

(2004) 09 KL CK 0004
In the High Court Of Kerala
Case No : W.A. No. 1732 of 2004

M. Subramanian and Others

APPELLANT

Vs

Devicolam Taluk Plantation Workers Co-operative Credit
Society Ltd. and Others

RESPONDENT

Date of Decision : 22-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Government Servants Conduct Rules, 1973 — Rule 47

Citation : AIR 2005 Ker 81 : (2004) 2 KLJ 979

Hon'ble Judges : K.K. Denesan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : B. Premnath E, for the Appellant; B.S. Swathikumar, S.C. for Election Commission and M.P. Madhavan Kutty and Joice George for Respondent Nos. 2, 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, J.—The appellants are the petitioners in W.P. (C) No. 24978/ 2004 which was dismissed by the learned single Judge.

2. The appellants are members of the Devicolam Taluk Plantation Workers Cooperative Credit Society Ltd. No. K. 382 (hereinafter referred to as "the Society"). As per Ext. P1 notification dated 28-7-2004 a meeting of the General Body of the Society was convened on 29-8-2004 to elect a new Managing Committee. The schedule for the election also was contained in Ext. P1 notification. The last date for receipt of nomination papers was 17-8-2004. The date of scrutiny of nomination papers was 18-8-2004. The last date for withdrawal of nomination paper was 19-8-2004. Petitioners 1 and 2, and respondents 4 and 11 were among the persons who submitted nomination papers. On the date of scrutiny of the nomination papers the petitioners objected to the candidature of respondents 4 and 11 on the ground that they were disqualified for being elected as members of the Managing Committee. According

to the appellants, their objection was not considered by the Returning Officer and the names of respondents 4 and 11 also were included in the final list of candidates. Hence the appellants filed the Writ Petition (W.P.(C) No. 24978/2004) praying for a direction to respondents 2 and 3 to delete and remove respondents 4 and 11 from the list of contesting candidates for the election scheduled on 29-8-2004. However, the learned single Judge dismissed the writ petition observing that election process had already commenced and that there was nothing to show that the alternate remedy of filing an election petition is not an efficacious remedy. The learned single Judge also observed that in view of the dispute on factual issues, election petition is the more appropriate remedy. At the same time the learned single Judge clarified that all the contentions of the petitioners as well as respondents are left open and that the petitioners may file election petition if so advised, in case they have a cause of action after the election. It is submitted by the learned counsel for the appellants that the election has been held and the fourth respondent has already been declared elected as a member of the Managing Committee.

3. Having heard learned counsel for the appellants and having considered the materials placed on record, we do not find any illegality in the impugned judgment. The learned single Judge was right in refusing to invoke his jurisdiction under Article 226 of the Constitution of India to interfere with the election process which had already commenced.

4. The learned counsel for the appellants contended that the appellants' objection to the candidature of respondents 4 and 11 was based on their disqualification for being elected as member of the Managing Committee in view of Section 28(2)(a) and (b) of the Kerala Co-operative Societies Act and Rule 47 of the Government Servants' Conduct Rules. According to the learned counsel, such a dispute will not come under the purview of Section 69 of the Kerala Co-operative Societies Act in view of the Explanation u/s 69(2) (c). We do not find any merit in this contention. As per Section 69(2) (c) for the purpose of Sub-section (1) of Section 69, any dispute arising in connection with the election of the Board of Management or any officer of the Society shall be deemed to be a dispute. As per the Explanation u/s 69(2)(c), a dispute arising at any stage of the election commencing from the convening of the General Body Meeting for the election shall be deemed to be a dispute arising in connection with the election, In the present case, the dispute arose at the stage of the scrutiny of the nomination paper's. During the scrutiny of the nomination papers the appellants questioned the eligibility of respondents 4 and 11 to be candidates in the election on the ground that; they were disqualified u/s 28(2) (a) and (b) of the Kerala Cooperative Societies Act and Rule 47 of the Government Servants' Conduct Rules, overruling the said objection, respondents 4 and 11 were included in the final list of candidates. If respondents 4 and 11 were disqualified to be candidates in the election, their election, if any, can be challenged by raising a dispute u/s 69 of the Kerala Co-operative Societies Act. Such a dispute will be a dispute which arose after the convening of the General Body Meeting for the

election. As already mentioned, the General Body Meeting was convened as per Ext. P1 notification dated 28-7-2004 and the dispute regarding the disqualification of respondents 4 and 1 arose on 18-8-2004, i.e. the date of scrutiny of the nomination papers. Hence we have no doubt that the above dispute is a dispute coming under the purview of Section 69 of the Kerala Co-operative Societies Act.

5. For the reasons stated above, there is no merit in the appeal and the appeal is dismissed.