
(2002) 07 KL CK 0056

In the High Court Of Kerala

Case No : O.P. No's. 15128 and 15741 etc. of 2002

Gopinathan Nair

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Citation : (2002) 07 KL CK 0056

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : D. Somasundaram, N. Nandakumara Menon, K. Vinodkumar, N. Reghuraj and K. Amminikutty, for the Appellant; T.R. Ramachandran Nair and M.A. Aboobacker, Government Pleader, for the Respondent

Judgement

Kurian Joseph, J.—Administrator in a co-operative society is not entitled to enroll new members so as to alter the composition of the society. But is there such a restriction on the Administrator/Administrative Committee in the matter of removal of ineligible members?

2. Petitioners in the former two cases are aggrieved by the steps taken by the respondents for removing the members of the 3rd respondent society on the ground of ineligibility. The 3rd respondent society is now managed by an Administrative Committee. The main contention of the petitioners is that the Administrator/ Administrative Committee has no power either to admit members or remove any members from the rolls of the society. The decisions of the Supreme Court in K. Shantharaj and another Vs. M.L. Nagaraja and others, and Joint Registrar of Co-operative Societies v. T.A. Kuttappan 2000 (2) KLT 480 (SC) and the decision of the Full Bench of this Court in Hassan v. Joint Registrar of Cooperative Societies 1998 (2) KLT 746 are relied on. No doubt, it is more res integra that the Administrator/Administrative Committee appointed either u/s 32 or 33 of the Kerala Co-operative Societies Act has no power to enroll new members so as to alter the composition of the Society. But can it be said with the same force that the Administrator or Administrative Committee has no power to

expel a member who is ineligible to be a member in the society?

3. The Kerala Co-operative Societies Act was introduced with a view to providing for the orderly development of the co-operative sector in the State. Member is defined u/s 2(1) of the Act as follows:-

"2(1). "Member" means a person joining in the application for the registration of a cooperative society or a person admitted to membership after such registration in accordance with this Act, the Rules and the bye-laws and includes a nominal or associate member."

Under Section 27 of the Act, "the final authority of a society shall vest in the general body of the members", subject of course to the provisions of the Act, Rules and bye-laws. As far as the scheme of the Co-operative Societies Act is concerned, a co-operative society registered under the Act is a democratic institution formed by the members for the orderly development and functioning with the co-operation of the members for the welfare of the members. In other words, it is a democratic institution by the members, of the members and for the members. Therefore, only the eligible members are entitled to participate in the activities and partake the benefits of a co-operative society. Keeping this cardinal principle in mind I shall now try to analyse the provisions regarding enrolment and expulsion of members.

4. Section 16(1) deals with enrolment of members, which reads as follows:-

"16. Persons who may become members:-

(1) No person shall be admitted as a member of a society except the following, namely :-

(a) an individual-

(i) who has attained the age of eighteen years:

Provided that this sub clause shall not apply in the case of a society formed exclusively for the benefit of the students of any school or college;

(ii) who is not of unsound mind;

(iii) who is a resident within, or is in occupation of land in the area of operation of the society;

(b) any other society; (ba) local self Government;

(c) the Government; and

(d) any body of persons, whether incorporated or not and whether or not established by or under any law, if such body is approved by the Government in this behalf by general or special order;

Provided that in a society formed for the promotion of the economic interest of its members through a specified activity no person other than who is likely to be

benefited directly by such activity may be admitted as a member of such society unless such admission is permitted specifically by rules;

Provided further that where a society is formed exclusively for the benefit of person engaged in any particular industry, no person who is not an actual worker in the industry shall be admitted in excess of such percentage of the total membership of the society as may be prescribed:

Provided also that the Coffee Board, the Rubber Board and any other statutory or non-statutory Board, committee or Corporation constituted for the purpose of the development of an industry, may be admitted as a member of a society engaged in marketing and processing of the products of the industry concerned and formed for the workers and growers of such industry, so however that no such Board, Committee or Corporation shall be admitted as a member of a co-operative credit society.

Provided also that in the case of hospital co-operative societies, industrial and commercial establishments and other organisations registered under any other law may be admitted as members.

Explanation:- For the purpose of this sub-section "hospital co-operative society" means a society, the main object of which is to run a hospital or to conduct medical or paramedical courses or to run medical shops."

The corresponding rule is Rule 16 which reads as follows:

"16. Conditions to be complied with for admission for membership:-

(1) No person shall be admitted as a member of a society unless-

(a) he has applied in writing in the form if any laid down by the society.

(b) his application is approved by the committee of the society;

(c) he has fulfilled all other conditions laid down in the Act, Rules and Bye-laws;

(d) in the case of other societies or a body of persons, whether incorporated or not, and any statutory or non-statutory Board, approved by the Government, Committee or Corporation constituted for the development of any industry the application for membership shall be accompanied by a resolution authorising it to apply for such membership.

