

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR
&
THE HONOURABLE MRS. JUSTICE C.S. SUDHA

Thursday, the 16th day of June 2022 / 26th Jyaishta, 1944
WA NO. 92 OF 2022

AGAINST JUDGMENT DATED 10.01.2022 IN WP(C) 260/2022 OF THIS COURT

APPELLANTS/PETITIONERS:-

1. SHIBILY SAHIB, VICE PRESIDENT, THODUPUZZHA PRIMARY CO-OPERATIVE AGRICULTURAL RURAL DEVELOPMENT BANK LTD NO. 4388, THODUPUZZHA, IDUKKI DISTRICT - 685581, RESIDING AT VADAKKAYELMEDA HOUSE, MUTHALAKODAM P.O, KARIKODE VILLAGE, THODUPUZZHA TALUK, IDUKKI DISTRICT.

AND 7 OTHERS.

BY SENIOR ADVOCATE SRI.GEORGE POONTHOTTAM AND
ADV.SMT. NISHA GEORGE

RESPONDENTS/RESPONDENTS:-

1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), PAINAVU, IDUKKI-685603.

AND 3 OTHERS.

BY ADVOCATE GENERAL FOR R1 & R2

STANDING COUNSEL SRI.R.LAKSHMI NARAYAN FOR R3

ADV.SRI.P.V.BABY FOR R4

Prayer for interim relief in the Writ Appeal stating that in the circumstances stated in the appeal memorandum, the High Court be pleased to stay the operation of the interim order of the Learned Single Judge dated 10.01.2022 in W.P.(C) NO.260/2022, pending disposal of the Writ Appeal.

This Writ Appeal again coming on for orders on 16/06/2022 upon perusing the appeal memorandum and this court's order dated 23/05/2022, the court on the same day passed the following:

P.T.O.

Writ Appeal No.92 of 2022

&

W.P.(C) Nos.260 & 15659 of 2022

Dated this the 16th day of June, 2022

ORDER

P.B.Suresh Kumar, J.

W.A.No.92 of 2022 is one preferred against the interim order dated 10.01.2022 in W.P.(C) No.260 of 2022 directing the Managing Committee of the fourth respondent, a Co-operative Society to pass a resolution to hold election within sixty days from 25.01.2022. There was also a direction in the said order that the Society shall update its Form-6B Register in terms of Rule 16A(1) of the Kerala Co-operative Societies Rules before 25.01.2022. Although the interim order is one passed at the instance of the petitioners, they themselves have preferred the appeal contending, *inter alia*, that the direction to hold the election subject to the said condition is unworkable.

2. Having regard to the fact that the term of the then existing Managing Committee of the Society has already expired and they are continuing in office on the basis of the arrangement made by the Government in the wake of COVID-19 pandemic and keeping in view of the constitutional

mandate that co-operative societies are to be controlled democratically, this Court called for the writ petition also, to be considered along with the appeal so as to issue effective orders for holding election in the Society.

3. Later, after affording the parties an opportunity of hearing, this Court passed an order on 15.03.2022 directing the State Co-operative Election Commission (the Election Commission) to act upon the resolution already adopted by the Managing Committee and to take necessary steps forthwith to hold the election. Paragraphs 6 to 8, and the operative portion of the order read thus:

“6. When these matters were taken up today, the learned counsel for the petitioners submitted that the process of updating the Form-6B Register has not been completed as directed by the learned Single Judge and that the same is delayed with a view to ensure that the election does not take place in the Society.

7. On a query from the Court, the learned counsel for the Society submitted that there are about 20000 members in the Society; that Form-6B Register was being maintained in the Society; that the Form-6B Register in the Society was up-to-date till the last flood; that Form-6B Register pertaining to about 3000 members was destroyed in the flood and that the process of reconstructing the said portion of the Register was though resumed in terms of the interim order, the same could not be completed in full, for all the members who were called upon to furnish their photographs, particulars etc. for the said purpose have not turned up pursuant to the paper

publications. It was, however, pointed out by the learned counsel that a substantial portion of the lost Form-6B Register has now been reconstructed.

