

**(1988) 09 KL CK 0011**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 7377 of 1984**

G. Kannan and another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

**Date of Decision :** 15-09-1988

**Acts Referred:**

Kerala Co-operative Societies Act, 1969 — Section 88(1)

**Citation :** (1988) 2 KLJ 527

**Hon'ble Judges :** K. Sreedharan, J

**Bench :** Single Bench

**Advocate :** K. K. Usha, for the Appellant; P. N. K. Achan and Smt. Vanaja Madhavan Government Pleader, for the Respondent

## **Judgement**

K. Sreedharan J.

1. Petitioners are Presidents of two Co-operative Banks affiliated to the Circle Co-operative Union, Alathur. The members of the Co-operative Union are to be elected in the manner provided u/s 88(1) Clauses (a) to (d) of the Kerala Co-operative Societies Act, hereinafter referred to as "the Act". As per clause (a) nine members are to be elected by the members of the committees of the societies within the circle. The petitioners were candidates for being elected from the constituency of members of the committee. They are also voters in that constituency. As per the preliminary voters' list published on 4-7-1984, 667 voters constituted the electorate. As there were errors in preparing the list, written objections were filed pointing out the mistake. Without properly considering those objections it is alleged, a final list was published on 10-7-1984, Election was held on its basis on 5-8-1984. According to the petitioners, on account of the improper exercise of discretion by the Returning Officer, 3rd respondent, the petitioners and two others from their panel got defeated. Therefore, they challenge the election and pray for a declaration that the election conducted on 5-8-1984 as illegal and void. The learned Counsel appearing for the petitioner fairly and rightly submitted that the challenge against the election

held on 5-8-1984 is not pressed. According to counsel, the petitioners want a decision regarding the vires of Rule 131 (1) of the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as "the Rules". The said provision according to counsel, is ultravires the provisions contained in Section 88 of the Act and so it has to be struck down.

2. The relevant prayer made by the petitioners regarding the challenge against rule 131(1) of the Rules is as follows:

To declare that the provision contained in Rule 131 (1) (d) of the Co-operative Societies Rules, 1969, is not in tune with the provision of the Act particularly Section 88 thereof and the same is violative or ultravires the provisions of the Act and Rule 129 (q) of the Co-operative Societies Rules, 1969.

3. Section 88 of the Act deals with constitution of Circle Co-operative Unions. The Government are to constitute Circle Co-operative Unions for each Circle in the State by notification in the Gazette. For constituting a Circle Co-operative Union, among others, nine members are to be elected by the members of the committees of the societies within the Circle. The manner in which those nine persons are to be elected, as per the Act, is to be provided by the Rules. Chapter XIII of the Rules contains provisions relating to Co-operative Unions, Rules 126 to 149 deal with Circle Co-operative Unions. Rule 129 is concerned with election of members of the Circle Cooperative Unions. It states that the election shall be held at a meeting of the members of the Managing Committees of all the societies working within the Circle and of all the full time paid employees of Co-operative Societies within the Circle. Clause (q) of that Rule states that on receiving the ballot paper, a member shall forthwith proceed to the polling compartment, make he mark "X" or "+" on the ballot paper against the names of the candidate or candidates for whom he desires to vote and put the ballot paper in the bail at box with utmost secrecy. As per this provision, a member can exercise his vote in favour of a candidate or candidates for whom he desires to vote. There is no compulsion on any of the members regarding the number of candidates for whom he should exercise the vote. Thus a member may exercise vote in favour of one candidate or for more candidates. Therefore on account of the fact that one member exercised vote in favour of one candidate alone, that ballot paper is not open to rejection. The vote exercised by that member should not be invalidated.

4. Rule 131 deals with rejection of ballot paper. Clause (1)(d) of this rule states:

A ballot paper shall be rejected--

(d) if the voter has not voted for such number of candidates as are to be elected or voted for more candidates than the Number required to be elected

As per this provision a voter has to exercise vote in favour of such number of candidates as are to be elected. In the instant case each voter had to exercise his vote in favour of two candidates as two were to be elected to the Circle

Union. If one voter exercised vote in favour of one candidate only then his ballot paper was rejected. Such an interference with the right of vote is against Section 88 of the Act and Rule 129 (q) of the Rules referred to earlier. When Rule 129 (q) confers, right to vote in favour of a candidate or candidates for whom the voter desires to vote, the provision contained in Rule 131 (1) (d) of the Rules cannot be upheld because it interferes with the voter's freedom. Nothing is seen in the Rules in support of the provision in Rule 151 (1) (d) allowing Returning Officer to reject a ballot paper on which a voter has exercised his right of vote for such of a candidate or candidates for whom he desired to vote on the ground that he did not vote in favour of the required number of candidates to be elected. Therefore, the provision in Rule 131 (1) (d) to the effect that if a voter has not voted for such number of candidates as are to be elected, his ballot paper shall be rejected, cannot be sustained.

5. Validity of an identical provision contained in Rule 160 (i)(d) of the Rules relating to the election to State Co-operative Union, came up for consideration before this court in Antony Vs. Returning. Offices & Ors. (1981 KLT 137), A learned Single Judge of this court struck down that provision which invalidated the vote on the ground that the voter has not exercised his right in favour of such number of candidates as are to be elected. That decision was taken up in Appeal. That appeal has been dismissed in State of Kerala Vs. Antony & Ors. 1986 KLT 64 holding:

We are of the view that the first limb of Rule 160 (1) (d) which reads, if the voter has not voted for such number of candidates as are to be elected" is null and void and of no effect.

In the circumstances detailed above, the original petition is disposed of with a declaration that the first limb of Rule 131 (1) (d) Which reads "if the voter has not voted for such number of candidates as are to be elected" is null and of no effect. No costs.