

(2014) 10 KL CK 0309
In the High Court Of Kerala
Case No : W.P. (C). No. 15745 of 2014 (P)

Samuel P.

APPELLANT

Vs

Kappikkad Milk Producers" Co-operative Society Ltd.

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 10 KL CK 0309

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : Johnson Manayani and Jeevan Mathew Manayani, Advocate for the Appellant; P.N. Mohanan, Advocate and R. Ranjith, Government Pleader, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is a member of the 1st respondent-Society, who challenges the election notified by the 2nd respondent under Rule 35 of the Kerala Co-operative Societies Rules, 1969 [for brevity "KCS Rules"]. Such notification, issued at Exhibit P5, was in the capacity of a "Returning Officer", which capacity was conferred on the 2nd respondent with regard to Dairy Farm Societies.

2. The petitioner's contention is that, Section 28-B of the Kerala Co-operative Societies Act, 1969 [for brevity "KCS Act"] has a non obstante clause, by which the State Government was authorised to constitute a State Co-operative Election Commission, by a notification in the Gazette, for the superintendence, directions, preparation of electoral rolls and also for election to Co-operative Societies. With the advent of Section 28-B and the notification appointing the State Co-operative Election Commission, the 2nd respondent could not have issued the notification at Exhibit P5, is the short contention.

3. The learned counsel, appearing for the 1st respondent would in fact contend that the petitioner is disabled from making such submission, especially since he had acted as per the notification and had also filed a nomination on 17.06.2014,

later to which the writ petition was filed on 20.06.2014. The Circular of the Election Commission issued under Section 28-B of the Act, also was later to Exhibit P5 notification, is the contention raised to question the maintainability of the writ petition.

4. True, elections were conducted as per the notification issued at Exhibit P5 and the same was stayed by this Court. The contention of the learned counsel appearing for the petitioner is that, while invoking Article 226 of the Constitution, this Court has held that, even when it is found that an authority has acted without jurisdiction, the Court need not interfere with the same if justice has been done, in *Madhavikutty, S. Vs. State of Kerala and Others* , following a decision of the Hon'ble Supreme Court in *Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another*, .

5. In the present case, the above contention is urged only because of the elections having been already held and the results not declared only by reason of the interim orders of this Court. On a specific query, as to the number of members of the society, it is stated by the learned counsel that it is less than 100. The financial liability, in such circumstance, according to this Court, would not be so large as to sustain a fundamentally improper convening of an election as provided under the statute. In such circumstance, this Court is of the opinion that Exhibit P5 notification issued, is clearly against the dictate of the statute under Section 28-B of the Act. Exhibit P5 is, hence, set aside.

6. The Administrator, appointed on the expiry of the term of the Managing Committee, is said to be an officer of the Department. Therefore, "the Administrator, Kappikkad Milk Producers" Co-operative Society Ltd. No. T.123 (D), APCOS, Kappikkad, Poovachal P.O., Thiruvananthapuram, PIN-695 575" is suo motu impleaded as the additional 12th respondent and the said respondent is directed to immediately take a resolution with respect to the election to be convened and conduct the election within a period of three months from the date of receipt of a copy of this judgment. The Assistant Registrar concerned as also the Election Commission shall expedite the process to ensure conduct of elections as directed herein.

Writ petition is allowed. Parties are directed to suffer their respective costs.