
(1989) 03 KL CK 0065
In the High Court Of Kerala
Case No : O.P. No. 408 of 1989

C. Madhava. Das and Others

APPELLANT

Vs

Kerala Co-Op, Tribunal and Others

RESPONDENT

Date of Decision : 21-03-1989

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 29
Kerala Co-operative Societies Rules, 1969 — Rule 35(3)

Citation : (1989) 1 KLJ 617

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : P.K. appa Nair, P.K. Suresh Kumar and V.A. Muhammed, for the Appellant; M.K. Damodaran, V.N. Achutha Kurup, C.S. Rajan and A.N. Rajan Babu, Government Pleader, for the Respondent

Judgement

K. Sreedharan, J.—Electron to Board of Directors of 4th respondent Co-operative Bank, hereinafter referred to as "the Bank" was notified to be held on 25-6-1987. Notice of the election was published in two leading daily newspapers, viz. Mathrubhumi and Malayala Manorama on 1-6-1987 and 29-5-1987 respectively. Ext. P1 is a photostat copy of the notice published in Mathrubhumi daily dated 1-6-1987. Along with that notice the Returning Officer published information regarding dates fixed for various steps to be taken in the process of election. In pursuance to the notice, election was held on 25-6-1987. Petitioners, nine in number, won the election to the Board of Directors. The result of the election was declared by the Returning Officer. Seventh respondent challenged the election u/s. 69 of the Kerala Co-operative Societies Act, hereinafter referred to as "the Act", by filing A. R. C. No. 1/87-88. The 7th respondent questioned the election on the sole ground that there was no service of notice of the general body meeting on the members, either by post or in person. In other words, his contention was that publication of notice in newspapers was not proper service of notice. Second respondent, the Arbitrator, accepted the plea raised by the 7th respondent and held that the general body was convened in violation of Clause

25 (B) of the Bye-laws of the Bank. Accordingly, by Ext. P5 award dated 20-8-1988 the election of the petitioners to the Board of Directors of the Bank was set aside, He directed to conduct fresh election in accordance with the Act and the Rules framed thereunder. The petitioners took up the matter in appeal before the first respondent by respondent by preferring A. P. No. 89/88. The first respondent by Ext. P6 judgment dated 7-11-1988 dismissed the appeal and confirmed the award passed by the Arbitrator. Hence this Original Petition. Immediately after Ext. P5 award was passed by the second respondent, fifth respondent was appointed Administrator of the Bank. The Administrator has been impleaded in his individual capacity as Additional 8th respondent. He assumed charge as Administrator on 22-8-1988-He filed a detailed counter affidavit raising the following contentions. The election held on 25-6-1987 was illegal on account of the violation of the mandatory provisions contained in Section 28 (I) of the Act and the Bye laws of the Bank regarding the mode of convening the general body. As no proper general body was convened on 25-6- 1987 respondents 1 and 2 have rightly annulled the election. The Bank failed to issue notice to the members regarding the general body meeting. He went on to state that the previous Board of Directors did not admit members to the Bank and that he received a large number of complaints in this regard. Consequently he enrolled 6218 members during the period from 26-9-1988 to 23-12-1988. Thereafter steps were taken for electing new Board of Director to the Bank. For the said purpose a general body meeting has been convened to be held on 26-2-1989.

2. After the Administrator was personally impleaded as additional 8th respondent, he filed a separate counter affidavit justifying his action in enrolling large number of members

3. Seventh respondent has also filed counter affidavit supporting the orders, Exts. P5 and P6.

4. The short question that arises for consideration is whether the general body meeting held on 25-6-1987 for the purpose of electing Board of Directors of the Bank, was properly convened. The stand taken by the 7th respondent before the Arbitrator was that the notice of the general body meeting should have been served on each and every member personally by getting their signatures in the notice book or by post under certificate of posting. Notice in this manner as provided in Clause 25 (B) of the Bye-laws was not served. Therefore, the general body meeting was not convened legally for the purpose of election. Notice published by the Secretary of the Bank in the newspapers along with the intimation given by the Returning Officer under Rule 35(3) of the Rules is contrary to the provisions of the Act, the Rules and the Bye-laws. This contention of the 7th respondent was accepted by the Arbitrator in Ext. P5 award. The Tribunal in Ext. P6 judgment also accepted the above contention and took the view that there was total lack of notice of the general body meeting held on 25-6-1987.

