

S.Deekshith Vs. State of Kerala

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Court : Kerala

Decided On : Feb-05-2014

Judge : Honourable Mr.Justice K.Vinod Chandran

Appellant : S.Deekshith

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT:- THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN WEDNESDAY, THE 5TH DAY OF FEBRUARY 2014 16TH MAGHA, 1935 W.P.(C).No.29267 of 2013 (G)

----- PETITIONER(S):- -----

S.DEEKSHITH, VAYALRIKATHU VEEDU, KOTTAKKAKOPM P.O., ARYANADU - 695 542. BY ADVS.SRI.THOMAS ABRAHAM SMT.MERCIAMMA MATHEW SRI.V.RENJITH KUMAR SRI.ASWIN.P.JOHN RESPONDENT(S):-

----- 1. STATE OF KERALA, REPRESENTED BY ITS SECRETARY, DEPARTMENT OF CO-OPERATION, GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM - 695 001.

2. REGISTRAR OF CO-OPERATIVE SOCIETIES, KERALA STATE, TRIVANDRUM - 695 001.

3. KERALA STATE CO-OPERATIVE ELECTION COMMISSION, CO-BANK TOWERS, TRIVANDRUM - 695 001.

4. ELECTORAL OFFICER, ELECTION TO THE MANAGING COMMITTEE OF ARYANADU SERVICE CO-OPERATIVE BANK LTD. NO.593, ARYANADU, NEDUMANGAD, O/O. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), NEDUMANGAD, TRIVANDRUM - 695 542.

5. RETURNING OFFICER, ELECTION TO THE MANAGING COMMITTEE OF ARYANADU SERVICE CO-OPERATIVE BANK LTD. NO.593, ARYANADU, NEDUMANGAD, O/O. THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), NEDUMANGAD, TRIVANDRUM - 695 542. WP(C).NO.29267 OF2013- 2 - 6. JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), VANCHIYOOR, TRIVANDRUM DISTRICT, TRIVANDRUM - 695 008.

7. ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), NEDUMANGAD TALUK, TRIVANDRUM - 695 542.

8. ARYANADU SERVICE CO-OPERATIVE BANK LTD. NO.593, ARYANADU, NEDUMANGAD, REPRESENTED BY ITS SECRETARY, PIN - 695 542.

9. V.SHAJIMON, MELECHIRA VEEDU, THOLLOOR, ARYANADU P.O., NEDUMANGAD, TRIVANDRUM - 695 542.

10. B.PUSHKARAN NAIR, ASWATHY BHAVAN, ERAVOOR, ARYANADU P.O., TRIVANDRUM - 695 542.

11. VIJAYAKUMAR K., VIJAYA MANDIRAM, KANNANKARA MOOZHI, ARYANADU P.O., TRIVANDRUM - 695 542. R1 TO R7 BY SPECIAL GOVERNMENT PLEADER SRI.D.SOMASUNDARAM. R9 BY ADVS.SRI.GEORGE POONTHOTTAM SRI.BASANT BALAJI. THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON0502-2014, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:- WP(C).NO.29267 OF 2013 APPENDIX PETITIONER'S EXHIBITS:- ----- EXT.P1
- THE CERTIFIED COPY F

