
(1984) 11 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 6434 of 1984

R. Bhaskara Panicker

APPELLANT

Vs

The Kerala Co-operative Tribunal Trivandrum and Others

RESPONDENT

Date of Decision : 12-11-1984

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1984) KLJ 839

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : P. K. Balasubramonian, for the Appellant; T.P.M. Ibrahim Khan, for the Respondent

Final Decision : Dismissed

Judgement

U.L. Bhat, J.—The dispute in this case relates to election to the Board of Directors of fourth respondent Co-operative Society. Petitioner, fifth respondent and several others submitted nomination papers. Nomination paper of fifth respondent was rejected by the returning officer, third respondent on the ground that the members of the Society who proposed and seconded his nomination were disqualified. Against the rejection of his nomination paper, fifth respondent filed an election petition before the second respondent. The Arbitrator found that rejection of fifth respondent's nomination paper was illegal and accordingly set aside the election and directed re-polling to be held. Petitioner filed an appeal before the Tribunal, first respondent. The appeal has been dismissed. The result is that petitioner's election stands set aside. Hence this petition under Article 226 of the Constitution of India seeking to quash the award of the Arbitrator and the Judgment of the Tribunal. Ext. P3 is a copy of the award passed by the second respondent. In paragraph 4 of the plaint filed before the Arbitrator, it was averred that fifth respondent's nomination paper was rejected on the ground that members of the Society who proposed and seconded his nomination were defaulters of the Society. The present petitioner in his petition disputed this

statement and contended that the rejection was on some other ground. The original nomination paper of the fifth respondent was produced before the Arbitrator. The nomination paper contained an order by the Returning Officer to the effect that it has been rejected since proposer and seconder are in default. Therefore, there could be no legitimate dispute regarding the reason for rejection of the nomination paper.

2. Assuming that the persons who proposed and seconded the nomination paper of fifth respondent were defaulters, the question is whether that is a defect in the nomination paper rendering it liable to be rejected? The only provision regarding election contained in the Kerala Co-operative Societies Act (for short "the Act") is in Sec. 28 of the Act. Sub-secs. (2) and (3) of this Section lay down disqualifications for being a member of the committee. Rule 35 of the Kerala Co-operative Societies Rules (for short "the Rules") deals with procedure regarding conduct of election to the committee of Societies. Sub-clause (3) refers to preparation of list of members qualified to vote at the election in accordance with the provisions of the Act and the Rules and bye-laws. Clause (3)(c)(i) states that nomination of the candidates for election shall be made in the form prescribed by the society which on application shall be supplied by the committee to any member, free of cost. Clause 3(c)(ii) states that every nomination paper shall be signed by two members whose names are included in the list of members, One of the members shall sign the Form as proposer and the other as seconder for the nomination. Clause (d) deals with ineligibility of members to be nominated as candidates. Clause (e) deals with scrutiny of nomination papers and dealing with objections raised against nominations. Clause (e)(iv) states that the Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same, as the case may be, and if the nomination paper is rejected, he shall record in writing a brief statement of his reasons for such rejection.

3. Rule 44 deals with disqualification for membership of committee. No member of the society shall be eligible for being elected or appointed as a member of the committee of the society under Sec. 28 if he comes within the various disqualifications mentioned in the sub-clauses. Clause (c) of sub-rule (1) refers to a disqualification as being in default to the society or to any other society in respect of any loan or loans taken by him or loan in which he stood surety, for such period, as is prescribed in the bye-laws of the society concerned or in any case for a period exceeding three months or is a defaulter to the society or to any other society.

4. There are certain provisions in the Act and the Rules dealing with membership and the rights of members. Sec. 16 of the Act prescribes persons who may become members. Sec. 17 of the Act deals with expulsion of members. Sec. 19 of the Act states that no member of a society shall exercise the rights of a member unless he has made such payments to the society in respect of membership or has acquired such interest in the society, as may be prescribed by the rules or the bye-laws. Sec. 20 states that every member of a society shall

have one vote in the affairs of the society. Chapter III of the Rules deals with rights and liabilities of members of co-operative societies. Rule 16 lays down the conditions to be complied with for admission for membership. Rule 17 deals with restriction on the admission of members in certain types of societies. A member who has acted adversely to the interest of the society can be expelled in accordance with the procedure laid down in rule 18. Rule 28 states that no member of society shall be eligible to vote at the meeting fixed for any election to the committee of that society, unless thirty days prior to the date of such meeting 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.

