
(1992) 06 KL CK 0008

In the High Court Of Kerala

Case No : O.P. No"s. 6447 and 6476 of 1992

T.A. Sudevan

APPELLANT

Vs

Joint Registrar and Others

RESPONDENT

Date of Decision : 12-06-1992

Acts Referred:

Citation : (1992) 2 KLJ 11

Hon'ble Judges : K.P. Balanarayana Marar, J

Bench : Single Bench

Advocate : A.N. Rajan Babu, for the Appellant; A.M. Poulose, Government Pleader, for the Respondent

Judgement

K.P. Balanarayana Marar, J.—The question that arises in these original petitions is whether the Registrar of Co-operative Societies is bound to appoint a returning officer for conduct of election on receipt of a resolution by the committee of a Co-operative Society or whether he has discretion in the matter. Petitioner in O.P. 6457 of 1992 is the President of Ranny Government Servants" Co-operative Society. The term of the present managing committee will expire on 30-6-1992. A meeting of the managing committee was convened on 24-4-1992 and a resolution adopted to conduct election on 27-6-1992. The 2nd respondent was requested to appoint a returning officer to conduct election. He refused to appoint a returning officer and informed the petitioner that further steps for conducting the election could not be taken since the resolution is not consistent with S. 28 (1) of the Co-operative Societies Act and R. 35 (1) of the Rules. That order of the 2nd respondent is challenged in this O.P. Petitioner seeks a writ of certiorari to quash Ext. P2 and a direction to 2nd respondent to appoint a returning officer to conduct election to the managing committee.

2. The other petition O.P. 6476 of 1992 is filed by the President of Seethathodu Service Co - operative Bank. Here also the managing committee of the bank had passed a resolution to conduct election on 20-6-1992 and request was made for appointment of a returning officer. The 2nd respondent has not so far appointed

a returning officer and the matter was delayed. Hence the petition for issue of a writ of mandamus directing 2nd respondent to appoint a returning officer to conduct election to the managing committee. Second respondent in O.P. 6457 of 1992 filed a statement contending that the resolution adopted by the managing committee was defective. Since there is no resolution for convening a general body meeting for conduct of election, no action was taken for appointment of a returning officer. The fact that there was no proper resolution has been intimated to the society by the Asst. Registrar as per letter dated 30-4-1992. No statement is seen filed in O.P. 6476 of 1992. These petitions were heard together and are being disposed of by this common judgment.

3. The request of petitioner in O.P. 6457 of 1992 for appointment of a returning officer was rejected on three, grounds: (1) there was no proper notice of the managing committee meeting, (2) the minutes of the committee were not closed and signed by the competent officer and (3) no resolution was passed by the society for convening a general body meeting for election. The order of 2nd respondent refusing to appoint a returning officer is challenged by the petitioner in O.P. 6457 of 1992.

4. Before considering the validity of the objections raised by the 2nd respondent it has to be seen whether the registrar is bound to appoint a returning officer when once such a request has been made by the committee of the society through a resolution. The procedure regarding conduct of election to the committee of societies is dealt with in R. 35 of the Co-operative Societies Rules. The committee has to meet 60 days in advance of the date of expiration of the term and pass a resolution fixing the date, time and place for the conduct of the election to the new committee. A copy of that resolution has to be forwarded to the Registrar of Co-operative Societies by registered post within a week. On receipt of such a resolution the Registrar may appoint a returning officer for the conduct of the election. The question arises whether the Registrar has a duty to appoint a returning officer when once a resolution has been received by him or whether he can scrutinise the resolution for finding out whether it was properly adopted or not.

5. Sub - rule 2 of R. 35 reads thus:

The Registrar may on receipt of such resolution appoint a returning officer for the conduct of election.....

Learned Government Pleader would point out that the Registrar is given a discretion in the matter by using the word "may". According to him "may" means "may not" also. For proper reasons he may not appoint a returning officer as requested for in the resolution. On the other hand, it is the contention of the learned counsel for petitioner that the registrar has no discretion in the matter and that he is bound to appoint a returning officer: The short question therefore for consideration is whether it is obligatory on the part of the registrar to make an appointment on a resolution being forwarded to him.

6. From the nature of the English language the word "may" can never mean "must". But when it is employed in a legislation it has to be decided whether there is anything that makes it the duty of the person on whom is conferred the power to exercise. If he has no such duty, the exercise is only discretionary. It is settled law that when the power is coupled with a duty of the person to whom it has been given to exercise it, then it is imperative.

7. The word "may" is capable of meaning "must" or "shall" in the light of the context and where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command, (vide *Shri Rangaswami, The Textile Commissioner and Others Vs. The Sagar Textile Mills (P) Ltd. and Another*, .

8. The use of expression "may" is not decisive. Having regard to the context the expression "may" used in a statute has varying significance. In some contexts it is purely permissive. In others, it may confer a power and make it obligatory upon the person Invested with the power to exercise it as laid down. Generally the word "may" does not mean "must" or "shall" But it is well settled that the, word "may" is capable of meaning "must" or "shall" in the light of the context.

9. The Supreme Court in *Ambica Quarry Works v. State of Gujarat and Ors.*, (1987) 1 SCC 213 relying on an English decision observed that there may be something in the nature of a thing empowered to be done which may couple the power with the duty and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so. Whether the power is one coupled with a duty must depend upon the facts and circumstances of each case and must be so decided by the courts in each case.

10. The following passage in *Maxwell on Interpretation of Statutes*, 11th Edn. at page 235 is apposite in this connection.

