

(1992) 06 KL CK 0075
In the High Court Of Kerala
Case No : W.A. No. 453/92

State of Kerala and Others

APPELLANT

Vs

P. Thilothaman and Another

RESPONDENT

Date of Decision : 03-06-1992

Acts Referred:

Citation : (1992) 2 KLJ 28

Hon'ble Judges : M. Jagannadha Rao, C.J.; P. Krishnamoorthy, J

Bench : Division Bench

Advocate : Lal George, Government Pleader, for the Appellant; K. Balakrishnan, for 1st Respondent, for the Respondent

Final Decision : Allowed

Judgement

M. Jagannadha Rao, C.J.—This Writ Appeal is preferred by the State of Kerala and two Ors. against the directions issued by the learned Single Judge in the conduct of elections to the Shertallai South Coir Vyavasaya Co-operative Society Limited. By judgment dated 17th March 1992, the learned Judge observed that the interests of justice will be subserved by a direction to hold elections to the above said Society on or before 31st May 1992. The learned Judge, therefore, directed the Junior Co-operative Inspector (Administrator) to pass a resolution for holding the elections within a period of ten days from that date and take steps forthwith to communicate it to the Project Officer (Coir), Alappuzha. It was further directed that the said Project Officer shall thereupon appoint the requisite returning officer for the purpose of holding the election and the election is directed to be held on or before 31st May 1992. It is this order that is questioned in this Writ Appeal.

2. It may be noticed that the Governor of Kerala has issued an Ordinance which came into force on 7th February 1992 by which the term of the Society was reduced and a new scheme was brought forward for appointment of a new committee or an Administrator as provided in Section 28(1A) of the Kerala Co-operative Societies Act. The Society here claims to have passed a resolution on

6th February 1992 which, according to it, was despatched to the concerned authority by registered post only on 13th February 1992. The above said resolution required that the election to the committee of the Society be conducted on 25th April 1992. It so happened that an administrator was appointed as per the provisions of the Ordinance on 14th February 1992 and there is dispute as to the date on which he has taken charge, but going by the case of the society, he took charge on 27th February 1992. The Writ Petition was filed on the basis of the above said resolution of 6th February 1992 and various directions were sought for. The learned Judge, instead of going into the merits, himself fixed the date for the election, namely, that the election should take place on or before 31st May 1992.

3. Appellants preferred this appeal and obtained an order of stay from a Division Bench of this Court on 19th May 1992 and the result was that the election did not take place on 31st May 1992 as directed by the learned Judge. It is, therefore, necessary to decide as to what directions have to be given for the conduct of the election in the light of the provisions of the subsequent amending Act which replaced the ordinance.

4. In this context, it is necessary to refer to Section 28(1A) and 28(1B) of the amending Act which read as follows:

(1A) Where the committee of a society has ceased to be in existence as provided in the third proviso to Sub-section (1), the Registrar shall appoint

- (i) a new committee consisting of not more than three members of the society; or
- (ii) one or more Administrator or Administrators, who need not be a member or members of the society,

to manage the affairs of the society for a period not exceeding six months as may be specified in the order, which period may, at the discretion of the Registrar and for reasons to be recorded in writing, be extended from time to time, so, however, that the aggregate period shall not, in any case, exceed one year or till the new committee enters upon office, whichever is earlier.

(1B) The committee or Administrator or Administrators appointed under Sub-section (1A) shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee of the society under Sub-section (1) or of any officer of the society and take all such action as may be required in the interests of the society and shall arrange for the constitution of a new committee.

It is also necessary to refer to Rule 35(1) of the Rules which reads as follows:

35(1) The Committee shall meet at least 60 days in advance of the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of the election of the new committee. A copy of the resolution shall be sent to the Registrar by registered post within a week.

It is contention of learned Government Pleader for the Appellants that it is not for this Court to fix the date of election in exercise of its powers under Article 226 of the Constitution of India when the statute has prescribed a particular procedure and also a particular authority to take a decision in that behalf. On the other hand, it is contended by Respondent-writ Petitioner that even though the term of the Administrator may be six months, it is obligatory on him to take steps to conduct the election immediately after his appointment, otherwise he has to explain each day's delay even though he may be well within the period of six months.

5. It is, in our view, clear from the aforesaid provisions that Section 28(1A) envisages the appointment of a new committee or an Administrator to manage the affairs of the society for a period not exceeding six months as may be specified in the order, which period may, at the discretion of the Registrar and for reasons to be recorded in writing, be extended from time to time, so, however, that the aggregate period shall not in any case, exceed one year or till the new committee enters upon office, whichever is earlier. It is also clear from Section 28(1B) that the committee or Administrator or Administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee of the society under Sub-section (1) or of any officer of the society and take all such action as may be required in the interests of the society and shall arrange for the constitution of a new committee. Rule 35(1) of the rules states that the committee shall meet at least 60 days in advance of the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of the election of the new committee. A copy of the resolution shall be sent to the Registrar by Registered Post within a week. It is not necessary for the purpose of this Appeal to go into the question whether the resolution passed on 6th February 1992 by the society was in time or after 7th February 1992 and ante dated. The fact remains that the Ordinance had come into force and as required, an Administrator had been appointed. The Administrator has to exercise his powers u/s 28(1B) of the Act read with Rule 35 of the rules. We are unable to read anything in Section 28(1B) which states that the Administrator is liable to explain every day's delay in passing the resolution for the conduct of the election to the new committee. The upper limit is six months and he would be well within his jurisdiction if he passes the necessary resolution as contemplated by Section 28(1B) read with Rule 35. It is to be noted that Rule 35 prescribes an advance period of 60 days before which a resolution has to be passed. The Administrator being in the position of a committee, has to comply with the time limitations mentioned in Rule 35 and subject to that he has to exercise his powers u/s 28(1B).

6. In the present case, therefore, the learned Judge was in error in himself fixing a date for the election. The learned Judge should have left it to the Administrator to act in accordance with the provisions of Section 28(1B) read with Rule 35(1). The statute confers power or discretion in a statutory authority. This Court could

only direct the authority to exercise that power and this Court cannot substitute its decision to that of the said authority.

For the aforesaid reasons the order passed by the learned Single Judge is set aside and there shall be a direction as follows: The Administrator of the Society shall take steps for conducting election to the new committee in accordance with the provisions of Section 28(1B) read with Rule 35 of the rules. The Writ Appeal is allowed to the extent indicated above. There will be no, order as to costs.