

(2015) 02 KL CK 0116

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 23400 (Y) and 23980 of 2014

Pradeep U.R. and Ors

APPELLANT

Vs

The Kerala State Co-Operative Election Commission and
Others

RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 16, 17, 19, 20

Citation : (2015) 2 ILR Ker 80 : (2015) 2 KHC 62 : (2015) 1 KLT 911

Hon'ble Judges : V. Chitambaresh, J.

Bench : Single Bench

Advocate : P.C. Sasidharan, for the Appellant; D. Somasundaram, Spl.
Government Pleader, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V. Chitambaresh, J.—Is it an inflexible rule that an election process halted has to be continued from that stage only notwithstanding the efflux of time? The issue arises in the context of an election to the Managing Committee of a registered Co-operative Society.

2. The election to the Managing Committee of the Desamangalam Service Co-operative Bank Ltd. No. 134 ["the Bank" for short] was originally slated on 31.8.2014 as per the notification issued. But the election was indefinitely postponed by order dated 28.8.2014 of the Kerala State Co-operative Election Commission ["the Commission" for short]. The reason stated for the postponement was that the Bank did not make available the Register in Form-6B containing the photograph of the identity card holders. The power of the Commission to postpone the election under Section 28B of the Kerala Co-operative Societies Act, 1969 ["the Act" for short] is beyond dispute. Such power of superintendence, direction and control is discernible from Rules 35A and 35B of the Kerala Co-operative Societies Rules, 1969 ["the Rules" for short] as well. More than 6 months have elapsed since the postponement of election and there

was time enough to prepare the Register in Form-6B and therefore the election process has to be completed sooner or later.

3. I heard Mr. P.C. Sasidharan, Advocate on behalf of the petitioners in W.P. (C) No. 23400/2014, Mr. C.A. Majeed, Advocate on behalf of the petitioner in W.P. (C) No. 23980/2014, Mr. D. Somasundaram, Special Government Pleader on behalf of the State and Mr. George Poonthottam, Advocate on behalf of the Bank.

4. One of the questions that arise for consideration is as to whether the election process has to be continued from the stage it was halted or a fresh notification be issued. It may at once be noticed that about 6 months have elapsed since the postponement of election and there has been a sea change in the Act and the Rules owing to amendments. Many a voter would like to put in his nomination as a candidate for election which opportunity cannot be deprived for the reason that he did not do so earlier. The possibility of a few voters being ineligible to vote or the existing candidates being incapacitated due to efflux of time cannot altogether be ruled out. What is the harm in directing a fresh notification for election to be issued giving opportunity to those who would like to contest in the present scenario? I do feel that a fresh notification displaying the election calendar would subserve the ends of justice taking note of the expiry of 6 months after postponement. I am conscious of the fact that the election was directed to be continued from the stage it was stopped in *Madhavan Namboodiri Vs. Kumaran and Others*--> . But the said decision was rendered in the context of Rule 35 of the Rules which has been omitted by SRO. 733/2014 with effect from 26.11.2014. This is not a case of stoppage of election by the Returning Officer due to interruption but a conscious postponement by the Commission due to non-availability of vital records. I am not therefore dissuaded from directing the Commission to issue a notification afresh and commence the process for conducting the election to the Managing Committee of the Bank.

5. Yet another reason which persuades me to direct the Commission to issue a notification for election anew is the amendment to the Act and the Rules as regards the right of a member to vote. Sections 16A, 19A of the Act and Rule 18A of the Rules have been so introduced See: *Kalladikode Service Co-operative Bank Ltd. v. State of Kerala* [2015 (1) KLT 438]. The necessity to adhere to the amended provisions has been highlighted therein following *Gopalakrishnan v. State of Kerala* [2011 (3) KLT SN 51 (DB)]. It is inter alia contended that Section 20 of the Act remains unamended and that the right of a member to have one vote remains unaffected even after the amendment aforesaid.

6. Section 20 of the Act is extracted hereunder for the sake of clarity:

"20. Vote of members - Notwithstanding anything contained in any other provision of this Act or any other law, every member of a society shall have one vote in the affairs of the society:

Provided that--

(a) a member admitted within sixty days immediately prior to the date of election shall not have the right to vote;

(b) a nominal or associate member shall not have the right to vote;

(c) where the Government is a member of the Society, each person nominated by the Government on the committee of the society shall have one vote each including the right to vote for election of office bearers of the society;

(d) an ex-officio member on the committee of a society shall have one vote but shall not have right to vote for election of office bearers of the society;

(e) in the case of an equality of votes, the chairman shall have and exercise a second or casting vote."

(emphasis supplied)

The proviso (a) to Section 20 of the Act itself reveals that a member admitted within 60 days immediately prior to the date of election shall not have the right to vote even though would continue as such. Rule 35A(4) of the Rules also throws light on the fact that the Administrative Department shall be responsible for the publication of the list of members qualified to vote. The qualification should be in accordance with the provisions of the Act, Rules and the Bye-laws of the Bank as it stood on a date 60 days prior to the date fixed for the poll. Thus a member having a vote should nevertheless have a right to exercise that vote as per the Scheme of Sections 16A, 19A, 20 and Rule 18A and 35A(4) of the Rules. The non obstante clause in Section 20 of the Act merely reiterates the right of a member to have one vote and does not deal with the exercise of that right by the member.