8. As noted, the stand of the Society is that the Form-6B Register can be completed only if all the members who are called upon to furnish the details turn up with the details. True, in order to ensure a fair election, it is advisable to have an up-to-date Form-6B Register, but the question is whether in a situation of the present nature, the election process could be delayed until the Form-6B Register is made up-to-date by the Society. According to us, insofar as it is conceded that the Form-6B Register is substantially updated, there cannot be any impediment for conducting election, for otherwise, in a situation of the present nature, the election could be delayed indefinitely. Needless to say, in that event, an Administrator or Administrative Committee chosen by the officials as dictated by their political heads would govern the society. The above situation, according to us, would be contrary to the scheme of the Constitution after the Constitution 97th Amendment Act that every Co-operative Institution shall be governed democratically by an elected committee.

We, therefore, deem it appropriate to pass an interim order directing the State Co-operative Election Commission to act upon the resolution already adopted by the committee on 25.11.2021 and take steps forthwith to conduct the election to form a new Managing Committee in the Society in accordance with the provisions contained in the Act and Rules. Ordered accordingly.”

4. Thereupon, when the writ appeal was taken up on 31.03.2022, it was submitted by the learned counsel for the petitioners that steps have not been taken by the Election Commission to hold the election as directed by this Court. The

Standing Counsel for the Election Commission, in the circumstances, was directed to get instructions in the matter.

5. On 01.04.2022, when the writ appeal was taken up, the learned Standing Counsel for the Election Commission submitted that the Election Commission has no machinery to hold the election and the machinery for holding the election is provided by the State through its Co-operative Department after fixing a convenient date, having regard to the availability of the personnel to be deployed for the conduct of the election. It was also submitted by the learned Standing Counsel that it is due to the delay on the part of the officials of the State Co-operative Department in fixing a date for the election and in extending the services of the personnel required for holding the election, notification for the same could not be issued. After obtaining telephonic instructions, the learned Government Pleader then submitted that though elections are normally scheduled on holidays, since elections in some other Societies are already scheduled on all holidays in the months of April and May, the department is unable to render necessary assistance to the Election Commission. The learned counsel for the petitioners then pointed out that the attempt of the department is to prolong the election so as to enable the existing Managing Committee to continue in office

and to fix a working day rather than a holiday for conducting the election to the Society so as to reduce the turnout on the election day with a view to ensure the success of the existing committee who have the blessings of the political parties in power in the State. When this Court indicated to the learned Government Pleader that the instructions received by him fortifies the stand of the petitioners that the election in the Society is being deliberately delayed, after taking further instructions in the matter, the learned Government Pleader submitted that arrangements can be made for holding the election on 14.05.2022. In the light of the said submission, the learned Standing Counsel for the Election Commission submitted that in that event, the election can be conducted on 14.05.2022. In the light of the said submission, this Court adjourned the matter after recording the submissions aforesaid. Pursuant to the undertaking, the election was notified by the Election Commission to be held on 14.05.2022.

6. After the notification, during the summer recess of the Court, the first petitioner instituted W.P.(C) No.15659 of 2022 before this Court seeking police aid to ensure that the process of election scheduled on 14.05.2022 is not obstructed by the fourth respondent therein namely, Prof.K.I.Antony and his henchmen. It is alleged in the said writ

petition that arrangements are being made by him to sabotage the election by causing obstruction to the voters. On 10.05.2022, this Court passed an interim order in the said case directing the Deputy Superintendent of Police, Thodupuzha as also the Circle Inspector of Police, Thodupuzha to afford sufficient protection for the smooth conduct of the election. In addition, as per the said order, this Court directed the Returning Officer to video-graph the entire polling process. This Court also appointed, in terms of the said order, an Advocate Commissioner to oversee the election and to file a report on or before 24.05.2022.

