
(1998) 08 KL CK 0041
In the High Court Of Kerala
Case No : O.P. No. 3749 of 1998

Peter Xavier and Others

APPELLANT

Vs

Aravindakshan and Others

RESPONDENT

Date of Decision : 19-08-1998

Acts Referred:

Kerala Court Fees and Suits Valuation Act, 1959 — Section 70(1)(c)

Citation : (1998) 2 KLJ 509

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

Bench : Single Bench

Advocate : P.P. Jacob, for the Appellant; T.D. Rajalakshmi, P.N. Mohanan, Sebastian Davis and Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—Petitioners are aggrieved by the rejection of Election Petition, A.R.C. No. 1819 of 1996 by the Arbitrator holding that the petitioners have not affixed necessary court fees for entertaining the election dispute. Election Petition dated 19-7-1996 was filed by six petitioners before the Joint Registrar of Co-operative Societies, Ernakulam, who vide Ext.P1 order dated 7-8-1996, in exercise of the powers under Sec. 70(1)(c) of the Act appointed the Assistant Registrar (General), Kanayannur to hear and dispose of the matter.

2. Arbitration case was filed against the election held on 23-9-1996 in the Thevara Urban Co-operative Society, in which respondents 1 to 5 got elected. Petitioners wanted a declaration that the election held on 23-9-1996 is void and illegal and that petitioners should be declared to have been elected in the place of respondents 1 to 5. Before the Arbitrator a preliminary objection was raised by the third respondent contending that Arbitration Case is not liable to be entertained since the requisite court fees have not been remitted by the petitioners. According to third respondent and others, petitioners ought to have remitted Rs. 500/- each towards fee as per Rule 67(7)(a)(1) and also court fee of Rs. 12/-. Instead, the petitioners have jointly paid only an amount of Rs.

500/- as fee and Rs. 2/- towards court fee. Further respondents 1 to 5 have also raised another contention that Arbitration Petition was not accompanied by the records relied on by the petitioners and only a list of relevant documents relied on by the petitioners was produced.

3. Petitioners filed a statement to the preliminary objection stating that as per Rule 67(7)(a)(I) of the Rules, they need pay only Rs. 500/- to decide the dispute in the Election Petition. According to the petitioners, all the petitioners need not independently pay Rs. 500/- for deciding the dispute. Further it was also stated that Rule 67(7) is intended only to subsequent petitions and applications which are being presented regarding interlocutory prayers. Therefore there is no necessity of affixing stamp of Rs. 2/- by way of court fee in an Election Petition.

4. Contentions raised by the petitioners were repelled by the arbitrator. Arbitrator rejected the petition holding that sufficient court fee has not been affixed by the petitioners.

5. The short question that has come up for consideration in this case is whether the election petition filed by the petitioners is maintainable or not due to deficiency of court fee.

6. I am of the view that this question has already been answered by a learned single Judge of this court in *Gopalakrishna Panicker v. State of Kerala*, 1990 (2) KLT 495. This court took the view that it has been the settled law that formalities relating to election petitions have to be complied with strictly, and that any deviation therefrom will prove fatal to the very maintainability of the petition itself. This is because the right to challenge an election is not a common law right, but a special right which has to be specifically conferred by statute and therefore, the terms of the statute conferring the right have to be complied with before the petition can be maintained and entertained. Referring to the decision of the Supreme Court in *Charan Lal Sahu Vs. Nandkishore Bhatt and Others*, , and in *Satya Narain Vs. Dhuja Ram and Others*, , the court highlighted the public interest which requires an expeditious culmination of the election process.

7. The relevant rule, which is applicable to this case, is extracted below:

67. Reference of disputes, payment of expense and decisions on disputes.--

(7)(a) The fees for deciding the dispute shall be as follows:--

I. Monetary disputes:--

Forty paise for claims of every Rs. 10 or part thereof, subject to a minimum of Rs. 10 and a maximum of Rs. 500/-

II. Non-monetary disputes.--

(i) For cases filed by the employees of the society Rs. 50/-

(ii) in other cases Rs. 500/-

Note:-- The fees shall be paid in advance into the nearest Government Treasury. All petitions and applications presented under this Rule shall bear court fee stamps as required under the Kerala Court Fees and Suit Valuation Act, 1959 (10 of 1960).

It is evident from the above mentioned rule, in the case of non-monetary disputes, Rs. 500/- is the fees and that fee has to be paid in advance in the nearest Government Treasury. All petitions and applications presented under the Rule shall bear court fee stamps as required under the Kerala Court Fees and Suits Valuation Act, 1959. Therefore, over and above Rs. 500/- a person who challenges an election has to affix a court fee of Rs. 2/- as well.

8. A Division Bench of this court in *Nandakumar v. Arbitrator*, (1996) 2 KLT 324 upheld the decision of a learned single Judge of this court in *Gopalakrishna Panicker's* case (*supra*) with regard to payment of fees, and production of receipted challan for entertaining the election petition. Division Bench held as follows: The learned single Judge in *Gopalakrishna Panicker's* case (1990 (2) KLT 495) in interpreting R.67 of the Kerala Co-operative Societies Rules held that the mandatory rule therein is to produce the document on which the dispute is based as well as receipted challan to evidence payment of the fees fixed under clause (a) of sub-rule (7) for deciding the dispute along with the petition. The interpretation of the expression "list of relevant records" did not arise for consideration directly in that case. The relevant portion of the rule reads as follows:

The application shall be accompanied by a list of relevant records on which the dispute is based and a receipted challan to evidence payment of the fees fixed under clause (a) of sub-rule (7) for deciding the dispute.

It contains two clauses. The first clause relates to the submission of a list of "relevant records on which the dispute is based" and the second part is "receipted challan to evidence payment of the fees". Both the clauses are to be read disjunctively in as much as a list of relevant records does not mean the documents as such. No rule of the Co-op. Societies Rules lay down that the petitioner is required to file all the documents or records along with the petition failing which the petition is liable to be rejected. So far as the mandatory rule in the other part of the aforesaid rule, namely, the production of a receipted challan, is concerned there can be no doubt that without the accompaniment of a challan in evidence of payment of fees along with the petition, the same cannot be entertained like a suit. The interpretation by the learned single Judge in *Gopalakrishna Panicker's* case (1990 (2) KLT 495) with regard to the mandatory requirement of production of a challan appears to be correct. But the interpretation of the rule regarding requirement of production of the document or record along with the petition does not appear to be correct.

In view of the finding of the Division Bench, it is evident that the payment of requisite court fees along with the Election Petition is a mandatory requirement.

I am not prepared to accept the contention of the petitioners that they need together pay only Rs. 500/- as fees. What petitioners pray for is not merely setting aside election and therefore resolving the dispute, but they wanted them to be declared elected in the place of respondents 1 to 5. Therefore all the petitioners are bound to pay Rs. 500/- each. Apart from that, they have to affix court fee stamps of Rs. 2/- each. Even if the petitioners are filing the Election Petition collectively, they are bound to pay fees and court fees as mentioned above. In the said circumstances, I am of the view that Arbitrator has rightly rejected the petition filed by the petitioners. Consequently, this writ petition lacks merits and the same is dismissed.