JUDGMENT

IN WP(C).NO.13169/2013 DATED 30.5.2013. EXT.P2 COLLECTIVELY: TRUE COPY OF THE NEWS PAPERS VIZ., MALAYALA MANORAMA AND MATHRUBHUMI CONTAINING ELECTION NOTIFICATION. EXT.P3 TRUE COPY OF THE LETTER DT.12.11.2013 ISSUED BY THE ELECTORAL OFFICER TO THE SECRETARY OF THE BANK. EXT.P4 TRUE COPY OF THE LETTER DATED 13.11.2013 SENT BY THE SECRETARY OF THE BANK TO THE ELECTORAL OFFICER. EXT.P5 TRUE COPY OF THE LETTER DATED 13.11.2013 SUBMITTED BY THE PETITIONER BEFORE THE ELECTORAL OFFICER. EXT.P6 TRUE COPY OF THE LIST OF 116 PERSONS DECIDED TO BE DELETED FROM THE DRAFT VOTERS LIST BY THE ELECTORAL OFFICER. EXT.P7 TRUE COPY OF THE NOTICE DATED 13.11.2013 PUBLISHED BY THE ELECTORAL OFFICER IN FORM NO.35. EXT.P8 TRUE COPY OF THE LIST OF 53 CANDIDATES WHOSE NOMINATIONS WERE RECEIVED BY THE RETURNING OFFICER. EXT.P9 TRUE COPY OF THE LIST OF THE SAID 36 PERSONS PUBLISHED BY THE RETURNING OFFICER. EXT.P10 TRUE COPY OF THE NOTICE PUBLISHED BY THE RETURNING OFFICER ON 23.11.2013. EXT.P11 TRUE COPY OF THE NOTIFICATION AND

ORDER

NO.E(1)2353/2013/S.C.E.C. DATED 25.11.2013. EXT.P12 TRUE COPY OF

JUDGMENT

DATED 23.10.2013 IN W.P.(C) NO.24296 OF 2013 WP(C).NO.29267 OF 2013- 2 -
RESPONDENT(S)'

EXHIBITS/ANNEXURES:-

----- ANNEXURE R3(a) TRUE COPY OF THE REQUEST. ANNEXURE R3(b) TRUE COPY OF THE REPORT DATED 21.11.2013. ANNEXURE R3(c) TRUE COPY OF THE REPORT DATED 23.11.2013. EXT.R9(a) TRUE COPY OF THE

ORDER

NO.C.R.P.(2)5866/2013 DATED 8.7.2013. EXT.R9(b) TRUE COPY OF THE ENQUIRY REPORT DATED 23.09.2013 EXT.R9(c) TRUE COPY OF THE

ORDER

ISSUED BY THE ELECTORAL OFFICER/ASST. REGISTRAR (G)
DATED 30.10.2013. vku/ (true copy) K.Vinod Chandran, J.

----- W.P.(C).No.29267 of 2013-G
----- Dated this, the 5th day of February, 2014

JUDGMENT

The petitioner is a member of the 8th respondent-Society, to which election was notified as per Exhibit P2. The election was scheduled on 8.12.2013. As per the election schedule, the Electoral Officer published a voters list on 13.11.2013. Nominations were submitted before the Returning Officer and with respect to 7 constituencies, out of a total of 13, there were no contesting candidates. With respect to 6 constituencies, there were rival candidates, the list of which was published in Exhibit P10 dated 23.11.2013. What remained was only the polling when the Kerala State Co-operative Election Commission (for brevity "Election Commission") came out with Exhibit P11, by which the election was cancelled. The petitioner assails the same and seeks for resumption of the election from the stage at which it was stopped.

2. Sri.Thomas Abraham, the learned counsel for the petitioner, contends that the cancellation was on the ground that there were members included in the voters list who were from areas outside the area of operation of the Society and, hence, the election WP(C).No.29267 of 2013 - 2 - would not be a fair one. It is submitted that the 8th respondent is a Society with 17258 members and on valid objections being raised about 116 persons included in the draft voters list, were removed by the Electoral Officer as per Exhibit P6. The Election Commission has now acted on a subsequent report of the Electoral Officer, which report has been filed on extraneous considerations. It is also submitted that as per the Joint Registrar's report, produced by the State as Annexure R3(c), the objection is only with respect to 9 voters.

