(1992) 11 KL CK 0005

In the High Court Of Kerala

Case No : O.P. No. 11701 of 1992

Balakrishnan and another — APPELLANT

Vs

Returning Officer and Others — RESPONDENT

Date of Decision : 30-11-1992

Acts Referred:
Kerala Co-operative Societies Act, 1969 — Section 11, 11(2)
Kerala Co-operative Societies Rules, 1969 — Rule 20

Citation : (1993) 1 KLJ 280

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : P.K. appa Nair and P.K. Suresh Kumar, for the Appellant; A.A. Abul Hassan, V.M. Kurian and Govt. Pleader, T.R. Ramachandran Nair, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—Petitioners are members of the third respondent Society. Election to the committee for the management of the Society has been notified by the first respondent as per Ext. P-1. A preliminary voters ''list was published on 1-9-1992. Final voters'' list was published on 4-9-1992. Petitioners to their utter dismay found that their names were not in the voters'' list along with 71 others. Case of the petitioners is that their names were not included in the voters'' list presumably because they did not pay the enhanced share amount to the Society. Third respondent-Society has admitted that the petitioners are members of the Society. It is stated in the counter-affidavit filed by the third respondent that the petitioners have not paid the balance amount of their share value as per the amendment effected in 1988 enhancing the share value from Rs. 100/- to Rs. 200/- per share and so they have been legitimately denied of voting rights.

2. Petitioners contend that they became members of the Society long before the amendment and so even if the share value has been increased from Rs. 100/- to

Rs. 200/- as per the amendment it cannot bind them as they became members of the Society long before the amendment. It is further contended by them that no notice u/s 11(2) of the Kerala Co-operative Societies Act was given to them and so there cannot be any justification for denying voting right.

3. Counsel for the petitioners fairly conceded that he does not want to press the first contention in view of this Court''s decision in Jose v. Registrar of Co-operative Societies (1992-2 KLT 673). But the counsel advanced his contentions with regard to lack of notice u/s 11 (2) of the Act. Counsel for the third respondent and the Government Pleader submitted that Section 11 has no application to a case where share value of a Society has been increased as that Section deals with liabilities of the Society.

4. Chapter II of the Act deals with registration of Co-operative Societies. Section 11 (1) enables a society by amendment of its bye-laws to change the form or extent of its liability. Section 11(2) provides that when a society has passed a resolution to change the form or extent of its liability it shall give notice thereof in writing to all its members and creditors and notwithstanding the provisions of Section 24 or any bye-laws or contract to the contrary, any member or creditor shall, during a period of two months from the date of service of the notice upon him, has the option of withdrawing his shares, deposits of loans, as the case may be. Sub-section (3) states that any member or creditor who does not exercise his option envisaged under sub-section (2) shall be deemed to have given his assent to the change.

5. The question that arises for consideration is whether Section 11 has any application to a case where share value of the Society has been increased. Contention of the petitioners'' counsel is that whenever the share value is increased even though it is by the general body, separate notice should definitely be given to every member as envisaged u/s 11(2) and if that was not done, voting right of a member cannot be denied. Counsel for the third respondent and the Government Pleader pointed out that Section 11 applies only to change of liabilities of the society and it cannot have any application to a case where the society has increased the share value by decision of the general body. Contention of the petitioners that increase of share value by amendment to the bye-laws of a society would come u/s 11 (2) and so all the members should be given separate notice calling upon them to pay the increased share value cannot be accepted as the above provision is not really intended to meet such a situation. That can be easily discerned from the provisions in Chapter III of the Act which concerns the members of the Co-operative Societies and their rights and liabilities.

6. Counsel for the respondents contended that u/s 19 of the Act and Rule 20 of the Rule a member who has paid the full share amount to the society alone can exercise voting right and the petitioners were denied voting rights for valid reasons. Section 19 provides that no member of a society shall exercise the rights, of a member unless 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 or the bye-laws. Rule 20 makes the position clear that the subscription to share capital along with admission fee and any other payments required to be paid under the bye-law is the sin-question for acquiring rights of a member. Rule 28 provides that no member of a society shall be eligible to vote at the meeting fixed for any election to the committee of that society, unless thirty days prior to the date of such meeting he acquires the number of shares for membership as may be provided in the bye-laws of the society of which he is a member.

7. Learned counsel for the third respondent submitted that though the first petitioner has paid Rs. 100/- as share value he has not filed any objection to the voters'' list, that the second petitioner has paid only Rs. 39/- and that even as per the Bye-law as it stood before the amendment he cannot have any voting right it is also stated that 19 persons named in the counter affidavit have paid only Rs. 25/- per share. As the petitioners have not paid the value of shares as per the Bye-laws of the society Section 19 and Rule 28 would definitely stand in their way of their claim to vote in the election. Though the Bye-laws of a society do not have the force of a Statute it is binding on all the members of the society. As the amendment has been effected by the General Body of the society it would bind all the members and so the petitioners who have not paid the full share value to the society as per the Bye-laws cannot claim any voting rights. Petitioners are not entitled to any relief''s sought for in the Original Petition. In the result the Original Petition is dismissed.

