

(2003) 02 KL CK 0077
In the High Court Of Kerala
Case No : O.P. No. 698 of 2003

Gopalan Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 11-02-2003

Acts Referred:

Citation : (2003) 1 KLT 1008

Hon'ble Judges : R. Rajendra Babu, J

Bench : Single Bench

Advocate : S. Siri Jagan and A.V. Ravi, for the Appellant; K. Sajan Varghese, for the Respondent

Final Decision : Allowed

Judgement

R. Rajendra Babu, J.—The petitioners who are the elected members of the 3rd respondent, Peringoda Service Co-operative Bank, filed this O.P. for quashing Ext.P4 order passed by the 2nd respondent, the Joint Register of Co-operative Societies, Palakkad, disqualifying the petitioners from continuing as members and also Ext. P7 order passed by the 1st respondent confirming Ext.P4 order.

2. Heard the learned counsel for the petitioners, the 3rd respondent and the learned Government Pleader,

3. The petitioners were elected to the Board of Directors of the 3rd respondent society in an election held on 21.10.2001. On the basis of a complaint, the Joint Registrar initiated proceedings for disqualifying the petitioners under Rule 44(3) of the Co-operative Societies Rules. By Ext.P4 order the petitioners were disqualified to continue as elected members of the society. The only ground relied on for disqualification of the petitioners was that they were not active members of the society at the time of electing them to the Board of Directors and hence they are liable to be disqualified. The learned counsel for the petitioners submitted that a member can be disqualified under Rule 44(3) only if the member suffered a disqualification under Sub-rule (2) of Rule 44 and not on

any other grounds. Sub-rule (2) of Rule 44 deals with the disqualification of a member who was elected or appointed as a member of the committee and it reads;

(2) A member of the committee shall cease to hold his office as such, if he -

(a) becomes disqualified under Sub-rule (1), provided that where a member ceases to hold his office as such by reason of having been sentenced for any offence, he shall be restored to office for such portion of the period for which he was elected or appointed as may remain unexpired at the date of such restoration, if and when the sentence is annulled on appeal or revision and any person elected or appointed in the vacancy in the interim person shall on such restoration vacate office;

Provided further that the disqualification under Sub-clause (i) of Clause (c) of Sub-rule (1) shall be deemed to be accrued only after expiry of a period of one month from the date of receipt by the member concerned of a notice from the society demanding him to clear off the defaulted amount specified therein and he fails to remit or cause to remit the amount within the said period; or

(b) cease to be a member of the society; or

Provided that this clause shall not apply to a person nominated by the Government or any other authority specified in this behalf by the Government under Sub-section (1) of Section 31 of the Act or by Government or Registrar under Sub-section (1) of Section 28 of the Act or by Government under Sub-section (3) of Section 28A of the Act.

(c) is subsequently seen to be disqualified under Sub-rule (1) on the date of election itself.

Provided that the disqualification under Sub-clause (i) of Clause (c) of Sub-rule (1) shall be deemed to be accrued only after the expiry of a period of one month from the date of receipt by the member concerned of a notice from the society demanding him to clear off the defaulted amount specified therein and he fails to remit or cause to remit the amount within the said period.

Sub-rule (3) prescribes the procedure to be followed by the Registrar in disqualifying a member who suffered disqualification under Sub-rule (2) of Rule 44. Sub-rule (1) of Rule 44 prescribes the disqualification of a member to be elected as a member of the Board of Directors. The disqualification under Sub-rule (1) also is a disqualification under Sub-rule (2) for continuing as a member. The disqualification u/s 28 of the Act is a disqualification as under Sub-rules (1) and (2). The present disqualification is one u/s 20 of the Act which says that only an active member has a right to vote. Section 20 deals with the right of the members to vote which says that notwithstanding anything contained in any of the provisions of the Act or any other law, every active member of the society shall have one vote in the affairs of the society. The explanation to Section 20 defines an "active member" as follows:

"Explanation:- For the purpose of this section, active member means,-

(i) in the case of a credit society, a member who has made a deposit or has become a borrower or surety or has attended any general body meeting of the society during the period of five years immediately preceding the date of resolution of the committee for the conduct of election.

(ii) in the case of any other society, a member who has involved in all or any of the objects of the society specified in the bye-laws thereof during the period of five years immediately preceding the date of resolution of the committee for the conduct of election,"

The learned counsel for the petitioners submitted that the petitioners were active members of the society and they had attended all the meetings of the society and as such no disqualification would be there in respect of those members. The above argument stands supported by the observation made in Ext.P7 order wherein it was recorded thus:

"The Joint Registrar (General), Palakkad has verified the concerned Register of the Bank and found that the appellants' name are included in the list of Active Members."

The above finding in Ext.P7 would clearly indicate that the petitioners were active members of the society and on factual ground also the order passed by the Joint Registrar and the 1st respondent cannot be sustained.

4. The learned counsel for the petitioners submitted that a member can be disqualified only on the grounds enunciated in Rule 44(2) and not on any other grounds. The disqualification imposed u/s 20 limiting the right of voting to active members is not a ground mentioned in Sub-rule (2) of Rule 44 though the disqualification u/s 28 as well as other grounds are mentioned therein. By Sub-rule (2) of Rule 44 a member ceases to be a member of the committee on suffering the disqualifications enumerated therein and an order has to be passed by the Registrar under Sub-rule (3) on the basis of the disqualification suffered under Sub-rule (2). The disqualification u/s 20 is not included in Sub-rule (2) and as such even if an elected member was not an active member, he does not suffer a disqualification when once elected. If there was disqualification u/s 20, such disqualification should have been decided prior to the election and such disqualification cannot be raised after the election, as it is not included in Sub-rule (2) of Rule 44. Hence Ext.P4 order passed by the 2nd respondent and confirmed by the 1st respondent by Ext.P7 order are liable to be set aside.

5. It is quite embarrassing and unfortunate to note that the elected representatives had to approach this Court by filing consecutive three Writ Petitions for safeguarding and upholding their right to continue as the members of the society. The authorities should have taken sufficient care in examining the provisions of law before taking action against the petitioners for disqualifying them. On silly and unfounded grounds the petitioners had been disqualified and

such approach should have been avoided.

In the result this O.P. is allowed. Exts. P4 and P7 orders passed by respondents 2 and 1 respectively shall stand set aside.