
(2004) 02 KL CK 0026
In the High Court Of Kerala
Case No : W.A. No. 2965 of 2002

Rajendran

APPELLANT

Vs

State Co-operative Election Commission

RESPONDENT

Date of Decision : 13-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2004 Ker 329 : (2004) 2 ILR (Ker) 413 : (2004) 1 KLT 1026

Hon'ble Judges : K.K. Denesan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; B.S. Swathi Kumar and P. Ravindran, for the Respondent

Judgement

Cyriac Joseph, J.—The appellant is the petitioner in O.P. No. 16199 of 2002 which was dismissed by the learned Single Judge. The respondents herein are the respondents in the said Original Petition.

2. The dispute relates to election to the Managing Committee of the Kumaramputhooor Service Co-operative Bank Limited No. 373 (hereinafter referred to as "the Bank"). As per resolution dated 4.4.2002 of the Administrative Committee of the Bank it was resolved to conduct election to the Managing Committee of the Bank on 9.6.2002. The said resolution was sent to the State Co-operative Election Commission (first respondent) through the Joint Registrar of Co-operative Societies (General), Palakkad (second respondent). As per Ext. P1 election notification dated 27.4.2002 issued by the first respondent, the election was scheduled to be held on 9.6.2002. The date for filing the nomination papers was 27.5.2002, the date for scrutiny of the nomination papers was 28.5.2002 and the date for withdrawal of the nomination papers was 29.5.2002. The preliminary list of active members eligible to vote in the election was to be published on 13.5.2002 and the objections to the preliminary voters' list was to be filed before 5 p.m. on 17.5.2002 and the final voters' list was to be published on 18.5.2002. A preliminary voters' list was published by the Electoral

Officer (4th respondent) on 13.5.2002. But, before preparing and publishing the final voters" list, the first respondent issued Ext.P2 Circular dated 14.5.2002 directing that in view of the coming into force of the Kerala Co-operative Societies (Amendment) Ordinance, 2002 (Ordinance No. 6/2002) on 4.5.2002, elections to Co-operative Societies shall be held only after including all eligible members in the preliminary/final voters" list published on or after 4.5.2002. It was pointed out in Ext.P2 that as per the said Ordinance, not only the active members but all the members of the Society were given the right to vote. It was also directed that the Electoral Officers should immediately stop the election proceedings in the case of Societies where preliminary/ final voters" list was published on or after 4.5.2002 including only active members in such list. It was further directed that fresh date for conducting the election should be decided by the Societies in terms of Rule35A(4) of the Kerala Co-operative Societies Rules and the resolution should be sent to the State Co-operative Election Commission through the Joint Registrar (General) concerned. Based on Ext.P2 Circular of the first respondent, the 4th respondent published Ext.P3 notice dated 19.5.2002 stating that proceedings to conduct election to the Managing Committee of the Bank on 9.6.2002 were stopped until further orders. Thereafter, the Administrative Committee of the Bank met on 11.6.2002 and passed a fresh resolution (Ext.P4) to conduct the election on 30.6.2002. The said resolution of the Administrative Committee was forwarded to the first respondent through the Joint Registrar of Co-operative Societies, Palakkad. In Ext.P4 resolution the Administrative Committee took the stand that Ordinance No. 6 of 2002 was not applicable to the Bank as the election proceedings had already commenced and that the election proceedings should be continued from the stage where it was stopped and the election should be held on 30.6.2002. Alleging that the respondents were not taking any effective action to conduct the election as per Ext.P4 resolution of the Administrative Committee, the petitioner who is the convener of the Administrative Committee filed the Original Petition on 17.6.2002 praying to quash Exts.P2 and P3 and to direct respondents 1, 3 and 4 to conduct the election on 30.6.2002 as per Ext.P4 resolution. Along with the Original Petition C.M.P. No. 27499 of 2002 was filed praying for stay of all further proceedings pursuant to Exts.P2 and P3. Though notice was ordered on the Original Petition and the C.M.P. on 25.6.2002, no interim order was passed by the court. While issuing notice to the respondents, the court directed the petitioner to implead the affected parties in a representative capacity. However, no step was taken to implead the affected parties. The Original Petition was finally heard and was dismissed on 21.11.2002.

