

(2016) 10 KL CK 0048

In the High Court Of Kerala

Case No : Writ Petition (C) No. 29964 of 2016 (U)

T.K. Porinchu

APPELLANT

Vs

The State Co-Operative Election Commission

RESPONDENT

Date of Decision : 07-10-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Rules, 1969 — Rule 35A

Citation : (2017) AIRCC 753 : (2017) 1 KerLJ 339 : (2017) 1 KLT 82

Hon'ble Judges : Mr. P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : Sri. George Poonthottam, Advocate, for the Petitioner; Govt. Pleader Smt. Vidya. A.C, for the Respondent Nos. 1 to 3; Sri. M. Sasindran, for the Respondent No. 5

Final Decision : Allowed

Judgement

Mr. P.B. Suresh Kumar, J. - The petitioner is the President of the Thrissur District Co-operative Hospital Society Ltd., ("the Society" for short), a Society registered under the Kerala Co-operative Societies Act ("the Act" for short). The term of the managing committee of the Society is due to expire on 4.12.2016. On 22.8.2016, the managing committee resolved to request the first respondent, the State Co-operative Election Commission ("the Election Commission" for short), to take steps to conduct election on 23.10.2016 to form a new managing committee. Ext.P1 is the resolution adopted by the managing committee in this connection. Ext.P1 resolution and the documents required to be submitted along with the same, have been submitted to the second respondent, the Joint Registrar of Co-operative Societies for onward transmission to the Election Commission. It is alleged that the second respondent is not forwarding the resolution to the Election Commission with a view to thwart the conduct of the election proposed by the managing committee. The petitioner, therefore, seeks directions to the second respondent to forward Ext.P1 resolution to the Election Commission. He also seeks directions to the Election Commission to conduct

election as proposed by the managing committee.

2. A statement has been filed by the second respondent. The stand taken by the second respondent in the statement is that the proposal to conduct the election on 23.10.2016, long prior to the expiry of the term of the managing committee in office is not in accordance with the provisions of the Act and that therefore the proposal of the managing committee was not recommended. It is stated that the Election Commission is empowered to conduct election only on the recommendation of the Registrar. It is, however, conceded in the statement that the second respondent has forwarded the resolution of the Society to the Election Commission without the recommendation.

3. A member of the Society got himself impleaded as the additional fifth respondent in the writ petition. In the affidavit filed in support of the impleading application filed by the additional fifth respondent, it is stated that the petitioner and his team in the managing committee have been indulging in various acts of corruption; that vigilance cases have been registered against them; that an enquiry under Section 65 of the Act is ordered into the affairs of the Society; that the managing committee headed by the petitioner is liable to be superseded and that election is proposed in advance to prevent the supersession of the managing committee.

4. Heard the learned counsel for the petitioner, the learned Special Government Pleader as also the learned counsel for the additional fifth respondent.

5. The learned counsel for the petitioner contended that the resolution adopted by the managing committee to conduct election on 23.10.2016 is in conformity with the Rules framed under the Act and therefore, the first respondent has no option but to conduct election as proposed by the Society. Per contra, the learned Special Government Pleader asserted that the resolution adopted by the Society cannot be said to be in accordance with the Act and the Rules made thereunder. According to the learned Special Government Pleader, a managing committee elected to power cannot give up their office before the expiry of the term without sufficient cause.

6. The relevant portion of Rule 35A of the Kerala Co-operative Societies Rules which lays down the procedure for conduct of election by the State Co-operative Election Commission reads thus:

"35A. [Procedure regarding conduct of election to the committee of Societies by the State Co-operative Election Commission.-- The election of the members of the committee of Societies by the State Co-operative Election Commission shall be conducted in the following manner.

(1) The committee shall meet at least 60 days prior to the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of the election to the new committee. A copy of such resolution shall be sent to the State Co-operative Election Commission by registered post within a week

through the Registrar

[Explanation] -- The expression "Registrar" means (a) in the case of societies having State wide jurisdiction or having jurisdiction over more than one district, the Registrar of Co- operative Societies, (b) in the case of societies where the jurisdiction of which is confined to one district and in the case of Primary Societies, the jurisdiction of which exceeds one circle, the Joint Registrar of the district concerned and (c) in the case of Primary Societies the jurisdiction of which does not exceed one circle, the Assistant Registrar of the circle concerned.

(2) The Co-operative Election Commission may on receipt of such a resolution appoint returning officer from among the officers of the concerned Administrative Department for the conduct of election. The Returning Officer so appointed may be given such remuneration as may be fixed by Government from time to time. The Returning Officer shall take necessary steps for the conduct of election and the Committee shall render all necessary assistance to the returning officer for the conduct of election to the committee.

