

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 17TH DAY OF JULY 2015/26TH ASHADHA, 1937

WP(C).No. 20887 of 2015 (I)

PETITIONER:

PRESIDENT, KSHEEROLPADAKA SAHAKARANA SANGAM
NO.K-69 (D) APCOS, KURIANAD P.O., PIN - 686 636.

BY ADVS.SRI.P.RAVINDRAN (SR.)
SRI.SREEDHAR RAVINDRAN

RESPONDENT:

1. DEPUTY DIRECTOR OF DAIRY DEVELOPMENT,
KOTTAYAM DISTRICT - 686 001.
2. KERALA STATE CO-OPERATIVE ELECTION COMMISSION,
CO-OPERATIVE BANK TOWER, VIKAS BHAVAN P,
THIRUVANANTHAPURAM -33.
3. THE DAIRY DEVELOPMENT OFFICER,
UZHAVOOR BLOCK UNIT, MARANGATTUPPILLY P.O.,
KOTTAYAM - 686 635.

R1 BY ADV. SRI. D. SOMASUNDARAM, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
17-07-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 2 :

APPENDIX

PETITIONER'S EXHIBITS:

- EXT.P1 : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO.3497/13 DATED 29.10.2013.
- EXT.P2 : TRUE COPY OF THE NOTICE DATED 18.02.2014 ISSUED BY THE 1ST RESPONDENT ALONG WITH TRANSLATION.
- EXT.P3 : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 5806/14 DATED 10.02.2015.
- EXT.P4 : TRUE COPY OF THE ORDER ISSUED BY THE 1ST RESPONDENT DATED 18.05.2015.
- EXT.P5 : TRUE COPY OF THE JUDGMENT IN W.P.(C) NO. 15439/15 DATED 26.05.2015.
- EXT.P6 : TRUE COPY OF THE COMMUNICATION OF THE 1ST RESPONDENT DATED 12.06.2015 ALONG WITH TRANSLATION.
- EXT.P7 : TRUE COPY OF THE LETTER SUBMITTED TO THE 3RD RESPONDENT DATED 17.06.2015 ALONG WITH TRANSLATION.
- EXT.P8 : TRUE COPY OF THE LETTER SUBMITTED TO THE 2ND RESPONDENT DATED 17.06.2015 ALONG WITH TRANSLATION.
- EXT.P9 : TRUE COPY OF THE COMMUNICATION OF THE 1ST RESPONDENT DATED 03.07.2015.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

P.A. TO JUDGE

DAMA SESHADRI NAIDU, J.

W.P. (C) No.20887 of 2015 (I)

Dated this the 16th day of July, 2015

JUDGMENT

The petitioner, the elected president of the Kurianad Ksheerolpadaka Sahakarana Sangam, has a grievance that the efforts of the managing committee of the society to have the elections conducted on time when the term of the present managing committee lasts are being thwarted by the respondents.

2. According to the petitioner, as the term of the committee is to expire on 07.08.2015, it passed a resolution on 28.05.2015 and submitted that to the first respondent, the Deputy Director, to be forwarded to the second respondent, the Election Commission. The first respondent, instead of forwarding the request of the managing committee, returned it to the petitioner pointing out some minor discrepancies in the resolution passed by the Board of Directors.

3. Acting on Ext.P6 communication of the first respondent, the managing committee rectified what are said to be inconsequential defects and again submitted it to the first respondent to be forwarded to the second respondent. Eventually,

the second respondent issued Ext.P9 communication to the first respondent, with a copy to the petitioner, that the elections to the managing committee could not be conducted on 27.07.2015, the date decided by the managing committee of the society, because the time frame stipulated in the statute had not been adhered to. Assailing the same, the petitioner has approached this Court.

4. The learned Senior Counsel for the petitioner has strenuously contended that in terms of Rule 35A(1) of the Kerala Co-Operative Societies Rules ('the Rules' for brevity), the resolution was passed on 28.05.2015, clearly 60 days prior to the expiry of the term. According to him, since the present managing committee got elected in the elections held on 29.07.2010, the time fixed for having the elections for the next term would come to an end by 28.07.2015. Though the managing committee has rectified the inconsequential defects and submitted Ext.P7 proceedings, for all statutory purposes, contends the learned Senior Counsel, the time of resolution ought to be reckoned as 28.05.2015.