3. In the impugned judgment, the learned Single Judge has referred to the argument of the learned counsel for the petitioner that as on the date of publication of the preliminary voters" list, the amendment to Section 20 of the Kerala Co-operative Societies Act (hereinafter referred to as "the Act") conferring voting right on every member of a Society had not come into effect and as such the election should have been proceeded with, based on the unamended

provision. Reference is also made to the argument that, once the process of election has commenced, the Electoral Officer could not have stopped the election for the purpose of giving effect to the Circular issued by the first respondent, Election Commission. Reference is also made to the contention that the Election Commission has no jurisdiction to issue any such direction unless the Ordinance or the Act is given retrospective effect. The learned Single Judge observed that the contention was not without force. However, since the election was scheduled to be conducted on 9.6.2002 and since that date was already over, the learned Single Judge held that the process of election should be started afresh on the basis of a fresh resolution to be passed rescheduling the date of election and other processes. According to the learned Single Judge, in view of the amendment already brought into force, every member is entitled to cast his vote in the election to be held pursuant to any resolution rescheduling the date of election. Though the counsel for the petitioner, relying on the decision in *George v. Joint Registrar 1985 KLT 836* contended that the process of election should continue from the date on which the resolution had already been passed, the learned Single Judge pointed out that the above mentioned case was a case where the polling was adjourned by the Returning Officer; whereas, in the present case only the preliminary voters' list was published and no other steps were taken. Hence the learned Single Judge held that it was not just and proper to deny the voting right to persons who were entitled to vote as per the amended provision when the Legislature in its wisdom decided to give such a right to all the members of the Bank. According to the learned Single Judge, if the election is to be held based on the provisions as it stood at the time of preparing the electoral roll, it will be a denial of the right conferred on the members of the Society. The learned Single Judge rejected the contention that the election should be held as per the pre-existing law. According to the learned Single Judge, the question had become academic so long as the election could not be held as fixed earlier. After holding that the Original Petition had become infructuous, the learned Single Judge directed the Administrative Committee to proceed to conduct the election on or before 28.12.2002 and the State Co-operative Election Commission was directed to issue necessary notification on receipt of the resolution of the Administrative Committee.

4. Aggrieved by the judgment of the learned Single Judge the petitioner in the Original Petition has filed this appeal praying to set aside the judgment of the learned Single Judge and to grant all the reliefs prayed for in the Original Petition. The Writ Appeal was admitted on 10.12.2002 and an interim order was passed in C.M.P. No. 7958 of 2002 staying all steps pursuant to the impugned judgment, pending disposal of the appeal. Sri. Habeebulla. S.R, who is a member of the Bank was allowed to get himself impleaded as additional 5th respondent in the Writ Appeal as per order dated 30.1.2003 in C.M.P. No. 197 of 2003.

5. We have carefully considered the pleadings in the case and the submissions made by the learned counsel for the parties with reference to the statutory provisions.

6. According to S.20 of the Kerala Co-operative Societies Act, 1969 as it stood prior to 1.1.2000, every member of a Society shall have one vote in the affairs of the Society. But S.20 of the Act was amended with effect from 1.1.2000 as per Act No. 1/2000 providing that notwithstanding any thing contained in any other provision of the Act or any other law, every active member of a Society shall have one vote in the affairs of the Society. S.20 was again amended by Ordinance No. 6 of 2002 with effect from 4.5.2002 deleting the word "active" and providing that every member of a Society shall have one vote in the affairs of the Society. The said Ordinance was later substituted by Act No. 3 of 2002. Thus, during the period from 1.1.2000 to 3.5.2002 only active members of a Society were entitled to vote in the affairs of the Society but with effect from 4.5.2002 all members of a Society are entitled to vote.

