

(1996) 01 KL CK 0061
In the High Court Of Kerala
Case No : O.P. No. 18933/95 D

George Abraham and Others

APPELLANT

Vs

The Assistant Registrar, Co-operative Societies and Others

RESPONDENT

Date of Decision : 19-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala High Court Act, 1958 — Section 3

Citation : (1996) 01 KL CK 0061

Hon'ble Judges : K. Sreedharan, J; J.B. Koshy, J

Bench : Division Bench

Advocate : T. Devassia, for the Appellant; P.K. Behanan, Government Pleader for 3rd Respondent and K. Balakrishnan, for Respondents 7 to 19, for the Respondent

Judgement

K. Sreedharan, J.—This Original Petition has come before us on a reference made by a learned Single Judge u/s 3 of the High Court Act. Petitioners are three in number. Petitioners 1 and 2 are members of Kuruppumpady Service Co-operative Bank Ltd. No. E-257, the third Respondent. The third Petitioner was a member of the elected Board of Directors of the third Respondent bank. Election to the Board of Directors was held on 31st October 1992. As per the terms of the bye-laws its term was for three years. So, the term of the Board of Directors was to expire on 30th October 1995. Government issued Order, dated 11th August 1995, u/s 101 of the Co-operative Societies Act (hereinafter referred to as the Act) whereby the term of the Board of Directors then in force was changed to three years and three months instead of three years. Subsequently by G.O. (P) No. 156/95, dated 6th November 1995 the term of the existing Board of Directors of the Co-operative Societies was extended by a further period of three months. According to the Petitioners, even though the term of the existing Board of Directors of the third Respondent bank was extended by six months as per the notifications mentioned earlier their term expired on 30th October 1995. As per Rule 35(1) of the Rules framed under Co-operative Societies Act the committee should have been met at least sixty days prior to the expiry of their term and

passed a resolution to conduct the election. In the instant case the term of the Board of Directors expired on 30th October 1995 and the committee passed a resolution to hold the election at its meeting held on 14th October 1995. Since there was no clear 60 days from the date of passing of the resolution and the date of expiry of their term of office, the said resolution is invalid. Even as per the resolution dated 14th October 1995 General Body for electing the new Board of Directors was to be held on 31st December 1995. On receipt of that notification by the Assistant Registrar he did not appoint a Returning Officer. He wrote back to the society to re-fix the date of election between 15th January 1996 and 29th January 1996. Thereupon Board of Directors passed resolution dated 25th November 1995 requesting the Assistant Registrar to appoint a Returning Officer for holding election on 31st December 1995. Assistant Registrar appointed a Returning Officer pursuant to that resolution as evidenced by Ext. P-9 order dated 29th November 1995 for holding the election on 31st December 1995. Returning Officer took steps to have the election to the Board of Directors held on 31st December 1995. While so the Petitioners moved this Original Petition on 4th December 1995 inter alia praying for quashing Ext. P-9 order appointing a Returning Officer for election to be held on 31st December 1995 and to quash the entire proceedings to conduct the election to the Board of Directors on 31st December 1995.

2. Along with the Original Petition Petitioners moved C.M.P. No. 34988 of 1995 praying for stay of all proceedings to conduct the election to the Board of Directors of the third Respondent bank on 31st December 1995 on the basis of the decision taken by the third Respondent bank on 14th October 1995 till the final disposal of the Original Petition. This Court by order dated 19th December 1995 stayed the election until further orders. By the time the stay order was passed it is contended by the Respondents that the Returning Officer appointed pursuant to Ext. P-9 completed the entire process for holding the election on 31st December 1995 and the actual polling alone was to take place.

3. The main argument advanced by the learned Counsel representing the Petitioners is that the term of Office of the Board of Directors expired on 30th October 1995 and that the Board did not pass a resolution sixty days prior to 30th October 1995 for holding election to the new Board of Directors. They passed the resolution only on 14th October 1995. That resolution is in violation of the terms contained in Rule 35 of the Rules inasmuch as there was no clear sixty days period from that day upto the date of expiry of their term. It is the further contention of the Petitioners that any action taken by the previous Board of Directors after 30th October 1995 is void and so the resolution passed by them on 25th November 1995 requesting the Assistant Registrar to appoint a Returning Officer for holding the election on 31st December 1995 is void and consequently the Returning Officer who was appointed as per Ext. P-9 pursuant to the resolution dated 25th November 1995 cannot be considered as validly appointed. In this view of the matter, according to the learned Counsel, all the steps taken by the Returning Officer have to be treated as non est. We will deal

with these arguments in seriatim.