5. Rule 5 of the Rules enumerates various details to be provided for in the Bye-

laws of a Society. Clause (q) of that Rule states that bye-laws should contain the mode of convening annual and special general body meetings, issue of notices, and the business which may be transacted there-at. In compliance with this requirement of the Rules, provision has been made in Clause 25 (B) of the Bye-laws regarding the service of notice of general body meetings. As per that provision, notice regarding general body meeting is to be to the members either in person after obtaining their full signature in token of having received the same or by post under certificate of posting. The bye-law also provided that any defect in the service of notice will not go to invalidate the action taken by the general body.

6. The above provision of the Bye-laws was in terms of clause 3(a) of Rule 35 of the Rules as it stood prior to the amendment brought out by S. R. O. 1736/85 dated 24-12-1985. The provision contained in Rule 35 (3) (a) was in relation to the intimation to be given by the Returning officer regarding the details of election of the members of the committee. After the amendment of 1985, the Returning Officer is entitled to give intimation to the members either in person and obtain their full signature; in token of having received the same or by post under certificate of posting or by publishing such details in two vernacular dailies having wide circulation in the area. So, as far as the procedure regarding the conduct of election to the committee of the society is concerned, the Returning Officer can now give intimation to all members by publishing the details in two vernacular dailies having wide circulation in the area. It is settled law that the election to the committee of a society should be held in conformity with the provisions contained in Rule 35 of the Rules. Clause 3 (s) of Rule 35 reads:

The result of the elections shall also be recorded in the minutes book of the society and attested by the Returning Officer and shall also be notified immediately on the notice board of the Society. The members so elected shall be deemed to have been elected by the general body of the society for the purposes of clause (b) of section 29.

Section 29(1) (b) states:

29(1) A general body meeting of a society shall be held once in a year for the purpose of-

(a) xxx

(b) election, if any, in the prescribed manner of the members of the committee other than nominated members;

The combined effect of this provision and Rule 35(3)(s) is that the committee elected in conformity with the procedure prescribed in Rule 35 will be a committee elected by the general body as provided in Section 29 of the Act. Section 29 makes it clear that members of the committee can be elected only in the prescribed manner "Prescribed" has been defined in Section 2(o) of the Act as "prescribed by rules made under this Act," Rule 35 of the Rules prescribes the

manner in which the election is to be held. In the election has been held in conformity with the manner prescribed in Rule 35 then that election will be deemed to be an election held by the general body as contemplated by Section 29 of the Act. In the instant case 7th respondent or for that matter the Administrator who filed a detailed counter affidavit has no case that the election that was held on 25-6-1987 was contrary to the procedure laid down in Rule 35 of the Rules.

7. Learned counsel representing the respondents raised a contention that the general body of the society should constitute a committee in accordance with the bye-laws, as per Section 28 of the Act. According to them, this provision mandates that the election should be in accordance with the procedure laid down in the bye-laws. Clause 25 (B) of the Bye-laws lays down procedure for service of notice of the general body. So, the general body should have been convened in terms of that provision, If not, it will be violative of the provisions contained in Sec. 28 of the Act. I find it difficult to accept this contention of the learned counsel. What Section 28 prescribes is that the general body of a society shall constitute a committee in accordance with the bye-laws. If the bye-law prescribes the number of the members of the Board of Directors or lays down qualifications for getting elected to the committee, then those provisions of the bye-laws should be complied with in constituting the committee. How the committee is to be elected, is not a matter to be found out from the bye-laws, but it is to be in conformity with Rule 35 of the Rules. Accordingly the procedural aspects contained in the bye-laws regarding the service of notice etc. have no relevance in constituting the committee u/s. 28 of the Act.

