
(1992) 09 KL CK 0034

High Court Of Kerala

Case No: W.A. No. 791/92

Madhavan Namboodiri

APPELLANT

Vs

Kumaran and Others

RESPONDENT

Date of Decision: Sept. 2, 1992

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: M. Jagannadha Rao, C.J; P. Krishnamoorthy, J

Bench: Division Bench

Advocate: V.P. Mohankumar, Prabha M. Pillay and Gopikumar, for the Appellant; M.K. Damodaran, for 1st Respondent and T.R. Ramachandran Nair, for Respondents 2 to 4, for the Respondent

Final Decision: Dismissed

Judgement

P. Krishnamoorthy, J.

This writ appeal is by the 4th Respondent in O.P. No. 7630 of 1992. The Appellant 4th Respondent got himself impleaded in the original petition by filing, C.M.P. No. 13229 of 1992. The original petition under Article 226 of the Constitution of India was filed by the President of the Koram Ksheera Vyavasaya Sahakarana Sangham (hereinafter referred to as the Society). The term of the managing committee of the society was to expire on 30th June 1992- The managing committee passed a resolution to hold election on 14th June 1992 and in pursuance to the resolution a returning officer was appointed. The preliminary voters" list was published on 8th May 1992 and the final list was published on 15th May 1992. The nomination papers were accepted after scrutiny. Though everything was ready for the election, on the date of election, namely, on 14th June 1992, the returning officer did not turn up to conduct the polling. There is a controversy between the parties as to the reason why the returning officer did not come on the date of election- According to the returning officer, while he was on his way to the place of election on 14th June 1992, he was forcibly taken in a jeep from Taliparamba bus stand to Kasaragod where he was illegally detained till 4 p.m. From there he reached Payyannur and lodged a

complaint with the Police and a case was registered under the various sections of the Indian Penal Code. Anyhow, we are not much concerned with that "controversy in these proceedings.

2. Admittedly, the election was not held on 14th June 1992 and so the Petitioner-President of the society filed the original petition seeking a writ of mandamus directing the 1st Respondent to proceed With- the election process from the stage where it was stopped and to conduct the polling before 30th June, 1992.

3. In the counter-affidavit filed by the returning officer, he alleged that he was kidnapped by certain people on 14th June 1992 and was forcibly taken from Taliparamba to Kasaragod and he was released only at 4 p.m. Immediately thereafter he filed a complaint before the Police and he reported the matter to the Joint Registrar also. He made arrangements for conducting the election on 29th June 1992.

4. Though the election was postponed to 29th June 1992, the election did not actually take place on that day also in view of the stay order granted by the Joint Registrar. This original petition was filed on 15th June 1992 and the Joint Registrar passed the order of stay in view of the pendency of the original petition.

5. Later, the 4th Respondent got himself impleaded and he filed a counter-affidavit, raising the objection that out of 273 ordinary members, only the names of 75 were shown in the voters" list. It was also contended by him that the existing "committee should not be permitted to continue in office so that there may be a free and fair election.

6. During the pendency of the original petition, the managing committee passed a resolution on 16th July 1992 fixing the date of election as 20th September 1992. The resolution also fixed the time and place of election. During the course of the hearing this fact was brought to the notice of the learned Singla Judge and since it was felt that the date stipulated was unduly distant, it was suggested that a near date be fixed for the election. In pursuance to that suggestion" from the court, another resolution was adopted by the society on 5th August 1992 fixing the date of election as 16th August 1992. The 4th Respondent raised an objection that the earlier resolution dated 9th Mafch 1992"fixing the date of election as 14th June 1992 having been rescinded by the executive committee, the election could not be continued from the stage at which it was stopped- It was further contended that the whole election process as contemplated under Rule 35 of the Co-operative Societies Rules has to be repeated by giving effect to Rule 26 of the Rules, taking into account the new date of election. It was contended by him that when once the earlier election could not be conducted as originally fixed and a fresh resolution having been passed, new voters" list has to be prepared in accordance with Rule 26, taking into account the fresh date of election as the relevant date.

