
(2021) 12 KL CK 0155

In the High Court Of Kerala

Case No : Writ Appeal No.1658 Of 2021 in Writ Petition (C) No. 26919 Of 2021

Ramla. C.A

APPELLANT

Vs

Kerala State Co Operative Election Commission

RESPONDENT

Date of Decision : 21-12-2021

Acts Referred:

Kerala Co operative Societies Rules, 1969 — Rule 35A(4)

Citation : (2021) 12 KL CK 0155

Hon'ble Judges : P.B.Suresh Kumar , J;C.S.Sudha, J

Bench : Division Bench

Advocate : P.C.Sasidharan, B.Ashok Shenoy, Arjun Raghavan, Pooja Pankaj, P.S.Gireesh, K.V.George, Arjun R Naik, Lakshmi Narayanan, V.K.Sunil, George Poonthottam, V.K.Sunil

Final Decision : Disposed Of

Judgement

P.B.Suresh Kumar, J.

1. Writ appeal No.1658 of 2021 is one preferred challenging the interim order dated 07.12.2021 in W.P.(C) No.26919 of 2021, in terms of which the interim order dated 30.11.2021 earlier passed in the said case was vacated. When the writ appeal came up for hearing on 10.12.2021, this Court felt that in order to resolve the dispute between the parties effectively and completely, it is necessary to decide the writ petition itself. Accordingly, in terms of the interim order dated 10.12.2021 in the writ appeal, W.P.(C) No.26919 of 2021 was withdrawn to this Court.

2. Since the writ petition has been withdrawn to this Court, it is unnecessary to deal with the writ appeal and it is suffice to deal with the writ petition.

3. Heard the learned counsel for the petitioners, the learned Standing Counsel for the first respondent, the learned Government Pleader as also the learned Senior Counsel for the party respondents.

4. The petitioners 1 and 2 are two among the members of the Managing Committee of the sixth respondent Co-operative Society (the Society) registered under the Kerala Co-operative Societies Act, 1969 (the Act). The third petitioner is a member of the Society. The term of the Managing Committee is due to expire on 16.12.2021. As such, on the basis of Ext.P2 resolution dated 18.10.2021, the Managing Committee of the Society decided to conduct election to form a new Managing Committee, on 11.12.2021. On the basis of the said resolution, the Kerala State Co-operative Election Commission (the Election Commission) has issued Ext.P5 notification on 03.11.2021 for conducting the election. According to the petitioners, Ext.P2 resolution is contrary to the provisions of the Act. The petitioners therefore preferred a representation to the fourth respondent, the jurisdictional Joint Registrar of Co-operative Societies requesting to rescind Ext.P2 resolution. The said representation was turned down by the Joint Registrar in terms of Ext.P7 order. In the meanwhile, the Electoral Officer appointed by the Election Commission published the final voters list for the election pursuant to Ext.P5 notification. Ext.P9 is the final voters list published by the Electoral Officer in this regard. According to the petitioners, Ext.P9 does not contain the mandatory particulars of the voters insisted in terms of Rule 35A(4) of the Kerala Co-operative Societies Rules (the Rules). The petitioners have therefore challenged in the writ petition Ext.P2 resolution, Ext.P5 election notification, Ext.P7 order as also Ext.P9 voters list.

5. As indicated in the opening paragraph, though this Court stayed the election pursuant to Ext.P5 notification in terms of the interim order dated 30.11.2021, the same was later vacated on 07.12.2021.

6. The main argument advanced by the learned counsel for the petitioners was that Ext.P9 final voters list is not one prepared in terms of Rule 35A(4) of the Rules and if an election is permitted to be conducted on the basis of such a voters list, the same may not be a fair one. The learned counsel has relied on the decisions of this Court in *Joseph v. Kothamangalam Co-op. M. Society Ltd.*, 1994 KHC 176, and *Velloor Service Co-operative Bank Ltd., Kottayam v. State of Kerala*, 2014 KHC 866, in support of his contention that Ext.P9 final voters list is not in tune with Rule 35A(4) of the Rules.

7. Per contra, the learned Senior Counsel for the party respondents contended that insofar as the election process has already commenced and is nearing completion, this Court may not be justified in interfering with the same even if it is found that the final voters list published by the Electoral Officer is defective in any manner, and the petitioners shall be relegated to the election court for redressal of their grievance concerning the election. The learned Senior Counsel has also submitted that petitioners are persons who are having political clout, and if the election process is interdicted at their instance, they will ensure that the election does not take place in near future.

8. We have examined the contentions put forward by the learned counsel for the parties on either side.

9. Going by the mandate of Rule 35A(4) of the Rules, the voters list duly approved by the committee and submitted to the Electoral Officer in order to publish the preliminary voters list shall contain the admission number, name of the member, the name of the father or husband and the address of such member. The object sought to be achieved by the publication of a preliminary voters list and calling for objections, if any, is to ensure that the said list does not contain persons ineligible to vote and that all persons eligible to vote are included therein. The publication of a preliminary voters list in terms of Rule 35A(4) of the Rules, containing among other particulars, the fathers or husbands name of a member and the address of such member is highly essential in order to ensure that the members of the Society are afforded with a reasonable opportunity to exercise their statutory right of objecting to the preliminary voters list in a fruitful manner. The said statutory right would be rendered nugatory, if identification of the members is not possible as to the preliminary voters list. In the case on hand, Ext.P9 final voters list published by the Electoral Officer does not contain any particulars of the voters other than the membership number and the name. The said voters list cannot be construed as one prepared in accordance with Rule 35A(4) of the Rules. We have no doubt in our mind that a fair election cannot be conducted based on such a voters list. As pointed out by the learned counsel for the petitioners, in an identical situation, a learned Single Judge of this Court upheld the decision of the Election Commission to interdict an election proposed on the basis of such a voters list for starting the election process afresh from the stage of publication of the preliminary voters list, and the said decision has been affirmed by the Division Bench in Velloor Service Co-operative Bank Ltd.

10. In the course of hearing, it has come to the notice of this Court that since the election to the Managing Committee of the Society is not likely to take place before the expiry of the term of the last elected committee, an Administrator has been appointed in the Society. The Administrator was accordingly, impleaded as an additional respondent in the writ petition.

11. In the aforesaid facts and circumstances, especially in the light of the decision of the Division Bench in Velloor Service Co-operative Bank Ltd, the writ petition and the writ appeal are disposed of with the following directions:

1. The additional tenth respondent in the writ petition shall prepare forthwith a list of members of the Society in tune with Rule 35A(4) of the Rules. He shall also adopt a resolution for conducting election to the Managing Committee of the Society afresh within ten days from the date of receipt of a copy of this judgment and forward the same immediately thereafter to the Election Commission through the concerned officers of the Department.

2. The concerned officers of the Department shall ensure that the resolution adopted by the Administrator reaches the Election Commission within a week from its date of despatch.

3. The Election Commission shall, within a week thereafter, notify the election and complete the process within the minimum possible time.