

(2016) 03 KL CK 0121
In the High Court Of Kerala
Case No : WP(C) No. 8755 of 2016 (T)

S. Jayakumar

APPELLANT

Vs

The State Co-Operative Election Commission and Others

RESPONDENT

Date of Decision : 18-03-2016

Acts Referred:

Citation : (2016) 03 KL CK 0121

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : N. Anand and Manu G. Rajan, Advocates, for the Appellant; D. Somasundaram, Spl. Govt. Pleader, for the Respondent

Final Decision : Disposed off

Judgement

Dama Seshadri Naidu, J.—1. Earlier, the petitioner filed W.P.(C) No. 39287/2015 seeking a direction to the Joint Registrar to cancel the registration of the fourth respondent Society. On the other hand, the President of the said Society filed W.P. (C) No. 426/2016 seeking a direction that the election to the managing committee of the Society be held without further delay.

2. The principal grievance of the petitioner is that the very constitution of the managing committee of the respondent Society is fraught with illegalities. According to him, the Society did not have sufficient number of promoters living within the territorial limits of the Society.

3. In the above context, this Court rendered Exhibit P4 judgment on 01.02.2016 to the following effect:

"In conclusion, this Court disposes of both the writ petitions with a direction to the first respondent or the Joint Registrar of Thiruvananthapuram, whoever is empowered, to consider petitioner's Exhibit P4 objections concerning the registration of the third respondent Society and pass appropriate orders thereon, after affording an opportunity of hearing to the third respondent Society as well as the petitioner, as expeditiously as possible, at any rate, within a period of one

month from the date of receipt of a copy of this judgment.

It is further made clear that the election proposed to be held to the third respondent Society shall be contingent upon the orders to be passed either by the first respondent or by the Joint Registrar, as the case may be."

4. Now, the petitioner once again approached this Court. His grievance is that despite the direction by this Court that the election to the respondent Society should be held contingent upon a decision on the validity of the registration, the Society had its election fixed for 20th of this month.

5. The learned counsel, in elaboration, has submitted that the Election Commission which is a party to one of the writ petitions (W.P.(C) No. 426/2016) is aware of the judicial directive in the common judgment. Ipso facto, it ought to have waited until the Registrar or the Joint Registrar has adjudicated upon the validity of registration. Only thereafter should it have proceeded with the process of election provided the registration could be sustained. At the time of admission of the writ petition, the learned counsel pressed for an interim direction staying the election.

6. The learned counsel for the respondent Society as well as the learned Government Pleader, then, submitted that hearing was scheduled to be held on 15.03.2016 and that a decision was expected before 20.03.2016. Accordingly, this Court adjourned the matter on a couple more occasions. Eventually, the Joint Registrar passed Exhibit P9 order holding that the petitioner's objections could not be sustained.

7. The learned counsel has strenuously contended that the Joint Registrar issued Exhibit P7 notice to the petitioner apparently on 03.03.2016 fixing the date of hearing on 15.03.2016. He has drawn my attention to Exhibit P8, the hard copy of the tracking in relation to Exhibit P7 taken from the website of India Post. Supported by Exhibit P8, the learned counsel hammers home his contention that Exhibit P7 notice was posted only on 12.03.2016, and it was received on 14.03.2016, hardly ours before the Joint Registrar undertook the hearing.

8. The learned counsel, therefore, contends that mala fides have been writ large on the face of the Joint Registrar's conduct. In elaboration, he has submitted that the Joint Registrar issued Exhibit P7 notice only to impress upon this Court that it had issued the notice well in advance, but in truth the notice was issued on 12.03.2016 and received on 14.03.2016.

9. The learned counsel has further contended that on 15.03.2016 when the hearing took place, despite the petitioner's repeated requests to provide him some reasonable time to place all the material on record, the Joint Registrar flatly refused and proceeded with the adjudication.

10. The learned counsel has also contended that the Election Commission, being a party, ought to have waited until the adjudication by the Joint Registrar, instead of hurrying with the election notification.

11. The learned counsel for the respondent Society, on the other hand, has submitted that the Joint Registrar has rendered Exhibit P9, which is an elaborate order containing cogent reasons. According to him, even at the time of registering the Society, the founding members have produced sufficient proof to the satisfaction of the authorities that they have been residing within the territorial limits of the Society.

12. The learned counsel has further contended that because the Society has been recently registered, in the election for the managing committee, there is no real contest. Already almost all the nominations are without opposition. The constitution of the committee is unanimous, save its consecration.

13. Regardless, first, in Exhibit P4 this Court has observed that the election should be contingent upon the decision to be rendered by the Registrar or the Joint Registrar on the issue of the Society's registration. This Court does acknowledge that there is no mandate in Exhibit P4 judgment that the Election Commission should not initiate the process until the issue of registration is decided. Perhaps, taking cover under that seeming ambiguity, the Election Commission may have gone ahead with the notification. It is, in my view, difficult to find fault with the Election Commission.

14. As has been rightly contended by the learned counsel for the petitioner, the course of action adopted by the Joint Registrar is a cause for concern. Exhibit P7 notice bears the date of 03.03.2016 but, as is evident from Exhibit P8, it was posted only on 12.03.2016. These days with the prying eyes of technology, one needs to be circumspect concerning one's conduct, lest the technology should expose the wrong doing.

15. In the present instance, since the petitioner received the notice only on 14.03.2016, he had hardly been left with any time to prepare for the hearing, much less back up his arguments before the authority with sufficient documentary proof. I reckon, because of the delay in the petitioner's receiving Exhibit P7 notice, the Joint Registrar ought to have acceded to the petitioner's request-by granting time.

16. The learned counsel for the respondent Bank has brought to my notice that the tenure of the promoting committee at the helm of the affairs has already been extended until 05.05.2016.

17. In the facts and circumstances, this Court is of the firm opinion that Exhibit P9 cannot be sustained. The legal maxim of vintage value is that justice should not only be done but also seen to be done. In the present instance, the Joint Registrar may have ruled on the petitioner's objections but the procedure adopted falls foul of the established norms. Ends cannot justify the means.

18. This Court, therefore, sets aside Exhibit P9. Consequently, it directs the Joint Registrar to issue a fresh notice to the fourth respondent and the petitioner sufficiently in advance and hear both the parties on the validity of the fourth

respondent Society's registration. Needless to observe that the constitution of the managing committee yet to come into coexistence shall be subject to the decision to be taken by the Joint Registrar.

19. It is further clarified that on 20.03.2016, as scheduled in the election notification, the authorities may announce the results concerning the managing committee to be constituted, but it shall not assume charge until the decision is rendered by the Joint Registrar.

With the above observations, the writ petition is disposed. No order on costs.