5. Thus, it is seen that preparatory to an election, the committee in office has to prepare a list of members qualified to vote at the election in accordance with the provisions of the Act, the Rules and the bye-laws as stood on a date 30 days prior to the date fixed for the poll. The list has to be published, objections called for and resolved and final list of eligible voters also published. Any such eligible member, subject to the provisions of Sec. 28 of the Act and Rules 35 and 44 of the Rules, is entitled to submit nomination for election. The nomination has to be made in the form prescribed by the society and the nomination paper has to be signed by two members whose names are included in the list of members. They are the proposer and the seconder. It is thus clear that there is a difference between a member as such, a member who is eligible to vote and a member who is eligible to be nominated as a candidate. It is not every member who is eligible to vote. The eligibility is subject to restriction in Section 19 of the Act and rule 28 of the Rules. It is not every eligible member who is entitled to be nominated as a candidate. The eligibility for nomination is subject to Section 28 of the Act and Rule 44 of the Rules. Neither the Act nor the Rules prescribe any specific eligibility criterion for members who can sign the nomination form as proposer and seconder. The only eligibility mentioned in the Rules is stipulated in Rule 35(3)(c)(ii). He must be a member whose name is included in the list of members published under rule 35(3) (b). Any member whose name is found in the final list of voters validly prepared is entitled to sign a nomination paper as proposer or seconder. There is no provision in the Act or the Rules stipulating that only a member who is eligible to be a candidate can sign nomination paper as proposer or seconder. There is no case for anybody that any such restriction is contained in the bye-laws of the society. Members whose names are found in the final list of voters, if they are in default as contemplated in rule 44(1)(c) of the Rules, will be disqualified for membership of the committee. They are not disqualified to vote or to sign a nomination paper as seconder or proposer. Such default is an inhibition only against candidature and not against the right to vote or to propose] or second any candidate. Ban on such a defaulter signing a nomination as proposer or seconder cannot be inferred from any of the provisions of the Act or the scheme thereof.

6. I am supported in this conclusion by a decision of the Punjab and Haryana High Court in *Pala Singh and Others Vs. The State of Punjab and Others*, . The

Court was dealing with the provisions of Punjab Co-operative Societies Rules. Those Rules did not contain any provision prescribing disqualification for a proposer or a seconder. But the Rules provided that a member who is a defaulter on the date of poll is disqualified from casting his vote. The disqualification attaches only where the member is a defaulter on the date of the poll. It was held that disqualification did not attach to a member who was not defaulter on the date of the poll but was a defaulter on the date of his signing a nomination as proposer or seconder. The Court observed:

In the context in which the word "proposer" is mentioned in the instructions, all that appears to be meant is that he shall be a person whose name is borne on the list of members of the Society, although the same is designated as "zonal list of voters" which expression can mean nothing more or less than a list of members of the Society pertaining to a particular zone without reference to the disqualification, if any, that such member may earn or may have earned by reason of a default in so far as his right to vote at the poll to be held later on is concerned.

7. Nomination paper of the fifth respondent was rejected solely on the ground that the proposer and seconder were in default as contemplated in rule 44(1)(c) of the Rules. If they were such defaulters, the only consequence is that they would be disqualified for membership of the committee. They would not be disqualified for signing the nomination as proposer or seconder; they would not be disqualified even in the matter of exercising their right of vote. Therefore, the conclusion of the Arbitrator as well as that of the Tribunal that the rejection of the nomination paper of the fifth respondent was illegal is sustainable in law.

8. Learned counsel for the petitioner has raised certain other contentions. Petitioner herein preferred Ext. P1 objections before the Arbitrator raising certain preliminary objections. They were overruled. Petitioner herein filed an appeal before the Tribunal and the Tribunal stayed further proceedings of the Arbitrator under Ext. P2. The order of stay was in force for two months from 11-4-1984. Even before that fifth respondent filed an original petition in this Court and the petition was disposed of directing the Arbitrator to dispose of the arbitration case within two months from the date of receipt of a copy of the judgment. The judgment pronounced on 31-1-1984 must have been received by the Arbitrator sometime later. The Arbitrator disposed of the arbitration case and pronounced the award on 13-4-1984. This was within the period of time stipulated by this Court; however, this was when the order of stay granted by the Tribunal was in force. Learned counsel for the petitioner would contend that in these circumstances the award must be declared to be illegal. It is most unfortunate that the Arbitrator pronounced the award at time when the stay order issued by the Tribunal was in force. Evidently, he did so feeling constrained by the judgment of this Court in the original petition directing him to dispose of the arbitration case within a particular period. This court could not have intended that he should dispose of the case even violating any order of stay passed by a

competent tribunal. It would be open to this court now to set aside the award and remit the case for fresh disposal. But no purpose will be served in as much as it is clear that the rejection of the nomination paper was illegal.

9. Learned counsel for the petitioner also contended that rule 67 of the Rules requires that the application before the Arbitrator should be accompanied by a list of relevant records on which the dispute is based and in this case the application was not accompanied by any such list. It is therefore contended that the application or plaint was liable to be rejected in limine on that ground. There is no provision in the Act or the Rules prescribing the consequence of the list of relevant records not being produced along with the application. Therefore, dismissal of the application on that ground cannot be said to be mandatory. Further, it cannot be said that the dispute is based on any particular record. The dispute raised is regarding the rejection of the nomination paper. The only relevant records would be the nomination paper and the order of rejection. These records have been referred to in the application. No prejudice has been caused to the opposite side on account of the application not being accompanied by a list of relevant records. I therefore do not agree that the application should have been dismissed in limine. It is next contended that the unsuccessful candidates were foot impleaded in the arbitration case and this was a fatal defect. The Rules do not prescribe that the unsuccessful candidates should be made parties. They may be proper parties but in the absence of any rule prescribing that they shall also be impleaded, I am not satisfied that it is a fatal defect requiring dismissal of the application.

In these circumstances, I find no ground to interfere under Article 226 of the Constitution of India. Original Petition is dismissed but in the circumstances, without costs.