

(2004) 06 KL CK 0039

In the High Court Of Kerala

Case No : Writ Petition (C) No. 38603 of 2003

Aomanathan

APPELLANT

Vs

Deputy Director, Dairy Development Society

RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Citation : (2004) 2 KLT 887

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : P. Ravindran, for the Appellant; G. Gopakumar (Cherthala) and Rasheed C. Nooranad and John Joseph Vettikad, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—Ext.P5 proceedings drawn up by the third respondent—Returning Officer, who had been authorised to conduct an election to the Perumbalam Milk Producers Cooperative Society, Alappuzha, (4th respondent) (herein after referred to as the Society) is under challenge by the Chairman of the Administrative Committee, who is presently in office. The Society came into existence in 1995, but the Committee constituted could not carry out any functioning and the Department was constrained to appoint an Administrator in the same year, u/s 33 of the Kerala Co-operative Societies Act. The term of the Administrator was not extended thereafter and practically the activities of the Society became defunct. After about eight years, there were proposals for resurrecting the Society. By Ext.P1 proceedings, the Department had appointed an Administrative Committee for reviving the institution. The order required them to re-Start the functioning of the institution and also for taking steps for conducting an election, for constituting a Director Board. The period of the Committee was stipulated as three months from 9.6.2003. It appears that the term had been extended and during the said period a resolution had been passed to hold an election, so as to hand over charge to an elected committee. After due

verification, the Deputy Director of Dairy Development had passed an order (Ext.P3) dt.17.11.2003 appointing a Returning Officer to hold the election.

2. A draft voters list of 63 persons had been prepared by the Committee which had been counter signed and published on 21.11.2003 by the Returning Officer. However, on 26.11.2003, examining the objections that had been raised against the voters list, the Returning Officer held that the members who had been enrolled by the Administrative Committee did not merit membership and since the members originally who were on the rolls and who were deemed as qualified for participating in the election were less than 10, it would not have been possible to continue the process of election. The election is countermanded. This is the subject matter of the Writ Petition.

3. I.A.No. 128 of 2003 has been filed by two members of the Society for getting themselves impleaded and they had put up a stand that the decision of the Returning Officer was erroneous, since there were sufficient members who were qualified and the elections should have been held. Apparently the attempt was to exclude the newly enrolled members from the election. These only betray the small minds of persons, who miss the woods and only see the trees. However, the objection appears to be inconsequential as dog in the manger. The short question is whether it may be possible for the Returning Officer to hold that the members enrolled by the Administrative Committee could be considered as members who had a right to participate in the election.

4. The Returning Officer has referred to a judgment of this Court in O.P.No. 4699/ 2001 as authority for his conduct, and from the circumstances, it may appear that he was referring to the judgment rendered by a Full Bench of this Court reported in Porinchu Vs. Joint Registrar, . The issue whether an Administrative Committee appointed u/s 32 of the Kerala Co-operative Societies Act had the power to enroll new members had been considered by a Full Bench of this Court in Hassan v. Jt. Registrar of Co-op. Societies 1998 (2) KLT 746 . As a matter of fact, the judgment as above had been approved by the Supreme Court later on. The issue had thereafter again been considered by another Full Bench of this Court in Cherthala Agricultural Rural Development Bank v. Jt. Registrar 2000 (1) KLT 730 wherein the Bench had held that the judgment in Hassan's case can have only prospective application. In Porinchu's case, the Full Bench had held that an interim Administrator has no power to enroll new members and followed the principles declared by the Supreme Court in Joint Registrar of Co-op. Societies v. T.A. Kuttappan and Ors. (2000) 6 SCC 1271 while approving the judgment in Hassan's case. The Full Bench however held that the High Court has no power of prospective overruling and Cherthala Agricultural Rural Development Bank's case should be considered as one decided on the facts of the case, presented alone. The learned Government Pleader, therefore, submits that the position is well settled that an Administrator may not have power to enroll new members and the decision therefore cannot be faulted.

5. However, according to me, the issue has to be viewed from another angle.

This was a case where an Administrative Committee had been appointed so as to revive an ailing Society. Only by enrolment of new members, life could have been injected to it. To contend that even though specifically appointed for the said purpose the Committee could not have enrolled members would be begging the question. As the situation revolves on a vicious circle, it requires to be clarified that at least in certain cases, we have to recognise the powers of an Administrator for enrolling members. I think the observations in Porinchu's case can be taken as one which authorises this Court to mould the reliefs in appropriate manner. Otherwise, the result would have been that the purpose for which the Administrative Committee had been appointed, would have got itself defeated.

6. For one other reason also, I think it would be proper to set aside Ext.P5. This was a case where action had been initiated invoking powers u/s 33 of the Act, unlike the other decided cases, where the steps resulted from punitive background. Under Sections 33(2) of the Act, the Committee is to function under the control of the Registrar, and carry out instructions from time to time. They can exercise all or any of the powers and functions of the Committee. If the Registrar has authorised them to take steps for constituting a Director Board, the enrolment of members becomes a necessary prerequisite. Action is to be taken "in the interest of the Society". They are the key words, and therefore enrolment cannot be termed as objectionable, viewed from any angle.

7. The Supreme Court as also this Court had held that enrolment of members by the Administrator is to be discouraged. The Court dealt with altogether a different context, taking notice of certain sinister background. It was necessary in this case that members were to be added on by the Administrator as nobody else could have done it. This was essential "to bring on an even keel a ship which was in doldrums".

8. The observations of a Division Bench of this Court, in a slightly different context, also may be adverted in this context. The Division Bench in Kadakam Service Co-operative Bank Ltd. Vs. Narayana Bhat, had held that a person who had been already enrolled as a member ceases to be a member only if he is removed following the procedure under Rules 16(3) and 16(4) of the Rules. In the above said case, Justice Cyriac Joseph was dealing with a situation where a member has failed to pay the additional share value and consequently the Bank had taken a stand that he has ceased to be a member of the Bank. However, speaking for the Bench, His Lordship held that petitioner may not be able to exercise the rights of a member till due payment is made, but for that reason, he cannot be altogether treated as non-member of the institution so long as he had not been duly divested of the membership.

9. In the present case, the Administrative Committee had conferred membership to eligible persons. There is no case that any of them had been removed from such membership by valid procedure. Therefore, until such process is initiated and completed, it could not have been possible to hold that they were not

members of the Society.

10. The Writ Petition is therefore allowed. Ext.P5 is quashed. In view of the decision already taken, whereunder an election is ordered to be held, the Deputy Director (1st respondent) will see to it that a new Returning Officer is appointed for conducting the election, as authorised by the bye-laws of the Society. Orders should be passed within two months from the date of receipt of a copy of this judgment.