(2) No person shall be eligible for admission as a member of a co-operative society, if he,-

(a) has not attained the age of 18 years;

(b) is not a resident of or does not own or possess land within the area of operation of the society, provided that this clause shall not apply in the case of a society formed exclusively for the students of any School or College;

(c) has applied to be adjudicated as an insolvent or is an undischarged insolvent;

(d) has been sentenced for any offence, other than an offence of a political character or an offence not involving moral turpitude and a period of five years has not elapsed from the date of expiry of the sentence; or

(e) is a paid employee of the Society or of its financing Bank or of any society for which it is the Financing Bank provided that the restriction shall not apply to Co-operative Motor Transport Societies, Co-operative Workshops, Societies for the employees of Financing Banks and Societies formed for benefit of actual workers; or

(f) has been surcharged u/s 68 and a period of 3 years has not elapsed since the payment of money or restoration of property as directed in the said order of surcharge.

(3) Where a person already admitted to membership is seen to have been ineligible for membership at the time he was so admitted as a member or if he subsequently becomes ineligible for membership the Committee of the Society may remove the person from membership after giving him an opportunity for making his representation if any, and the person concerned shall thereupon cease to be a member of the society.

(4) Where a member of a society becomes ineligible to continue as such, the Registrar may of his own motion or on a representation made to him by any member of the society or by the financing Bank, by an order in writing declare that he has ceased to be a member of the society from the date of his order. The Registrar shall give such person an opportunity to state his objection, if any, to the proposed action and if the person wishes to be heard, he shall be given an opportunity to be heard before passing an order as aforesaid."

It may be seen from the scheme of the Act and Rules that in order to become a member in the Society a person should have attained the age of 18 years, he should not be of unsound mind, he should be residing in or occupying land within the area of operation of the society, he should not be an insolvent; he should not be a person sentenced for an offence other than of a political character and a period of five years has not lapsed from the date of expiry of the sentence, he should not be a person surcharged u/s 68 and the three years period has not elapsed after the payment of money and he should be otherwise eligible under the provisions of the bye-law of the concerned society. It is significant to note that even if a person fulfils all these conditions, yet the committee may, for valid reasons, refuse to enroll a person as member of the society. Of course such person is entitled to represent before the Registrar and then the Government. As far as an ineligible member is concerned, if he is subsequently seen to have been ineligible even at the time of admission or if he subsequently becomes ineligible for any of the reasons enumerated above, the committee of the society is bound to remove the person from membership, after giving an opportunity for making representation. Though the statute used the word "may" in Rule 16(3), it is a statutory duty of the committee and only a person who is eligible to be a

member alone is entitled to be in the society, being a society of the members and hence the said expression "may" has to be understood as "shall" and it is an obligation of the committee to remove ineligible members. That is why under Sub-rule (4) of Rule 16, in case the society fails to carry out the statutory obligation of removing the ineligible members, power is reserved to the Registrar to intervene in the matter. In short, only members are contemplated as per the Act and Rules to be part of the democratic institution of a co-operative society. Needless to say, a member should be an eligible member, as otherwise in the place of orderly development there will be disorderly functioning which the law does not permit.

5. That takes us to the operation of law under Sections 32 and 33 when the society is in doldrums. Section 32 reads as follows:-

"32. Supersession of Committee. -

(1) If the Registrar, after an inquiry by himself or through his subordinates or on a report of the financing bank, of the Vigilance Anticorruption Bureau of the Government or the Vigilance Officer or otherwise is satisfied that the committee of any society,-

(a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or bye-laws or does anything which is prejudicial to the interests of the society; or

(b) wilfully disobeys or fails to comply with any lawful order or direction issued under this Act or the Rules; or

(c) makes any payment contrary to this Act or the Rules or the bye-laws or causes any loss or damage to the assets of the society by breach of trust or wilful negligence; or

(d) misappropriates or destroys or tampers with the records or causes the destruction of records to cover up any misconduct or malpractice, he may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee and, appoint a new committee consisting of not more than three members of the society in its place or, appoint not more than three administrators, who need not be members of the society, to manage the affairs of the society for a period not exceeding six months, as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so however that the aggregate period does not exceed one year.

(2) The Registrar shall consult the financing bank and Circle Co-operative Union or State Co-operative Union as the case may be before passing an order under Sub-section (1).

(3) Notwithstanding anything contained in Sub-section (1) or Sub-section (2) it shall not be necessary to give an opportunity to the committee to state its

objections and to consult the Unions and financing banks, in cases where the Registrar is of the opinion that it is not reasonably practicable to do so, subject however to the condition that in such cases the period of supersession shall generally be for six months and in case a new committee, cannot be constituted or enter upon office in accordance with the bye-laws of the society within the period of suppression the period may be extended for a further period not exceeding six months-(a) in the case of a co-operative society only after consulting the Circle Co-operative Union concerned; and

(b) in the case of an Apex Society or a Central Society only after consulting the State Cooperative Union.

