

(2017) 03 KL CK 0035

In the High Court Of Kerala

Case No : WP(C) Nos. 33394, 33440, 34019, 33414 and 36015 of 2016

K. Jayavarma

APPELLANT

Vs

The State Co-Operative Election Commission Cobank Tower

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Act, 1969 — Section 69(3)

Citation : (2017) 2 ILRKerala 40 : (2017) 2 KerLJ 17 : (2017) 1 KLT 921

Hon'ble Judges : Mr. V. Chitambaresh and Mr. Sathish Ninan, JJ.

Bench : Division Bench

Advocate : P. Ravindran and K. Gopalakrishna Kurup, Senior Advocates, Sri. George Poonthottam, D. Somasundaram, P.C. Sasidharan, P.E. Sajal, Aparna Rajan, Sreedhar Ravindran, T.P. Pradeep and P.K. Satheesh Kumar, Advocates, for the Petitioner; Sri. Mohammed Hashim, By Special Government Pleader, Sri. M.H. Hanil Kumar, Special Government Pleader To Ag, Sri. V.G. Arun, Sri. T.R. Hari Kumar, Advocates, for the Additional Respondent No. 5; Sri. Ranjith Thampan, Addl. Advocate General, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

Chitambaresh, J.—The Kerala Co-operative Societies Act, 1969 is referred to as "the Act" and the Kerala Cooperative Societies Rules, 1969 is referred to as "the Rules" hereafter. All these writ petitions challenge the various steps taken in the conduct of an election to the Managing Committee of a bank and are hence bunched together. The matter comes on a reference by a learned single Judge when there was a hitch to conduct the election in spite of the direction by another Division Bench.

2. The election to the Managing Committee of Thiruvalla East Co-operative Bank Ltd. No. 3260 ("the bank" for short) was slated on 05.11.2016 as per the calendar. The preliminary voters list published contained 611 members whereas the final voters list published had only 28 members disabling an election even. This is because the number fell short of 50 members necessary to constitute a

quorum for a General Meeting as per clause 22 of the bye-laws of the bank. An Annual General body Meeting is to be convened in the prescribed manner for the purpose of election too as per Section 29(1)(b) of the Act. No election could have been conducted even if all the 28 members were present in the General body Meeting convened to conduct the election to the Managing Committee. It was at this juncture did this Court intervene and direct the election to go on as scheduled subject to riders by an interim order dated 01.11.2016. The full text of the interim order is reported in *Cherian Eapen v. Managing Committee, Thiruvalla East Co-operative Bank, Pathanamthitta* [2016 (5) KHC 486]. Its operative part is as follows:

"Interest of justice would be met by directing the election to go on as scheduled permitting all the 611 members aforesaid to cast their vote in the election to the managing committee. The same would however be provisional and subject to these writ petitions and also the invocation of Section 69 of the Kerala Co-operative Societies Act."

It is conceded that the election to the managing committee accordingly took place on 05.11.2016 even while steps were afoot to challenge the aforesaid interim order before the Supreme Court.

3. The Supreme Court in Special Leave Petitions filed by the Joint Registrar of Cooperative Societies (General) and others initially passed an interim order dated 11.11.2016. Its operative part is as follows:

"Looking at the peculiar facts and circumstances of the case, it is directed that by way of interim order an Administrative Committee shall be formed which shall consist of one Government Official, who will be the Chairman of the Committee and the President as well as the Secretary of the Society shall be the members of the said committee.

The Administrative Committee shall perform day-to-day work of the Co-operative Society and shall not take any policy decision."

The Special Leave Petitions ripened into Civil Appeals which were eventually disposed of after taking note of the subsequent developments by judgment dated 05.12.2016. Its operative part is as follows:

"Though several contentions are taken by the parties, we do not propose to go into the merits of the matter since the writ petitions are pending before the High Court. Since by the time this Court passed the order dated 11.11.2016, a Managing Committee had already been elected on 05.11.2016, we dispose of these appeals permitting the committee elected on 05.11.2016 to manage the affairs of the Society for the time being, on a provisional basis with the rider that the said committee shall only perform the day-today work of the Co-operative Society and shall not take any policy decision, till the writ petitions are disposed of."

4. The principal contentions urged in the writ petitions mainly challenging the

correctness of the voters list and the validity of the election can be summarised as follows:

- (i) No final voters list was published in accordance with Rule 35A(4) of the Rules;
- (ii) The final voters list is at any rate not in accordance with Rule 18A of the Rules;
- (iii) Form No.32 register was not properly maintained to form the basis of the voters list; and
- (iv) All the 611 members did not get an opportunity to submit a nomination as candidate.

5. We heard M/s. P. Ravindran, K. Gopalakrishna Kurup, Senior Advocates, M/s. D. Somasundaram, George Poonthottam, P.C. Sasidharan, Advocates on behalf of the petitioners and Mr. Ranjith Thampan, Additional Advocate General, Mr. V.G. Arun, Advocate on behalf of the respondents in the writ petitions.

