

(2014) 03 KL CK 0111

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 4680 of 2014 (H)

K.A. Sukumaran Santhosh and C.L. Simon Master

APPELLANT

Vs

The Kerala State Co-Operative Election Commission and
Others

RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227

Kerala Co-operative Societies Act, 1969 — Section 32 69

Citation : (2014) 03 KL CK 0111

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P.C. Sasidharan, for the Appellant; D. Somasundaram for R1 to R3 by Special Government Pleader and Sri. George Poonthottam for R4 and R5 by Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—These three writ petitions are filed against the election proceedings initiated by the Kerala State Co-operative Election Commission (for brevity "the Election Commission"), the polling of which stood scheduled on 02.03.2014. The petitioners in W.P. (C). No. 4680 of 2014 are the erstwhile President and two Director Board Members of the 5th respondent-Society; which Board of Directors stood superseded u/s 32 of the Kerala Co-operative Societies Act, 1969 (for short "the Act"). The super session is the subject of challenge in another writ petition, being W.P. (C). No. 19811 of 2013, pending before this Court.

2. W.P. (C). No. 4663 of 2014 is filed by five petitioners, claiming to be members of the respondent-Society, whose grievance is against the notice published by the Society, calling upon the members of the Society to collect fresh identity cards, after the issuance of the election notification. They apprehend that since Form No. 6B Register is stated to have been lost; in Exhibit P3 publication itself, the

attempt of the Part-time Administrator, who is in charge of the affairs of the Society, is to subvert the election process by issuance of identity cards to non-eligible members.

3. W.P. (C). No. 4714 of 2014 again is filed by another five petitioners, claiming membership in the Society and assailing the preliminary voters list published, omitting the names of 629 members enrolled by the Committee during March to May, 2013. This was the period when the Committee was resumed to the office of the Managing Committee, after the earlier supersession order was set aside by this Court. They challenge the publication of the final voters list without inclusion of their names, along with the so-called 629 eligible members.

4. W.P. (C). Nos. 4680 of 2014 and 4714 of 2014 seek setting aside of the order passed by the Electoral Officer, bearing No. O.611/2014 dated 08.02.2014, produced as Exhibits P8 and P6 respectively; rejecting the objections to the draft voters list leading to the publication of the final voters list. W.P. (C). No. 4663 of 2014 seeks a mandamus to the Returning Officer to permit all members having valid identity cards, issued even prior to the election notification and the publication calling for members to obtain fresh identity cards.

5. Essentially all the writ petitions challenge the election process; under Article 226 of the Constitution of India. This Court, due to paucity of time, adjourned the hearing on 28.02.2014. But, since the writ petitions were filed earlier and the version of the Department as well as the Administrator was awaited, this Court allowed the polling to be continued; but interdicted the publication of the results until further orders from this Court. In fact at the time when such orders were passed, the learned counsel appearing for the petitioners strenuously urged that members with identity cards issued earlier by the Society should be permitted to vote. However, the learned Special Government Pleader (Co-operation) as also the learned counsel appearing for the Administrator objected to the said course of action, since there were no Form No. 6B Registers available to cross-verify the identity of such members from the earlier identity cards. It was strenuously argued by the learned Special Government Pleader that in fact the allegation is that the erstwhile Managing Committee, which was superseded, committed theft of Form No. 6B Registers. It was the Administrator who, after taking charge, made a publication [Exhibit P3 in W.P. (C). No. 4663 of 2014] calling for members to get issued with fresh identity cards and a fresh register was constructed on the basis of the details available in the computers of the Society. There would be no method by which the membership numbers or the identity of the voters, who bring the earlier identity cards, could be cross-verified. The learned Special Government Pleader also contended that there is a volatile situation existing and that such orders would only complicate the smooth conduct of the elections. Hence such permission was not granted.

