

(2014) 02 KL CK 0001
In the High Court Of Kerala
Case No : WP(C). No. 2182 of 2014(W)

R. Subash

APPELLANT

Vs

State Co-Operative Election Commission, The Electoral
Officer, The Returning Officer, Ottoor Service Co-Operative
Bank Ltd.

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 02 KL CK 0001

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : B.S. Swathi Kumar, Sri. Remya Murali, Sri. Ashish Mohan and Sri. A.K. Rajesh, Advocate for the Appellant; D. Somasundaram, Spl. Government Pleader for R1 to R3 and Sri. P.N. Mohanan, Advocate for R4, Advocate for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The petitioner is a member of the respondent society to which elections are scheduled on 8.2.2014. The petitioner contends that as per the notification, though a draft voters list is to be published on 4.1.2014; no such list was published and that on the publication of the final voters list it was detected that there were ineligible persons included in the final voters list. There is also a contention that the outgoing Managing Committee has resorted to en masse enrolment of members that too within the statutorily prohibited sixty day period, of the elections scheduled. The petitioner seeks an interdiction of the elections and a fresh election to be conducted as mandated under the Kerala Co-operative Societies Act and Rules, 1969.

2. The petitioner society has around 6054 members and election was scheduled as per Ext.P1 notification dated 23.12.2013. Though the petitioner contends that no draft voters list was published it is the submission of the learned Special

Government Pleader, on instruction from the Electoral Officer, that in fact, a draft voters list was published on the notice board of the society and that no objections were received. Admittedly, the petitioner has not filed an objection.

3. But, the petitioner however, contends that without publication of draft voters list there could not have been any objection filed. The petitioner also has a contention that there are included in the voters list, many persons who are not eligible to exercise their franchise for reason of their having their residence abroad or out of the area of operation of the society and also for reason of many of them being no more. What the petitioner would alternatively pray for is that at least the disputed vote be kept in a separate box.

4. Looking at the averments made in the writ petition as also the arguments made before Court, all the allegations raised here, would require adjudication of facts. Whether a draft voters list was published, as also members included in the final voters list being outside the area of operation of the society are all matters requiring examination of facts. It is trite that disqualification of members is not a procedure contemplated at the time of elections and obviously, the petitioner does not have a case that he has approached any authority for such disqualification at any earlier point of time.

5. The apprehension of impersonation in the election definitely can be set at naught by verification with form 6B register on a dispute of identity being raised.

6. Considering the totality of the circumstance as also the fact that the election is scheduled on 8.2.2014; which normally this Court does not interfere with under Article 226, this Court is of the opinion that the petitioner has to raise all such contentions, if so advised, in a properly instituted Election Petition. This Court is not convinced that the allegations now raised would enable this Court to invoke the extra ordinary jurisdiction so as to interdict a validly constituted election. It is made clear that this court has not made any observation as to the procedure of the election or the voters list, being valid, which the petitioner would be entitled to agitate in a validly constituted Election Petition.

Writ Petition is dismissed. No costs.