7. The learned Single Judge did not accept that contention and held that when once election process is interrupted, it has to be proceeded from the stage at which it was

stopped and accordingly he directed to conduct the polling on 16th August 1992. The learned Judge also held that there is no irregularity in the committee itself fixing the new date for election and accordingly overruled the contention raised by the 4th Respondent. It was held by the learned Judge that the present managing committee shall be permitted to continue in office till the new committee assumed charge. This judgment of the learned Single Judge is challenged in this writ appeal.

8. It is now admitted before us that in pursuance to the order of the learned Single Judge, election was actually conducted on 16th August 1992, results were declared and the new managing committee has assumed office.

9. In this appeal counsel for the Appellant, Sri V.P. Mohan Kumar, has raised the same contention which he raised before the learned Single Judge, namely, that having regard to the provisions contained in Rule 35 of the Kerala Co-operative Societies Rules, when once the election could not be conducted on the date originally fixed, for whatever reason, and another resolution is passed by the managing committee fixing another date for the election, the whole process, right from the appointment of a returning officer till the election, has to be done afresh and that the direction given by the learned Single Judge to proceed with the election from the stage at which it was stopped is not supported by the provisions contained in the rules. In order to decide that question, it is necessary to note that in this case all arrangements for the election had been made to be conducted on 14th June 1992 and that the polling could not be conducted on that day as the returning officer could not be present on that day- There is a controversy between the parties as to the reason, why he was not present on 14th June 1992, but we are not concerned with that in this case. Whatever may be the reason, polling did not start and nothing happened on that day. In this context, it is relevant to note the relevant provisions of Rule 35 of the Co-operative Societies Rules which lay down the procedure for the conduct of an election:

35. Procedure regarding conduct of election to the committee of societies.-"The election of the members of the committee of a society shall be conducted in the following manner.

(1) The committee shall meet at least 60 days in advance of the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of the election of the new committee, A copy of the resolution shall be sent to the registrar by registered post within a week.

(2) * * * *

(3) * * * *

(e) (i) On the day following the date fixed for the receipt of nomination papers, the returning officer shall take up the scrutiny of the nomination papers. The candidate or his proposer or his seconder may be present at the time of the scrutiny of nomination papers;

* * * *

(v) The returning officer shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or affray or by causes beyond his control.

* * * *

(p) (p) If at any stage of the polling the proceedings are Interrupted or obstructed by any riot or affray or if at such elections it is not possible to take the poll for any sufficient cause, the returning officer shall have power to stop the polling, recording his reasons for such an action in the minute book of the society.

* * * *

Rule 26 deals with prohibition on admission of members- and transfers of shares on the eve of general meeting. Rule 26 reads:

26. Prohibition on admission of members and transfers of shares on the eve of general meeting:-(1) No society shall admit members or approve the transfer of shares within sixty days prior to the date of election or the date of the general body meeting;

(2) Any person admitted as member and any person in whose favour the transfer of shares have been approved in contravention of this rule shall not have the right to membership or the right to vote at the said election or at the general body meeting.

It is contended by counsel for the Appellant that an adjournment of the proceedings is contemplated under two contingencies, namely, one at the stage of scrutiny of nomination papers under Rule 35(3)(e)(i) and another to stop the polling which has already been started. In the former case, the proceeding! can be adjourned only if the proceedings are interrupted or obstructed by riot or affray or by causes beyond the control of the returning officer and a polling can be stopped by the returning officer if it is interrupted or obstructed by any riot or affray or if it is not possible to conduct the election for any sufficient cause. The contention of counsel for the Appellant is that both these circumstances are non-existent in- this case, i.e., there was no obstruction at the stage of scrutiny of, the nomination papers nor was there any stoppage of the polling already started, for the polling never commenced in this case. In that view of the matter, according to counsel for the Appellant, all proceedings taken in pursuance to the election will get effaced when once the election could not be conducted for any other reason and the whole process has to be repeated. It is also contended that in this case the managing committee having passed a subsequent resolution under rule 35, it necessarily follows that the election could not be continued from the stage at which it was stopped.