The Supreme Court of the United States similarly laid it down that that which public officers are empowered to do for a third person the law requires shall be done whenever the public interest or individual rights call for the exercise of power, since the latter is given, not for their benefit, but for his and is placed with the depository to meet the demands of right and to prevent the failure of justice. In all such cases, the court observed, the intent of the legislature, which is the test, is not to grant a mere discretion, but to impose a positive and absolute duty.

11. The question whether "may" in R 35(2) is a permissive or enabling expression or whether it is capable of meaning "must" has to be resolved in the light of the principles enunciated and dealt with in the preceding paragraphs. The committee of the society shall meet 60 days in advance of the date of expiration of Its terms and pass a resolution fixing the date, time and place for the conduct of the election. A copy of that resolution has to be forwarded to the Registrar of Co-operative Societies within a week in order to enable him to appoint a returning officer for the conduct of the election. The returning officer has to

follow certain procedure regarding the finalisation of voters list, receiving and scrutiny of nomination papers etc. The purpose of forwarding the resolution is only for getting a returning officer appointed who alone can conduct the election. In case the registrar is given a discretion in the matter, he can refuse to appoint a returning officer with the result that another resolution will have to be adopted and there is every possibility of the election not being conducted before the expiry of the term of the committee. That may result in an administrator taking charge of the society. Sub-rule (2) of R. 35 does not confer any power on the registrar to scrutinise the resolution to ascertain whether the resolution was properly adopted and whether it is defective in any manner. Had the legislature intended to give such a power to the registrar, necessary provision would have been inserted in the sub-rule. The registrar having not been conferred with any such power, the only conclusion possible is that the registrar on receipt of a resolution has to straight away appoint a returning officer for conduct of the election. He has no discretion in the matter. An obligation is cast on the registrar to appoint a returning officer. The legislature has enjoined a duty on him to commence the process of election by appointing a returning officer. That commencement cannot be delayed or defeated either by inaction on the part of the registrar to appoint a returning officer or by refusing to appoint a returning officer for any reason whatsoever. The word "may" in sub-rule therefore means "shall". The Registrar has no discretion in the matter.

12. Having found that the registrar is bound to appoint a returning officer on receipt of a resolution, the question whether the resolution passed by the managing committee of Ranny Government Servants' Society Ltd. is defective or not does not survive for consideration- Even if it be, it is not within the province of the registrar to consider those objections. Whether notice of the meeting was properly given or whether the minutes were closed and signed by the competent officer are matters to be looked into by the members of the managing committee. If any of the members is aggrieved on account of notice having not been given to him, it is upto him to raise that objection and get the resolution rescinded in the manner known to law. The first two objections are therefore without any substance whatsoever.

13. Regarding the 3rd objection that a resolution to convene a general body meeting for conduct of election has not been adopted, it has to be said that R. 35 (1) does not contemplate such a resolution to be passed simultaneously with the resolution fixing the date, time and place for the election. Learned Government Pleader would point out that a general body meeting has to be convened once in a year for the purpose of election, if any, in the prescribed manner of the members of the committee other than the nominated members. It is the general body of the committee which shall elect the managing committee in accordance with the bye-laws and it is the general body which entrusts the management of the affairs of the society to such committee. It is pointed out that a general body meeting should have been convened simultaneously with the adoption of resolution for conduct of election. Counsel for petitioner draws attention to clause

34 of the bye-laws of the society which stipulates 7 days" notice to be given for convening a general body meeting. In case a meeting is convened for amendment of the bye-laws, 15 days" notice has to be given. Counsel would therefore point out that it is sufficient if 7 days" notice is given for convening the meeting. The non-convening of the general body meeting cannot therefore be stated as a reason for not appointing a returning officer. The date, time and place of conduct of the election had already been decided and declared. The returning officer appointed by the Registrar will have to publish a final list of voters, receive and scrutinise the nomination papers and then proceed with the conduct of election. Since sub-rule (1) of R. 35 does not provide for adoption of a resolution for convening of the general body meeting, a general body meeting for the purpose of election can be convened in accordance with the bye-laws. In the meantime the members will be intimated about the details of the election. The purpose of convening of general body meeting is only to enable the members to cast their vote in the election. Learned counsel for petitioner is right in his submission that the convening of the meeting can be had in accordance with clause 34 of the bye-laws. There was sufficient time for the committee to convene a general body meeting. This objection raised by the 2nd respondent is also without any substance.

14. For the aforesaid reasons O.P. 6457 of 1992 is allowed and Ext. P2 is quashed. The 2nd respondent has to be directed to appoint a returning officer to conduct election to the new managing committee of Ranny Government Servants" Co-operative Society. Since election cannot be conducted on 27-6-1992 for want of time to publish the final voters list it will be open to the managing committee to pass another resolution fixing time, date and place. Such resolution shall be adopted within a period of two weeks from this date. On receipt of the resolution the Registrar shall appoint a returning officer who shall proceed to conduct the election in accordance with the procedure prescribed in Rule 35. The present committee shall continue in office till the new members assume charge. O.P. 6476 of 1992 is also allowed and 2nd respondent is directed to appoint a returning officer for the conduct of the election. Since the election cannot be conducted on 20-6-1992 as decided by the committee, it will be open to the committee to pass another resolution and fix another date. On such resolution being passed by the society and forwarded to the Registrar, he shall appoint a returning officer without any delay and the returning officer so appointed shall proceed with the conduct of election in accordance with Rule 35. The present managing committee is permitted to continue in office till elections are held and new members assume charge.

The Original Petitions are disposed of as above.