7. Consequent on the amendment of Section 20 as per Act No. 1 of 2002, Rule 28 of the Kerala Co-operative Societies Rules was amended to provide that only active members as defined in Section 20 of the Act shall be eligible to vote. In Rule 35A(4) of the Kerala Co-operative Societies Rules also it was provided that only the active members shall be included in the voters' list. However, pursuant to the amendment of Section 20 as per Ordinance No. 6 of 2002 which was later substituted by Act No. 3 of 2002, no corresponding amendment was effected either in Rule 28 or in Rule 35A(4). Thus even now as per the Proviso to Rule 28 and Rule 35A(4), only active members shall be eligible to vote. But, the said provisions in the Rules have no legal force as they are contrary to the provisions contained in S.20 of the Act. Therefore, notwithstanding the apparent conflict between the provisions in the Act and the provisions in the Rules, with effect from 4.5.2002 every member of a Society shall have one vote in the affairs of the Society.

8. As per Ext. P1 notification issued on 27.4.2002, the preliminary voters' list was to be published on 13.5.2002. According to the averments in the Original Petition and the Memorandum of Writ Appeal, the preliminary voters' list was published on 14.5.2002. It appears to be a typing error. Whether the date of publication of the preliminary voters' list is 13.5.2002 or 14.5.2002, it was after the amendment to Section 20 of the Act providing that every member of a Society shall have one vote in the affairs of the Society. In other words, on the date on which the preliminary voters' list was published, every member of the Society was entitled to vote in the affairs of the Society and hence, eligible to be included in the preliminary voters' list. But admittedly, active members alone were included in the preliminary voters' list. Thus, the preliminary voters' list was prepared and published in violation of the provisions contained in Section 20 of the Act. It is to avoid such illegalities in the preparation of the voters' list that Ext.P2 Circular was issued by the first respondent, State Co-operative Election Commission directing that in the case of preliminary/final voters' list published on or after 4.5.2002, the election shall be conducted only after including all the eligible members of the Society in the voters' list. It is to give effect to the statutory provisions contained in Section 20 of the Act that the first respondent

directed that where the voters" list was published on or after 4.5.2002 including only the active members, the election proceedings should be immediately stopped and resolution should be sent to the first respondent through the Joint Registrar after fixing the date of election providing for sufficient time as per Rule 35A(4) of the Rules. It is in compliance with Ext.P2 Circular that the Electoral Officer published Ext.P3 notice stopping the election proceedings and enabling the Bank to fix a date for election in terms of Ext.P2 and to prepare the list of members qualified to vote at the election in accordance with S.20 of the Act. Hence, there was no illegality or impropriety in issuing Ext.P2 Circular by the first respondent and in publishing Ext.P3 notice by the 4th respondent.

9. There is no merit in the contention of the appellant that the first respondent Commission had no jurisdiction to issue Ext.P2 Circular directing to stop the election proceedings. The State Co-operative Election Commission was constituted u/s 28B of the Act. According to Section 28B of the Act, notwithstanding anything contained in the Act or in the Rules, the Government shall by notification in the Gazette constitute a State Co-operative Election Commission for superintendence, directions and control of the conduct of elections to the committees of all credit, apex, central and federal societies in the State. Hence the powers and functions of the State Co-operative Election Commission included "the superintendence, directions and control of the conduct of elections" to the Committees of the Societies. Therefore, it is the duty of the State Co-operative Election Commission to ensure that election to the Committees of the Societies are conducted strictly in accordance with the provisions of the Act. When it came to the notice of the first respondent that notwithstanding the amendment to Section 20 of the Act with effect from 4.5.2002 making every member of a Society eligible to vote in the affairs of a Society, elections were going to be held based on voters" list published on or after 4.5.2002 including only active members, the first respondent had the power and duty to take cognizance of such illegality in the preparation of the voters" list and to ensure that elections are held in accordance with law, after removing the illegality and publishing the voters" list in accordance with the provisions of Section 20 of the Act. It was in exercise of the said power and duty of the first respondent that the directions contained in Ext.P2 Circular were issued by the first respondent. Hence, in our view, the first respondent had the competence and jurisdiction to issue Ext.P2 Circular and he was fully justified in issuing the said Circular.