4. It is the common case that the term of office of the previous Board of Directors was to expire on 30th October 1995. As per Rule 35 of the Rules the said Board of Directors should have met at least 60 days in advance of the date of expiration of its term and passed a resolution fixing the date, time and place for the conduct of the election to the new Board of Directors. The Petitioners' case is that the previous Board of Directors did not comply with this provision. They passed the resolution only on 14th October 1995 and it was within the sixty days period mentioned in Rule 35 from the date of expiration of its term. That resolution cannot be considered as a proper resolution for holding the election.

5. Third Respondent produced along with its counter affidavit Ext. R-3(a) resolution passed by the Board of Directors on 5th August 1995. As per that resolution the Board resolved to request the Assistant Registrar to appoint a Returning Officer for holding the election to the new Board of Directors on 22nd October 1995. That resolution also happened to be within sixty days of the date of expiry of the term of their office. It is seen that pursuant to Ext. R-3(a) no Returning Officer was appointed by the Assistant Registrar. There upon the Board of Directors passed resolution dated 14th October 1995. That resolution was passed while the term of Office of the Board of Directors had not expired. As per that resolution the Assistant Registrar was requested to appoint a Returning Officer for holding election on 31st December 1995. The Assistant Registrar, for reasons best known to him, requested the Board of Directors to fix some date between 15th January 1996 and 29th January 1996 for holding election, since 31st December 1995 happened to be new year eve. On receipt of the communication the Board of Directors who were in office on account of the notifications issued by the Government extending their term of office passed Anr. resolution on 25th November 1995 repeating their request to have a Returning Officer for holding election on 31st December 1995. Thereupon the Assistant Registrar by Ext. P-9 order dated 29th November 1995 appointed a Returning Officer.

6. Are the resolutions passed by the previous Board of Directors on 14th October 1995 and 25th November 1995 requesting the Assistant Registrar to appoint a Returning Officer illegal? Resolution dated 14th October 1995, according to the learned Counsel representing the Petitioner, is illegal because it was passed within sixty days of the date of expiry of their term of office. Resolution dated 25th November 1995 is stated to be illegal because the term of office of the previous Board of Directors expired on 30th October 1995. Are these contentions sustainable? As per the provisions contained in Rule 35 the Returning Officer after his appointment has to take various steps for holding the actual election. The period required for completing those proceedings is 35 days from the date of appointment of the Returning Officer. So members of the new Board of Directors can be elected only after 35 days from the date of appointment of the Returning Officer. In such a situation circumstance may arise where new Board will not be

available to take charge of the affairs of the society when the existing one vacates office on expiry of the term. According to the scheme of the Act the newly elected Board of Directors should take over the office from the out going Board of Directors. If there is an interval between the date of expiry of the term of the previous Board of Directors and the date of assumption of office by the newly elected Board of Directors, the Co-operative Society will have to be placed under the control of an Administrator. To avoid such contingency the new Board of Directors should come into existence before the term of office of the previous Board expires. The new Board can come into existence only on the expiry of 35 days from the date of appointment of the Returning Officer. To achieve this purpose Clause (1) of Rule 35 provides that the committee in office should meet at least 60 days in advance of the date of expiration of its term and pass a resolution fixing the date for the conduct of the election of the new Board of Directors. The period of 60 days mentioned therein is taken as sufficient time to enable the election to be held and the new Board of Directors constituted. The said period can only be treated as directive and cannot be taken as a mandatory provision. In other words, the committee in office is to pass a resolution sufficiently in advance so as to enable the new Board of Directors to come into existence before the expiration of its term. A resolution as contemplated by Rule 35(1) will not be illegal or void on account of the reason that 60 clear days did not exist from the date of its passing and the date of expiry of the term of the Board of Directors. Viewed in that light the 60 days period cannot be treated as infallible. The words "shall meet" used in Rule 35(1) cannot be treated as absolute. The purpose of the said provision is to have all proceedings for a proper election to the Board of Directors complied with in terms of the later part of Rule 35. It is to ensure that the new Board of Directors take charge on the expiry of the term of the existing Board. The view expressed by the learned Single Judge of this Court in *A.K.G. Memorial Co-operative P.D. Society Ltd. v. Joint Registrar* 1992 (1) K.L.T 822 to this effect is the correct view and with respect we approve the same. It therefore follows that the resolution passed by the Board of Directors of a Co-operative Society for holding election cannot be considered as invalid on sole ground that the resolution happened to be passed within 60 days of the expiration of its term. So the resolution passed by the third Respondent in the instant case on 14th October 1995 should be treated as a valid one, even though it was passed within 60 days of the date of expiration of its term. Pursuant to that resolution if Returning Officer is appointed and election takes place in accordance with the other provisions of Rule 35 that election should be treated as proper and legal.

