
(2017) 08 KL CK 0004
In the High Court Of Kerala
Case No : 1623 of 2017

K.D. SEBASTIAN S/O.DEVASSYKUTTY, & ORS.

APPELLANT

Vs

LAJU P.V., & ORS.

RESPONDENT

Date of Decision : 04-08-2017

Acts Referred:

[Kerala Co-operative Societies Rules, 1969](#), Rule 35A(6)(b)

Citation : (2017) 08 KL CK 0004

Hon'ble Judges : Navaniti Prasad Singh, Raja Vijayaraghavan V

Bench : DIVISION BENCH

Advocate : M.M.MONAYE, DESI MATTHAI, GEORGE POONTHOTTAM, MOHAMMED HASHIM, I.SHEELA DEVI

Final Decision : Dismissed

Judgement

1. The question that comes up for interpretation is with regard to the meaning of the expression "Provided further that in the case of election on ward basis, the candidate, proposer and seconder shall be from the same ward." as appearing as the second proviso to Rule 35A(6)(b) of the Kerala Co-operative Societies Rules, 1969 ("the Rules" for short).

2. We have heard learned counsel for the appellants, who were the candidates for the election, learned counsel for the contesting respondents as well as the learned Special Government Pleader for the State and with their consent we are disposing of this appeal at this stage itself.

3. A brief history would be necessary. The Kerala Co-operative Societies Act, 1969 and the Rules framed thereunder contains provisions for election of members to the Managing Committee of a Co-operative Society. Prior to 2013, there were some co-operative societies, which by virtue of their bye-laws were conducting elections on ward basis after dividing the Co-operative Societies into wards. There were exceptions as well. In 2013, ie., with effect from 14.2.2013, the Kerala Cooperative Societies Act ("the Act" for short) was amended and

provisions were made for elections on ward basis for certain types of Co-operative Societies. Later, with effect from 26.11.2014, the Rules were amended and inter alia second proviso was added to Rule 35A(6)(b) of the Rules as quoted above. Subsequently, by Ordinance No.4/2017 which came into effect on and from 10.4.2017, the amendment to Section 28(1), which was incorporated with effect from 14.2.2013 was deleted. We will deal with this exercise of addition and deletion with reference to the judgment of this Court dated 29.6.2017 in W.A. No.1026 of 2017 [K.S. Anilkumar v. Kerala State Cooperative Election Commission and others]. After the said ordinance, on 12.4.2017, the State Election Commission issued election notification in respect of the appellants' Co-operative Society. So far as the Co-operative Society is concerned, namely, the Thuruthippuram Service Co-operative Bank Ltd., No.1789, its bye-laws provided for ward basis elections. The notification, thus being issued with regard to election, steps were to be taken for ward based election. The appellants 1 to 5, who were made additional respondents 6 to 10 in the writ petition filed their nominations. Their nominations were rejected on the ground that they had not filed nominations in respect of wards, of which they were members. It appears that though the candidate, proposer and the seconder were of the same ward, they did not belong to the ward from which election was sought. Later, they filed objection before the State Election Commission making certain complaints with regard to the electoral rolls. The 1st appellant also challenged the order of the Returning Officer by filing W.P.(C) No.15325 of 2017, but during its pendency, basing on the submission of the learned Special Government Pleader that steps were underway in view of Ordinance No.4 of 2017, the Writ Petition was closed.

4. In the meantime, the Election Commission adjourned the election on the basis of a representation submitted by some of the members of the Society. Aggrieved by the above, the 1st respondent filed the instant Writ Petition challenging the decision to postpone the elections which were to be conducted on ward basis. It is to be noticed that the election was postponed in view of the issuance of the Ordinance and as the matter was sub judice before this Court in other proceedings.

5. The appellants' first contention would be that in view of the Ordinance, the election could not be on ward basis. According to the learned counsel, all the provisions in the Act and Rules relating to ward based election would become redundant after the promulgation of Ordinance 4 of 2017 and the consequent amendment as made by deleting the relevant provision contained in Section 28(1) of the Act. This is noticed only to be rejected because these very appellants had sought permission to intervene in Writ Appeal No.1026 of 2017, which was disposed of on 29.6.2017, by a Division Bench of this Court and their objection through their intervention was rejected. This Court, upon examining the scheme of the Act and the amendments, held that prior to the amendment in the year 2013, ward based election was directory in the sense that a Co-operative society could take a decision and frame bye-laws providing for ward based elections, whereas another Co-operative Society could have continued

otherwise. But this position changed with the amendment of Section 28(1) of the Act with effect from 10.2.2013. Thereafter, it became mandatory to hold elections on ward basis in such Co-operative Societies. Subsequently, various amendments were brought in with effect from 26.11.2014 which included the one in relation to the proviso as quoted above. The effect of our judgment was that now the position which existed prior to the year 2013 has been restored. In other words, if the bye-laws of the Society permitted elections to be held on ward basis, then elections after the Ordinance would be on ward basis. As a corollary, if the bye-laws did not provide so, the elections would be carried out accordingly and not on ward basis. The rules have not been amended till date and the proviso to Rule 35A(6)(b) still exists in the Rules. We do not find anything inconsistent in the rules to the provisions of the Act in as much as we have already held that originally the elections could be on ward basis as well. That position having been restored the provisions in the rules for ward basis election would thus not be in conflict. Notwithstanding the amendments, if this be the historical and legal position, keeping that in mind let us now see the import of the second proviso to Rule 35A(6)(b) to the Rules as quoted above.

6. Inward basis elections it cannot be disputed that the candidate must belong to that ward itself and therefore, in view of the proviso, it is made clear that the proposer and the seconder should also be from the same ward. In other words, the candidate, the proposer and the seconder must all belong to the ward from which the election is contested by the candidate. This is the clear and simple meaning of the said proviso.

7. The problem with the appellants was that they had filed nominations for election from the ward of which neither the appellants nor the proposers nor the seconders belong. This was presumably done in view of the stand taken by the appellants that after the amendment by the Ordinance, ward based elections could not be held any more and that concept stood extinguished. We have already rejected this argument. Thus the rejection of nominations of the appellants on the aforesaid ground cannot be questioned. Their actions were contrary to the proviso quoted above. This substantial grievance having been negated by us, learned counsel for the appellant then argued that the election cannot be conducted on the electoral roll as available. We have again noticed this argument only to reject the same for, it is not disputed that firstly, this objection was raised for the first time before the State Election Commission long after the rejection of nominations of the appellants. Secondly, before the elections were announced, objections to electoral rolls were called for. The appellants did not file any objection. They made no objection to the local office nor to the Electoral Officer nor to the State Election Commission at the appropriate time and that being so, this Court would not entertain any such plea especially, when the electoral process has now commenced. We, thus, find no merit in the appeal and the same is accordingly dismissed.