6. The petitioners in W.P. (C). No. 4680 of 2014 are primarily aggrieved by the large number of persons who are alleged to have been enrolled as members by the Administrator. A device has been employed by which the members illegally

enrolled by the Administrator have been inserted in the place of members who have expired or gone out of the area of the society, is the contention. As a matter of fact, the erstwhile Managing Committee stood superseded on 22.10.2011 and was restored to office on 04.12.2012 by virtue of a judgment of this Court. But, however, again by order dated 05.08.2013, the Managing Committee was superseded and the Administrator took charge on 07.08.2013. It was thereafter that the present election was scheduled. The allegation of the petitioners is that in the earlier period between October 2011 and December 2012 as also after the assumption of office of the Administrator on 07.08.2013, there were a number of enrolments made.

7. When a Special General Body was convened on 12.01.2014 by the present Administrator, the petitioners had approached this Court with a writ petition on the apprehension that 5000 members enrolled by the Administrator would be permitted to take part in the Special General Body. The petitioners' apprehension was ventilated before this Court, since certain Bye-law amendments were placed in the said Special General Body. On the specific contention of the learned Special Government Pleader that the members enrolled by the Administrator are so enrolled only for the purpose of granting loans and not for any other purpose, the writ petition was disposed of by Exhibit P4, holding that the quorum would have to be satisfied in the Special General Body without the members so enrolled by the Administrator being counted.

8. It is the contention of the petitioners that the draft voters list was published with the members listed Ward-wise and this was a device employed by the Administrator to fit in the members enrolled by him, in between, the valid members entitled to take part in the elections. The objection submitted by the petitioners were alleged to have been considered in a callous manner. Since the publication of a voters list with the eligible members included therein and those ineligible excluded, is a fundamental factor with respect to a democratic and free election, the petitioners seek that the order Exhibit P8 be set aside and the respondents restrained from the conduct of the election as such.

9. The petitioners in W.P. (C). No. 4714 of 2014 are concerned with the non-inclusion of 629 members who are said to have been enrolled by the Managing Committee, validly after they were resumed to office on 04.12.2012. The petitioners therein too rely on the objection submitted, produced as Exhibit P5, seeking inclusion of 629 members so enrolled by the Managing Committee itself. Petitioners in W.P. (C). No. 4663 of 2014 challenged the action of the Administrator in attempting to issue fresh Identity Cards and seeks an order permitting all members to whom the earlier Managing Committee had issued Identity Cards to be participated in the elections. They maintain; with a fair amount of obstinacy, that they are entitled to be participated in the elections on the basis of their earlier Identity Cards, since it is conclusive proof of their membership. Admittedly, they refused to get issued the new Identity Cards and never applied for the same. A reading of Exhibit P3, according to them, would

indicate that the Administrator had the Identity Cards ready to be issued on the basis of the voters list. This, according to them, would indicate that the issuance of Identity Cards will be only in a pre-conceived manner.

10. Primarily what is to be noticed is that the 1st respondent-Bank does not have, with it, the Form No. 6B Register and the allied documents, which would substantiate the claim of membership of an individual. It is clear from the pleadings on record that the draft voters list itself was published on the basis of the list supplied by the 1st respondent, which list was framed from the details of members available in the computers of the Society. As was noticed, supersession orders were passed against the Managing Committee, the first of which was set aside by this Court and there were two intervening periods when the Administrator was in charge. It is also the contention of the members of the superseded Managing Committee that the records of the Society were taken away by an officer of the Department, aided by miscreants, against which a complaint has been lodged on 15.05.2013 (Exhibit P14).

11. The specific case of the Department as also the Administrator is that at the second instance when the Administrator took charge on 07.08.2013, the Managing Committee which was superseded, failed to handover the Membership Register, Form No. 6B Register, Application Forms, Minutes Book, etc. Despite repeated directions, the Managing Committee members having not handed over the Registers and the documents, the Society has initiated criminal prosecution against the erstwhile Managing Committee for theft of such Registers and documents [Exhibit R4(c) in W.P. (C). No. 4680 of 2014]. The Administrator having taken charge and having been deprived of the essential documents and registers; had, with the object of conducting elections to the Society, collected the details of the members from the computers available in the Society and had prepared a draft voters list, the objections to which were rejected by the Electoral Officer; which rejection is assailed in the above writ petition.