7. Then the question that may arise is as to what will be the position of the previous managing committee whose term is to expire on 30th October 1995. As per the bye-laws if the term expires on 30th October, 1995 from the succeeding day the society must be under the Administration of an Administrator. That Administrator will have to hand over charge to the newly elected Board of Directors whose election was held pursuant to the resolution dated 14th October

1995. In other words from the date of expiry of the term of the previous Board of Directors and the date on which the new Board of Directors take charge the society will be under the control of an Administrator. This circumstance will not in any way invalidate the resolution passed on 14th October 1995 or the process of election taken pursuant thereto.

8. Ext. P-9 is the order by which Returning Officer was appointed to hold the election to the new Board of Directors. That order states that it was pursuant to resolution dated 14th October 1995 and 25th November 1995 the Returning Officer is appointed. As stated earlier the resolution passed by the Board of Directors on 14th October 1995 is a proper one. Pursuant to that proper resolution of the Board of Directors when a Returning Officer is appointed this Court is not to interfere with that appointment in exercise of the powers under Article 226 of the Constitution.

9. In Ext. P-9 reference was also made to resolution dated 25th November 1995 passed by the previous Board of Directors. Their term expired on 30th October 1995. They happened to be in office pursuant to the two notifications issued by the Government on 11th August 1995 and 6th November 1995. But for those notifications issued by the Government the previous Board could not have been in office beyond 30th October 1995. The previous Board of Directors exercised their powers as such under the cover of those notifications. Till that notification is cancelled they were legally entitled to exercise all the powers as though they are members of the Board of Directors. Viewed in that light the action taken by the previous Board of Directors cannot be considered as illegal or honest. At this juncture it may be worthwhile to note the decision of a Division Bench of this Court in *Raghavan Nair v. Joint Registrar* 1993 (1) KLT 725. The Bench to which one of us (Sreedharan, J.) was a party took the view that an action taken by one within the scope of its authority for the interest of public and not for his own benefit is valid and binding as if they were the acts of officers appointed *de jure*. In the instant case the previous Board of Directors was duly elected by the members of the society. As per the provisions of the bye-law and the Act their term was three years. That three years period was extended by notification issued by Government. Consequently they continued to be in office. They exercised the duties as members of the Board of Directors in public interest and not for their personal benefit. They were exercising Jurisdiction *de facto* as members of the Board. Such action taken by them cannot be considered to be void or non est when it is found that the notifications issued by the Government are invalid. The previous Board's actions, in the instant case, are to be treated as *de jure*. A Division Bench of this Court in O.P. No. 19338 of 1995 took the view that the notifications issued by the Government cannot affect the term of office of the existing Boards of Directors or managing committees of co-operative societies. Their Lordships took the view that:

According to us, the impugned notification has no application to a committee already constituted by the general body of a society, unless such general body

wants to refix the period. The notification would apply to the general body which is yet to constitute a managing committee and in such case general body can fix the duration of the committee upto 3? years.

We are in respectful agreement with the said observation. Consequently the previous Board of Directors of the third Respondent had its term expired on 30th October 1995. In the light of the notifications issued by Government trying to extend the term of office of existing Board of Directors if the Assistant Registrar appointed the Returning Officer taking note of the resolution passed by the previous Board of Directors on 25th November 1995 the said appointment cannot be faulted.

10. As per Ext. P-9 order the Assistant Registrar did in fact appoint a Returning Officer. It is the admitted case of parties that that Returning Officer took steps as per Rule 35 for holding election to the Board of Directors of the co-operative society on 31st December 1995. That process of election has been stopped by this Court as per order in C.M.P. No. 34988 of 1995 dated 19th December 1995. Since the process of election which was initiated and proceeded with by the Returning Officer was stopped by order dated 19th December 1995 the Returning Officer has to start from the stage at which it was stopped. This is the view expressed by a Division Bench of this Court in *Madhavan Namboodiri v. Kammaran* 1992 (2) KLT 567. We are in respectful agreement with the said statement of law.

11. In view of what has been stated above, we find no merit in this Original Petition. It is accordingly disposed of. The Returning Officer appointed under Ext. P-9 is directed to continue the process of election from the stage at which it was interrupted by the order passed by this Court in C.M.P. No. 34988 of 1995 after re-scheduling the polling date. We make it clear that the Returning Officer should hold the election as expeditiously as possible.

The Original Petition is disposed of as indicated above. Parties are directed to suffer their respective costs.