10. The next question is whether the respondents are bound to act upon Ext.P4 resolution of the Administrative Committee. In Ext.P4 the Administrative Committee took the stand that Exts.P2 and P3 were illegal, that the first respondent had no power to direct to stop the election proceedings and that Ordinance No. 6 of 2002 would not affect the election to the Managing Committee of the Bank. We have already found that the first respondent had the power and jurisdiction to issue Ext.P2 Circular and that the 4th respondent had published Ext.P3 notice only in compliance with Ext.P2 Circular. There is no legal

basis for the contention that Ordinance No. 6 would not affect the election to the Managing Committee of the Bank. As already pointed out, Section 20 of the Act was amended by Ordinance No. 6 of 2002 with effect from 4.5.2002 and therefore with effect from 4.5.2002 every member of the Society was entitled to vote in the affairs of the Society. The preliminary voters' list was published after the said amendment but including only active members and excluding the ordinary members. Thus the preliminary voters' list was prepared in violation of the provisions contained in Section 20 of the Act. Though the election notification to conduct the election on 9.6.2002 was issued on 27.4.2002, the voters' list was liable to be prepared in accordance with the statutory provisions in force at the time of preparation of the voters' list. Therefore, Ordinance No. 6 of 2002 which amended Section 20 of the Act with effect from 4.5.2002 was applicable to the election to the Managing Committee of the Bank since the preliminary voters' list was published on 13.5.2002. Hence the stand taken by the Administrative Committee in Ext.P4 was wrong and illegal and the respondents were not bound to act upon Ext.P4 resolution.

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 Section 20 of the Act. Therefore, in terms of Rule 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.

12. When the appellant contends that the election proceedings should continue from the stage where it was stopped, his demand appears to be that the election should be conducted on the basis of a voters' list containing the name of only active members of the Bank. Since Section 20 of the Act had been amended with effect from 4.5.2002 conferring voting right on the ordinary members also and since the preliminary voters' list was published only after the coming into force of the said amendment, the appellant's demand cannot be accepted. Acceptance of the said demand will amount to permission to conduct the election based on the voters' list prepared contrary to the provisions contained in the Act. When the first respondent intervened to stop the election proceedings and to ensure

that the election is conducted in accordance with the provisions of the Act, there is no justification for the High Court to invoke its jurisdiction under Article 226 of the Constitution of India to facilitate an illegal election. Such an election is sure to be set aside if it is challenged.

13. There is another aspect also. If the election proceedings are to be continued from the stage where it was stopped in this case, the election proceedings will have to be continued from the stage the objections to be preliminary voters" list and preparing the final voters" list. While preparing such final voters" list the Electoral Officer cannot ignore the fact that the ordinary members of the Bank were wrongly excluded from the preliminary voters" list and the Electoral Officer will have to publish the final voters" list including the ordinary members also. In such a situation also, the demand of the appellant to conduct the election based on the voters" list containing only active members of the bank will not be accepted. Hence ultimately there will not be any material difference for the appellant even if the election proceedings are continued from the stage where it was stopped.

14. According to Rule 35A(4) of the Kerala Co-operative Societies Rules the Electoral Officer shall be responsible for the publication of the list of members qualified to vote at the election in accordance with the provisions of the Act, Rules and Bye-laws as stood on a date 60 days prior to the date fixed for the poll. It means that the list of members of the Society shall be as on a date 60 days prior to the date fixed for the poll. In other words, persons admitted as members within 60 days prior to the date fixed for the poll are not eligible to be included in the voters" list. This is clear also from Rule 28 of the Kerala Co-operative Societies Rules which provides that no member of a Society shall be eligible to vote at the meeting fixed for any election to the Committee of that Society unless 60 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. This is further clear from Rule 26 which provides that no Society shall admit members or approve the transfer of shares within 60 days prior to the date of election or the date of the General Body meeting and that any person admitted as member and any person in whose favour the transfer of shares has been approved in contravention of the Rule, shall not have the right to membership or the right to vote at the said election or at the General Body meeting. Therefore, only persons admitted as members 60 days prior to the date fixed for poll are eligible to be included in the list of members qualified to vote at the election.