5. The learned Senior Counsel has also strenuously contended that in terms of Rule 35A of the Rules, the first respondent does not

have the power to vet the resolution passed or the application submitted by the managing committee of the petitioner society, much less return the same. According to him, he is only a forwarding authority, and if any rectification is required, it shall be demanded only by the second respondent. He has further contended that in terms of clause (8) of Rule 35A(3) of the Rules, the second respondent Election Commission has ample powers to fix the timings of the election instead of returning the proposal of the managing committee for rectification, that being the only shortcoming.

6. Per contra, the learned Government Pleader for the respondents has made elaborate submissions, taking me through the entire record. Chronologically stating, the learned Government Pleader has submitted that initially the managing committee reckoned the date of expiry of its term from the date when it assumed office, rather than from the date when it was elected. In that context, the date fixed subsequently in the rectified communication clearly fell beyond the term of the present managing committee.

7. According to the learned Government Pleader, the managing committee does not have the power to fix any date for

election falling beyond the currency of its term. He has also submitted that Ext.P7, the rectified proposal, has not been supported by any resolution.

8. The learned Government Pleader has also pointed out that in Ext.P7 communication, the managing committee suggested another date instead of the date originally fixed in the resolution dated 28.05.2015. It is his contention that the re-fixation of the date makes it necessary for the managing committee to have a proper resolution passed once again, instead of one of the officials issuing Ext.P7 communication.

9. The learned Government Pleader has strenuously opposed the contention of the learned Senior Counsel for the petitioner that the first respondent is a mere forwarding authority. According to him, in terms of the circulars that have been issued from time to time, the said authority has been assigned a clear role before the recommendation of the managing committee could be forwarded to the second respondent Election Commission. To buttress his submissions, the learned Government Pleader has submitted that the date, time, and other particulars have to be mentioned in two

‘proformas’: one to be filled up by the managing committee and the other by the first respondent.

10. Eventually, the learned Government Pleader has submitted that in terms of Circular Nos. 1 of 2007 and 5 of 2011, the former having been issued in terms of the judicial directive of this Court in O.P. No. 5248 of 1989 , it is not possible for the second respondent to conduct elections adhering to the time frame mentioned in either of those circulars. According to him, since the present managing committee cannot continue beyond its term, the second respondent would make every endeavour to have the elections conducted as expeditiously as possible, albeit while the society is under the management of an Administrator, who is to be appointed on the expiry of the term of the present managing committee.

11. Heard the learned Senior Counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing the record.

12. In the present instance, the issues that fall for consideration are as follows:

- I. Whether 28.05.2015, the date of resolution, should be taken as the reckoning point for the purpose of fixing the

date of election, notwithstanding the subsequent communications involving the rectifications?

II. Whether the Registrar/the Deputy Director, the first respondent, has any role to play, such as scrutinizing or vetting the proposals of the managing committee, rather than simply forwarding the same to the second respondent Election Commission?; and

III. Whether the Election Commission in terms of Rule 35A (3) (viii) of the Rules could fix the date and time for conducting elections, disregarding the resolution passed by the managing committee, so that it could conduct elections within the time frame while the tenure of the present managing committee subsists?

In re, Issue No.I

13. We may begin our discussion with reference to Rule 35A of the Rules which prescribes the procedure regarding conduct of election to the committee of societies by the State Co-Operative Election Commission. The said provision, an elaborate one, to the extent relevant, reads as follows:

"35A. Procedure regarding conduct of election that the committee of Societies by the State Cooperative Election Commission:- the election of the members to the committee of Societies by the State Cooperative Election Commission shall be conducted in the following manner:

- (1) the committee shall meet at least 60 days prior to the date of expiration of its term and pass a resolution fixing the date, and place for the conduct of the election to the new committee. A copy of such resolution shall be sent to the State Cooperative Election Commission by registered post within a week through the Registrar.
- (2) * * *

- (3) The State Election Commission shall notify that the details of election to the committee of the society, in two vernacular dailies having wide circulation in the area. A copy of the information shall also be affixed on the Notice Board of the head office and the branches, if any, of the Society. The notification shall contain the following particulars:
- (i) the number of vacancies to be filled up by election;
 - (ii) any area or constituency that is specified in the bye-laws from which member sought to be elected;
 - (iii) the date on which and the place at which the preliminary notification of the list of members qualified to vote as the voters shall be published;
 - (iv) the dates between which objections shall be filed and the date on which, the hours between which, and the place at which, the objections, if any, shall be scrutinized;
 - (v) the date on which, and the place at which, the final voters lists shall be published;
 - (vi) the date on which, the place at which, and hours between which nomination paper shall be filed by the contesting candidate or by his proposer or seconder;
 - (viii) the date and hour when the nomination paper will be scrutinized;
 - (viii) the date on which, the place at which and the hours between which, pulling if necessary will take place.