6. The questions posed above cannot be termed as pure questions of law without reference to the factual situation that could be ascertained only when the parties adduce evidence. Should the writ petitioners be relegated to the alternate remedy of raising a dispute under Section 69(3) of the Act under such circumstances? The statutory provision runs thus:

"69. Disputes to be decided by Co-operative Arbitration Court and Registrar-

(1) x x x x

(2) x x x x

(3) No dispute arising in connection with the election of the Board of Management or an officer of the Society shall be entertained by the Co-operative Arbitration Court unless it is referred to it within one month from the date of the election."

The validity of the voters list or the correctness of the Form No.32 register are certainly matters connected with the election in respect of which a dispute can be raised. This is so notwithstanding the fact that adherence to Rule 35A(4) and Rule 18A of the Rules or the maintenance of Form No. 32 register is mandatory statutorily. There is no reason as to why the petitioners shall not invoke the statutory remedy available to them which is efficacious and speedy in nature.

7. We are fortified in this view by the decision in Shri Sant Sadguru Janardan Swami Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra [(2001) 8 SCC 509]. It is held therein as follows:

"9. If the contention of the appellants is that there was a breach of rule or certain mandatory provisions of the Rules were not complied with while preparing the electoral roll, the same could be challenged under Rule 81(d)(iv) of the Rules by means of an election petition. In view that the preparation of

electoral roll is part of the election process and if there is any breach of the Rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the Tribunal.

10. x x x x x x

11. x x x x x x

12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled th at the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

(emphasis supplied)

The above decision has been followed even recently in *Shaji K Joseph v. V.Viswanath and others* [(2016)4 SCC 429] while dealing with an election to the Dental Council of India. It was held therein as follows:

"The judgments referred to herein above clearly show the settled position of law to the effect that whenever the process of election starts, normally courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the courts, possibly no election would be completed without the court's order. Very often, for frivolous reasons, candidates or others approach the courts and by virtue of interim orders passed by courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforesaid reasons, this Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election."

(emphasis supplied)

8. The decisions in *Devassy v. Assistant Registrar of Co-operative Societies* [1976 KLT 40] and *Govindan v. Deputy Registrar of Cooperative Societies* [1983 KLT 1038] are cited. The ratio decidendi is that a proper electoral roll is a fundamental factor and that this Court can step in either before or after the election. But the infraction of a fundamental factor alone might not be sufficient to invalidate an election by resort to the writ jurisdiction. We are persuaded to hold so in view of the authoritative pronouncement of the Supreme Court referred to above dealing also with the process of election. We should not be oblivious of the fact that Cooperative Societies have gained recognition by the

97th amendment to the Constitution of India of course the vires of Articles 243ZH to 243ZT introduced in Part IXB of the Constitution of India by amendment is under challenge before the Supreme Court.

9. We are not to be misunderstood as holding that under no circumstances can a writ petition be entertained under Article 226 of the Constitution of India during the process of election. The Supreme Court has summed up the propositions in law in *Election Commission of India v. Ashok Kumar and others* [AIR 2000 SC 2979]. The relevant amongst them are extracted below:

"3. Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4. Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court."

(emphasis supplied)

The Supreme Court in so doing referred to two earlier constitution bench decisions in *Ponnuswami's case* [AIR 1952 SC 64] and *Mohinder Singh Gill's case* [AIR 1978 SC 851].

10. *Ashok Kumar's case* (supra) was followed in *Santhosh v. State Election Commission* [2015 (4) KLT 710] in relation to an election under the Panchayat Raj Act, 1994 (Kerala). The said judgment rendered by one of us has been affirmed by the Division Bench in W.A. No. 339/2016 filed by the State Election Commission and another. There is no reason as to why the salutary principles laid down by the Supreme Court should not apply for an election to a Co-operative Society as well. Thus a writ petition can be entertained on the well settled parameters in order to correct or smoothen the progress of the election. The instance of rejection of the nomination on totally untenable grounds is an example which could be rectified without upsetting the election calendar. But errors which do not have the effect of interfering with the free flow of the scheduled election can be challenged only in an election dispute. A writ court should act with circumspection as the inevitable consequence of not holding an election in time is the advent of an Administrator. The appointment of an Administrator in lieu of an elected Managing Committee should be the last resort in a democratic process. It should be borne in mind that *Ashok Kumar's case* was decided in the context of a constitutional bar to call in question the process of election. The principle therein should apply fortiori when an alternate remedy

well exists under the Act to question the process of election to a society registered.

11. We therefore relegate the petitioners to the alternate statutory remedy available under Section 69(3) of the Act wherein all the factual and legal issues could be gone into. It is pointed out that a dispute arising in connection with the election should be raised within one month from the date of election as per the Act. But we notice that the election to the Managing Committee of the bank was held subject to the result of the writ petitions only by virtue of the interim order. Therefore it is clarified that any dispute raised in connection with the election to the Managing Committee of the bank within one month from today shall be dealt with as per law. What exactly should be the arrangement in the meanwhile is the further question since more than three months have elapsed since the conduct of election. The Supreme Court has permitted the Managing Committee to perform the day-to-day work on provisional basis without taking any policy decision. We make it clear that the status quo as ordered by the Supreme Court in its judgment dated 05.12.2016 shall hold the field till the culmination of the dispute.

12. The Writ Petitions are disposed of accordingly. There will however be no order as to costs.