12. It is not clear as to who is in possession of the registers of the Bank, which would have the details of the membership of the Bank. Allegations are made against each other, of having removed the registers and cases also are seen to have been registered. Documents have been placed on record and averments made with respect to the investigation having been closed and the case registered having been referred by the police. This Court is not going into the allegations made with respect to the alleged removal of registers; nor is this Court expected to ferret out such registers. But, it has to be noticed that a number of documents, being resolutions passed by the Administrator at the first instance when he took charge, the resolutions after the superseded Managing Committee had taken over charge, the application forms of the alleged enrolment by the Administrator; all have been produced by the erstwhile Managing Committee members.

13. The complaint said to have been lodged on 15.05.2013 [Exhibit P14 in W.P. (C). No. 4680 of 2014] is in very vague terms, not specifying the registers which

have been taken away. In fact if membership registers and Form No. 6B Registers were taken away in the alleged incident, it was incumbent upon the Managing Committee to have indicated the same in the complaint filed before the police. It is also clear that the Managing Committee was in office, after the alleged incident on 15.05.2013, for about three months. But for making a vague complaint before the police [Exhibit P14], no steps seems to have been undertaken by the Managing Committee to reconstruct the registers; nor was such an application made before the Registrar. Though an attempt has been made by the learned counsel for the petitioners to contend that the erstwhile Managing Committee had taken photo copies of the registers, which have been produced herein, this Court is not convinced of the above. It is of considerable import that the petitioners do not at all anywhere make a specific statement that they have in fact handed over the documents when the Administrator took charge on 05.08.2013. This Court makes it clear that these observations are made only in the context of the specific allegation of the petitioners that the voters roll, being the fundamental aspect in an election, in the present case, cannot be sustained for reason of it being defective, since there is no register available in the respondent-Bank which could be referred to, to sustain the membership of the voters included. The criminal law put in motion has to take its course and the observations made above have no bearing on it. But as things stand now this Court is not persuaded to accept that the entire documents kept in the Bank were photocopied by the erstwhile Managing Committee.

14. The illegality in enrolment of members by the Administrator is canvassed on the basis of the decision of the Hon"ble Supreme Court reported in *Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others*, This Court has, following the aforesaid judgment, in *Prakashkumar Vs. State Co-operative Election Commission*, reiterated that the same is not permissible. A number of decisions have been placed before this Court to buttress the contention of the petitioners that Article 226 can be invoked in exceptional circumstances to interdict elections, viz., *Devassy v. Asst. Registrar of Co-operative Societies* [1976 KLT 40], *Gopalan v. Joint Registrar of Co-op. Societies* [1985 KLT 446], *V.R. Krishnan Ezhuthachan Vs. The Assistant Registrar of Co-operative Societies and Others*, *Mathai, K.V. Vs. State Co-operative Election Commission and Others* and *Ahmednagar Zilla S.D.V. & P. Sangh Ltd. v. State of Maharashtra* [(2014) 1 SCC 133].

15. *Devassy (supra)* was a case in which a learned Single Judge of this Court, following the decision of the Supreme Court in *Chief Commissioner, Ajmer Vs. Radhey Shyam Dani*, held that a "proper electoral roll is a fundamental factor before the election is actually held and if the complaint is that no such roll has been prepared in accordance with the Rules, this court can certainly step in even before the election is actually held and prevent the election being held on the imperfect electoral rolls exercising its jurisdiction under Art. 226 of the Constitution" (sic). The facts in the said decision may not be very relevant, since the learned Judge, in the said case, refused to interfere with the elections.

16. Gopalan (*supra*) is a case in which interference was made on the ground that the enrolment of members by the Administrator was not valid and legal as also on the further ground of the illegality in so far as the direction of the Secretary making it obligatory for each member to produce the share certificate as a condition precedent for the exercise of franchise. In the said case, the electoral list admittedly contained persons who were enrolled as members by the Administrator. Most of the new members were in fact residing outside the area of operation and the voters list, *prima facie*, established that fact (paragraph 5).