10. After hearing counsel for the Appellant and the Respondents, we are not inclined to accept this contention. The learned Counsel for the Appellant is right when he contends

that neither Rule 35(3)(e)(i) or Rule 35(3)(p) is applicable to the facts of this case. But the question to be considered is as to whether the Committee has jurisdiction and authority to fix another date for the election when the election could not be conducted on the date originally fixed. Counsel for the Appellant placed great reliance on a decision of this Court reported in *Mavelikara Co-operative H. S, Ltd. v. District Co-operative Bank* 1974 KLT 783. In that case, the election could not be held on the date fixed due to certain stay orders passed by court. Ultimately, the returning officer fixed a new date for election and notified" that the election would be conducted on the basis of the voters" list published for the previous election date. After considering the various provisions of the Act and the rules, this Court held:

No provision in the Act or the rules was brought to my notice under which an election which did not take place on the date fixed for the same, could be continued from the stage it was stopped. Rule 35(1) indicates otherwise, for under that sub-rule the date, time and place for the conduct of the election has to be fixed by a resolution of the existing committee; at a meeting held at least 60 days in advance of the expiration of its term. Under the Act or the rules, no power is conferred on the returning officer to fix the date, time and place of election. The result is that if for any reason an election is not conducted on the date fixed, Sub-rule (1) of Rule 35 is attracted, and all the steps envisaged by the several provisions in that rule have to be taken. Admittedly, the date of poll was not fixed by the administrator, but by the 3rd Respondent, the returning officer as per Ext. P-4 notification. Ext. P-4 notification as well as the election held in pursuance thereof, are therefore invalid.

11. The very same learned Judge followed the dictum in the above case, in *Achuthan v. Returning Officer* 1977 KLT S.N. 10 case 28.

12. The decision in 1974 KLT 783 came up for consideration before a Division Bench of this Court in *Abubaker v. Kunhavaran* 1983 KLT 995. In that case while the polling was being conducted, some persons obstructed the polling and unauthorisedly entered the booths and thus the polling was interrupted by such conduct and the returning officer stopped the polling in exercise of the powers conferred under Rule 35(3)(p) of the Co-operative Societies Rules. Petitioners in that case made a prayer to this Court to issue a direction to the returning officer to conduct the election from the stage at which it was stopped. The question that arose in that case was as to whether the returning officer could continue the election from the stage at which it was stopped. The Division Bench held that the rules do not specifically provide whether the returning officer should fix the date for election which has been stopped if the election is not continued later on the same day nor is there any provision which says that this power could be exercised by the managing committee. It was further held that the power under Rule 35(3) fpj is to Stop the polling and that it will not enable the returning officer to. efface the proceedings which had already taken place. The Division Bench further held:

The power of cancellation is different from a power of stopping. When something is cancelled what has already been done is effaced. The rule contemplates stopping because polling cannot go further on account of certain circumstances until a situation arises where the obstruction or obstacle is removed. Necessarily therefore by its very character stopping of a polling does not mean that what has been done would be rendered ineffective. Even from the point of view of expediency this would be the proper approach, for otherwise the election will have to commence over and over again if only there is an attempt again and again to create some trouble or obstruction. The incentive for creating such obstruction would be more if the effect of such obstruction is to nullify whatever has been done by way of polling. Apart from that on the plain meaning, of the rule we feel it proper to treat stoppage as one which for the time being operates to discontinue the polling so that it may be continued again.

The Division Bench also referred to the decision in *Mavelikara Co-operative H.S. Ltd. v. District Co-operative Bank* 1974 KLT 783 and held that that was a case not concerning the stoppage of election under Rule 35(3)(p) and may not be applicable to a situation where election was stopped after it was commenced. The Division Bench has clearly laid down that an election which was stopped for reasons mentioned in Rule 35(3)(p) of the rules can be continued from the stage at which it was stopped and that it is not necessary to have the whole process repeated.

