
(2001) 07 KL CK 0032
In the High Court Of Kerala
Case No : O.P. No. 1659 of 2000

Jose Kuttiani

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-07-2001

Acts Referred:

Citation : (2001) 07 KL CK 0032

Hon'ble Judges : P.K. Balasubramanyan, Acting C.J.; T.M. Hassan Pillai, J

Bench : Division Bench

Advocate : George Poonthottam, for the Appellant; K.K. Raveendranath, Sr. Govt. Pleader, K. Balakrishnan and P. Ravindran, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, Ag.C.J.

1. This Original Petition filed by the Chairman of the Kerala State Co-operative Marketing Federation challenges the order Ext. P3 dated 5.1.200 issued by the Government of Kerala in exercise of power under S. 31 of the Kerala Co-operative Societies Act nominating to the Managing Committee of the Kerala State Co-operative Marketing Federation three members and also nominating two other members, one a member of a Scheduled Caste and another, a woman in exercise of power under S.28A(3) of the Act. The challenge is confined to the nomination made under S.28A(3) of the Act. We are therefore, not concerned with the validity of the nominations made under S.31 of the Act contained in Ext.P3 notification.

2. The Kerala State Co-operative Marketing Federation is an apex society as defined in S.2(a) of the Kerala Co-operative Societies Act, hereinafter referred to as the Act. It has the State as its area of operation and it is having as its members other co-operative societies with similar objects and declared as such the Registrar of Co-operative Societies. The election to the Managing Committee of the apex society was notified on 15.10.1999. The election was to be held on

20.11.1999. The nominations of certain candidates were rejected and those candidates approached this Court challenging the rejection. The election notified to be held on 20.11.1999 got postponed. Ultimately it is seen that the election was actually held on 3.1.2000 after this court disposed of the Original Petitions challenging the rejection of nomination of certain candidates. The results of the election were declared on 3.1.2000 itself. It is stated that the Managing Committee was constituted on 18.4.2000 in terms of R.38 of the Kerala Co-operative Societies Rules, hereinafter referred to as the Rules S.2(e) of the Act indicates that it is the committee to which the management of the apex society is entrusted. It is to this duty elected managing committee that the Government in exercise of its power under S.31 of the Act nominated three members. It is seen that the Government have subscribed to the share capital of the apex society and have also guaranteed the repayment of loans taken by the apex society and hence is entitled in terms of S.31 of the Act to nominate not more than three members or one third of the total number of members of the committee of the apex society. Thus the nomination of the three members in exercise of power under S.31 of the Act by Ext.P3 order cannot be called in question. It was also not called in question on behalf of the petitioner at the time of the final arguments in the Original Petition.

3. As noticed already, the election to the Managing Committee of the apex society was notified on 15.10.1999. Though S.28A(1) of the Act as it stood as on that date provided for reservation of one seat for a woman member and one seat for a member belonging to the Scheduled Castes or Scheduled Tribes in so far as they related to the committee of every primary credit society, every District Co-operative Bank, Kerala State Co-operative Bank Ltd. and the Kerala State Co-operative Agricultural and Rural Development Bank Ltd., that rule of reservation was not applicable to an apex society like the one involved in this case. Therefore while passing the resolution for holding the election in terms of R.35(1) of the Rules it was not provided for any reservation of seats to woman and Scheduled Castes/Scheduled Tribes. Due to one reason or other, the election was not held on 20.11.1999, the notified date as contemplated by the resolution and notification dated 15.10.1999. The election was held only on 3.1.2000. Meanwhile the Act was amended by Act 1 of 2000 and S.28A(1) as it stood was replaced by a provision which made the rule of reservation of one seat each to women and a member of Scheduled Castes/Scheduled Tribes was made applicable in respect of election to the Managing Committee of an apex society as well. In other words an apex society was also brought into purview of the rule of reservation. This meant that to any election that was to be held to the managing committee of an apex society after 1.1.2000, one seat had to be reserved for a woman and one seat had to be reserved for a member belonging to the Scheduled Castes or Scheduled Tribes. To cover cases of societies where managing committee existed but which did not have a woman member or a member belonging to the Scheduled Castes or Scheduled Tribes, a provision was made by Act 1 of 2000 in S.28A(3) of the Act. By that provision, it was provided

that in cases where there was no reservation for women or for a member belonging to the Scheduled Castes or Scheduled Tribes in the committees of any apex society at the commencement of Act 1 of 2000, the Government may nominate a woman member or a member belonging to the Scheduled Castes or Scheduled Tribes to the committee. Here the election was actually held on 3.1.2000. But since that election was held on the resolution taken prior to the amending Act 1 of 2000 and pursuant to the election notification dt. 15.10.1999, there was no reservation of a seat for a woman or a member belonging to the Scheduled Castes or Scheduled Tribes in the present apex society. Assuming the power available under S.28A(3) of the Act as amended by Act 1 of 2000, the Government nominated a woman member and a member belonging to the Scheduled Castes to the managing committee of the apex society by the very same order dt. 5.1.2000 by which it nominated its nominees under S.31 of the Act. What is involved in this Original Petition is the entitlement of the Government to make nomination under S.28A(3) of the Act in this case where the election was actually held on 3.1.2000, after the coming into force of Act 1 of 2000 and based on a resolution and an election notification issued prior to the coming into force of Act 1 of 2000 and without providing for the reservation of two seats in the managing committee of the apex society.