7. On 23.05.2022, when the writ appeal was taken up, the learned counsel for the petitioners submitted that although arrangements have been made for holding the election on 14.05.2022, the polling was obstructed by the supporters of the candidates who have the blessings of the political parties which are in power in the State by resorting to violence, as a result of which the election had to be postponed. It was also submitted that despite the order of police protection granted by this Court, the police remained as mute spectators at the instance of the leaders of the said political parties. In the light of the aforesaid submission, this Court directed the Registry to list W.P.(C) No.15659 of 2022 also

along with the matters pending before this Court. In terms of the order aforesaid, this Court directed the Election Commission to file an affidavit indicating the circumstances which led to the postponement of the election and also to produce the video of the election proceedings which was directed to be taken by this Court as per the order in W.P.(C) No.15659 of 2022.

8. On 27.05.2022, when these matters were taken up, Senior Counsel Sri.George Poonthottam appeared for the petitioners, the Advocate General appeared for the official respondents and Standing Counsel, Sri.R.Lakshmi Narayan appeared for the Election Commission.

9. The learned Senior Counsel for the petitioners contended that what happened at the polling station on the polling day was unprecedented and should not have happened at all in a country governed by rule of law. The issue is of inevitable importance since it is a case where a group of people could deliberately prevent election to a co-operative society by resorting to violence in spite of specific orders having been issued by this Court directing the police to ensure the smooth conduct of the election. According to the learned Senior Counsel, the occurrence that took place on the day at the polling station is one that could have been prevented by

the police. It was submitted that the Police, however, abstained from preventing the violence at the instance of the leaders of the political parties in power who want to somehow obstruct the election process from duly taking place. It was submitted by the learned Senior Counsel that if a situation of this nature is tolerated, the administration of justice in the State would be in peril. It was further pointed out that the petitioners are initiating appropriate action against the erring Police Officials under the Contempt of Courts Act before the learned Single Judge, and at the same time, the official respondents who have a duty to ensure compliance of the orders passed by this Court have to create a situation where election to the society could be properly conducted. The learned Senior Counsel, therefore, prayed for appropriate orders for conduct of the election.

10. The learned Standing Counsel for the Election Commission submitted that although the Election Commission has made all arrangements for the election, the election could not be conducted due to the riot that took place at the polling station on the relevant day. It was also submitted that the Election Commission has video-graphed the entire series of incidents and made available the video to the court to have an idea as to what transpired in and around the polling station on

the relevant day. According to the learned Standing Counsel, in a situation of this nature, the Election Commission cannot be blamed for having postponed the election.

11. The learned Advocate General refuted the submission made by the learned Senior Counsel for the petitioners that the police officials were hand in glove with the leaders of the political parties in power. He also refuted the submission of the learned Senior Counsel that the police officials did not take any effort for the smooth conduct of the election.

12. In the affidavit filed by the Returning Officer for the election on behalf of the Election Commission, it is stated, among others, that on 13.05.2022, the police informed him that a crime has been registered against a person who is living in the vicinity of the polling station for having produced and distributed fake identity cards for the election; that he had written to the Station House Officer and to the concerned Deputy Superintendent of Police to maintain law and order during the election; that even though he along with the Electoral Officer and polling officials arrived at the polling station at 7 a.m. with ballots and polling materials, certain persons prevented the polling officials from entering the polling station; that the said persons did not allow the voters

also to enter the polling station; that although 56 officers were deployed to conduct the election process, only 16 of them were able to enter the polling station by 8.30 a.m., the time at which they were expected to report, and it was only by 8.50 a.m., the remaining officers could enter the polling station, that too, with police aid. It was also stated by the Returning Officer in the affidavit that even though the polling commenced by 9.00 a.m, neither the candidates nor the voters could enter the polling station due to the riot that was going on outside the polling station to prevent the election. It was also stated in the affidavit that owing to the ongoing riot, the polling was disrupted and since the voters, polling agents and even candidates could not reach the polling station, he postponed the election by invoking the power under Rule 35A(6)(n)(x) of the Kerala Co-operative Societies Rules. Paragraphs 5, 6, 7 and 8 of the affidavit read thus:

5. On the date of polling (14/05/2022), myself, the Electoral Officer and 10 polling officials arrived at the polling station at 7 am with ballots and polling materials. Protesters against the alleged distribution of fake identity cards, prevented and threatened the polling officials from entering the polling station. The staff was then able to reach the polling station only with the help of the police. Protesters did not allow other election officials and voters to enter the polling station . Although 56 officers were deployed to complete the election process, only 16 of them were able to enter the polling station by 8.30 am, the time at which they were

expected to report. It was only by 8.50 am with the help of police, the remaining polling staff entered the polling station.

