

(2008) 03 KL CK 0024

In the High Court Of Kerala

Case No : Writ Petition (C) No. 6882 of 2008-T

Thomas Kaithaparambil

APPELLANT

Vs

TVM Jilla Un-employees Welfare Co-op. Socy. Ltd.

RESPONDENT

Date of Decision : 12-03-2008

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 35

Citation : (2008) 2 ILR (Ker) 271 : (2008) 2 KLJ 234 : (2008) 2 KLT 743

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; A.G. Aneetha (GP), for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Learned Senior Government Pleader appears for the second respondent. Having regard to the nature of the directions and orders being issued hereunder, notice to the first respondent is dispensed with preserving its right to move this Court for review of this judgment, if aggrieved. The petitioner is a promoter of the first respondent society, which was to have the first election to its committee. The second respondent was appointed as Returning Officer to conduct the election in terms of Rule 35 of the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as the "Rules".

2. In terms of sub-rule (3)(a) of Rule 35, the Returning Officer is duty bound to give intimation to all members included in the final list of voters, regarding the various details enlisted on that provision. The dates fixed for submission of nomination papers, scrutiny of nomination papers, date of polling and other details are also to be regulated by such intimation, in terms of Rule 35 of the Rules.

3. However, it is shown that a notice is drawn up by the Secretary/President of the society convening the meeting and including at the foot of that notice, the notification issued by the Returning Officer in terms of Rule 35(3)(a). It is further shown by the learned Special Government Pleader for Co-operation, from the

files, in the presence of the Returning Officer, that on 1-2-2008, the Returning Officer handed over the notification under Rule 35(3)(a) to the President of the society for dispatch and the notifications were dispatched only on 5-2-2008, the date fixed for receiving the nominations. Those materials unequivocally show that the notifications having been issued only on 5-2-2008, it was impossible to insist that the said date shall be the date for receipt of nominations.

4. Rule 35 does not include any authority for the Returning Officer to authorize the President or the Secretary of a society to despatch the notifications which are issued by the Returning Officer. A reading of Rule 35(3)(a), as already noticed, does not contemplate the involvement of any person other than the Returning Officer in the conduct of the election. Not only that, when the matter relates to election, it is appropriate to involve only the Returning Officer in carrying out the requirements of Rule 35(3)(a), unless that rule itself authorizes any other person to be involved at that stage. So much so, the Returning Officer, the second respondent acted without authority in entrusting the notification for the election with the President or the Secretary of the society for its despatch. On the basis of such entrustment, it is indisputable that the election process has effectively failed.

5. But what is more surprising is that Ex. P3 has been issued by the Returning Officer stating that the notification was despatched only on 5-2-2008. The situation reflected in Ext. P3 is nothing but the creation of the Returning Officer. That apart, even if the Returning Officer. That apart, even if the Returning Officer has only stopped the polling by the issuance of Ext. P3, the mere stoppage of the polling cannot cure the situation in hand. After having failed to act in terms of Rule 35(3)(a), it was not for the Returning Officer, at any rate, to stall the election on the basis of such actions as could be referable to the President or the Secretary of the society, in not despatching the notification to the members, following the unauthorized entrustment by the Returning Officer. Therefore, the impugned Ext. P3 has to go. The same is accordingly set aside.

6. In the aforesaid view of the matter, the election has to be held by rescheduling it because, it is the near admitted situation that on 5-2-2008, none other than those enlisted in Ext. P2 could submit their nominations. Though the learned counsel for the petitioner submits that being a society in its infancy there may not be any contest at all, the purity of the democratic process requires that the election is re-scheduled and conducted accordingly.

7. For the aforesaid reasons, it is directed that the schedule of dates fixed as per Ext. P1 shall be re-scheduled by the Returning Officer and notified by him in terms of Rule 35(3)(a) in accordance with law and the election shall be conducted at the earliest, at any rate, within a period of 30 days from now. The promoters' committee shall be in office till election is held and results declared as directed above. The writ petition is ordered and disposed of in the above terms.