(4) The committee or administrator or administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the powers and functions of the committee or of any officer of the society and take such action as may be required in the interests of the society.

(5) The committee or administrator or administrators shall, before the expiry of its or his or their term of office, arrange for the constitution of a new Committee in accordance with the bye-laws of the society.

(6) Every order made by the Registrar under Sub-section (1) shall be communicated to the Circle Co-operative Union."

For the purpose of analysis of the situation in the instant case it is not necessary to quote Section 33 except to state that in certain given situations Section 33 also provides for appointment of an Administrator/Administrative Committee. Sub-section (2) of Section 33 is literally the same as Sub-section (4) of Section 32. The only difference is in the matter of constitution of a new committee and u/s 33(3) it is provided that "the Committee or Administrator or Administrators shall arrange for the constitution of a new committee or for the entering upon office of the new committee as the case may be." It is to be noted that the Administrator or Administrative Committee has to arrange for the constitution of a new committee. The committee is constituted by the general body of a society. It has to be seen that only the members constitute the general body; members means not the persons on the rolls but the eligible members of a society because only the eligible members should have a say in the affairs of the society. Viewed from that angle it has to be held that the moment a member of a society becomes ineligible to be a member of the society, that person is liable to be expelled from membership. Such a person should not be allowed to participate in the affairs of the society or partake the benefits of the society. The society is meant for the welfare only of its members.

6. The expulsion from membership is to be made following the procedure provided under Rule 16. It is pertinent to note that on acquisition of ineligibility, a person does not automatically ceases to be a member in the society. He is removed from membership only "after giving him an opportunity for making his

representation". There is no question of any subjective satisfaction. Law provides for objectivity and transparency. In that situation it cannot be held that the Administrator or Administrative Committee cannot objectively consider the question of ineligibility of a member and take steps to remove such ineligible members. The Administrator/Administrative Committee is the committee under Rule 16(3) while exercising such statutory duty/function/power. It is also to be noted that if any such person who is removed from membership if aggrieved, can certainly invoke Rule 176 of the Rules requiring the Registrar to rescind any resolution of any meeting of any society or the Committee of any society if it appears to him that such resolution is ultra vires of the objects of the society or is against the provisions of the Act, Rules or bye-laws of the society. The statute having provided such safeguards it will not be proper to restrict the duty and power of the Administrator or Administrative Committee in the matter of removing ineligible members. As held by the Supreme Court in Kuttappan's case (2000 (2) KLT 480) "the duty of such a Committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a committee appointed by the Registrar while the Committee of management is under supersession, is as pointed out by this Court, only to bring on an even keel a ship which was in doldrums." The ship containing ineligible members is bound to be in doldrums and it can be brought to an even keel only if it deballast such burdens. It is significant to note that the apex court emphasised the point of the lack of power for the Administrator to enroll members since "enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected committee rather than by an Administrator or a Committee appointed by the Registrar." The expulsion of ineligible members would in no way alter the composition of the Society. It would only compose the society properly. It may be noted that the very appointment of Administrator u/s 32 could also be for a reason of the Committee being negligent in the performance of the duties imposed on it by the Act or when it does something which is prejudicial to the interests of the society. Admission of ineligible members and extending them the benefits of the society is certainly negligence on the part of the committee and which is something prejudicial to the interests of the society. Unless such prejudice or consequence of the negligence are set right the Administrator or Administrative Committee cannot constitute a new committee. If it is a case of admission of large number of new members certainly it might change the composition of the society and that way it would amount to interfering with the functioning of a democratic institution. But expulsion of an ineligible member would only be in promotion of the democratic values in a democratic institution. An Administrator/Administrative Committee and for that matter the Committee of a society and the general body are bound to uphold the democratic values in a co-operative society. Expulsion of an ineligible member on following the procedure contemplated under the Rules is only in furtherance of the pursuit of democratic values and it is a statutory duty cast on the committee, the Administrator, the Administrative Committee or to the Registrar as the case

may be.

7. It is also significant in this context to note that the Legislature has made its intention clearer in the Act 1 of 2000 while amending Sections 32(4) and 33(2) of the Act conferring the powers and functions of the committee of the society on the Administrator/Administrative Committee. It is to be noted that the unamended provision conferred only the functions of the committee on the Administrator/Administrative Committee.

O.P. No. 18117 of 2002 is disposed of directing the respondents to take appropriate action in the light of the judgment. O.P. Nos. 15128 and 15741 of 2002 are dismissed.