8. Section 29 enjoins the society to hold a general body meeting of its members. Notice of that general body meeting will have to be given by the society. Secretary being the executive head of the society notice for the general body meeting has to be issued by him. The Secretary of the 4th respondent Bank issued Ext.P1 notice. It is true that, that notice was not served on the members individually after obtaining their signatures in token of having received the same or by post under certificate of posting. It was published in two vernacular dailies having wide circulation in the area. Can that publication be considered as proper notice of the general body meeting ?

9. Sri, M.K. Damodaran, learned counsel representing the Administrator, 5th respondent, submits that Section 104 of the Act provides for service of notice. As per that section every notice should be posted by registered post. A notice under the Act can be served only in the said manner and any other mode of service will be against the statute In this view, the learned counsel proceeds to state that there was no notice whatsoever regarding the general body held on 25-6-1987. Consequently, according to counsel, the election of the petitioners was against Section 29 of the Act as well. I find it difficult to agree with this argument. Before the Arbitrator or the Tribunal none had a case that notice of the general body should have been served on all members by registered post only. The contention

was that notice should have been served personally after obtaining their signatures in token of having received the same or by post under certificate of posting. Further Rule 35(3) of the Rules contemplates a different mode of service of intimation. That provision of the Rule was challenged before this court as one violating the provisions of Section 104 of the Act. That contention was repelled in *Kunhikrishnan v. Secretary, Nadapuram S. Co-Op. Bank Ltd* (1987 (1) KLT 201) Sukumaran J. after examining the various provisions of the Act and the Rules dealing with the service of notice observed:

It is thus evident that in relation to the election, (which no doubt involves a serious matter as regards the exercise of franchise by a member) the legislature has contemplated a less rigorous provision, which combines fairness with practicality. It is in that context that the rule subtly speaks only of intimation and not of notice. Consistent with practicalities, the rule insist only on "intimation" being given. A certificate of posting is insisted upon to ensure that intimation in relation to election has been given. Ordinarily, and in the absence of any foul play or deceitful means, any member to whom the intimation of the election is sent by a letter under certificate of posting, would get such intimation. That would be fair enough procedure. If in relation to such an election, actual service is insisted upon, it may virtually result in an undue delay in, if not altogether a defeat of, the election process. It would therefore appear that the legislature and the rule making authority have consciously made a distinction between notice and intimation, depending upon the context in which information on an aspect has to be disclosed. In that view of the matter, there is no inconsistency between Rule 35 (3) (a) and S. 104 of the Act.

I am in respectful agreement with this observation. Now a days Co-operative movement is getting maximum momentum. Administrators appointed to various societies have proved very effective in enrolling thousands of members. 8th respondent could enlist 6218 members in less than 3 months. When the members, are numerous it will not be possible to serve notices of general body on individual member or to send it by post on certificate of posting. This might have been the reason to adopt the mode of publication in vernacular dailies. This is evident from the change brought out S.R.O. 1736/85.

10. In *Karunakaran v. Special Sale Officer* (1956 KLT 701) M.P. Menon, J. stated:

S 104 of the Act permits service of notice by registered post and prescribes that in such a case, actual service or delivery need not be separately proved. This is different from saying that service by registered post is the only permissible statutory method. The section does not exclude other well known methods of effecting service such as service through a bearer or process server.

From the above it can safely be held that the service of notice under the Act and the Rules can be by methods other than by registered post as provided u/s 104 of the Act.

11. Notice to members regarding the general body meeting for the election of

new Board of Directors is to inform them of the purpose of the meeting. Information can be given to the members by publication in newspapers. Such publication can certainly be taken as proper notice for convening the general body. Publication in two vernacular dailies is an accepted mode of giving intimation of the election. The Returning Officer is bound to give intimation regarding the process of election to the members. By that intimation, he has to apprise the members of the election to the committee. The election can take place only in the general body. The voting, depending on the number of members, will be spread over for a few hours. At some point of time during that period any member can exercise his vote. The general body convened for the purpose of election will not be a congregation of all members of the society at any particular point of time. The intimation given by the Returning Officer and the notice published by the Secretary of the society as evidenced by Ext. P1 are found to have given sufficient information to the members regarding the convening of the general body for the purpose of election. According to me, there was proper notice of the general body meeting and the election held in such a general body must be deemed to be a proper election as contemplated by Sec. 29 (1) (b) of the Act.

