
(1999) 01 KL CK 0034
In the High Court Of Kerala
Case No : O.P. No. 305 of 1999

K.V. Solomon

APPELLANT

Vs

Returning Officer, Kakka Vyavasaya Co-operative Society Ltd.,
Kuthiyathodu

RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Ker 191 : (1999) 1 KLJ 305

Hon'ble Judges : K.S. Radhakrishnan, J

Bench : Single Bench

Advocate : D. Somasundaram, for the Appellant; N. Reghuraj, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Petitioner has approached this Court seeking a direction to the respondent to allow the agents of the candidates to witness inscribing of mark on ballot paper by the Returning Officer or Polling Officers for and on behalf of blind or physically infirmed or illiterate members of the Society. According to the petitioner, such a direction is necessary to ensure a fair election. According to the petitioner, the same would also make their action transparent and free from unnecessary allegations. Learned Government Pleader opposed the said prayer.

2. Relying on Rule 35(3)(o) of the Co-operative Societies Rules, learned Government Pleader submitted that if such a procedure is adopted that will affect the secrecy of the election. In this connection, it is necessary to refer to the relevant portion of the said rule, which is extracted below :

"35(3)(o).....

On receipt of such ballot paper, the member shall proceed to the polling compartment set apart for inscribing a mark (X) against the name of the candidate or candidates, as the case may be, put the ballot paper in the ballot

box kept for the purpose with utmost secrecy. If owing to blindness or other physical infirmity, or illiteracy, a member is unable to inscribe the mark on the ballot paper, the Polling Officer or the Returning Officer shall ascertain from him the candidate or candidates in whose favour he desires to vote, inscribe the mark (X) on his behalf and put the ballot paper in the ballot box."

The necessity of maintaining secrecy is evident from the said provision itself. Rule 35(3)(n) also stipulates that each polling station and where there is more than one polling booth at a station, each such booth shall contain a separate compartment in which the members can record their votes in secrecy.

3. Maintenance of secrecy in the matter of voting will enable a voter to exercise his franchise without any fear from any quarters. There is no legal right on the candidates or the polling agents to insist that persons having blindness or other physical infirmity or illiteracy should cast their vote in their presence. Rules do not support such a contention. I am of the view the Legislature has guarded the secrecy in the matter of casting vote. Due to the blindness or other physical infirmities or illiteracy power is given to Returning Officer to ascertain from such person in whose favour that person desires to cast vote. Therefore there cannot be any doubt that the Returning Officer who is expected to conduct a free and fair election would go against the wish of such persons. No other person can be entrusted with that responsibility than Returning Officer. Under the above mentioned circumstances I am of the view the petitioner is not justified in seeking a direction to the Returning Officer to see that above mentioned persons cast their vote in the presence of polling agents.

Original petition therefore lacks merits and, the same is dismissed.