17. Krishnan Ezhuthachan (*supra*) again dealt with the enrolment of about 152 members by the Administrator, in which Society, there were only 132 members when he assumed office. An additional ground was taken in the case that membership fees, being the share money and the application fee; in respect of 152 members were received within the 90 days preceding the date of election, disentitling such members from exercising franchise. There, the election was directed to be conducted, keeping the votes polled by the 152 members in a separate box and later, finding the enrolment to be bad, their votes were directed to be excluded and the results declared thereon.

18. Mathai (*supra*) again interfered with the election, finding the same to be vitiated for want of delimitation of wards. The Bye-laws of the society specifically conferred the power for delimitation on the general body, while; projecting the expediency due to the anticipated expiry of the term of the Managing Committee, the Managing Committee itself made such delimitation. It was on the finding that such delimitation could not have been proceeded with by the Managing Committee that the elections were interfered with.

19. Ahmednagar Zilla S.D.V. & P. Sangh Ltd. (*supra*) was a case in which directions issued under Article 226 for inclusion of the name of certain members in the electoral roll was challenged before the Hon'ble Supreme Court as not maintainable. The controversy arose on an amendment brought to the Bye-laws categorizing the members of the society as Class "A", "B" and "C" on the basis of the quantity of milk supplied by them. The Department approved the same and the voters list was prepared in accordance with such amendment. Certain members who were excluded, filed appeal against the amendment, which was allowed and the revision and the subsequent proceedings before the High Court also upheld the striking down of such amendment. Simultaneously an application was moved under Article 226, in which the direction to include the petitioners therein, was issued. In the context of the amendment of the Bye-laws having been found to be not in conformity with the Bye-laws; the electoral roll prepared on that basis was found to be improper. The High Court, exercising jurisdiction under Article 227, had also refused to interfere with the order of the appellate authority and the revisional authority, thus nullifying the amendment. It was held that the High Court's jurisdictional aspect under Article 226 would take a back seat, since it was for the appellants to show that the amendments were carried on in accordance with law.

20. There can be no dispute that the High Court, in exceptional circumstances, would interfere with the elections, especially when gross illegality is shown, which would persuade the Court to stop an illegally constituted election. Though the learned counsel for the petitioners strenuously urged that the inclusion of members who were enrolled by the Administrator vitiates the very election initiated by the Administrator, reducing it to a farce; no material is at present discernible as to who are such members. Admittedly it is the contention of the erstwhile Managing Committee members that when they were resumed to office, they had passed resolutions to remove the members admitted by the Administrator at the first instance. That resolution is also produced as Exhibit P3 in WP(C). No. 4680/2014. However, no names are seen in the said resolution and it only indicates that all the memberships granted by the Administrator, as "A" Class members, are revoked and such individuals were granted "E" Class membership; obviously the latter class of membership not entitling participation in the elections. It is also quite evident that there are no registers or applications for membership existing in the first respondent as of now, to cross-verify the draft voters list or the final voters list.

21. The Department or the Administrator also does not have a case that the voters list has been prepared on the basis of the admission register or a regularly maintained Form No. 6B Register or even the application form of members. Faced with a situation of there being, no such registers available, the Administrator had taken the permission of the Joint Registrar and had proceeded to retrieve the details of the members from the computers and issue publication calling for the members to obtain fresh Identity Cards. More than 75% of the members are said to have collected their new Identity Cards also. It is very pertinent that neither the erstwhile Managing Committee members nor the petitioners, who claim to have been issued with Identity Cards by the erstwhile Managing Committee members, have a contention that any who approached the Administrator for a new Identity Card has been declined issue of the same. Necessarily when new Identity Cards were issued, a Form No. 6B Register also would have been reconstructed. In the context of the Registers and the allied documents having been removed from the premises of the Society, it cannot be gainsaid that the actions of the Administrator, as approved by the Joint Registrar, was in any manner irregular or improper.

