
(1981) 12 KL CK 0032
In the High Court Of Kerala
Case No : W.A. No. 511 of 1981

Pulickal Abubaker

APPELLANT

Vs

K. P. Kunhavarani and Others

RESPONDENT

Date of Decision : 02-12-1981

Acts Referred:

Citation : (1983) KLJ 523

Hon'ble Judges : P. Subramonian Poti, Acting C.J.; K. Bhaskaran, J

Bench : Division Bench

Advocate : V. Siyaraman Nair, V. M. Nayanar and R. Krishnan Nair, for the Appellant; M.M. Cherian, George Jacob, Asok M. Cheriyan and Poly Mathew, for the Respondent

Judgement

Subramonian Poti, Ag. C.J.

1. The appellant was not a party in the original petition before the learned single Judge, but being aggrieved by the judgment the appellant has been granted leave to file this appeal. The petitioners in the original petition were candidates for election to the managing committee of the Nediyruppu Service Co-op. Bank Ltd. The appellant herein was also a candidate. The returning officer for such election, the 1st respondent in the original petition was taking steps to conduct the election on 26-9-81. On that day polling commenced at 8 A.M. in four booths. While the polling was being conducted at about 9 A.M. some persons obstructed the polling and unauthorizedly entered the booths. Since the polling was interrupted by such conduct the 1st respondent returning officer stopped the polling in exercise of the powers conferred under Rule 35(3)(p) of the Co-op. Societies Rules which reads:

35. *** **

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(3) *** **

(p) if at any stage of the polling the proceedings are interrupted or obstructed by any riot or affray or if at such elections it is not possible to take the poll for any sufficient cause, the returning officer shall have power to stop the polling, recording his reasons for such an action in the minute book of the society.

2. Ext. P1 is the order passed by him recording reasons. Therein he has mentioned that he was exercising the power conferred under Rule 35(3) (p) in view of the circumstances which he has detailed in his order. The complaint of the petitioners in the original petition was that since passing Ext. P1 order no steps were being taken by the returning officer to complete the election. In the meanwhile the co-op. society has come under the management of the administrator the 3rd respondent in the original petition. In these circumstances the petitioners prayed that the court be pleased to issue an interim direction to the returning officer to conduct the election from the stage at which it was stopped on 26-9-81. It is that which has been dealt with by the learned single Judge. The learned single Judge directed the returning officer to proceed with the polling on a day to be fixed by him within one month. The learned single Judge also directed that he need not start afresh the whole election which means that those who have already cast the votes need not recast the votes. Thereupon the appellant has come up in appeal raising two points, these being: (1) Under the Kerala Co-op. Societies Rules the returning officer has only a power to conduct the elections, this does not include power to fix a date for election and that power, is only with the managing committee which means that it is with the administrator now. The learned single Judge ought not to have directed the 1st respondent to fix the date of the election; (2) The direction of the learned single judge that votes already cast need not be recast and such voters need not be allowed to vote again is not proper, for the process must start all over again.

3. The rules do not specifically provide whether the returning officer should fix the date for election which has been stopped if the election is not continued later on the same day. Nor does the rule say that this power could be exercised by the managing committee. Rule 35(1) deals with a situation which cannot be said to be the situation arising in this case. It is in these circumstances the court thought that it would give a directive. The court would be competent to do it in the circumstances. But since the contention has been raised in this case that the administrator should fix a date and none appearing in this case have any objections to that course we do not see why this should not be so fixed. The administrator may fix the date for election and on that day the election be conducted by the returning officer.

4. We have already adverted to R. 35(3)(p). That provides for stopping the polling and this may be done at any stage of the polling. It is on the satisfaction that it is not possible to take the poll. The power to stop the polling is not a power which enables him to efface what has already been done. The power of cancellation is different from a power of stopping. When something is cancelled what has already been done is effaced. The rule contemplates stopping because

polling cannot go further on account of certain circumstances until a situation arises where the obstruction or obstacle is removed. Necessarily therefore by its very character stopping of a polling does not mean that what has been done would be rendered ineffective. Even from the point of view of expediency this would be the proper approach, for otherwise the election will have to commence over and over again if only there is an attempt again and again to create some trouble or obstruction. The incentive for creating such obstruction would be more if the effect of such obstruction is to nullify whatever has been done by way of polling. Apart from that on the plain meaning of the rule we feel it proper to treat stoppage as one which for the time being operates to discontinue the polling so that it may be continued again. If it could be continued the very fact that it is continued would show that it could be taken up from the stage at which it was stopped. We do not think in the context of the rule it is possible to read the words "stop the polling" to mean that whatever has been done is also nullified. We may advert to the decision of Vadakkal. J. in *Mavelikara Co-op. Housing Society Ltd. v. Alleppey Dist. Co-op; Bank* (1974 KLT 783). On the facts it was a case different from the one before us. In that case the 3rd respondent, the returning officer for election, convened a general body meeting for poll on 19-8-1973. The election did not take place on that day since there was a stay from a court. On the stay being vacated the returning officer fixed another day, 11-11-1973. On that day also it could not be conducted because of another stay from a court. That was later vacated and the returning officer had postponed the election to a date which fell beyond the date of vacating the injunction order. Again the election could not be conducted because there was an order of stay from this court. Thereafter again election was fixed to be held on 7-4-1974. It was thereupon that this court was approached by the petitioner in that case which was a society that had been admitted as a constituent member of the 1st respondent society of which the 3rd respondent had been appointed returning officer for the election. The complaint was that the name of the petitioner society had not been included in the voters' list and therefore all steps taken for the election should be held to be invalid. Dealing with this contention this court said that the contention that the returning officer was competent to fix the date, time and place of election because of the power conferred on him under Rule 35(2) for the conduct of the election could not be sustained because under Rule 35(1) the managing committee or the administrator was given the power to fix the date, time and place for the conduct of the election. Reference was made to Rule 35(3) (p) which enabled the returning officer to stop the polling and the court in that background observed that the returning officer had no power to postpone the polling and fix another date for the polling for any reason whatsoever. What would happen if the election process is stopped by exercise of the power under R. 35(3)(p) was not considered in the case and that is the question which we are called upon to decide in this case. The decision in *Mavelikara Co-op. Housing Society Ltd, v. Alleppey Dist. Co-op. Bank* (1974 KLT 783) was followed in *Achuthan v. Returning Officer* (1977 KLT 10 short notes).

In the circumstances the only direction we need give in this appeal is that the administrator may fix a date for continuance of the polling and on that day the 1st respondent, the returning officer may conduct the polling and proceed with the election in accordance with law. The administrator shall fix a date immediately and pass an order so fixing the date within 2 weeks from today.