

(2003) 09 KL CK 0053
In the High Court Of Kerala
Case No : W.A. No. 1606 of 2003

A.K. Bhaskaran

APPELLANT

Vs

Jose Joseph and Others

RESPONDENT

Date of Decision : 30-09-2003

Acts Referred:

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

Citation : (2004) 1 KLJ 321 : (2004) 1 KLT 91

Hon'ble Judges : K.K. Menon, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : P.V. Baby, for the Appellant; T.R. Ramachandran Nair and B.S. Swathikumar, for the Respondent

Final Decision : Dismissed

Judgement

Cyriac Joseph, J.—This appeal is against the judgment in W.P. (C) No. 27207 of 2003. The appellant was not a party to the said Writ Petition. He has filed this Writ Appeal with the leave of the Court. The Writ Petition was filed by the first respondent herein, Sri. Jose Joseph, President, Vazhithala Service Co-operative Bank Limited. The main prayer in the Writ. Petition was for a direction to the third respondent in the Writ Petition (i.e. the Kerala State Co-operative Election Commission, Trivandrum) to appoint an Electoral Officer and a Returning Officer to conduct the election to the Managing Committee of the Bank on 19-10-2003 as requested for in Exts. P1 and P2. Ext. P1 is Resolution No. 10/196 dated 28-7-2003 of the Board of Directors of the Bank resolving to conduct election to the Board of Directors of the Bank on 19-10-2003 and to request the Kerala State Co-operative Election Commission to appoint an Electoral Officer and a Returning Officer for conducting the election. Ext. P2 is a letter dated 29-7-2003 of the Secretary of the Bank requesting the Kerala State Co-operative Election Commission to appoint the Electoral Officer and the Returning Officer. The first respondent filed the Writ Petition apprehending that the Kerala State Co-operative Election Commission would not take necessary action on Exts. P1 and

P2. Taking note of the fact that the Joint Registrar of Co-operative Societies had already recommended the election, the learned Single Judge closed the Writ Petition with the observation that it will be appropriate for the Election Commission to act upon the recommendations of the Joint Registrar as also Exts. P1 and P2 and notify the election. Admittedly, the Kerala State Co-operative Election Commission has already notified the election to be held on 19-10-2003.

2. The appellant is a member of the Vazhithala Service Co-operative Bank Limited. He contends that the Board of Directors-of the Bank passed Ext. P1 resolution when they received a notice u/s 32(1) of the Kerala Co-operative Societies Act (hereinafter referred to as "the Act") proposing to supersede the Board of Directors. According to the appellant, the Board of Directors took a hasty decision to conduct the election on 19-10-2003 so that the preparations for the election including the preparation of the voters' list can be made by the Board of Directors" before it is superseded. It is contended that it was unfair on the part of the Board of Directors to pass a resolution like Ext. P1 after receipt of a notice u/s 32(1) of the Act proposing to supersede the Board of Directors.

3. The learned counsel for the appellant is not able to point out any provision in the Kerala Co-operative Societies Act or the Kerala Co-operative Societies Rules or the Bye Laws of the Bank which prohibits the Board Directors of the Bank from passing a resolution under Rule 35A (1) of the Kerala Co-operative Societies Rules (hereinafter referred to as "the Rules) alter the issuance of a notice u/s 32(1) of the Act proposing to supersede the Board of Directors. Having regard to the provisions in the Act and the Rules, it cannot be, said that merely because a notice u/s 32(1) of the Act has been issued proposing to supersede the Board of Directors, the Board of Directors cannot pass a resolution under Rule 35A (1) of the Rules. It should be remembered that even if a notice u/s 32(1) of the Act has been issued, the Registrar can drop the proposal to supersede the Board of Directors after considering the explanation offered by the Board of Directors. Therefore, issuance of a notice u/s 32(1) of the Act does not disentitle the Board of Directors of a Co-operative Society to exercise its rights or powers under the Act or the Rules. Hence, we cannot accept the contention that election cannot to be conducted on the basis of Ext. P1 resolution merely because the said resolution was passed by the Board of Directors after a notice u/s 32(1) of the Act was issued.

4. Learned counsel for the appellant submits that the normal tenure of the Board of Directors is to expire only on 10-11-2003, but Ext. P1 resolution was passed by the Board of Directors too early. According to Rule 35A (1) of the Rules, the committee shall meet at least 60 days prior to the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of the election to the new committee. The term of the existing committee is to expire on 10-11-2003. Ext. P1 resolution was passed on 28-07-2003. the election if scheduled to be held on 19-10-2003. Hence, it cannot be said that Ext. P1 resolution was passed too early. At any rate, the committee is free to meet on

any day earlier than 60 days prior to the date of expiration of its term. In this case the committee met 105 days prior to the date of expiration of its term. The law did not prevent them from doing so. Therefore, Ext. P1 resolution passed on 28-07-2003 cannot be said to be illegal.

5. Admittedly, the order of the Joint Registrar superseding the Board of Directors has taken effect. The learned Single Judge has also observed that the action taken by the Election Commission pursuant to Exts. P1 and P2 will not in any way prejudice the proceedings taken u/s 32(1) of the Act against the Committee in office. The Election Commission has already issued a notification on 2-9-2003 proposing to conduct the election on 19-10-2003. We do not find any illegality or irregularity in the action taken by the Election Commission. Hence there is no merit in the appeal and the appeal is dismissed.