6. The polling started at 9 am in the absence of the candidates and polling agents as no one was present despite the notice given to the candidates or the polling agents to collect the passes from me and to enter the polling station. An hour after the start of polling, no one reached the polling booths to cast their votes. This was due to the commotion going on due to a riot outside the polling station. The proceedings at the polling booth and the riots around the polling station were recorded on 14 video cameras and kept on the hard disk in my possession. In compliance with the direction issued by this Hon'ble Court, the same is being made available .

7. It is submitted that the Thodupuzha Deputy Superintendent of Police and Station House Officer are responsible for maintaining law and order during the election period as per Order No. W.P.(C) No.15659 of 2022 dated 10/05/2022 of the Hon'ble High Court of Kerala. The Thodupuzha Deputy Superintendent of Police has informed the matter to the District Collector, Idukki and on the direction from the Collector, the Thodupuzha Tahsildar (Land Assignment) came to the polling station to assess the election related conflicts and has witnessed it firsthand. In addition, it is learnt that the Thodupuzha Police Station has registered a case as Crime No.758 / 2022 in connection with clashes and verbal disputes with voters and opponents in various places. One Sri.V.V. Mathai, Chairman of Circle Cooperative Union, also informed me about the grave situation prevailing outside.

8. As there were riots outside the polling station and as the polling was disrupted for about an hour after the start of the polls, with voters, polling agents and even candidates unable to reach the polling booths, and having been notified by the police authorities about the conflict and since I was convinced that the election process could not proceed due to

these uncontrollable matters, on 14/05/2022 at 10.10 am, I announced that the election process has been postponed invoking Rule 35A(6)(n)(x) of Kerala Co operative Societies Rules, 1969. The photocopy of the proceedings No.B/620/2022 dated 14.5.2022 issued by me in this regard has been produced herewith and marked as Annexure - R3 (a). The same has been communicated to the State Co - operative Election Commission.

13. In the report filed by the Advocate Commissioner appointed in W.P.(C) No.15659 of 2022 to oversee the election, the Advocate Commissioner has affirmed the various statements in the affidavit filed by the Returning Officer on behalf of the Election Commission. In addition, the Advocate Commissioner has stated in his report that Prof.K.I.Antony, the fourth respondent in the W.P.(C) No.15659 of 2022, who introduced himself as the President of the Society and a candidate for the election, informed the Advocate Commissioner that his supporters are protesting at the entrance of the polling station and that they will neither permit the election to be conducted nor allow the voters to enter the polling station to cast their vote. It is also stated in the report that the protestors forming a crowd at the entrance of the polling station did not allow anyone to enter the polling station; that some among them were seen carrying sticks; that they were manhandling and abusing persons who were attempting

to enter the polling station and that the police officers were not seen taking any steps to ensure that the voters could enter the polling station to cast their votes. It is also stated in the report filed by the Advocate Commissioner that he observed that one V.V.Mathai, a member of the ruling political party and the Chairman of Thodupuzha Circle Co-operative Union was seen requiring the Returning Officer in a threatening tone to cancel the election. The report further stated that the election had to be postponed as not even one vote was polled in spite of an hour having been passed after the commencement of the election process and that the crowd of protestors gathered at the entrance of the polling station welcomed the decision of the Returning Officer to postpone the election. The relevant portions of the report of the Advocate Commissioner read thus:

“Prof.K.I.Antony, who introduced himself as the current President of the Bank and candidate for the election contesting from the LDF panel, informed me that the LDF members were the ones who were protesting in front of the entrance. He told me that the protestors would not allow the conducting of the election. He also told me that they would not be letting the voters enter the premises or cast their vote.

x x x x x

The crowd gathered in front of the entrance was seen not allowing anyone to enter the school premises. Some of them were seen carrying sticks. It was seen that they were

manhandling and abusing anyone who was trying to get in. The police officers were seen not taking any steps to ensure that the voters could enter the premises and cast their votes.

x x x x x

Meanwhile, one V.V.Mathai, who was later identified as Thodupuzha Circle Co-operative Union Chairman and a ruling party member, was seen talking to the Returning Officer in a threatening tone about why he was not cancelling the election.

x x x x x

The crowd gathered in front of the entrance welcomed the decision to postpone the election. They were seen convening a meeting in front of the gate after the postponement of the election, and the crowd gradually dispersed".

