

K.A. Philip and anr. Vs. the Returning Officer and anr.

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Court : Kerala

Decided On : Dec-03-2007

Reported in : 2008(1)KLJ254

Judge : Thottathil B. Radhakrishnan, J.

Acts : Kerala Co-operative Societies Act, 1969 - Sections 9; Kerala Co-operative Societies Rules, 1969 - Rules 35, 35(1), 35(2), 39(1), 39(2) and 39(3)

Appeal No. : W.P.(C) No. 24975 of 1997

Appellant : K.A. Philip and anr.

Respondent : The Returning Officer and anr.

Advocate for Def. : Anu Sivaraman, GP and; George Mecheril and; Raju K. Math

Advocate for Pet/Ap. : V.G. Arun,; T.R. Harikumar and; Jaiby Paul, Advs.

Judgement :

Thottathil B. Radhakrishnan, J.

1. The Registrar appointed a Returning Officer to conduct election to the committee of the society in question, acting on the resolution of 7-6-2007, by the committee then in office, to conduct elections on 11 -08-2007. Following due procedure, the polling commenced at 9 a. m. on 11 -08-2007. It is stated that

during the course of polling, smoke emanated from a ballot box in one among the four polling booths. Following this, the Returning Officer stopped the polling in all the booths; opened that ballot box, defused the smoking element and handed over the ballot papers and the ballot boxes under proper seal to the Secretary of the society.

2. The President of the society and the Board of Directors then in office, filed this writ petition on 16-8-2007, seeking a direction that the polling should continue from the stage at which it was stopped on 11-8-2007. A declaration that the committee then in office is entitled to continue till the election process is completed, was also sought for.

3. On the next day, i.e., on 17-8-2007, an Administrator was appointed because the term of office of the second petitioner Board had expired on 16-8-2007, the date of filing of this writ petition.

4. The facts and events noticed above are not in dispute.

5. The additional third respondent has filed a counter affidavit. Adv. Sri. George Mecheril appearing for him argued that the writ petition has become infructuous in as much as the declaration that the second petitioner is entitled to continue in office can never be granted in view of the fact that an Administrator was appointed and still further, that the direction sought for in relation to the polling also cannot be granted at the instance of the petitioners, who have ceased to be in office by efflux of time. It is concluded that the electoral process on the basis of Ext. P1 resolution cannot continue to run any further, because the committee that took Ext. P1 resolution has ceased to hold office.

6. Per contra, Adv. Sri. V.G. Arun for the petitioner argued that Ext. P1 resolution to conduct the election was taken by the committee in office on the date of Ext. P1 and is one with authority. Accordingly, he argued that the force of Ext. P1 resolution is not co-terminus with the terms of that committee, on 16-08-2007, as argued on behalf of the additional third respondent. It is also argued that the petitioners have the definite case that the person in office as the Returning Officer, while the election was conducted, had acted against the interest of the society and

stopped the entire election, though there was no room to do so, merely on the basis of the situation in relation to one of the ballot boxes. He further argued that in the light of the fact that the entire materials in connection with the election, including the ballot box from which smoke emanated and the ballot papers in that box, are kept under safe custody and seal with the Secretary, as handed over by the Returning Officer, it would be only just and proper to direct the electoral process to continue from the stage at which it was stopped, by ensuring that the polling is completed by letting those voters who did not vote on that day, to vote, after ascertaining from the records, the identity of persons who have already voted.

7. Ext. P1 resolution was lawfully taken by the committee then in office, with the first petitioner as the President. Second petitioner is the Board of Directors. Section 9 of the Kerala Co-operative Societies Act, 1969, hereinafter referred to as the 'Act', for short, provides that a co-operative society, on registration, shall be a body corporate, having perpetual succession and common seal. This means that Ext. P1 resolution of the committee of the society, taken on 7-6-2007, is one that will govern the society in relation to the matter dealt with in Ext. P1. The continued sustenance of the decision contained in Ext. P1 does not depend upon the continuance, in office, by the same committee that took the decision as on the date on which Ext. P1 resolution was passed. For these reasons, the argument of the third respondent that the decision contained in Ext. P1 is co-terminus with the term of the committee that rendered that decision and was in office only till its term expired on 16-8-2007, is only to be rejected. I do so. The electoral process does not fail with the passage of time beyond 16-08-2007.