7. It is one thing to say that a member shall have one vote and quite another thing to say that such member has the right to exercise that vote as has been noticed above. All voters in a society would definitely be its members though not vice versa as has been held in *K.V. Vijayakumar Vs. The Joint Registrar of Co-operative Societies and Others*, as follows:-

"14. We are, however, of the view that all voters no doubt must be members, but all members may not necessarily be voters. Merely by virtue of being a member, one does not acquire the right to vote automatically. A member, for example, shall not be eligible to be a voter unless 30 days prior to the date of the meeting held for passing the resolution for the election to the committee of the society, he acquires the number of shares for membership as may be provided in the bye-laws of the society of which he is a member. If a member has not complied with the condition laid down in R. 28, he does not cease to be a member. What is restricted is his right to vote in the election.

15. The right to vote must be distinguished from admission as a member. While Rules 17 and 20 deal with conditions for admission, R. 26 deals with prohibition for admission to membership within a particular period. Ss. 16, 17, 19 and 20

deal with admission, expulsion, suspension of the rights and conferment of right to vote on member of the Society. (Vide Vasavan's Case). Rule 35 of the Rules on the other hand, lays down the duties and responsibilities of the Returning Officer to publish the final list of eligible voters, after considering the objections if any received, against any of the persons list as voters. If the Returning Officer declares a member to be an ineligible voter, he does not expel him thereby from the membership of the Society. A member who is disqualified as a voter may still continue to be a member of the Society if he is not otherwise disqualified to be a member".

(emphasis supplied)

I am not oblivious of the fact that the above decision was rendered at a time when the non obstante clause contained in Section 20 of the Act had not been introduced by amendment. But the non obstante clause has no impact on the right of a member to vote and such right would not automatically follow the membership as is attempted to be projected.

8. Rajendran Vs. State Co-operative Election Commission, is a converse case where every member had one vote instead of every active member due to the amendment of Section 20 of the Act. The question whether the election process should be continued from the stage at which it was stopped or a fresh election notification based on a new resolution is necessary was considered as follows:-

"11. The next question is whether the election proceedings should be continued from the stage at which they were stopped. The election proceedings were stopped after publishing the preliminary voters" list and before publishing the final voters" list. Though as per Ext. P1 the final voters" list was to be published on 18.5.2002, it would appear that the final voters" list was not published in view of Ext. P2 circular. The preliminary voters" list was published without including ordinary members also and thus in violation of S. 20 of the Act. Therefore, in terms of R. 35A(4) of the Kerala Co-operative Societies Rules, the Chief Executive of the Bank has to again prepare and update the list of members qualified to vote in accordance with the provisions of the Act, rules and Bye-laws and to submit the voters" list duly approved by the Committee to the Electoral Officer and the Electoral Officer has to publish the preliminary voters" list calling for objections. Since the election could not be conducted on 9.6.2002 as originally decided by the Administrative committee and since a fresh preliminary voters" list has to be published, it is necessary to pass a fresh resolution fixing a new date for election. It is also necessary to issue a fresh election notification based on such resolution of the Committee. Hence, in this case, it is not possible to continue the election proceedings from the stage where it was stopped."

(emphasis supplied)

9. Is it proper for me to direct the election to be conducted as per the old notification thereby keeping the provisions of Sections 16A, 19A of the Act and Rule 18A of the Rules in suspended animation? Certainly not since the active

members qualified to vote in accordance with Sections 16A, 19A of the Act and Rule 18A of the Rules have to be identified and a fresh notification is obviously imminent. I am of course conscious of the fact that there are some observations to the contrary in the judgment dated 21.1.2015 in W.A. Nos. 75 and 80 of 2015. I find that there was no challenge therein to the amended provisions of the Act and the Rules and the judgment was rendered on the peculiar facts of that case. The same is evident from the following observations:-

"Our conclusions on the above two issues would therefore show that in so far as election to the Board of Directors of the Society is concerned, neither of the statutory provisions, viz., Section 16A, Section 19A or the provisions of the Rule 18A referred to above have any relevance."

(emphasis supplied)

The binding decisions of the Division Bench in Vijayakumar's case (supra) and Rajendran's case (supra) are also not seen referred to therein which I however respectfully follow in deciding the course of action.

10. The Administrator in charge of the affairs of the Bank is directed to take a resolution fixing the date and time of election as required under Rule 35A of the Rules. The Commission shall issue a fresh notification for the election depicting the calendar of events of course to be conducted in accordance with the amended Act and the Rules. It shall be ensured that a duly elected Managing Committee assumes office not later than 6 months from today and no other point is urged in these writ petitions.

The Writ Petitions are disposed of. No costs.