

(2013) 01 KL CK 0163

High Court Of Kerala

Case No: Writ Petition (C) No. 2238 of 2013

D. Suresh Kumar

APPELLANT

Vs

Kerala State Co-operative
Election Commission and Others

RESPONDENT

Date of Decision: Jan. 30, 2013

Acts Referred:

- Kerala Co-operative Societies Act, 1969 - Section 28(1), 32, 32(1)

Citation: AIR 2013 Ker 132 : (2013) 1 ILR (Ker) 565 : (2013) 2 KLJ 343

Hon'ble Judges: K. Surendra Mohan, J

Bench: Single Bench

Advocate: P.C. Sasidharan and T.R. Harikumar, for the Appellant; D. Somasundaram, Spl. GP, for the Respondent

Final Decision: Allowed

Judgement

K. Surendra Mohan, J.

The petitioner, President of the Board of Directors of the Poothakulam Service Co-operative Bank Limited No. 2944 complains that though a resolution was adopted by them on 22.12.2012 resolving to hold the election to the Managing Committee on 03.03.2013 as per Exhibit P1(a) and was forwarded as per Exhibit P1, the respondents have returned the same declining to take necessary action to hold the election as proposed. The third respondent had on receipt of the resolution forwarded the same to the second respondent with his recommendations. However, the second respondent has taken a decision not to forward it to the first respondent as per Exhibit P2. Exhibit P3 has been issued in terms of the reasons stated in Exhibit P2 communicating the said decision to the petitioner. Two reasons are stated for the refusal to forward the resolution to the first respondent. The first reason is that, though the term of the Managing Committee is to expire only on 30.03.2013, the election is proposed to be conducted on 03.03.2013, which date is about one month prior to the date of expiry of the term of office of the Committee. For the above

reason, it is pointed out that the stipulation in Rule 35A(1) of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as the "Rules" for short) has been contravened. The second-reason is that though notice has been issued u/s 32 (1) of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the "Act" for short) proposing to initiate action against the present Managing Committee, the same was challenged by them in a writ petition before this Court. Dissatisfied with the judgment of this Court dismissing the said writ petition, the Managing Committee has challenged the Single Bench decision before the Division Bench in a Writ Appeal, which is pending.

2. According to Sri P.C. Sasidharan, who appears for the petitioner, both the above reasons are unsustainable. Reliance is placed on the decision reported in [Abu, M.K. Vs. State Co-operative Election Commission and Others](#) which is produced as Exhibit P4 in this writ petition, to contend that the expression "at least 60 days prior to the date of expiration of its term" does not indicate that the said requirement should be followed as an immutable rule. If there were sufficient reasons to indicate that a decision had to be taken by the Committee at an earlier point of time, it was certainly open to the committee to do so, provided there were reasons to justify the same. In the present case, the decision to conduct the election on an earlier date was taken for the reason that 30.03.2013, being the date of expiry of their term of office, it would not be possible to get any school for the conduct of the Election, since annual examinations would be in progress in all schools, during the end of March. It was for the said reason that the election was proposed to be held about a month prior to the actual date of expiry of the term. The reason being a genuine and reasonable one, it is contended that the request should have been acceded to. According to the counsel, the fact that proceedings u/s 32(1) are contemplated cannot be a ground for stalling the electoral process. Since there are no orders passed against the Managing Committee at present, the second ground is also unsustainable, it is contended.

3. The Special Government Pleader Sri D. Somasundaram refutes the contentions of the counsel for the petitioner pointing out that under the provisions of circular No. 1/2001 issued by the Government, on receipt of the resolution from the Managing Committee, the Assistant Registrar had to forward the same to the Joint Registrar for necessary action. Therefore, the Joint Registrar was within his powers to take note of the defects and to return the resolution to the Managing Committee. It is also contended that the attempt of the Managing Committee is to conduct the election before any action was taken against them u/s 32 of the Act. In view of the above, it is contended that Exhibits P2 and P3 were perfectly in order and for the said reason not liable to be interfered with.