14. With a view to ensure the correctness of the statements made in the affidavit filed on behalf of the Election Commission and the report of the Advocate Commissioner, we have watched the videos made available to the Court by the Election Commission by displaying the same in open court in the presence of the counsel for the parties. The videos displayed contain, among others, visuals of a mob blocking entry into the polling station, attacking and chasing those who were attempting to enter the polling station and threatening and attacking the police.

15. As noted, the election to the Society that was

scheduled on 14.05.2022 was an election directed to be conducted by this Court overruling all objections taken against the conduct of the election. The order passed by this Court in W.P.(C) No.15659 of 2022, if understood in the background of the factual allegations made in the said writ petition, would make it clear that the order was intended to create a situation so as to enable the voters to cast their votes peacefully and smoothly in the election. The affidavit filed on behalf of the Election Commission, the report of the Advocate Commissioner and the videos made available by the Election Commission would reveal beyond doubt that the election to the Society ordered to be conducted by this Court has been prevented by a group of people by resorting to rioting, despite the specific order issued by this Court in W.P.(C) No.15659 of 2022.

16. As far as co-operative societies are concerned, the constitutional perspective as disclosed from Article 43B is that it shall be the endeavour of the States to promote democratic control of co-operative societies. In other words, it shall be the obligation of the State to ensure that co-operative societies shall be governed by the elected representatives of its members. In the light of the said constitutional provision, bureaucratic control of a co-operative society is one to be resorted to only in exceptionally exceptional situations where

democratic control is not possible. We have referred to the constitutional scheme only to emphasise that timely election to a co-operative society is not merely a statutory obligation of the authorities concerned, but a constitutional obligation. Coming to the governance of co-operative societies, the litigations that come up before this Court indicate that majority of the co-operative institutions in the State are victims of politicisation in a sense that they are being used as levers of political power, and elections to co-operative societies have become an arena of rivalries between political parties. It is on account of such politicisation that the societies lack positive philosophy, ethos of co-operation and also modern practices of professional management which ultimately lead to bad debts and losses, thereby eroding the faith of the people in co-operative institutions.

17. The case on hand is an illustrative one of the evil effect of the politicisation of co-operative societies. But for the rivalry between political parties, we do not find any reason why a group of people should go to the horrid extent of indulging in an unlawful activity in the nature of rioting, so as to prevent holding of an election in a co-operative society, that too, one conducted as directed by this Court with police aid. Instances of this nature would certainly erode the confidence

reposed on co-operative institutions by the people and the same, in turn, would adversely affect the co-operative movement intended to keep pace with the broader development of the country. That apart, violence to defeat implementation of orders of the court cannot be taken lightly, for it defeats the very administration of justice and leads to failure of rule of law. The State has an inflexible obligation to ensure compliance of orders of courts. A message to the public that orders of courts could be defeated by resorting to violence will certainly have a deleterious effect on the credibility of judicial institutions.

18. Let us now examine the question as to whether there was failure on the part of the State machinery in complying with the directions of this Court. The petitioners have no case that arrangements have not been made by the Co-operative Department of the State Government and the Election Commission in compliance with the directions issued by this Court on 15.03.2022 and the undertaking made before this Court on 01.04.2022. The grievance of the petitioners is only that since the polling could be successfully thwarted by a group of people with the support of the political parties in power in the State and since the police remained as mute spectators to the violence perpetuated in and around the

polling station, appropriate orders need to be passed for conduct of the election which is thwarted, for the stalemate now created cannot continue, and that if it continues, it will be a reward for the perpetrators of the violence.

