support of this contention, counsel placed reliance on the judgment of the Apex Court in Bar Council of Delhi and Others Vs. Surjeet Singh and Others, AIR 1980 SC 1612 : (1980) 4 SCC 211 : (1980) 3 SCR 946 .

6. On the other hand, Adv. V. Rajendran and Adv. P.V. Baby contended that the appellant's own union had filed W.P(C).15684/14 and that since in that writ petition, the plea now urged was not even raised, the appellant is barred from raising such a contention. In support of this plea, learned counsel placed reliance on Explanations IV and VI to section 11 of the Code of Civil Procedure. Counsel also submitted that section 69(2)(c) of the Act provides a statutory remedy against election disputes and that once the said remedy has become time barred, it is not open to the parties to invoke the remedy under Article 226 of the Constitution of India. In support of this contention, learned counsel placed reliance on the Division Bench judgment in Assistant Commissioner of Central Excise Vs. Krishna Poduval, (2005) 199 CTR 581 : (2005) 4 ILR (Ker) 499 : (2005) 4 KLT 947 . The respondents also faulted the appellant on the ground of

delay and laches. They also tried to impress upon us the loss and difficulties that are likely to be caused to the society, if, on a technical reason, the election is set at naught.

7. We have considered the submissions made. It is true that in view of the Constitution (Ninety Seventh Amendment) Act, 2011, which was brought into force with effect from 15.2.2012, as per Article 243ZK thereof, the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to co-operative societies shall vest in such authority or body, as may be provided by the Legislature of a State, by law. As per the proviso to this Article, the Legislature of a State is obliged to provide by law for the procedure and guidelines for the conduct of such elections and as per Article 243ZT, such law is to be enacted within one year from the commencement of the Constitution Amendment Act. It was in discharge of this constitutional obligation that the State of Kerala enacted the Kerala Co-operative Societies Amendment Act, 2013 (Act 8 of 2013) which was brought into force with effect from 14.2.2013, whereby, section 28B providing for the State Co-operative Election Commission was inserted into the Act. Therefore, with effect from 14.2.2013, the statutory duty of conduct of election is on the Election Commission as constituted under section 28 B of the Act. However, even if an election is held in breach of the statutory mandate under section 28 B of the Act, the statute itself provides for remedy to the aggrieved.

8. Such remedy contained in the statute is in section 69(2)(c), which provides that any dispute arising in connection with the election of the Board of Management or any officer of any society shall be resolved before the Co-operative Arbitration Court. Explanation to section 69(2)(c) also says that a dispute arising at any stage of an election commencing from the convening of the general body meeting shall be deemed to be a dispute arising in connection with the election. Section 69(3) further provides that no dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Cooperative Arbitration Court unless it is referred to it within one month from the date of the election. Therefore, by sub-section 3 of section 69, the Arbitration Court is interdicted from exercising its power unless the reference of the dispute is received by the court within one month from the date of the election. The date of election mentioned in sub-section 3 has been understood as the date of declaration of the result of the election. Law is settled by this Court that once a cause of action has become time barred for pursuing remedy under the statute, a litigant cannot invoke the powers of this Court under Article 226 of the Constitution of India and seek remedy against the time barred cause of action. In this context, it is profitable to make reference to the judgment of the Division Bench of this Court in Assistant Commissioner of Central Excise Vs. Krishna Poduval, (2005) 199 CTR 581 : (2005) 4 ILR (Ker) 499 : (2005) 4 KLT 947 , where, this Court has held thus:

"Once the period of limitation has run itself out and the appellate authority does

not have power to condone the delay in filing the appeals beyond the maximum period prescribed under the Act, the remedies come to an end just like in the case of a time barred suit and cannot, by invoking the discretionary remedy under Article 226 of the Constitution of India, resurrect unenforceable cause of action. That would amount to defeating the very law of limitation. Jurisdiction under Article 226 of the Constitution of India cannot be invoked against express statutory provisions, however harsh the effect of the provisions may be on an assessee or litigant."

9. In so far as this case is concerned, admittedly, election was held and results were declared on 22.6.2014. The instant writ petition was filed before this Court only on 18.8.2014. In view of section 69(3), as on 18.8.2014, when the writ petition was filed, remedy available under section 69(2)(c) had already become time barred on the expiry of 30 days from 22.6.2014. This, therefore, means that as on 18.8.2014, when the writ petition was filed, in view of the principles laid down in the Division Bench judgment referred to above, the writ petition was not maintainable.

10. It is true that the counsel for the appellant contended that since the election held was a void one, the time limit prescribed in section 69(2)(c) of the Act cannot be pressed into service against the appellant, we are unable to accept this contention for the reason that even if the contention is accepted, this only demonstrates an illegality and such illegality is to be corrected only in the proceedings under section 69(2)(c). Therefore, the rigour of section 69(3) stares at the face of the appellant.

11. In so far as the decision of the Apex Court in *Bar Council of Delhi and Others Vs. Surjeet Singh and Others*, AIR 1980 SC 1612 : (1980) 4 SCC 211 : (1980) 3 SCR 946 relied on by the learned counsel for the appellant is concerned, it is true that election to the Bar Council of Delhi was interfered with by the Apex Court in a proceedings arising out of a writ petition filed under Article 226 of the Constitution of India. Reading of the judgment shows that the Apex Court has found that in view of the findings arrived at, the alternate remedy provided was inadequate. The case of the appellant, on facts, is totally incomparable with the facts dealt with by the Apex Court and therefore, this judgment cannot improve the case of the appellant.

12. We also find merit in the contention raised by the counsel for the society relying on the provisions of section 9 of the CPC. We have already referred to the fact that on 19.6.2014 when the election was about to take place, the union of which the appellant is the member filed W.P(C).15684/14, a copy of which has been produced as Ext. R4(a). In that writ petition, though the union was the petitioner, the beneficiaries of the litigation instituted by the union are the members of the union. At that point of time, the argument now pressed into service was available to the union. However, the union did not raise such a contention. Therefore, the appellant who is a member of the union and who is bound by the actions of the union, cannot now raise the said plea.

In such circumstances, we are not satisfied that the judgment under appeal suffers from any illegality calling for interference. Appeal fails. It is accordingly dismissed.