15. If a new, date of election has to be decided by the Committee and if a new schedule of election, has to be notified by the Electoral Officer, a question will arise whether the list of members qualified to vote at the election should be prepared with reference to the new date fixed for the poll or to the original date fixed for the poll. Relying on *Madhavan Nambboodiri v. Kammaran* 1992 (2) KLT 567 learned counsel for the appellant submitted that the list of members

qualified to vote should be prepared with reference the original date fixed for poll, i.e. 9.6.2002. On the other hand, learned counsel for the 5th respondent contended that the list of members qualified to vote should be prepared with reference to the new date fixed by the Committee. In *Madhavan Namboodiri v. Kammaran* (Supra) this Court held that when polling is stopped under Rule 35(3)(p) of the Rules, the election process can be continued from the stage at which it was stopped. Under Rule 35(3)(p) the Returning Officer can stop the polling if at any stage of the polling the proceedings are interrupted or obstructed by any riot or affray or if at such election it is not possible to take the poll for any sufficient cause. The Court also held that if the process is adjourned under Rule 35(3)(v) of the Rules, then also the proceedings can be continued from the stage at which it was stopped. Under Rule 35(3)(e)(v), while examining the nomination papers and deciding the objections, the Returning Officer may adjourn the election proceedings when such proceedings are interrupted or obstructed by riot or affray or by causes beyond his control. The court further held that taking into account the setting and purpose of Rule 35, the normal rule is that an election process having been started if for any reason had to be stopped in the middle, it can be continued from the stage at which it was stopped. Even in cases not covered by Rule 35(3)(e)(v) and Rule 35(3)(p), by virtue of the provisions contained in Section 28 of the Act and Rule 35 of the Rules, it is for the Managing Committee to fix the date for election. Though there is no provision in the Act or the Rules as to what should happen if an election could not be held on the original date due to any reason not contemplated under the Rules, it does not mean that the Committee is powerless. The authority and jurisdiction to fix the date of an election is vested in the Committee and when such power is conferred on the Committee there is an implied grant of the power of doing all such acts which are essentially necessary to its execution. In that view of the matter, the court held that the Committee has jurisdiction and power to fix a new date for the election, if it could not be conducted on the original date fixed and in the absence of any clause giving them that power will not militate against the Committee exercising such a power in a contingency where an election could not be conducted on the date originally fixed. However the court rejected the contention that when the election is postponed or adjourned, members admitted 60 days prior to the new date fixed for poll will be entitled to vote and that a new voters' list will have to be prepared. The court held that the intention in making a prohibition in Rule 26(2) is clear that a member disqualified under that rule will not be entitled to vote at the "said election" even if the election is postponed or adjourned due to any reason beyond the control of the Managing Committee or the Returning Officer. If for any reason the election was adjourned to any other date, the members who are entitled to vote will have to be determined taking into account the original date of election and not the adjourned date of election. The court also held that the Managing Committee has authority and jurisdiction to fix a new date for the election, if for any reason the election could not be conducted on the original date fixed and that it is not necessary to repeat the whole process as contemplated under Rule 35 and that election proceedings could be continued