8. It was incidentally pointed out on behalf of the third respondent that, in view of the prescriptions in Rule 39(3) of the Kerala Co-operative Societies Rules, 1969, hereinafter, for short, the 'Rules', that the election of all the members of the committee shall be held before the expiry of the term of office of the existing committee, the electoral process no more survives. That sub-rule, read in the backdrop of the contents of sub-rules 1 and 2 of Rule 39, clearly shows that the said provision does not mean that the exercise of bringing a new committee into office will fail, unless it is done at or before the expiry of the term of the committee

already in office. The Registrar, acting on Ext. P1 resolution, appointed a Returning Officer in terms of Rule 35(2) of the Rules. The necessary statutory process commenced, by the committee taking Ext. P1 resolution. The appointment of the Returning Officer followed. That electoral process has to go to its logical end in terms of Rule 35. The contention to the contrary fails.

9. On 16-8-2007, when this writ petition was filed, the committee headed by the first petitioner was in office. The Administrator was appointed only on 17-8-2007. The term of office of that committee had not expired before the institution of this writ petition during the office hours of this Court on 16-08-2007. The petitioners, therefore, had the standing to file this writ petition as filed. The first petitioner, though described as the President of the Board of Directors of the society, is impleaded by his name and therefore, his locus standi continues.

10. When the committee in office had lawfully resolved to conduct the election and had communicated that decision to the Registrar in accordance with Sub-rule (1) of Rule 35 of the Rules, the Registrar, duty bound as he was, did the needful for the conduct of election by commencing the process provided by Sub-rule (2). When there were four polling booths, in my view, the Returning Officer did not act with due diligence and maturity, expected from an officer of that status, while the polling in all the booths were stopped merely on the premise of a situation referable only to one of the ballot boxes. It is not uncommon that polling in a booth or in relation to a particular station is stopped. But the process has to necessarily continue in so far as the other booths and stations are concerned. Even if polling was stopped in one booth on a ground referable to the situation in a ballot box, the Returning Officer ought to have seen that the polling in the other booths continues. This would be subject to any decision that may be taken by the competent authorities in accordance with law, later on, regarding the ballot box in relation to which there had been a mishap. The post of Returning Officer of an election is one by virtue of which, on being directed to conduct the election, it is expected of him to act in a manner that the electoral process, which is nothing but one of the most cardinal facets of the democratic process, is carried on, to reach at the result that it has to, viz., that the polling is conducted within the time limit, on the date to which it is scheduled, in terms of the law applicable to the election.

11. The question that now arises is as to how the situation in hand needs to be resolved. The ballot boxes, including the one from which, smoke had emanated, and the ballot papers retrieved from that box are available in safe custody. At the first blush, the request of the petitioners for continuing the polling from that point may appear to be sound. But, on a deeper consideration, it would show that there may be disparities which would affect certain core principles of the democratic process. The ballot boxes were taken off and put in safe custody by about 2 p.m. on the date of poll. Certain voters are stated to have cast vote; some have not. There are more than 6000 voters in the final list. The polling day was fixed as 11-8-2007 and time to cast the votes was from 9 a.m. to 4 p.m. Therefore, the right of the voters to exercise the franchise is to be within that time limit on that particular day. There might have even voters who would have decided not to vote. There would have been voters who would think twice before they vote, if they are given a second opportunity. If the pleas of the petitioners is accepted in toto, those who did not vote or were yet to vote on 11-8-2007 would get a polling time, double that which was available to those who had already voted. By now, the time they would have at their disposal, to decide on as to how they would exercise their franchise would also be totally different from what was available to those who had exercised the franchise on 11-8-2007. Therefore, the situation cannot be resolved by extending to those who have not voted on 11-8-2007, a further opportunity to vote. All that could be done is to have re-polling in the booths where the polling was stopped and could not be completed within the time frame fixed as per the notification. Unfortunately, the administrative and otherwise official imprudence of the Returning Officer has placed all the ballot boxes and polling booths in the same status, which calls for re-polling. The inescapable conclusion therefore, is that there has to be a re-polling for all the polling booths in the election in question, on the basis of the final voters' list that was published following the resolution of the committee for the election, that was held on 11-8-2007 and with the same candidates.

12. In the result, this writ petition is disposed of directing that re-polling shall be conducted ignoring the polling held on 11-8-2007. The Joint Registrar having jurisdiction over the society shall identify and take over all the ballot papers provided for the purpose of the polling on 11-8-2007, including those which are

used for casting votes. He shall hand over all such materials to the police officer investigating the crime case stated to have been registered in relation to the incident. Re-polling, as above, shall be conducted on or before 15-1-2008. It shall also be ensured that any voter's identity card issued after 11-8-2007 is not permitted to be used. The Joint Registrar will ensure that the directions in this judgment are complied with scrupulously.

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