
(1993) 03 KL CK 0006
In the High Court Of Kerala
Case No : O.P. No. 2275 of 1993

R.V. Satheendrakumar and Others

APPELLANT

Vs

Joint Registrar and Others

RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 1 KLJ 884

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : M.K. Damodaran, for the Appellant; D. Somasundaram (Govt. Pleader) and George Poonthottam, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—The petitioners are members of the Board of Directors of Vattiyoorkkavu Service Co-operative Bank Limited, the respondent No. 2 herein. They were duly elected on 16-8-1992. The respondent Nos. 4 and 5 were impleaded in this petition pursuant to their own application, by a separate order in C. M. P. No. 5358 of 1993. The respondent Nos. 4 and 5 filed A. R. C. No. 35 of 1992 before the Joint Registrar of Co-operative Societies, Thiruvananthapuram, u/s 69 of the Kerala Co-operative Societies Act in which they challenge the validity of the election of the petitioners to the Board of Directors of the Bank. The Joint Registrar of Co-operative Societies by his order dated 1-2-1993 made under sub Section (3) of Section 70 of the Kerala Co-operative Societies Act confirmed the interlocutory order made by him on 31-10-1992 whereby he prohibited the petitioners from assuming office as members of the Board of Directors. This petition is against the interlocutory order whereby the petitioners have been kept out of office on the score that their election to the Board of Directors is, prima facie, vitiated by gross irregularities. No doubt, ordinarily an elected body should not be prevented from assuming the office to which they are duly elected, But there may be cases where the process

of election is so deeply vitiated by a wide range of irregularities, that, what was held was not election but a mechanical exercise devoid of the quality of fair and free choice of leaders by members qualified to vote. In such cases it is hazardous to permit the "elected" members of the committee from entering into office and function as the Board of Directors. So, in such cases it is appropriate to prevent the "Board of Directors" from assuming office.

Under sub-section (3) of Section 70 of the Act the Registrar who hears the dispute possesses the power to "make such interlocutory orders as he may deem necessary in the interest of justice." The language of sub-section (3) of Section 70 by itself places no restriction on the power to prevent elected members of the Board of Directors from assuming office. But since the Registrar's order is discretionary, the discretion has to be exercised on well established principles. Where the Registrar or Arbitrator is called upon to prevent the elected body from taking office he is expected to consider a variety of factors and act with great circumspection. In a case of this kind, he must consider:

- a) the nature of the allegations showing that the elections were vitiated.
- b) the existence of prima facie case which means whether the respondent Nos. 4 and 5 have a chance of success and
- c) whether the interests of justice require that an interlocutory order must be made.

In a case when the elected members of a Board of Directors or Managing Committee are sought to be prevented from entering office care must be taken to see that such interlocutory orders are not made unless there is material in the possession of the plaintiffs which, when proved at the trial, would show that the process of election was so vitiated, that what was held was no election at all.

2. The question, therefore, is whether the Joint Registrar whose order is impugned, had, before him, material on the basis of which he could conclude that the respondents 4 and 5 are in possession of material which, if proved, would establish that the election was vitiated. Broadly stated, the material disclosed in the plaint is as follows:

- a) In 1989 the then Administrator enrolled 1695 members on a single day i.e. 26-2-1989. Such enrolment was contrary to the rules, as among other things, he enrolled persons residing outside the area of operation of the bank.
- b) On 26-2-1989 the then Administrator expelled 665 A class members illegally.
- c) Inquiry u/s 66 of the Act was ordered in 1991. This inquiry relates to the misconduct of the Administrator and the subsequently elected Board of Directors.
- d) In the election in which the petitioners were elected, members who had dual membership were included in the list of voters. Similarly, minors and persons residing outside the area of operation, were included in the list of members qualified to vote.

e) The Returning Officer counted ballot boxes Nos. 1 to 9 on 3-9-1992 without notice to the candidates or their agents in clear violation of sub-clause (r) of clause (v) of sub rule (3) of Rule 35 of the Kerala Co-operative Societies Rules.

3. The irregularities at (a), (b) and (c) were committed in 1989. The Board of Directors elected on the basis of such irregularities assumed office and continued to function until the elections held on 16-8-1992 at which the petitioners were elected. Therefore in a sense, these irregularities alleged to have been committed in 1989 are, stale and not the direct cause of the allegedly debased election held on 16-8-1992. But the Joint Registrar considered that the irregularities though committed in 1989, continued to exist in 1992. Thus the unqualified members who voted in 1989 continued on the roll of members till 1992 and their votes went into the process of election in 1992. How much importance should be attached to such a stale fact in the grant of interim relief can be a matter of opinion, but their relevance cannot be doubted. The Registrar was entitled to take into consideration the fact that the unqualified voters enrolled in 1989 voted at the election held in 16-8-1992. The Registrar was within his authority in taking into account these facts.

4. Again, it cannot be said that the Registrar was in error in considering the facts set out at (d) in paragraph 3 above, for exercising his discretion under sub-section (3) of Section 70 of the Act.

5. What is more important is the conduct of Returning Officer in counting the votes in the 9 ballot boxes without notice to the candidates. The irregularity alone, if proved, is so serious that the process of election must be held to have been vitiated.

6. All the above irregularities allegedly committed in 1989 and in 1992 and the counting of votes without notice to candidates, were present to the mind of the Joint Registrar. He has considered the gravity of the allegations made by the respondent Nos. 4 and 5, their effect the purity of the process of election and has considered whether the drastic order which he made was called for.

7. The impugned order is made in exercise of discretionary authority. If the Registrar has taken into account the facts alleged and weighed their effect, it follows that he has exercised his discretion properly. If there were no facts before him but mere assertions unsupported by facts, then, what was exercised was no discretion at all. But having regard to the nature of the irregularities and the evidence which may be proved at the trial, I hold that the Registrar did exercise discretion on sound principles.

8. This is a petition under Article 226 of the Constitution of India. The impugned order is a discretionary order. It is not permissible to reevaluate the conclusions of facts arrived at by the Joint Registrar and come to a different conclusion, provided the Joint Registrar had before him some material relevant to the conclusion that election was vitiated. If he had acted without any material at all it is a different matter.

9. Then the question is whether, interests of justice called for the impugned order. The Committees of the Co-operative Societies are intended to be chosen by the process of election by members. The elections conceived by the Act and the Rules are based on well known basic conditions. They are :

i) Only those members who are qualified shall elect the members of the committee.

ii) The Returning Officer, Polling Officers and others perform their duties honestly and in accordance with the Act and the Rules.

If a committee or Board of Directors gets "elected" due to the advantage derived from breach of the above rules, their election is tainted with such illegality as to deprive it of the character of elected Board of Directors. If, upon considering the facts, the Registrar or Arbitrator, held that Prima facie the election was vitiated, justice requires that the affairs of the Society are not entrusted to such a Board of Directors. The Registrar was therefore right in making the impugned order. For the reasons stated in the foregoing paragraphs, the petition is dismissed.