3. Sri.D.Somasundaram, learned Special Government Pleader (Co-operation) submits that the voters list is the basis on which the elections are conducted and inclusion of persons who are not entitled to vote is so fundamental an error that would vitiate the election itself and the Election Commission, who has over all

supervision of the elections, validly exercised its powers to cancel the election. The learned Special Government Pleader relies on the decisions in *Devassy v. Asst. Registrar of Co-operative Societies* [1976 KLT40 and *Govindan v. Dy. Registrar of Co-op. Societies* [1983 KLT1038 to buttress his contention. WP(C).No.29267 of 2013 - 3 - 4. Sri.George Poonthottam, learned counsel appearing for the 9th respondent would contend that there is an enquiry pending against the Managing Committee under Section 65 and though the term of the Committee expires only on 21.02.2014, the elections were scheduled far earlier on 08.12.2013 to get over the anticipated disqualification on the culmination of the enquiry proceedings.

5. As per the provisions of the Kerala Co-operative Societies Act, 1969 (for brevity "the Act") and the Kerala Co-operative Societies Rules, 1969 (for brevity "the Rules"), it is seen that the Electoral Officer and Returning Officer were appointed by the Election Commission in pursuance of the notification, Exhibit P2. The Electoral Officer had also published a final voters list after considering the objections placed before it. The learned Special Government Pleader, however, would indicate that even before such publication, the Electoral Officer, who was the Assistant Registrar (General), Nedumangad, had informed the Election Commission about the discrepancies in the membership of the 8th respondent-Society by letter dated 30.10.2013, produced as Annexure R3(a). WP(C).No.29267 of 2013 - 4 - 6. Annexure R3(a) refers to a complaint, which was forwarded to the Assistant Registrar (General) by the Election Commission, again regarding the inclusion of persons who were outside the area of operation of the Society. The Assistant Registrar (General) also referred to about 23 examples as persons who have been enrolled as members from outside the area of operation of the Society. However, the Assistant Registrar's finding is that for a comprehensive enquiry, every member needs to be heard in person. It was also noticed that there are 17258 members in the Society. Obviously no action was taken by the Election Commission on the above report, which was long prior to the dates notified in Exhibit P2. It was the author of Annexure R3(a), who acted as Electoral Officer and published the final voters list after having considered the objections placed before him. Hence, despite the report Annexure R3(a), the Electoral Officer chose to publish the final voters list on 13.11.2013, as was

notified. It is also pertinent that about 116 members were removed from the electoral rolls as being persons residing outside the area of operation of the Society. As per Rule 35A, the Returning Officer had taken charge for receiving nominations and WP(C).No.29267 of 2013 - 5 - considering the same. It was subsequent to this, that too on 21.11.2013, that Annexure R3(b) report is submitted by the Electoral Officer. After the publication of the final voters list, the Electoral Officer's role is very nominal under Rule 35A.

7. The complaint regarding persons from outside the area of operation of the Society being enrolled as members, was before the Assistant Registrar (General) before the election proceedings commenced. A report was also filed, pointing out certain specific instances. The said officer, in fact, had been appointed as the Electoral Officer, who is enjoined upon to look into the draft voters list and finalize the same after considering the objections. There is no allegation that the objections were not considered properly. As was noticed above, 116 members were removed from the rolls by the Electoral Officer and after having published the final voters list, the Electoral Officer, purportedly on a communication issued by the Election Commission on 20.11.2013, submits a report again pointing out the discrepancies in the voters list. What is relevant is that, the report dated 21.11.2013 [Annexure R3(b)] points out that 116 persons were removed from the draft voters list on a WP(C).No.29267 of 2013 - 6 - prima facie consideration and takes a stand that for verifying the membership of others, there is the requirement of a more detailed examination. It is trite that the consideration of objection by the Electoral Officer is neither a roving enquiry; nor a proceeding of removal from membership, as has been declared by a Division Bench of this Court in *Vijayakumar v. Joint Registrar* [1996 (1) KLT285].