4. I have heard the Counsel for the petitioner as well as the learned Special Government Pleader. As already noticed above, as per Exhibits P2 and P3, two reasons are stated for not forwarding the resolution of the Managing committee to

the first respondent. The first reason is that the election was proposed to be conducted about a month prior to the date of expiry of the term of the office of the present Managing Committee, which according to the authorities is not permissible in view of Section 35A(1) of the Act. However, it is necessary to notice that the above issue has been considered by this Court in Exhibit P4 judgment. It has been held that the period of sixty days contemplated by the Rule would have to be applied depending on the facts and circumstances of a case.

5. Paragraphs 5 and 6 of the said judgment reads as follows:-

5. Section 28B of the Kerala Co-operative Societies Act, 1969, the "Act", for short provides for the constitution of the State Co-operative Election Commission for the superintendence, directions and control of the conduct of election to the committee of the society. The election in question is governed by Rule 35A of the Kerala Cooperative Societies Rules, 1969, hereinafter referred to as the "Rules". That Rule provides the manner in which the election to the members of the committee shall be conducted by the State Co-operative Election Commission. Sub-rule(1) thereof provides among other things, that the committee shall meet at least 60 days prior to the date of expiration of the term and pass the resolution fixing the date, time and place for the conduct of the election to the new committee. Rule 35(1) enjoins and empowers the committee to fix the date for the conduct of the election. Adverting to Section 28(1) of the Act, it can be noticed that committee is constituted by the general body of the society for the purpose of being entrusted with the management on the affairs of the society. It is therefore explicitly clear that the democratic right of the general body of a co-operative society to elect its committee is exercised by having the date of election fixed by the committee, which is in office by a democratic process.

6. The wisdom to fix the date for the election is of the committee. It is a democratic process. Unless it is shown to be in violation of any prescription of law, the same has to be recognized. This principle is well laced into the manner in which sub-rules 1, 2 and 4 of Rule 35A are couched.

6. The Court has gone on to observe further as follows:-

There is no specific power conferred on the State Co-operative Election Commission or any other authority under the Act on whose permission or orders, would depend the date of conduct of the election. No such power is given under Rule 35A. The State Co-operative Election Commission is duty bound to appoint an Electoral Officer to give effect to the decision of the Committee fixing the date, time and place for the conduct of the election to the new committee. The view is fortified by the decision of this Court in [T.A. Sudevan Vs. Joint Registrar and Others](#), .

7. Applying the above dictum to the facts and circumstances of the present case, it has to be held that the reason for holding the election on an earlier date has been specified by the resolution Exhibit P1. It cannot be held that the reason is whimsical

or unreasonable. In view of the above, it has to be held that the first reason stated is unsustainable.

8. The counsel for the petitioner also points out that Rule 35A has been amended in the year 2003 by providing that the resolution has to be sent to the State Co-operative Election Commission by registered post within a week through the Registrar as specified in the explanation to sub rule 2 of Rule 35. The explanation to Rule 35 specifies that the expression "Registrar" in the case of primary societies, the jurisdiction of which does not exceed one circle, refers to the Assistant Registrar of the circle concerned. Therefore, the Assistant Registrar of the concerned circle is the authority who has to forward the resolution to the Election Commission as per the amended sub rule (1) of Rule 35A. The above being the position, it was unnecessary for the third respondent to have forwarded the resolution to the second respondent, as done in the present case. Since no proceedings have been initiated against the present Managing Committee u/s 32(1) of the Act, the second reason also can only be held to be unsustainable. For the above reasons Exhibits P2 and P3 are set aside. The counsel for the petitioner has handed over to me copy of a fresh resolution dated 29.01.2013 adopted by the Managing Committee proposing to hold the election on 31.03.2013. It is also submitted that the said resolution has been forwarded to the third respondent. In view of the above development, there shall be a further direction to the third respondent to forward the present resolution to the first respondent, so as to ensure that the election is conducted on 31.03.2013, as scheduled.

For the above reasons, this writ petition is allowed. The second respondent is directed to forward the resolution of the Managing committee of the Poothakulam Service Co-operative Bank Limited No. 2944 dated 29.01.2013 to the first respondent immediately, so as to ensure that the election is conducted on 31.03.2013, as scheduled.