4. S.28A(3) of the Act by its rigour applies to a case where in a committee of an Apex society at the commencement of Act 1 of 2000 there is no representation for women or to the Scheduled Castes or Scheduled Tribes. Therefore, for S.28A(3) to apply, there must be a committee of the apex society in existence as on 1.1.2000, the date on which Amending Act 1 of 2000 came into force. In this case, there was no managing committee in existence on 1.1.2000 which appears to be a condition precedent for exercise of power under S.28A(3) of the Act. S.28A(1) as amended by Act 1 of 2000 provides that notwithstanding anything contained in the Act or the Rules or the bye-laws, there shall be a reservation in the committee of every apex society also one seat for a woman member and one seat for a member belonging to the Scheduled Castes or Scheduled Tribes. Here, since the resolution was taken prior to the commencement of Act 1 of 2000 and the election notification itself was issued on 15.10.1999 and since S.28A(1) reservation was not applicable to an apex society at that time, there was no reservation of seats as contemplated by the amended S.28A(1) of the Act. But the election itself was held only on 3.1.2000 two days after the coming into force of the amended S.28A(1) of the Act and the reservation provided therein even in respect of an apex society. S.28A(1) as amended by Act 1 of 2000 specifies that the said provision will apply notwithstanding anything contained in the Act, the Rules or the bye-laws of the society. Therefore the provision is attracted notwithstanding the fact that the bye laws of the society did not provide for it and notwithstanding the earlier resolution taken by the society in terms of R.35 of the Rules. That in such a situation the statutory mandate will prevail is clear from the decision of this Court in *Gopinathan Nair v. Senior Inspector of Co-operative Societies* (1986 KLT 1269) In *Babaji Kondaji Garad Vs. Nasik Merchants*

Co-operative Bank Ltd., Nasik and Others, the Supreme Court held that the provision for such reservation, that too in respect of co-operative societies should be construed in such a manner that it would advance the purpose or intendment underlying the provision making the reservation and not in a manner to thwart it.

5. Thus, on literal interpretation of S.28A(3) of the Act as amended by Act 1 of 2000 it is clear that there was not in existence any committee of the apex society to which the Government could nominate the two contemplated members in exercise of power under S.28A(3) of the Act. At the same time, the election held on 3.1.2000 has gone against the mandate of S.28A(1) of the Act as amended by Act 1 of 2000. It is therefore clear that there has come into existence a managing committee of the apex society without complying with the mandate of S.28A(1) of the Act as amended and at the same time without enabling the Government to exercise its power under S.28A(3) of the Act on proper construction of that provision. The challenge to the exercise of power under S.28A(3) of the Act as amended has therefore to succeed in this case on the short ground that there existed no managing committee of the apex society as on 1.1.2000 to which the Government could nominate two members one a woman and the other a member of the Scheduled Castes or Scheduled Tribes. To that extent the petitioner has to succeed in this Original Petition in respect of his challenge to Ext.P3.

6. At the same time as we have noticed, there has been a non-compliance with the mandate of S.28A(1) of the Act as amended by Act 1 of 2000 while electing the Managing Committee on 3.1.2000. The non-obstante clause in S.28A(1) understood in the light of the interpretation placed on such a provision by the Supreme Court in the decision above referred to makes it necessary for this Court to set aside the very election of the managing committee of the co-operative society held on 3.1.2000 without complying with the statutory mandate of S.28A(1) of the Act as amended by Act 1 of 2000. It has therefore become necessary for this Court to further exercise its power to set aside the election held on 3.1.2000 to the apex society in question and to direct the society to hold a fresh election in compliance with S.28A(1) of the Act as amended by Act 1 of 2000. We therefore declare that the election held on 3.1.2000 to the apex society in question is illegal and unsustainable and direct the Kerala State Co-operative Marketing Federation and the first respondent to start the election process afresh and elect a managing committee to the apex society. To avert a lacuna in the administration of the apex society, we direct the managing committee elected on 3.1.2000 to be in charge of the day to day affairs of the society and to carry on the administration of the apex society. They are restrained from taking any policy decisions or implementing any policy decisions while they are functioning as directed by this Court until a proper managing committee is constituted.

7. The Original Petition is allowed in the above manner.