22. The petitioners in W.P. (C). Nos. 4714 of 2014 and 4663 of 2014 claim to be members who have valid identity cards issued by the erstwhile Managing Committee. They suspect a pre-meditated attempt to issue identity cards to only those members who are favoured by the Administrator, on a reading of the publication [Exhibit P3 in WP(C). No. 4663 of 2014]. From a reading of Exhibit P3, it definitely indicates that identity cards of the members included in the voters list are ready and those members should approach the respondent-Bank for the issuance of the same with two photographs. There can be no pre-meditation attributed, since the Form No. 6B Register has been just reconstructed, on the basis of which the draft voters list was published.

23. Petitioners in W.P. (C) No. 4714 of 2014 are aggrieved by the exclusion of 629 members duly enrolled by the erstwhile Managing Committee. It is to be noticed that the petitioners 2 and 4 in the said writ petition were included in the voters list, but, however, did not approach the respondent-Bank for issuance of a new identity card. It is to be specifically reiterated that there is no instance of denial of issuance of new identity cards. To understand better the situation, even according to the erstwhile Managing Committee members the last person enrolled by them had membership No. 25826 and the Administrator has enrolled members upto 30,289. Definitely such members would have been enrolled only for the purpose of availing the facilities offered by the Bank. The resolutions produced in W.P. (C). No. 4680 of 2014, indicating the inclusion of members by the Administrator, specifically notice such enrolment to be confined for the purpose of availing loans. The total members figuring in the final voters list is 19,917. Identity cards were issued to 13,000 members. 12,015 members are said to have exercised their franchise in the polling conducted on 02/03/2014, out of which it is alleged that 3619 were the members enrolled by the Administrator.

24. The draft voters list having been published on the basis of the details of the members retrieved from the computers of the Society, the petitioners had approached the Electoral Officer with an objection, which have been produced in the respective writ petitions. Exhibits P6 and P7 in W.P. (C). No. 4680 of 2014 raise similar complaints. That is to say, the inclusion of ineligible members, being those enrolled by the Administrator, was objected to. A list, running to more than 30 pages, was also appended, being the alleged ineligible members so enrolled. On a reading of Exhibit P8, which is assailed in the above writ petition, it is seen that the Electoral Officer had called for a report from the Managing Director. The report of the Managing Director was that the membership numbers shown in the list appended to the objection did not tally with their details given. The Managing Director had also reported that no membership is seen to have been given as per the list appended to the objections. On the ground that no details of the members who are said to have been enrolled by the Administrator has been specified and there are no enrolment of members as indicated in the list, the objections were rejected. It is very pertinent that Exhibit P8 order specifically noticed that the Form No. 6B Register and other allied registers and documents, as statutorily prescribed, were absent in the premises of the Bank and that the voters list was prepared from the details retrieved from the computers. It was also specifically stated in the order of the Electoral Officer that a criminal proceeding had been initiated against the erstwhile Managing Committee members for theft of the records.

25. This Court had also directed the Election Commission to conduct an inspection and report on the preparation of the draft voters list as also the effort taken for issuance of identity cards and reconstruction of Form No. 6B Registers. Evidently the Administrator, after having taken charge and being deprived of the necessary registers indicating the membership, had approached the Joint

Registrar for permission to reconstruct the Form No. 6B Register as also to issue fresh identity cards. The Chief Election Commissioner has referred to such proceedings and has, after inspection, found that the notification was published in the Malayala Manorama, Mathrubhoomi, Veekshanam and Deshabhimani Dailies. Identity cards are said to have been issued from 8.00 a.m. to 6.00 p.m. on working days and from 10.00 a.m. to 4.00 p.m. on holidays. Till 19.02.2014, 6000 new identity cards are said to have been issued and the process is said to be going on. As was noticed earlier, before election, almost 13000 members got issued for themselves the new identity cards. In the given situation, the course adopted by the Administrator is befitting, in so far as the statutory compliance is concerned.