13. An identical question arose before another learned Single Judge of this Court in *Valsaraj v. Joint Registrar* 1984 KLT 628. Two questions arose for consideration in that case, namely (1) when once an election which is decided upon by a resolution of the committee of a society is postponed due to circumstances beyond its control, is it obligatory for the society to conduct the election all over again with a fresh resolution under Rule 35(1), or can the proceedings be continued from the stage at which they were left off? and (2) what shall be the date, with reference to which the prohibition contained in Rule 26 of the Kerala Co-operative Societies Rules should be operative? On the first question the learned Judge considered the decision in *Mavelikara Co-operative H. S. Ltd. v. District Co-operative Bank* 1974 KLT 783 and also the Division Bench decision in *Abubaker v. Kunhavaran* 1983 KLT 995 and held:

The Division Bench held that, that the polling which was stopped by the returning officer had to be continued from the stage at which it was, left off, observing that the conclusion of Vadakkal, J, that:

The returning officer had no power to postpone the poll and fix another date for the polling for any reason whatsoever." was not correct and does not apply to all situations.

It may be noted that the aforesaid observation by the learned Judge may not be fully correct, for in *Abubalcer v. Kunhavaran* 1983 KLT 995, the decision in *Mavelikara Co-operative H. S. Ltd. v. District Co-operative Bank* 1974 KLT 783, was only distinguished and it was not held to be incorrect. , Anyhow, it is not necessary for us to go

into that question as we are independently considering the question. Furthermore, the learned Judge held: that an election process once interrupted has to be continued from the stage at which it was left off. The learned Judge observed that "if it were otherwise, any manipulation by extraneous agencies can effectively subvert the internal democracy of co-operative institutions by interference in the due course of election of these institutions of utmost importance in our constitutional system". The second question was also answered by the learned Single Judge, with which we are not concerned- An appeal was taken before the Division Bench in W.A. Nos- 250 and 318 of, 1984. Though a different view was taken in regard to" the second question, based on a later Division Bench decision reported in George v. Joint Registrar 1985 KLT 836, the answer to the first question by the learned Single Judge was not interfered with- But there is a pertinent observation in regard to the second question posed by the learned Single Judge which is of much relevance for deciding the controversy in this case. It was observed:

Whereas the learned Counsel appearing for Sri Valsaraj submits that the normal rule of directing the election process" to be continued from the stage at which it was interrupted should be followed in this case and that therefore the returning officer should be directed to hold the election that was interrupted by the interim order of stay granted by this Court, preparing the voters" list following the principle laid down in George"s case, But we feel that this normal rule was deviated by the Division Bench in the George"s case having regard to the fact that considerable time had lapsed in the meanwhile.

After saying this, taking into account the fact that for the last four years no election having been taken place and a large number of persons having become members of the society, it was observed that it is not fair that a large number of persons who had become members in the meanwhile should be . denied the right to vote, particularly having regard to the fact that the elections to the managing committee are held on a democratic basis. In that view of the matter, the Division Bench directed the returning officer to hold a fresh election for the period commencing from 1st July 1987 and directed him to prepare the voters" list in such a manner as not to include any member admitted on or after the 1st of April 1987.

14. From the aforesaid Division Bench decision of this Court also it is clear that the election process once having started, if the actual election could not be held due to any reason whatsoever, it can be continued from the stage at which it was stopped.

15. Another learned Single Judge of this Court in Haridas v. Alleppey Urban Co-operative Bank Ltd. 1991 (2) KLT 310 held that an election process can be proceeded with from the stage at which it was stopped, if it was adjourned under Rule 35(3)(e)(v) of the Co-operative Societies Rules and that it is not necessary to begin the election process over again.

16. From the aforesaid decisions what Emerges is that when polling is stopped under Rule 35(3)(p) of the Rules, the election process can be continued from the stage at which

it was stopped- If the election process is adjourned under Rule 35(3)(e)(v) of the rules, then also the proceedings can be continued from the stage at which it was Stopped. Taking into account the setting and purpose of Rule 35, we do not find any reason to make a deviation from the normal rule that an election process having been started, if for any reason had to be stopped in the middle, it can be continued from the stage at which it was stopped." Even in cases not covered by Rule 35(3)(e)(v) and Rule 35(3)(p), it is to be noted that by virtue of the provisions contained in Section 28 of the Act and Rule 35 of the rules, it is for the managing committee to fix the date for election, 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" (Sutherland on Statutory Constructions). In Domat"s Civil Law it has been stated:

It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it.

