
(1993) 03 KL CK 0080
In the High Court Of Kerala
Case No : O.P. No. 2361 of 1993

T.K. Sugathan and Another APPELLANT
Vs
Joint Registrar RESPONDENT

Date of Decision : 15-03-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 1 KLJ 932

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : P. Ravindran and Anil Sivaraman, for the Appellant; D. Somasundaram, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—Petitioner No.: 1, T. K. Sugathan is the President of the petitioner No.: 2, Pappinivattom Service Co-operative Bank Limited. The petitioner No.: 2 resolved that the elections to the Managing committee shall be held on 7-3-1993. A copy of the resolution was eventually sent to the Joint Registrar of Co-operative Societies, the respondent herein, as envisaged by sub rule (1) of Rule 35 of the Kerala Co-operative Societies Rules. The term of the present managing committee expires on 13-6-1993. The Joint Registrar of Co-operative Societies, by his letter No.: 0-46/93 dated 1-2-1993 informed the petitioners that it was not possible to appoint a returning officer to conduct the elections four months before the expiry of the term of existing managing committee. The reason pointed out in the letter was his experience that where elections are held much prior to the date of expiry of the term of the existing committees, the existing committee refuse to hand over the charge to the elected committees. The thrust of this letter is that it is not desirable to appoint Returning Officer and hold elections, far earlier, than the date of expiry of the term of existing committee. In this petition under Article 226 of the Constitution of India, the petitioners impugn the legality of the above decision of the respondent not to

appoint Returning Officer immediately.

2. The only submission made by learned counsel for the petitioners is that the committee of a co-operative society by its resolution fixed the date, time and place for the conduct of the election to the new committee. This was done "at least 60 days" in advance of the date of expiration of the term of the existing committee as required under sub-rule (1) of Rule 35 of the Kerala Co-op. Societies Rules. According to the petitioners the Registrar is in duty bound to appoint a Returning Officer immediately on receipt of such resolution. Since in this case the respondent has declined to do so, the impugned order violates sub rule (2) of Rule 35 of the Kerala Co-operative Societies Rules.

3. In *Sudevan v. Joint Registrar* (1992 (2) KLT (18) this Court examined the scope of sub rule (2) of Rule 35 which enjoins the Registrar to appoint a Returning Officer for the conduct of election, "on the receipt of such resolution". In that case the resolution under Sub rule (1) of Rule 35 was passed on 2-4-1992. The term of the committee was to expire on 30-6-1992. The proposed date of the election was 27-6-1992. The following propositions emerge from the judgment:

(a) The Registrar has no power to ascertain whether the resolution under sub rule (1) of Rule 35 was properly adopted.

(b) On receipt of such resolution the Registrar has "to straightaway" appoint a returning officer for conduct of the election. He has no discretion in the matter.

4. The petition proceeds on the assumption that by the impugned order respondent has declined to appoint a Returning Officer. The respondent has merely stated that since the term of the committee expires on 30-6-1993 appointment of Returning Officer could be made well in advance of the date of election but not four months in advance. In the counter affidavit the respondent has pointed out that the decision to hold elections was taken by the petitioners on 23-12-1992 and the elections were proposed to be held three months before the date of expiry of the term of the committee. He says "it is further submitted that the Returning Officer will be appointed to hold elections duly before the expiry of the term of the committee in power". Notwithstanding this categorical statement that the process of election will be set in motion and the elections completed before the expiry of the term of the committee, the petitioners pressed the petition.

5. The petitioners urge that in view of the judgment referred to, above, upon the receipt of the resolution, the respondent must straightaway appoint a Returning Officer. There are two reasons why the decision in *Sudevan v. Joint Registrar* (1992 (2) K. L. T. 18) does not apply to this case.

First in *Sudevan's* case the Joint Registrar had refused to appoint a Returning Officer. In this case the respondent has merely postponed the appointment of the Returning Officer.

Secondly the resolution of the society was passed just 60 days before the date of elections and not 180 days before the date of election, as is done in this case.