19. The report of the Advocate Commissioner, the relevant portions of which have been extracted would reveal that the election in the Society was on political lines between two groups and the perpetrators of violence are supporters of one group. The affidavit filed by the Returning Officer on behalf of the Election Commission indicates that although there was an order by this Court to the police to render necessary assistance to the voters to cast vote in the election, the Returning Officer having been convinced that there will be law and order issues on the date of election, made separate requests to the Station House Officer, Thodupuzha as also to the Deputy Superintendent of Police, Thodupuzha to take necessary steps to maintain law and order during the election. In a case of this nature, what is expected from the police is to take necessary steps to ensure that no member of the Society is prevented or obstructed by anyone in the matter of casting the vote. Instead, it appears that a few Police Constables were made available at the entrance of the polling station and when the mob came, they could not do anything. The videos indicate

that the mob was attacking even the Police Constables including women Police Constables, apart from revealing that the assailants were physically assaulting and chasing away people who attempted to enter the polling station. The police could not even prevent assault on individuals, much less the violence. No Police Constable was found in the videos where assault on individuals was recorded. Insofar as the occurrences are video-graphed by the videographer engaged by the Election Commission, in the light of the affidavit filed on behalf of the Election Commission, it has to be presumed that assault on individuals took place at the immediate vicinity of the polling station and the fact that no Police Constable was found in those videos would indicate that there was no attempt at all on the part of the Police even to prevent attacks on individuals who have come forward to cast their vote.

20. When this Court directs police to afford protection for the smooth conduct of an election, it implies that the police is obliged to ensure that every member of a society who is willing to cast vote is not obstructed by anyone in the matter of exercising that right. In other words, in a case of this nature, when the Police were informed by the Returning Officer himself that there would be law and order issues on the date of polling, the Police ought to have, by all means, taken

necessary steps for the smooth conduct of the election. We are unable to believe that the Police force in the State is incapable of providing aid for the smooth conduct of an election to a co-operative society. If we assume the contrary, we will have to hold that the Police force in the State is incapable of maintaining law and order. Needless to say, the Police Officers concerned were not eager and earnest in discharging their duties despite orders passed by this Court in W.P.(C) No.15659 of 2022, but at the same time, they were passively ensuring the postponement of the election. This is a very serious matter which affects the administration of justice. The very purpose of the Police force is to maintain law and order and to prevent commission of crimes. The Police is, therefore, the foundation for the existence of rule of law and if they collapse, the whole system would crumble down. They have, therefore, a sensitive responsibility to defend the safety and security of the people at all times. Accountability is one of the facets of rule of law. We are, therefore, of the view that we are obliged under law to do all that is necessary to ensure that such instances do not occur in future in the State. In the circumstances, we deem it appropriate to issue the following directions:

a) The Director General of Police,

Thiruvananthapuram and the District Superintendent of Police, Idukki are impleaded suo motu in W.P.(C) No.15659 of 2022.

- b) The Director General of Police is directed to cause an enquiry through an officer at the appropriate level to find out the officers who are responsible for not taking effective steps for compliance of the directions issued by this Court in W.P.(C) No.15659 of 2022 dated 10.05.2022, after affording the officers concerned an opportunity of hearing and after a thorough appraisal of the violence that perpetuated in and around the polling station on 14.05.2022. The Director General of Police would be free to call for the video of the occurrence recorded by the Election Commission. A report shall be filed before this Court after the enquiry, indicating the action taken.
- c) The Election Commission shall notify the polling of the election afresh forthwith, after due consultation with the Director General of Police in accordance with the provisions contained in Kerala Co-operative Societies Act, and the Rules made thereunder and take necessary steps to conduct the election on the notified date.
- d) The Director General of Police shall take all necessary steps to ensure that election to the

Society is conducted in a peaceful manner and no member of the Society who is entitled to cast vote in the election is obstructed within the jurisdictional limits of the Society, by making appropriate and necessary safeguards.

List these matters after six weeks.

**Sd/-
P.B.SURESH KUMAR, JUDGE.**



**Sd/-
C.S.SUDHA, JUDGE.**

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