Maxwell on Interpretation of Statutes contains a statement that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution". These principles were followed by their Lordships of the Supreme Court in I.T. Officer v. Mohd. Kunhi AIR 1969 S.C. 430, [The Sub-divisional Officer, Sadar, Faizabad Vs. Shambhoo Narain Singh, , Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd., , and Union of India and another Vs. Paras Laminates \(P\) Ltd., .](#) The authority and jurisdiction to fix the date of election is vested in the managing committee and when such a power is conferred on the committee, there is an implied grant of the power of doing all such acts which are essentially necessary to its execution. In that view of the matter, the committee has certainly jurisdiction and power to fix a new date for the election if it could not be conducted on the original date fixed and the absence of any clause giving tiem that power- will not militate against the committee exercising such a power in a contingency where an election could not be conducted on the date originally fixed.

17. Counsel for the Appellant relied on the provisions of Rule 26 of the Co-operative Societies Rules to contend that when once an election could not be held on the date originally fixed, the whole process has to be started afresh. He submitted that the above rule as amended precludes any member from voting at an election if he is admitted- to membership within 60 days of the election. It was contended that when once the election date is adjourned any person Who was admitted as a member beyond 60 days of the date of election, would be entitled to vote and a new voters" list will have to be prepared. On a reading of Rule 26 as a whole, we are not inclined to accept .this contention. The wording of Rule 26(2) is very relevant that it only provides that any person admitted as

member and any person in whose favour transfer of shares has been approved in contravention of the rule shall not, have the right to membership or the right to vote at the said election or at the general body meeting. It is to be noted that the word used, is "said election". Election of members of the managing committee normally accrues at a periodical interval in accordance with the provision contained in the bye laws, though no doubt it has been fixed as 3 years by the 1992 amendment. The intention in making a prohibition in Rule 26(2) is clear that a member disqualified under that rule will not be entitled to vote at the "said election" even if the election originally held is postponed or adjourned due to any reason beyond the control of the managing committee or the returning officer. In this case the election was to be held for the year 1992 after the term was over on 30th June 1992- For the purpose of that election a date was originally fixed and the necessary procedures were followed for conducting the election on 14th June 1992. The voters' list was also prepared in accordance with that date. If for any reason the election was adjourned to any, other date, even then the subsequent election also will be for the purpose of the "said election" and in that view of the matter, the members who are entitled to vote will have to be determined taking into account the original date of election and not the adjourned date of election. We are firmly of the view that the provision contained in Rule 26 does not militate against the view which we have now taken. 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 to repeat the whole process as contemplated under Rule 35. The election proceedings could be continued from the stage at which it was stopped and we further hold that the decision in 1974 KLT 783 was not correctly decided. If it is to be held that the whole election process has to be repeated when once an election is adjourned for whatever reason, it will upset the whole democratic process and subvert the normal election process- A few people may for some reason or other will be able to stop the elections and if it is to be started afresh, there will be no end to the election process- Expediency also demands that when once election process is started, even if it is interrupted in the middle by any reason beyond the control of the committee or the returning officer, it can be proceeded with later from the stage at which it was stopped. In this connection it is apposite to note what Thomas Jefferson said:

To lose our country by a scrupulous adherence to written law would be to lose the law itself, with life, liberty, property and all those who are enjoying them with us; thus absurdly sacrificing the end to the means.

This passage was quoted with approval by their Lordships of the Supreme Court in [Prakash Chandra Mehta Vs. Commissioner and Secretary, Government of Kerala and Others](#), .

18. As stated earlier, in pursuance to the direction given by the learned Single Judge, the election has already taken place and the new office-bearers 1 have taken charge. Counsel for the Appellant contended that the voters' list was not properly prepared and

many eligible voters were excluded. In a proceeding under Article 226 of the Constitution of India this Court cannot go into those questions which are pure questions of fact, and the remedy of the Appellant, if he is aggrieved, is to move an election petition under the provisions of the Co-operative Societies Act. We have decided in this appeal only the question as to whether the managing committee has jurisdiction to conduct election on the adjourned date as the election could not be held on the date originally fixed. We have not considered the question as to whether any voter has been excluded from the voters" list as alleged by the Appellant . and the remedy of the Appellant, if any, under the Act to raise that question is left open and he will be free to raise it before the appropriate forum.

19. Subject to the above observations, the Writ Appeal is dismissed.