6. Sub-rule (1) of Rule 35 requires that the committee shall meet for the purpose of such resolution, "at least 60 days" in advance of the date of expiration of its term. The words "at least 60 days" mean that between the date of resolution and the date of expiry of the term of the committee, a minimum of 60 days must elapse. These words do not mean that such a resolution could be passed 180 days in advance, of the date of expiry of the term of the committee. The argument of counsel for the petitioners ignores the meaning of the words "at least". The word "least" is used as the superlative of "little", meaning thereby the smallest, either in size or degree. According to the Websters New International Dictionary the word "least" means "little beyond all others". When one uses the word "at least" what is conveyed is that the thing, act or event should be at the least estimate. The words "at least 60 days" used in sub-rule (1) of Rule 35 mean that the resolution must be so passed that there is between the date of the resolution and the date of the expiry of the term of the committee a period of "60 clear days." Therefore where a resolution is passed one year in advance of the date of expiry of the term of the committee or six months before such date, it cannot be said that such resolution has been passed "at least 60 days" in advance of the date of expiry of the term of the committee. Having regard to the meaning of the word "least" such interval should be of:

a) minimum of 60 days and

b) reasonably earlier than the date of expiry of the term of the committee.

7. A brief analysis of the relevant provision of Rule 35 will throw some light on the subject. Sub-rule (1) of Rule 35 casts an obligation on the committee to meet "in advance of the date of expiration of its term". The time of such meeting has also been stipulated. Sub-rule (1) of Rule 35 says "at least 60 days" in advance. After so meeting "at least 60 days in advance" of the date of expiration of its term, the committee passes a resolution and sends it to the registrar. What the Registrar shall do is laid down in sub-rule (2) of Rule 35. It has been held that sub-rule (2) of Rule 35 is mandatory so far as the Registrar's obligation to appoint a Returning Officer is concerned. But the Registrar is not expected to appoint a Returning Officer upon receipt of any resolution. The resolution on which the Registrar is required to act has to be "such resolution". These words clearly refer to a resolution passed by the committee "at least 60 days" in advance of the date of expiration of its term. The significance of the stipulation of 60 days and the exclusion of an unreasonably long interval between the date of such resolution and the proposed date of election will be realised from the scheme of the rule. Upon the appointment of the Returning Officer the committee sends to him a list of members qualified to vote. This list has to be as on a date 30 days prior to the poll which means that the committee has 30 days from the date of appointment of the Returning Officer to prepare and send the list of members. So now, between the date of sending a list of members and the

date of poll 30 days are left. Objections to the list are invited not less than 15 days prior to the date of poll. Three days are provided for inviting objections and considering them. This leaves approximately 15 - 50 days before the election. The Returning Officer is left with about two week for his work. He is required to publish the final list not less than 10 days before the date of poll. During the last 10 days the intimation of election, receipt of nomination papers scrutiny and the final poll take place. This is the scheme of the election programme which occupies 60 full days. That is why leaving a margin of few days the legislature has prescribed at least 60 days period for passing a resolution and inviting the Registrar to appoint a Returning Officer. Therefore the legislature has left a reasonable time for the purpose of elections. The rationale of 60 days time is two fold. Firstly "at least" a period of about 60 days which the rule makes considered reasonable, should be available for completion of the elections. Secondly, the existing committee should continue in office for its full term and should not be displaced by the new committee before such term expires. If elections are held three or six months before the expiry of the term of the committee, the legislative scheme will be upset. Therefore a minimum period of 60 days has been provided. The scheme of the programme of elections and the rationale of the provision of "at least 60 days" clearly exclude a period of time much longer than 60 days.

8. As already stated "at least" means "little beyond all others" (Webster's New International Dictionary) In sub-rule (1) of Rule 35 "at least 60 days" means "a little beyond 60 days". Therefore it stands to reason that the period of "at least 60 days in advance of the date of expiration of its term" stipulated by sub-rule (1).of Rule 35 means "a little beyond 60 days in advance of the date of expiration of its term". This construction finds support from the rationale of the legislative scheme analysed in the foregoing paragraphs. It follows that a resolution passed far earlier than 60 days in advance of the date of expiration of the term of the committee, is not a resolution in accordance with sub-rule (1) of Rule 35. It is not "such resolution" referred to in sub-rule (2) of Rule 35. Therefore, the respondent was right in not acting forthwith on the resolution. For all these reasons there is no merit in this petition. It is accordingly dismissed.