

(2008) 07 KL CK 0048
In the High Court Of Kerala
Case No : Writ Petition (C) 21526 of 2008

Ambatt Asokan

APPELLANT

Vs

Oachira Service Co-op. Bank Ltd. and Another

RESPONDENT

Date of Decision : 21-07-2008

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 16, 19, 20, 28(2), 28(2)(a)

Citation : (2008) 2 KLJ 967 : (2008) 3 KLT 645

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : D. Somasundaran, for the Appellant; P.N. Mohanan and Anu Sivaraman (GP), for the Respondent

Final Decision : Allowed

Judgement

Thottathil B. Radhakrishnan, J.—The petitioner challenges rejection of his nomination as a candidate for the election to the committee of the first respondent Co-operative Bank. He became a member of that Bank on 18-8-1979. It is stated that he had been a member of its committee repeatedly, at least on three occasions. The rejection of his nomination for the ensuing election is on the ground that he holds dual membership in as much as, from 12-12-1997, he had been a member of the Klappana Service Co-operative Bank, a society of the same type as that of the first respondent. These facts are not in dispute. The petition contends that in terms of Rules 16 and 44 of the Kerala Co-operative Societies Rules, 1969, the "Rules", for short, and in terms of Section 28(2) of the Kerala Co-operative Societies Act, 1969, for short, the "Act", dual membership is not a disqualification and the only action that could be taken against the petitioner is his removal from membership in terms of Rule 27(2) of the Rules.

2. Per contra, the learned Senior Government Pleader argued that this Court has laid down in K.V. Vijayakumar Vs. The Joint Registrar of Co-operative Societies and Others, that the returning officer is within jurisdiction to decide on the

question of qualification and that, in terms of Rule 35A(6)(d), no person who is ineligible to vote in the election, shall be nominated as a candidate for the election.

3. The learned counsel appearing for the first respondent, which is now under an administrator committee, argued that, even applying the ratio of the decision in *Natarajan v. Returning Officer* (1997 (2) KLT 253), on facts, the liability is for removal from the rolls of the first respondent society since that was the society, of the petitioner became a member, without the previous sanction of the Registrar in terms of Rule 27(1) of the Rules

4. Going by Section 16 of the Act, the membership of a person to a society depends upon the decision of the committee of the society and the right to vote in terms of Section 20 can be exercised only after he has made such payments to the society, in respect of membership, or has acquired such interest in the society, as may be prescribed by the rules of the bye-laws, going by Section 19 of the Act. Rule 35A(6)(d) referred to by the learned Senior Government Pleader provides that no member shall be nominated as a candidate for election, if he is ineligible to vote in the election. The eligibility to vote in the election could be considered by the returning officer by applying the ratio in *Vijayakumar's* case (*supra*) Rule 44(1) does not provide dual membership as a ground for disqualification of membership of the committee. It was therefore that, it was held, in *Natarajan's* case (*supra*) among other things, that dual membership is not a ground of disqualification from contesting in the election or to become a member of the committee, to which proposition, I am in complete agreement. Not only that, so long as there is no provision in the bye-laws prohibiting dual membership, there is no infraction of the bye-laws as regards the matter of granting membership. This is what has been stated in the opening paragraph in *Natarajan's* case, before the learned Judge proceeded to quote Rule 27(2) of the Rules in that judgment. No provision of the bye-laws of the first respondent Society prohibiting dual membership is pointed out. As it was in *Natarajan's* case, in the case in hand also, the petitioner's name was included in the draft voters' list; it was not objected to by anybody and the final voter's list was published, on the strength of which the nomination has been made.

5. Adverting to Rule 27, it can be seen that sub-rule (2) thereof prescribes the liability for the infraction of the provisions in sub-rule (1) and therefore, the legal prescription as to law shall be only that consequence, particularly when such consequence is deprivation of membership in a society. The provision in sub-rule (2) obliging a society to act on a written requisition from the Registrar and to remove that person with dual membership, proceeds on the legislative intentment that he continues as a member till such removal. This means that his membership would continue to be otherwise valid and the removal can be triggered by the Registrar directing the Society to remove such a person from membership. Abundant support to this conclusion is also available in the provision in Section 28(2)(a) that a person shall be disqualified for appointment

as a member of a committee if he is a member of the committee of another society of the same type. By providing such a statutory embargo, only as regards the holding of dual offices as member of the committees of two societies of the same type, the intendment of the legislature is quite clear, that the mere fact of dual membership is not intended to deprive a person of his entitlement to be a member with voting rights. This can be easily seen in the manner in which the disqualifications prescribed in Section 28(2)(a) are couched. Therefore, as noticed in Natarajan's case, there is no provision in the Act or the Rules which disqualified a person on the ground of dual membership, from being a candidate for the election to the committee of one of those societies unless he is a member of the committee of another society of the same type. The petitioner, undisputedly, is not the member of the committee of any other society. For the forgoing reasons, this writ petition succeeds and the rejection of the nomination of the petitioner is liable to be quashed and he has to be permitted to contest in the election as a candidate.

In the result, this writ petition is allowed quashing the rejection of the petitioner's nomination for the ensuing election to the committee of the first respondent society and it is directed that his nomination shall be treated as valid and he shall be included in the list of candidates and the election conducted accordingly. No costs.