

(2014) 02 KL CK 0037

In the High Court Of Kerala

Case No : WA. No. 68 of 2014 and WP. (C) . 23859 of 2013

S/o. Gangadhara Cherthala Southpanikkar and S/o.
Narayanan Sureshkumar

APPELLANT

Vs

(President, Sri. C.V. Manoharan (Member No. 3568),
Managing Committee of Cherthala South Service Co-
Operative Bank) and Others

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 69

Citation : (2014) 02 KL CK 0037

Hon'ble Judges : Antony Dominic, J;Anil K. Narendran, J

Bench : Division Bench

Advocate : P.K. Suresh Kumar and Sri. Brijesh Mohan, for the Appellant; V.G. Arun, for R9, Sri. T.R. Harikumar R9 by Advocate, Sri. P.C. Sasidharan R1 and 2 by Advocate, Spl. Government Pleader Sri. D. Somasundaram and Sri. K.R. Saidalavi R7 BY Senior Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—The appeal is filed by respondent Nos. 7 and 9 against the judgment in W.P.(C). No. 23859 of 2013. By the impugned judgment the learned Single Judge directed the administrator of the respondent society to pass a resolution fixing the date of election and start election process from the stage where it was stopped. It is aggrieved by this judgment, this appeal is filed. We heard the learned Senior counsel for the appellant, the learned counsel for respondents 1 and 2, learned Special Government Pleader for respondents 3 to 6 and the learned Government Pleader for respondent No. 7 and also the learned counsel for respondent No. 9.

2. The briefly stated the facts of the case are that Ext. P1 is an election notification issued for scheduling the election to 28/09/2013 for electing the office bearers of the Cherthala South Service Co-operative Bank. By Ext. P2 on 19/8/2013 itself a returning officer was also appointed. Subsequently, referring

to Ext. P5, a report was made by the 7th respondent, the returning officer adjourned the election indefinitely. This was followed by Ext. P6 order passed by the 5th respondent appointing an administrator to the society and that order is dated 28/9/2013. Still later the 3rd respondent issued Ext. P7 order dated 30/9/2013 relying on Ext. P4 mentioned above and report of the Assistant Registrar dated 27/9/2013, he allegedly withdrew Ext. P1 notification. It was in these circumstances, respondents 1 and 2 filed the Writ Petition seeking to quash Exts. P4, P6 and P7 and for other consequential reliefs.

3. By the impugned judgment the learned Single Judge held that the election should not have been stopped and that Ext. P7 should not have been issued. On that basis the learned Judge issued the following directions:-

In such circumstances, this Court is of the opinion that the Election Commission should expedite the election process and to facilitate that; the Administrator has to pass a resolution fixing the date of polling, since the election was stopped by the Returning Officer on the previous day of the polling, and it is now to be resumed from the stage at which it was stopped. What remains is only the polling to be conducted and the Administrator shall, within three weeks from today, adopt a resolution fixing a date and venue for polling falling within three months from the date of resolution and communicate the same to the Election Commission and the Election Commission shall appoint a Returning Officer if necessary, and conduct the election in accordance with the Act and Rules as expeditiously as possible, at any rate, within the time stipulated herein.

It is this judgment which is in Appeal.

4. The learned Senior counsel for the appellants contended that the learned Judge having not interfered with Ext. P7 order issued by the Election Commission, could not have directed that the election process be resumed from the stage where it was stopped. Counsel also contended that the reasons mentioned in Ext. P7 justified the entertainment of a complaint to the effect that final voters list was containing ineligible members.

5. In so far as the contention that Ext. P7 order issued by the Election Commission was not quashed and therefore the directions could not have been issued is concerned, it is relevant to note that, in paragraph 9 of the judgment, the learned Judge has held thus:-

9. Be that as it may, in the present case, what is to be looked at is whether the election was only stopped by the Returning Officer or Ext. P7 cancels the elections, on the basis of complaints received from unnamed sources. It is to be noticed that here also, the Electoral Officer appointed by the Election Commission had published a final voters list after considering the objections and the stoppage of election was only due to the apprehension of law and order of situation. The Election Commission ought not to have subsequently entertained complaints again from unnamed sources and directed cancellation of the election. The learned Special Government Pleader would submit that there is no cancellation

as such effected, since, though in the closing paragraph it is stated that the election notification has been withdrawn, it is only on the basis of the stoppage of election made by the Returning Officer on the apprehension of law and order situation as reported by the police, that Ext. P7 was issued.

6. On a reading of this paragraph, it can be seen that, the learned Judge found fault with Ext. P7, however, did not probe into the matter any further for the reason that Special Government Pleader submitted before the learned Judge that what is ordered in Ext. P7 was not a virtual cancellation of the election. We are convinced that but for the submission made by the Special Government Pleader, the learned Judge would have interfered with Ext. P7. In such a case it is not open to the appellants to contend that Ext. P7 survives and therefore the impugned direction could not have been issued.

In so far as the complaints that were entertained by the Election Commission regarding the electoral roll is concerned, we have to say that, after the commencement of the election process, draft electoral roll was published, objections were entertained and the electoral roll was finalised on that basis. Once it was done and election was about to take place, it may not be proper for the Election Commission then to again entertain a complaint against the electoral roll and on that basis issue an order in the nature of Ext. P7. If the election was conducted on the basis of an invalid electoral roll, the remedy available is that provided in Section 69 of the Kerala Co-operative Societies Act. In such circumstances, the learned Judge was fully justified in directing that the election process shall be resumed from the stage where it was stopped and that the Administration Committee should pass a resolution for scheduling the election.

We do not find any illegality in the judgment. The Writ Appeal is therefore dismissed.