

(2010) 08 KL CK 0112

In the High Court Of Kerala

Case No : Writ Petition (C) . No"s. 25497 of 2009 (F) and 36853 of 2009- (B)

Gopalakrishnan

APPELLANT

Vs

Kumaramputhur Service Co-operative, The Joint Registrar of
Co-operative, The President, Kumarmputhur Service and S.R.
Habeebulla

RESPONDENT

Date of Decision : 30-08-2010

Acts Referred:

Citation : (2010) 08 KL CK 0112

Hon'ble Judges : T.R. Ramachandran Nair, J

Bench : Single Bench

Advocate : R.S. Kalkura, for the Appellant; V.M. Kurian, for the Respondent

Judgement

T.R. Ramachandran Nair, J.—W.P.(C). No. 25497/2009 concerns the election to the Board of Directors of the first respondent Co-operative Bank. The election was scheduled to be held on 21/09/2009. The petitioner"s allegation is against the enrolment of more than 2000 members viz., 2249 members, on 23/06/2009 and 17/07/2009. It is mainly alleged that the members have been enrolled illegally and without referring to the qualification fixed under the relevant provisions of the Act, Rules and Bye-laws. The main prayer in the writ petition is for a direction to the second and third respondents to take immediate steps to see that ineligible members do not participate in the election scheduled on 21/09/2009 and they are removed from the membership of the Society.

2. The learned Single Judge who heard the matter on 17/09/2009 declined to grant an interim order which was challenged before the Division Bench of this Court in W.A. No. 2078/2009. The Division Bench passed an interim order dated 18/09/2009 whereby an Advocate Commissioner was appointed to observe the election proceedings. The Bench also directed to keep a separate ballot box to the members enrolled on 23/06/2009 and 17/07/2009 in order to preserve the subject matter of the election. It was also directed that their votes shall be separately counted. The Returning Officer was given freedom to declare the

results of the election on the basis of the votes secured in both boxes. It was made clear that the declaration of the results will be subject to the result of the writ appeal. The writ appeal itself was disposed of with the following directions:

(1) All the parties impleaded in the writ appeal will stand impleaded as additional respondents in the writ petition.

(2) The report of the Advocate Commissioner will be treated as part of the records in the writ petition.

(3) It will be open to the parties to file their objection to the Advocate Commissioner's report within two weeks from today. The objection already filed by the first respondent will also form part of the records of the writ petition.

3. Thereafter, this Court passed an interim order dated 09/10/2009 in the writ petition directing the Joint Registrar to consider the complaints regarding ineligibility. Earlier, the Joint Registrar had directed the parties to file election petition and this was recalled later which fact is recorded in the interim order dated 28/10/2009. The order passed by the Joint Registrar is dated 23/11/2009 whereby he has found that the enrolment of 13 members was not correct and a direction was issued under Rule 16(3) of the Kerala Co-operative Societies Rules, to the Bank to take steps to remove them from membership after issuing notices. The said order is produced in W.P.(C). No. 36853/2009 as Ext.P10.

4. As far as W.P.(C) No. 25497/2009 is concerned, there is no challenge against election of any of the elected Directors, in the writ petition. It is a case where the writ petition was filed before the election was conducted. Evidently, the interim order passed by this Court to keep the votes of 2249 members separately will enable the writ petitioner or anybody else who challenges the election u/s 69 of the Act to get the details of those votes for filing an election petition. Any election could be challenged only by an election petition duly filed. Herein, the learned Counsel for the petitioner submitted that the Arbitration Court is not functioning and, therefore, an election petition could not be filed. The said contention appears to be not correct. Even if the officer who was functioning as Arbitration Court is no longer in office now, that is not a reason for the petitioner for not invoking the remedy u/s 69 of the Act. Now that the election is over and an elected committee has taken charge and, especially, since the subsequent proceedings are not challenged in the writ petition, this Court need not consider the validity of the election or any such matters in this writ petition. If the petitioner has got any grievance regarding the ineligibility of the members enrolled, he will have to seek remedy under Rule 16(4) of the Rules before the Joint Registrar inspite of the fact that the Joint Registrar has already considered a similar matter by passing the order dated 23/11/2009. If the petitioner is aggrieved by the order dated 23/11/2009, he can file an appeal before the appellate authority also. The said remedy is left open.

5. Even though the learned Counsel for the petitioner sought for a permission to move the Arbitration Court u/s 69 of the Act banking upon the pendency of the

writ petition and by excluding the said period, this Court evidently cannot grant such a relief. The period for raising a dispute concerning an election to the Board of Directors is fixed by the Act u/s 69(3) as one month. This Court cannot extent the period in these proceedings. If an election petition has already been filed by any other parties before the concerned statutory authorities, the petitioner can offer himself as a witness, subject to its acceptance by others concerned. Therefore, the said prayer cannot be granted.

6. In W.P.(C). No. 36853/2009, the petitioner is aggrieved by Ext.P10 order passed by the Joint Registrar. The Joint Registrar by the said order has directed to take steps to remove 13 members from the membership of the bank, after hearing them and on verifying whether they have attained the age of 18 years at the time of enrolment. Mainly it is contended that the Joint Registrar has not considered the ineligibility alleged in respect of other members, and the action of the Joint Registrar in confining the election to 13 members alone cannot be justified. The learned Counsel for the petitioner submitted that the petitioner had alleged ineligibility of about 98 members and he has produced evidence regarding ineligibility of about 13 members and about another 18 members on the date of pronouncement of the order. Therefore, it is pointed out that the Joint Registrar was not justified in confining the order to 13 persons alone. Evidently, the Joint Registrar has passed an order in the light of the fact that steps had to be completed within one month as directed by this Court by an interim order dated 28/10/2009. The Joint Registrar could not have adjourned the matter for allowing the petitioner to adduce further evidence. Ext.P10 order therefore, cannot be said to be illegal. But, it does not mean that the petitioner is not left without any remedy. If a proper application is filed before the Joint Registrar concerned by invoking Rule 16(4) of the Rules, with regard to the ineligibility of any other members, the Joint Registrar will consider the same and pass appropriate orders after issuing notice to the members concerned also and after due enquiry expeditiously. The said remedy is left open.

The writ petitions are disposed of as above. No costs.