12. In the above view the election of the petitioners to the Board of Directors of the society at the general body held on 25-6-1987 has only to be up-held. The contrary view taken by the Arbitrator and the first respondent in Ext. P5 and P6 respectively are unsustainable. I quash Exts. P5 and P6. I direct the 5th respondent to hand-over charge of the 4th respondent bank to the petitioners forthwith.

13. The petitioners have a contention that 5th respondent acted without good faith in admitting 6218 members to the bank. Within a short period between 26-9-1988 and 23-12-1988 the 5th respondent enrolled 6218 members. This was only to upset the working of the Bank. It is contended that the Administrator who was holding the office as a care-taker should not have resorted to this improper activity. Fifth petitioner approached this court earlier by filing O.P. 6793/88 challenging the appointment of the Administrator. While disposing of that petition this court observed :

Counsel for the petitioner, Mr. Appa Nair, very vehemently, contended that the 6th respondent, the Administrator, is taking very hurried steps to enroll large number of new members to the Bank, which is unfair and unauthorised. According to counsel, this is so done, in order to favour a few persons, which will really tilt the scale in the elections. It cannot be doubted that the Administrator has got all the powers of the Board. It is certainly open to him to consider applications for membership and enroll new members. However wide such powers may be, it is only appropriate that the 6th respondent (Administrator) bears in mind that any remedy which the appellants may obtain in the appeal Ext. P4 should not be rendered ineffectual, illusory or barren, for, it is trite law, that if the Appellate Tribunal were to set aside Ext. P2 order, the legal effect will

be that, that is the order that should have been passed by the 2nd respondent, even initially. This is a matter which should be borne in mind by the 6th respondent, Administrator, in taking decisions concerning the Bank.

Again fifth petitioner approached this court by filing O.P.8111/1988 complaining against the enrolment of new members. That Original Petition was disposed of by this court observing:

While delivering the judgment in O.P. No 6793 of 1988, I had indicated that the Administrator will certainly be prudent to see that the remedy, if any, obtained by the petitioner and others in the appeal (Appeal No. 89 of 1988) should not be tendered ineffectual. I do not think that the 4th respondent-Administrator will admit in discriminately large number of members as apprehended by the petitioner. All the same, it is sufficient if I make it clear that membership afforded to persons on or after the date when Appeal No. 89 of 1988 was filed before the Appellate Tribunal, will be subject to the final order that may be passed by the Tribunal in Appeal No. 89 of 1988. If the Appellate Tribunal were to affirm the decision of the Assistant Registrar setting aside the election, the admission of new members may not matter much. If, on the other hand, the Appellate Tribunal were to set aside the decision of the Assistant Registrar of Co-operative Societies, the consequential order appointing the Administrator itself will have to be reviewed and a different situation will emerge and as a sequel thereto any major policy decision, inclusive of the enrolment of members, can and will have to be re-appraised or re-evaluated by the person or authority, who wields the power as a result of the order likely to be passed by the Appellate Tribunal. This position is made clear.

In-spite of the above decisions, 5th respondent has enrolled 6218 members in the Bank. This high handed act of the 5th respondent is an abuse of his power as Administrator. Such an officer is a disgrace to the co-operative movement. Co-operative societies should be permitted to function through their elected representatives and the Administrators should be permitted to step in only in extra-ordinary circumstances. Even-though they are having all the powers of the Board of Directors of the society or bank they are only there to fill up the interregnum caused by the supersession or removal of the Board of Directors by a process of law. In the instant case, on account of the setting aside of the election, 8th respondent assumed office as Administrator. He misused his power as Administrator and enrolled more number of members than the society had at the time he assumed the office. Since the old Board of Directors is put back in office, I am not pursuing the matter any further. They will have to examine the various actions taken by the 8th respondent. It is for them to consider the future course of action to be adopted.

The Original Petition is disposed of in the above terms.