* * *

14. Indeed, Rule 35 A of the Rules simply mentions that the proposal has to be forwarded through the Registrar. It is, however, evident that the Government has issued subsequently various circulars, such as Circular No. 5 of 2011, assigning particular role to the Registrar; to wit, filling up the proforma based on the resolution passed by the managing committee. Thus, he has been assigned a specific role to act in the interstices left by the statutory provisions, and filled in by the administrative instructions. In my considered view,

the first respondent is not a mere forwarding authority; he could as well vet the proposal and point out any defects to be rectified by the managing committee of a Society.

In re, Issue No.II:

15. There is no gainsaying the fact that the resolution was passed on 28.05.2015, and that the statutory provision mandates that the resolution ought to be passed at least 60 days prior to the expiry of the term of the managing committee. In that context, there is sufficient force in the contention of the learned Senior Counsel that notwithstanding the subsequent rectification, if any, the resolution passed earlier would not be vitiated, nor can the second respondent take the subsequent communication, which, at best, could be treated as corrective in nature, as the date of resolution. I hasten to add that given the time frame required to be adhered to by the Election Commission to conduct the elections, the legislature, be it primary or secondary, has ensured that mere ritualistic passing of a resolution would not enure to the benefit of any managing committee.

16. It is evident from Rule 35A of the Rules that even the resolution is required to be communicated to the Registrar within 7

days, thereby amply indicating the necessity of adhering to a strict time frame. Further, in the scheme of things, it is not correct to conclude that the Election Commission, on its own, can notify the date of election, even if it were to be at variance with the date proposed by the managing committee of the Society, as has been contended by the learned Senior Counsel. Rule 35A (3) only enlists the details to be notified. Thus, the said provision is not an empowering provision for the Election Commission to act on its own.

17. We may, before proceeding further, examine Circular No.1 of 2001, which, inter alia, stipulates that, in terms of the judicial directive in O.P. No.5248 of 1989, the Election Commission should provide sufficient intervals between various stages of the election process, till the elections are held. Though I intended to quote from the said circular, a copy of it available in the books has made my task impossible, for, evidently, the English version of the Circular seems to be a 'literal' and verbatim translation of the vernacular, making the meaning unintelligible, for I am unable, owing to my linguistic limitations, to take aid of the vernacular version.

18. In the light of the above administrative instructions, if a

literal interpretation is to be given that the date of resolution is the reckoning point for all practical purposes, as is evident in this case, Ext.P7 was sent recently after rectifying what are said to be minor defects, but by the time it was received by the second respondent, the necessary time required for conducting elections, with intervals at various stages, was not available. Incontrovertibly, the process of conducting elections involves various factors, such as preparing the voters list, inviting objections, and giving sufficient time for nominations.

19. In the above context, I am of the considered opinion that, though technically resolution could have been passed 60 days prior to the expiry of the term of the managing committee, insofar as the Election Commission is concerned, it is the date when the properly completed or rectified recommendation is received from the managing committee that has to be reckoned as the date for computing the period for initiating the steps to conduct election.

In re , Issue No.III:

20. Since it has been statutorily established as well as judicially affirmed that the present managing committee cannot continue

beyond its tenure, as has been fairly admitted by the learned Senior Counsel, the incumbent managing committee may not have any objection, if the Government takes necessary steps to appoint an Administrator to oversee the affairs of the society. Nevertheless, the learned Senior Counsel has expressed his apprehension that since the Administrator could continue for six months with an extended period of six more months, the respondent authorities may tarry the process of elections by at least one year, thereby defeating the democratic process of the society having an elected body.

21. Equally to his credit, the learned Government Pleader has submitted that the respondents do not have any intention of taking shelter under any technicalities, and that the second respondent is willing to expedite the process to have the elections conducted at the earliest.

22. In the facts and circumstances, essentially going by what has been submitted regarding the process of election by both the learned Senior Counsel for the petitioner and the learned Government Pleader, I deem it appropriate to direct the respondents as follows:

Even after the expiry of the term of the present managing

committee, while the society is being administered by the Administrator, the second respondent Election Commission, taking the resolution passed by the present managing committee as the basis for the initiation of election process, may as well continue the process and fix a convenient date within three months for holding elections, in consultation with the Administrator.

This Court, accordingly, disposes of the writ petition. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

rv

