

(1993) 02 KL CK 0081
In the High Court Of Kerala
Case No : O.P. No. 1854 of 1993

M.P. Narayanan Nambiar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9, Order 6 Rule 9
Constitution of India, 1950 — Article 226

Citation : (1993) 2 KLJ 366

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : M.K. Damodaran, for the Appellant; Cyriac Joseph, A.A.G., D. Somasundaram, General Govt. Pleader and K. Ramkumar, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—The petitioner is a member of the Cannanore Co-operative Hospital Society Limited, hereinafter referred to as the society. The respondent Nos; 1, 2, 3, 4 and 5 are, respectively, the State of Kerala, the Minister for Co-operation, the District Magistrate, Kannur, the Joint Registrar of Co-operative Societies and the Returning Officer for the elections to the Managing Committee of the society. The elections are scheduled to be held tomorrow the 10th February, 1993. The petitioner seeks two orders. Firstly, he seeks a direction to the Joint Registrar of Co-operative Societies and the Returning Officer to maintain VI B register at the place of polling so that the candidate can verify and ascertain the identity of the members who poll at the election. The second relief prayed for is that an Advocate or advocates of this Court be nominated as "observers" to oversee the process of election and to report to this Court. So far as the first prayer is concerned identity cards to all the candidates have been issued and I do not think it necessary to make any order requiring the VIB register be kept at the place of polling.

2. The second relief which has been very strongly urged needs to be considered.

Allegations of manipulations have been made against the officers and the Minister, which are seriously disputed. It is not possible to express any opinion on the disputed facts which are urged in support of the allegations. The general fear expressed is that the elections will not be fair but will be rigged. According to the petitioner, the presence of observers and the fear of their adverse report will ensure free and fair election.

3. Learned counsel for the petitioner stated that the status of the observers which I am asked to appoint will be that of a commission to investigate facts. The appointment of observers is sought on the basis of the principles underlying Rule 9 of Order 26 of the Code of Civil procedure. The general principles underlying the appointment of commissioners are:-

(i) the court needs the assistance of commission to elucidate any matter in dispute.

(ii) commission is appointed to aid, by his report, the disposal of a pending proceeding.

(iii) commission cannot be appointed for investigation of matters extraneous to the proceedings.

There are three reasons why a commission or observer cannot be appointed on the basis of the principles emerging from Rule 9 of Order 6 of the Code of Civil Procedure.

(i) This petition under Article 226 of the Constitution of India is not a proceeding in which a substantive right is being litigated. Once the commission makes a report, there will be no proceeding before this Court which calls for a decision on the basis of the report. In the result, the report of the commission will be futile academic exercise, so far as this Petition is concerned.

(ii) There is no matter before this Court which needs to be elucidated by the investigation through the commission. The only matter to be decided is whether a commission should be appointed. By its very nature, such a decision precedes the appointment of commission. Therefore, it stands to reason that the appointment of commission which is the result of such decision cannot be useful in deciding this petition.

(iii) In the absence of any substantive right, the determination of which, the commission is expected to subserve, the appointment of commission, will be in aid of an extraneous matter.

4. Then learned counsel for the petitioner called in aid the inherent powers of this Court. The purpose of the exercise of the inherent powers is to subserve the ends of justice or to prevent abuse of process of the court. No process which is threatened with abuse has been issued by this Court. Therefore, there is no question of its abuse, Then there remain the ends of justice. The expression, ends of justice, cannot be understood in the abstract sense. It means justice

between the parties to this petition. The Kerala Cooperative Societies Rules prescribe elaborate provisions for the conduct of elections to the committees. The elections are conducted under the supervision and control of a Returning Officer. Identity of members who vote has to be established before the polling officer. For this purpose identity cards with photographs of members have been issued. Agents of the candidates watch the recording of votes and identify the voters. Sealed ballot boxes are opened and shown to the persons present and thereafter locked and sealed. Candidates are permitted to affix their seals on the ballot boxes. The elaborate procedure laid down by Rule 35 is designed to eliminate the mischief and manipulation which the petitioner fears will occur. After the results are announced the unsuccessful candidate has the remedy of challenging the election by a petition u/s 69 of the Kerala Co-operative Societies Act.

The machinery, consisting of Returning Officers, the polling officers and the personnel for counting votes, who are employees of the Government answerable for misconduct, together with the presence of polling agents of candidates to watch the proceedings adequately ensures free and fair poll.

5. The inherent powers of the court are intended to serve the ends of justice. In the context of the election to the committees under the provision of the Act and the Rules, justice means justice according to the procedure prescribed by the Act and the Rules. The appointment of observers, will create a parallel machinery to supervise the function of the statutory machinery, thereby interfering with the administration of law. Secondly this petition seeks court's sanction for a procedure not authorised by the Kerala Co-operative Societies Act and the Rules which have prescribed elaborate and self contained procedure to ensure fair and independent poll. The ends of justice are not promoted by the presence of observers not authorised by law.

In Bishambhar Vs. Radha Kishunji and Vijayadas Hanumantdas Gudihal vs. Shekharappa Anantappa Savanur (AIR 1941 Bom. 395) the courts did not exercise their inherent jurisdiction to aid procedures not sanctioned by law. For all these reasons O.P. No. 1854 of 1993 is dismissed.

C.M.P. No. 3541 of 1993 is also dismissed: