
(2014) 08 KL CK 0053
In the High Court Of Kerala
Case No : FAO. No. 202 of 2014

Sajeev

APPELLANT

Vs

Paravur Sree Narayanavilasam Samajam

RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Citation : (2014) 08 KL CK 0053

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : Harish Gopinath, Advocate for the Appellant; S.P. Aravindakshan Pillay, Advocate (Caveator), T. Krishnan Unni, Sr. Adv., Saju. S.A and T.S. Rajasenan, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.—Challenging order dated 12.6.2014 passed by the Subordinate Judge's Court, Kollam in I.A. No. 840 of 2014 in O.S. No. 783 of 1994, the second respondent in the I.A. has come up in appeal, through F.A.O. No. 202 of 2014. Two persons, allegedly elected as office bearers of the Paravur Sree Narayanavilasam Samajam (for short "the Samajam"), who are not parties in I.A. No. 840 of 2014 in O.S. No. 783 of 1994, has preferred F.A.O. No. 204 of 2014, on obtaining leave of this court to file the appeal as persons aggrieved, challenging the very same impugned order in F.A.O. No. 202 of 2014.

2. Both the appeals are relating to an election, allegedly conducted for electing the committee members of the Samajam, on 4.6.2014.

3. According to the appellants, the earlier committee of the Samajam was not properly functioning, and even meetings were not being called or convened. According to them, most of the members of the committee itself wanted to have an election conducted during the month of June 2014. The earlier committee was elected on 31.5.2009 and normally, their term would have elapsed on 30.5.2014. According to the appellants, as per clause 8(2) of the bye-laws of the Samajam, the General Body of the year of expiry of the term of the committee, shall be treated as an Election General Body. As per Clause 9 of the bye-laws, the term of

the committee shall be 5 years from the date of election. As per Clause 9(1) of the bye-laws, the existing committee can continue in office till the next 31st of March even after the expiry of 5 years, for enabling them to conduct an election of the new committee and thereafter, prior to the said 31st of March, the existing committee shall hand over charge to the such newly elected committee. According to the appellants, a meeting of the committee was convened on 13.5.2014, which has resolved to conduct the election for the new committee in the month of June 2014 itself, and they have appointed one Adv. G. Subhadevan, a practicing lawyer of the Kollam bar as the Returning officer. It is the case of the appellants that an election was scheduled to be held on 4.6.2014, and altogether 23 valid nominations were there, out of which two persons have withdrawn their nominations. As the remaining valid nominations were only 21, no election was necessitated as the strength of the committee to be elected is also 21. According to the appellants, on the same day, the said 21 members who were declared as elected, have taken charge also.

4. The respondents except the 5th respondent contended that the committee had never resolved to conduct the election, and that all the things were deliberately manipulated by the second respondent in I.A. No. 840 of 2014/appellant in F.A.O. No. 202 of 2014, who was the earlier Secretary working with them, who changed side, just prior to the meeting convened on 14.5.2014. Election was not at all an agenda for the meeting convened on 14.5.2014. According to the respondents except the 5th respondent, the appellant in F.A.O. No. 202 of 2014, the earlier Secretary changed side and joined the dissident group in the committee. During the course of the meeting on 14.5.2014, he went away from there with the minutes book and thereafter he decided to conduct an election by himself, for which he alone appointed the Returning officer of his choice. Thereafter, the said Returning Officer, who is the first respondent in I.A. No. 840 of 2014, published the election notification dated 29.5.2014 in Kerala Kaumudi daily dated 30.5.2014. It was only then, the respondents except 5th respondent herein, came to know about such a notification, and could collect information regarding the manipulations made by the appellant in F.A.O. No. 202 of 2014. Strangely enough, another member of the committee on his own choice, appointed another Returning Officer, and got published another election notification in Kerala Kaumudi daily dated 1.6.2014.

5. Immediately, on getting information with regard to the manipulations made by the appellant in F.A.O. No. 202 of 2014, the respondents except the 5th respondent herein, rushed to the Subordinate Judge's Court, Kollam with I.A. No. 840 of 2014, seeking an order of temporary injunction restraining any such election, as contemplated through the notification dated 29.5.2014, and also for restraining such persons who would be shown elected through such an election from taking charge as committee members. I.A. No. 839 of 2014 was also filed for declaring the election notification as null and void. The court below allowed I.A. No. 840 of 2014, thereby passing an order of temporary injunction as prayed for. I.A. No. 839 of 2014 was closed, as relief has been granted in I.A. No. 840 of

2014.

6. Heard Sri.K.P. Satheesan, the learned Senior Counsel for the appellants and Sri Sajeew Devarajan, the learned counsel for the respondents in F.A.O.No.204 of 2014. Heard Sri Krishnan Unni, the learned Senior Counsel for respondents 1 to 4 and Sri Harish Gopinath, the learned counsel for the appellant in F.A.O.No. 202 of 2014.

7. The learned senior counsel, Sri, K. P. Satheesan argued that in I.A.No. 840 of 2014, the duly elected members of the committee in the election conducted on 4.6.2014 were not made parties and the said I.A. was filed behind their back. It was on that ground, leave was sought for to file F.A.O. No. 204 of 2014. According to him, the court below should not have passed such an order restraining the newly elected committee members from taking charge as the committee members of the Samajam, without extending an opportunity of being heard to them. Further, according to him, any irregularity in the election notification would not vitiate the election conducted on 4.6.2014, especially when no election at all was necessitated. The learned counsel for the appellant in F.A.O. No. 202 of 2014, has argued that it was the collective decision of the committee having necessary quorum, which had appointed the 5th respondent herein as the Returning Officer, and all the procedures for conducting the election were duly complied with. An election was not necessitated as the valid nominations remained as 21, after the withdrawal of two nominations. On that day, in the presence of the Returning Officer, the committee had elected the office bearers also and they have taken charge from the appellant in F.A.O. No. 202 of 2014.

8. Per contra, the learned senior counsel, Shri.Krishnan Unni appearing for respondents 1 to 4, has pointed out that severe manipulations were done by the appellant in F.A.O. No. 202 of 2014 by cooking up false records and minutes, on the basis of which he himself appointed the 5th respondent as the Returning Officer. Things were manipulated in such a way that 21 persons of his choice could be located, and with the aid of the 5th respondent, records were manipulated in order to show that the said 21 persons were declared as elected.

9. In the course of the hearing, the learned counsel for the appellant in F.A.O. No. 202 of 2014 has produced before this court, a notarised copy of the minutes of the committee, allegedly prepared on 14.5.2014. Even on a bird's eye view of the said minutes, it is evident that the same was cooked up and falsely fabricated. It seems that 10 persons only were present at first in the meeting and they were serially numbered as 1 to 10 at the left hand side of the minutes, and their names are written just at the right hand side of said serial numbers. They had affixed their signatures at the right hand side of their names after leaving the usual space. It seems that thereafter the names of 10 other persons were falsely incorporated in it. For incorporating the names of the 11th person, there was space available at the left hand side, just below the original 10th serial number. On the next line itself, the minutes commenced. There was no space

available below serial No. 11. Therefore, it seems that the appellant in F.A.O. No. 202 of 2014, has chosen to make use of the right hand side for incorporating the names of the remaining 9 persons numbered as 12 to 20, even though space was not available there. By making insertions here and there in an irregular manner, however, the names and signatures of 9 more persons are seen incorporated in an interlinear manner, among the signatures of those serially numbered as 1 to 10. It is evident that those insertions were subsequently made. It was the President of the committee, who is the first respondent herein, who commenced the recording of minutes, and he recorded 5 items in the minutes in his hand writing. The remaining portions containing 2 paragraphs below it in page number 64, is in a different hand writing. Any examination is not required to show that it is in a different hand writing. To the query put by this court, as in whose handwriting the said two paragraphs were incorporated, the learned counsel for the appellant in F.A.O. No. 202 of 2014 could not give a specific answer with regard to the identity of the person, who recorded it, and he vaguely submitted that it was made by one of the committee members. Still his name has not been revealed. Even though the beginning portion of the minutes clearly shows that the meeting was convened under the chairmanship of the first respondent herein, at the last portion of the minutes what is shown is the signature of another person, who was styled as temporary chairman.

10. From the said minutes itself it is evident that in the course of the meeting, the minutes book was snatched away from the first respondent herein, and subsequently the two paragraphs were incorporated in it in a different handwriting, which is easily discernible on a mere look by the naked eye. The said two paragraphs seen subsequently incorporated are for making a version that during the course of the meeting, the first respondent along with the second respondent and another person namely Shally walked out of the meeting and did not participate in further proceedings. The said two paragraphs incorporated in a different handwriting, further reveal that the request for the conduct of an election had momentarily arisen in the course of the meeting, and it was not decided earlier. It seems that there were originally 3 agendas namely (i) Gurusmarana, (ii) The approval of the minutes of the earlier meeting, and (iii) Other urgent matters. It seems that in the hand writing in which the said last two paragraphs were incorporated in a different handwriting as aforesaid, at the right hand side of the 2nd agenda, a term "election" is seen subsequently incorporated. Admittedly, election was not at all an item in the agenda. It is evident from that two paragraphs incorporated at the bottom of the minutes that the request for an election had momentarily arisen during the so called meeting. It is evident that the minutes has been manipulated by the subsequent insertion of an item "election", at the right hand side of the 2nd agenda in the minutes.

11. As per the bye-laws of the Samajam, it is evident that the tenure of a committee is 5 years. The tenure of the committee headed by the first respondent, could normally terminate on 30.5.2014 only. As no election could take place during the month of February 2014, the committee headed by the first

respondent ought to have continued in office till 31.3.2015, so as to enable the said committee to conduct the election during the month of February 2015. The bye-laws is based on the scheme formulated by the court below for the Samajam. It seems that things were manipulated by the appellant in F.A.O. No. 202 of 2014 by circumventing and bypassing the provisions contained in the bye-laws for the continuance of the committee till 31.3.2015.

12. The learned senior counsel, Shri. Krishnan Unni has pointed out that there were only 11 persons with the 1st respondent herein, on his side including the appellant in F.A.O. No. 202 of 2014. The other 10 persons remained as a dissident group, and they did not co-operate with the administration of the Samajam and the office bearers under the leadership of the first respondent herein. It has been pointed out that when an occasion has arisen, the appellant in F.A.O. No. 202 of 2014 changed sides and joined with other dissident group. Even in such case, had there been a contention for the appellant in F.A.O. No. 202 of 2014 or the dissident group that the other group under the leadership of the first respondent had lost its majority, they could have very well approached the court below, as per the scheme for the conduct of another election or to send them out. Instead of doing it, the records were fabricated and falsely cooked up in order to make it appear that the committee had decided for an election and an election process was conducted. It seems that the aforesaid minutes, which has been produced before this court for perusal was not made available to the court below. Even then the court below could smell rat, thereby an order of temporary injunction as prayed for was granted. It is evident that the appellant in F.A.O. No. 202 of 2014 has played fraud in the matter, by cooking up false records. On the basis of fabricated records, he has even chosen to prefer an appeal. A person, who has played fraud is not entitled to any relief from a court of law, and the appeal preferred as such, is liable to be dismissed with compensatory cost.

13. Regarding the claim of the appellants in F.A.O. No. 204 of 2014, the learned senior counsel, Shri K P Satheesan has pointed out that even if the election notification was irregular, the election of the said appellants would not be vitiated. The said argument is devoid of merits. In fact there was no election at all, and such an imaginary election was deliberately made out by the appellant in F.A.O. No. 202 of 2014. An election had to be conducted by the committee. In order to make it appear that the committee had taken a decision, the minutes was fabricated and cooked up. Even then the appellant in F.A.O. No. 202 of 2014 wanted to see that 21 persons of his choice, were to be inducted. They could manipulate things in such a way that there was only 23 valid nominations, out of which two nominations were withdrawn. The present I.A. No. 840 of 2014 was filed before the court below on 4.6.2014, after giving notice to some of the committee members on 3.6.2014. They knew that the matter would come up before the court below on 4.6.2014. Therefore, things were deliberately manipulated to see that the election of 21 new committee members of the choice of the appellant in F.A.O. No. 202 of 2014 was conducted on 4.6.2014 itself. Within no time, they wanted to make it appear that the said committee had

taken charge. With the aid of the appellant in F.A.O. No. 202 of 2014, they have come up with the contention that they have taken charge on 4.6.2014 itself.

14. The learned senior counsel, Shri. Krishnan Unni has produced a copy of the proceedings of the District Educational Officer, Kollam on 24.7.2014. It has come out that the Samajam is running a school. The President of the Samajam is the Manager of the school. No doubt, the said school itself is the attraction behind the attempt to procure the administration of the Samajam with a view to snatching away the management of the school. By carrying out the aforesaid manipulations, they could obtain the proceedings of the District Educational Officer, Kollam on 24.7.2014, to the effect that the first appellant in F.A.O. No. 204 of 2014, is appointed as the Manager of the school. It has come out that there was no election at all and therefore, the first appellant in F.A.O. No. 204 of 2014, was not at all elected. He cannot be the President of the Samajam and not even a committee member. As no election has been conducted, it is evident that the first respondent herein continues to be the President of the Samajam. Unless and until he resigns or he is sent out through a proper order of the court below, he can continue in office till 31.3.2015. Matters being so, order dated 24.7.2014 passed by the District Educational Officer, Kollam, is also vitiated. The first appellant in F.A.O. No. 204 of 2014 cannot be the Manager of the school being run by the Samajam, as he has not been duly elected as the president of the Samajam. F.A.O. No. 204 of 2014, is also devoid of merits and is only to be dismissed with costs, and I do so.

In the result, F.A.O. No. 202 of 2014, is dismissed with compensatory cost of Rs. 3,000/- and F.A.O. No. 204 of 2014, is dismissed with costs.

The Registry is directed to forward a copy of this common judgment to the District Educational Officer, for information and appropriate action.