from the stage at which it was stopped. The court pointed out that if it is to be held that the whole election process has to be repeated when an election is adjourned for whatever reason, it will upset the whole democratic process and subvert the normal election process. The court also observed that a few people may for some reason or other will be able to stop the election and if it is to be started afresh, there will be no end to the election process. According to the court, expediency also demands that once the election process is started, even if it is interrupted in the middle by any reason beyond the control of the Committee or the Returning Officer, it can be proceeded with later from the stage at which it was stopped. Though we agree with the above views of the Division Bench in *Madhavan Namboodiri v. Kammaran* (supra) it is not practically possible to fully apply the ratio of the said judgment to the facts of this case. In *Madhavan Namboodiri v. Kammaran* (supra) the preliminary voters' list was published on 8.5.1992, the final voters' list was published on 15.5.1992 and the nomination papers were accepted after scrutiny. Though everything was ready for the election, on the date of election viz., 14.6.1992, the Returning Officer did not turn up to conduct the polling. According to the Returning Officer, while he was on his way to the place of election on 14.6.1992 he was forcibly taken away in a jeep and was illegally detained till 4p.m., Consequently, the election could not be held on 14.6.1992. But in the present case the election process was stopped due to the intervention of the State Co-operative Election Commission on account of the amendment of Section 20 of the Act as per Ordinance No. 6 of 2002 conferring the voting right on ordinary members also. The State Co-operative Election Commission is a statutory authority constituted under Section 28B of the Act for the superintendence, directions and control of the conduct of elections to the Committees of the Societies. The reason for the intervention of the Commission was that even though the above mentioned amendment of Section 20 came into force on 4.5.2002, voters' lists were prepared without taking into account the said amendment. The object of issuing Ext.P2 Circular was to ensure that voters' lists were prepared strictly in accordance with the provisions contained in Section 20. This is clear from the fact that the directions in Ext.P2 Circular did not apply to the elections where preliminary/final voters' list was published prior to 4.5.2002. If the normal principle of continuing the election process from the stage where it was stopped is followed in this case, the election process will have to be continued on the basis of the preliminary voters' list prepared without taking into account the amendment to Section 20 which had already come into force. The jurisdiction of this Court under Article 226 of the Constitution cannot be exercised closing our eyes to the clear violation of the statutory provisions while preparing the voters' list. Hence in view of the amendment to the statute and the consequent intervention of the State Co-operative Election Commission to stop the election process and to ensure the conduct of election in accordance with the statutory provisions, the ratio of the decision in *Madhavan Namboodiri v. Kammaran* (supra) cannot be fully applied in this case and direction cannot be issued to continue the election process from the stage where it was stopped.

16. At the same time we are of the view that when the election is to be held in this case on the basis of a fresh resolution of the Administrative Committee, the list of members qualified to vote at the election should be prepared with reference to the original date fixed for election, viz., 9.6.2002. In other words, in the light of Rules 6(2) and 28(1) of the Kerala Co-operative Societies Rules, a person who acquired the number of shares and was admitted as member of the Bank within 60 days of 9.6.2002, will not be eligible to be included in the voters" list. No distinction shall be made between ordinary members and active members while preparing the voters" list. Thus we are accepting the spirit of the decision in *Madhavan Namboodiri v. Kammaran* (supra) and are applying the ratio of that decision to the extent legally and practically possible. For the reasons already stated and in the peculiar circumstances of this case, we do not consider it proper or necessary to direct that the election process shall be continued from the stage where it was stopped.

17. In the light of the discussion above, the Writ Appeal is disposed of in the following terms:-

(i) The judgment in O.P. No. 16199/2002 is set aside.

(ii) The Administrative Committee/Administrator of the Bank shall pass a resolution within a week resolving to conduct election to the Managing Committee of the bank on a date not later than 25.4.2004 and shall forward the resolution to the first respondent through the second respondent.

(iii) On receipt of the said resolution from the Bank, respondents 1 and 2 shall take immediate necessary action to conduct the election on the date fixed by the Administrative Committee/Administrator.

(iv) The voters" list for the election shall be prepared with reference to the original date (i.e. 9.6.2000) fixed for the election. In other words, only members admitted 60 days prior to 9.6.2002 will be eligible to be included in the voters" list. No distinction shall be made between ordinary members and active members.

(v) The parties are left to bear their own costs.