26. It is pertinent that the writ petition filed by the erstwhile Managing Committee members, assailing the above order of the Electoral Officer, does not contain a specific denial of the allegation of such registers and documents having been removed from the office of the respondent-Society; by them. But for asserting that Form No. 6B Registers are to be maintained statutorily, neither the objection nor the writ petition seeks a verification or cross-verification of the voters list with the Form No. 6B Register, which should have been maintained by the Bank, even at the time of the erstwhile Managing Committee. It is also pertinent that, in the writ petition, the petitioners themselves have produced Exhibit P10 series of applications, said to be applications filed, when the Administrator was in charge at the first instance; the membership against which, are alleged to have been granted illegally. Admittedly the petitioners were the erstwhile Managing Committee members and as noticed earlier, they owe an explanation as to how they had in their possession the original applications filed during the term of the Administrator; which ought to have been in the Registered Office of the Bank. The explanation offered that the entire documents in the Bank were photocopied and kept by the erstwhile Managing Committee members, does not commend to reason. This Court does not say anything further on this, since criminal proceedings are initiated and pending before the competent Magistrate's Court.

27. In the instant case, along with the objections filed, a list of ineligible members seeking removal of such members from the final voters list was produced. The objection also speaks of their willingness to adduce evidence in support of the allegations made. It is trite that the Electoral Officer is not expected to make a roving enquiry and what is warranted is a prima facie consideration of whether the inclusion or exclusion, of a member pointed out specifically by an objector is established to be bad or not. Normally there would be registers and documents on which reliance could be placed to arrive at such a prima facie finding. Herein, the draft voters list itself was published on the basis of the reconstructed Form No. 6B Register; done, as per the details retrieved from the computers of the respondent-Bank. In the fact situation, it has to be found that the consideration of the objections and the rejection of the same is proper.

28. That definitely is not to say that the voters list is perfectly in consonance with the accepted principles and the statutory provisions governing the same. This Court has not at all gone into such issues, nor will it be proper for this Court, so to do, under Article 226 of the Constitution of India. The manner in which the voters list was published as also inclusion of ineligible members and exclusion of members are all matters to be agitated in a properly instituted Election Petition. The petitioners strenuously contended that the illegality is self-evident from the documents produced. Primarily no reliance can be placed on the photocopy of documents when the originals are said to be lost. Again this Court, under Article 226, cannot be looking at the membership of each individual objected to, and decide upon their eligibility to exercise franchise. Such examination is best left to be carried on in a validly instituted election petition; if instituted. The petitioners' contention that Section 69 of the Act is not an alternative remedy in the present case is on the ground that the eligibility of members enrolled by the Administrator to participate in the election, is no longer *res integra* and the eligibility or ineligibility as such cannot be agitated in an Election Petition. It has to be noticed that the law on the point is clear and the Administrator cannot enrol members, but for to extend the facilities offered by the Bank. Such members would have no right for franchise. Who is to be included in the voters list and who are to be excluded would depend upon their eligibility to exercise franchise. That necessarily would have to be decided by looking into the details retrieved from the computers; necessitating a fact adjudication. This Court definitely cannot go into such fact adjudication and it has to be stated that there is not enough material available before this Court, as per the records in the above writ petitions, on which unequivocal reliance can be placed; to come to a finding which would persuade this Court to hold the entire election process to be illegal, at this stage. Both the learned counsel invited this Court to look at the results of the election, as revealed now, from the report filed. This Court refused to do so, since that would amount to pre-empting a fact adjudication. Suffice it to say, there is not discernible any procedural defect nor a gross illegality which could, *prima facie*, be termed to be an exceptional case so as to command invocation, of the extraordinary powers of this Court.

In the above view of the matter, reserving liberties of the petitioners, if so advised, to institute an election petition, the writ petitions are dismissed. No costs. There shall also be a direction to the Registrar of Co-operative Societies to declare the results of the election on 28.03.2014.