(3) The State Election Commission shall notify the details of election to the committee of the society, in two vernacular dailies having wide circulation in the area. A copy of the information shall also be affixed on the Notice Board of the head office and the branches, if any, of the Society. The notification shall contain the following particulars:

- (i) The number of vacancies to be filled up by election;
- (ii) Any area or constituency that is specified in the bye-laws from which members are to be elected;
- (iii) The date on which and the place at which the preliminary notification of the list of members qualified to vote as the voter shall be published;
- (iv) The date between which objections shall be filed and the date on which, the hours between which, and the place at which, the objections, if any, shall be scrutinized;
- (v) The date on which, and the place at which, the final voters list shall be published.]
- (vi) The date on which, the place at which, and hours between which nomination paper shall be filed by the contesting candidate or by his proposer or seconder;
- (vii) The date and hour when the nomination paper will be scrutinised;
- (viii) The date on which, the place at which and the hours between which, polling if necessary will take place."

Rule 35A mandates that the managing committee in office shall meet at least 60 days prior to the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of election to form a new managing committee. The said Rule also mandates that the Society shall send such a

resolution to the Election Commission by registered post within a week through the Registrar. It is evident from the said Rule that it is for the managing committee in office of the Society to decide the date, time and place of the election to the new managing committee. While the rule mandates that a decision for the conduct of election has to be taken by the managing committee in office at least 60 days prior to the date of expiration of its term, the rule does not contain any provision as to the date of election. The rule also does not prevent the conduct of election before the expiry of the term of the elected committee. As noted above, the contention of the learned Special Government Pleader is that since the managing committee is elected for a term, they have to be in office for the term. In other words, according to the learned Special Government Pleader, the elected managing committee has no freedom to demit office by requesting the Election Commission to take steps to conduct election to form a new managing committee. This contention cannot be accepted. The scheme of the Constitution, especially, after its 97th amendment, is that the co-operative societies shall be controlled democratically. In a democratic set up, the will of the people that matters. The members of the managing committee in office of the Society are elected representatives of the members of the Society. A decision of the managing committee to conduct election to form a new managing committee on an early date is the decision of the members of the Society. In the said view of the matter, it cannot be said that the said decision is illegal in any manner. Further, the authorities under the Act cannot compel a managing committee to be in office, if they do not want to be in office. As far as the present case is concerned, the managing committee is not creating any bottle neck or vacuum in the administration of the society. The committee only requested the authorities concerned to conduct election to form a new managing committee. In the said view of the matter, according to me, if a resolution is adopted by the existing committee to conduct election at least 60 days prior to the date of expiration of the term, the same has to be acted upon by the authorities concerned. I am fortified in the said view by the decision of this Court in *Managing Committee, Thiruvalla East Co-operative Bank v. The State Co-operative Election Commission* [2016(4) KHC 703]. Though the learned Special Government Pleader pointed out that the said decision has been modified in appeal, a copy of the judgment in Writ Appeal No.1844 of 2016 preferred against the judgment in the said case, which was made available to me at the time of hearing, does not indicate that the Division Bench has interfered with the said view taken by the learned Single Judge.

7. While the rule provides that the resolution passed by the Society for conduct of the election has to be forwarded to the Election Commission through the Registrar, it does not provide that the Registrar has to recommend to the Election Commission for conduct of election as proposed by the Committee. The learned Special Government Pleader conceded that there is no provision in the Act and the Rules made thereunder which provides for recommendation by the Registrar to conduct election as proposed by the managing committee in office. As such,

the contention of the respondents that the resolution of the managing committee to conduct election on 23.10.2016 has not been recommended by the Registrar and therefore, the same cannot be acted upon, is unsustainable.

8. The case of the additional fifth respondent is that proceedings will be initiated in all probability to supersede the present managing committee headed by the petitioner and the managing committee has resolved to conduct election on an early date to prevent their supersession. According to the additional fifth respondent, in the said circumstances, the respondents are justified in not acting upon the resolution adopted by the managing committee. The question is whether the resolution adopted by the managing committee to conduct election on 23.10.2016 is in order and if so, whether the Election Commission is bound to conduct election to the managing committee of the Society on that day. The contention of the additional fifth respondent is that the managing committee is one liable to be superseded and that therefore, they shall not be permitted to demit office by conducting election. If the managing committee is one which is liable to be superseded, then one has to be happy, for, they are demitting the office. It is absurd to contend that a managing committee which is liable to be superseded should be compelled to be in office so as to enable the authorities to supersede them. That does not mean that the members of the managing committee shall be let scot free, if the allegations levelled against them are found true. If the allegations levelled against them are found true, adequate provisions are there in the statute itself to proceed against them and to prevent them from participating in the management of the Society in future.

9. In the circumstances, I am of the view that the Election Commission is bound to conduct election to the managing committee of the society as proposed by the existing committee. As noted above, the resolution is to conduct election on 23.10.2016. A minimum of thirty days is required to complete the procedures in connection with the election. The date of election, in the circumstances, has to be modified.

In the result, the writ petition is allowed and the Election Commission is directed to conduct election to the managing committee of the Society on or before 13.11.2016.