8. Maintenance of an electoral roll as per the Act and Rules is definitely a fundamental factor, as noticed in *Devassy and Govindan* (both supra). But a contravention of such fundamental factor cannot be easily assumed. Nor is to be presumed on vague allegations. The Electoral Officer is not conducting a roving enquiry and what is required is a prima facie consideration, that too on specific allegations being made pointing out the individuals who are said to be not entitled to be enrolled. There is no allegation that the Electoral Officer has failed to

examine any such specific objection filed within time. The allegation made, as is evident from Exhibit P3, is that about 6000 persons are outside the area of operation of the Society. Oftener than ever, such allegations are raised prior to the election merely to stall the election WP(C).No.29267 of 2013 - 7 - process. In the present case, it has also to be noticed that out of the thirteen constituencies, the nominations in seven constituencies stood unopposed. Elections were to be conducted in only the remaining six.

9. The afterthought of the Electoral Officer in sending a report, Annexure R3(b) after having published a final voters list is clearly suspect. The further communication issued by the Joint Registrar, Annexure R3(c), again on a query made by the Election Commission, raises only vague allegations as to the inclusion of members from outside the area of operation of the Society and speaks specifically of only 9 such persons having been included in the final voters list. The jurisdiction and powers of the Election Commission though held to be wide, was dilated upon by this Court in A.K.Kunhimohammed v. Returning Officer & Ors. [2014 (1) KLJ222 and it also held that it does not extend to calling for reports from officers of the Department totally unconnected with the election procedure. Annexure R3(b) definitely is on instigation and this Court has to find that no reliance could have been placed by the Election Commission on the same. The allegations being vague, it cannot be said that the election process WP(C).No.29267 of 2013 - 8 - would not be in the true spirit of the democratic functioning of the co-operative societies.

10. The learned counsel for the 9th respondent places a decision of this Court in W.P.(C).No.30058 of 2013 dated 02.01.2014, wherein, it is contended, that similar allegation of inclusion of members from outside the area of operation of the society was found to be justifiable reason for cancellation of elections. On going through the judgment and the facts disclosed therein, it is clear that the Committee admitted before Court that there were certain members who were included in the voters list, who were not entitled to exercise their franchise and it was the submission of the Society itself that they are now ready with the proper voters list published by the Electoral Officer and the procedure for elections may be resumed. This Court is of the opinion that the facts in the present case are clearly

distinguishable. No such admission is made by the Society or the Managing Committee members who were in office.

11. In the context of the finding that the cancellation of election itself is bad and on the strength of the finding that there was WP(C).No.29267 of 2013 - 9 - absolutely nothing wrong in the procedure adopted by the Electoral Officer and Returning Officer as enjoined upon them under Rule 35A; the cancellation has to be deemed a stoppage of elections. The cancellation of the elections being found to be bad, it can only be deemed that the polling was stopped. A Division Bench of this Court in *Madhavan Namboodiri v. Kammaran* [1992 (2) KLT567 held so: "It is no doubt true that there is no provision in the Act or the Rules as to what should happen if an election could not be held on the original date due to any reason not contemplated under the Rules. But that does not mean that the Committee is powerless. It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective. xx xx xx From what is stated above it has to be held that the Managing Committee has authority and jurisdiction to fix a new date for the election, if for any reason the election could not be conducted on the original date fixed, and that it is not necessary WP(C).No.29267 of 2013 - 10 - to repeat the whole process as contemplated under R.35. The election proceedings could be continued from the stage at which it was stopped ..." (sic). There shall be a direction to the Committee to take a resolution within two weeks from today, fixing a date for polling in accordance with the Act and the Rules and the same shall be forwarded to the Election Commission through the appropriate authority. The Election Commission is directed to convene the election from the stage at which it was stopped and appoint an Electoral Officer and a Returning Officer for the purpose of carrying on the polling and declaration of results. The election shall be conducted on the date notified, on the basis of the final voters list published on 13.11.2013 and the list of candidates in the constituencies in which polling is necessary as indicated in Exhibit P10. Writ Petition allowed. No costs. Sd/- K.Vinod Chandran vku/- Judge. (true copy)