
(1999) 07 KL CK 0075
In the High Court Of Kerala
Case No : O.P. No. 3762/99

K. Jayavarma

APPELLANT

Vs

Returning Officer

RESPONDENT

Date of Decision : 07-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 2 KLJ 120

Hon'ble Judges : T.M. Hassan Pillai, J;J.B. Koshy, J

Bench : Division Bench

Advocate : T.R.G. Warriar, D. Somasundaram and George Poonthottam, for the Appellant; V.N. Achutha Kurup, T.R. Ramachandran Nair, E. Subramoni, P. Ravindran and T.S. John, for the Respondent

Judgement

Koshy, J.—Main question to be decided in these cases is regarding the interpretation of rule 26 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as "the Rules"). All these cases arise out of the decision of the Returning Officer during the election to the managing committee of Tiruvalla East Cooperative Bank Limited (hereinafter referred to as "the Bank") registered under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act") that in view of rules 26 and 28 as interpreted by this court in Vijayakumar v. Joint Registrar (1996 (1) KLT 285), members admitted within a period of 90 days of the election cannot participate in the election. The Returning Officer removed names of 1951 members from the voters list without issuing any notice to them by a one line order dated 5-2-1999. President of the Bank challenged the proceedings of the Returning Officer (Ext.P5) by filing O.P.No.3762 of 1999. The learned Single Judge who admitted the above O.P. was of the opinion that the question raised regarding the eligibility to vote by members who were admitted within 90 days of the election has to be considered in detail. But to safeguard the interests of both sides, an interim direction was made on 23-2-1999 as follows:

.... In order to safeguard the interests of both the parties I am inclined to give a direction to keep three ballot boxes in the election to be held on 27-2-1999. The returning officer will keep a separate ballot box for casting votes of members shown in Ext.P5 excluding members 50881 to 51207. For members 50881 to 51207 another box will be kept. Regarding the other undisputed votes, the returning officer will maintain another ballot box. The votes kept in the boxes could be separately counted. The Returning Officer would declare the result after filing a statement before this court. It is made clear that no administrator be appointed till the matter is finally decided by this court.

Thereafter, after the election was over, when the matter came up for consideration, the learned Judge found that observations of the Division Bench of this court in Vijayakumar's case (supra) were passed without considering the scope of rule 26 as amended. It was further held that there is no dispute that the members were admitted prior to 60 days of election and as decided by another single Judge of this court in M.S. Paul and Another Vs. Alakode Service Co-op. Bank and Others, members admitted prior to 60 days of election are entitled to vote and, therefore, the Division Bench decision requires reconsideration and the matter was referred to the Division Bench by reference order dated 11-3-1999. In the O.P. originally, only Returning Officer was made as respondent as it challenged only the decision of the Returning Officer. Thereafter, whoever sought impleadment were allowed to be impleaded. Fourth additional respondent filed an appeal against the interim order dated 23-2-1999. By order dated 30-3-1999 in C.M.P. No. 1945 of 1999 in W.A.No.786 of 1999, it was held that after the term of the erstwhile managing committee is over, they cannot continue in office and administrator has to be appointed and, therefore, part of the direction in the interim order dated 23-2-1999 that till a final decision is taken, administrator should not be appointed was vacated.

2. As directed in the order dated 23-2-1999 election was conducted and polling was done in three separate ballot boxes - one for the undisputed voters, second for casting votes of members shown in Ext.P5 excluding members 50881 to 51207 and third one for member 50881 to 51207 who were admitted as members as per the resolution dated 28-12-1998. Election notification was dated 29-1-1999 and date of election was 27-2-1999. After counting of the votes a report was filed before this court by the Returning Officer showing the votes polled by each candidate with a statement. Thereafter, the matter came up during vacation, for declaration of result and it came up before us. We have noticed that if disputed votes are also counted it may affect only two candidates. In other words, out of the eleven candidates result of the nine candidates can be declared without any problem as they got majority votes in all the ballot boxes. Main question cannot be finally decided by vacation court. We had directed the returning officer to declare the result provisionally taking the undisputed votes without counting the votes kept in box Nos. 2 and 3. By order dated 20-4-1999 in C.M.P.No.1945/99 in Writ Appeal No.786 of 1999 and C.M.P.No. 16510 of 1999 in O.P.No.3762 of 1999, we have directed as follows:

In the facts and circumstances of the case, election may be declared subject to final result of the original petition, counting the undisputed votes in Box No. 1 only. The question whether the votes contained in Box Nos. 2 and 3 can be counted or not can be decided only after answering the Reference Order at the time of final disposal of the case. The matter can be considered only after vacation, on hearing the full arguments. The Administrator shall hand over the charge to the elected committee immediately after declaration of the result. The Returning Officer may declare the results of election subject to the final result of the O.P. as directed above within one week from today.

Accordingly, results were declared provisionally. The persons affected are one from scheduled caste constituency and another from Ward No.1. Those two affected candidates again approached this court by filing O.P.No. 11459/99 with a request to decide the matter urgently as according to them if the disputed votes are also counted they will be elected and consequently respondents Nos. 3 and 4 in that writ petition who were provisionally declared elected on the basis of our interim order will have to go out. First petitioner and third respondent who contested in the reserved constituency of scheduled castes and scheduled tribes got the following number of votes:

Box No. I

Box No. II

Box No. III

Total

undisputed

49256 to 50880

50881 to 51207

First Petitioner 2431

411

83

2925

Third respondent 2764

116

23

2903

Similarly, second petitioner and fourth respondent who contested from Ward No.1 got the following number of votes.

Box No. I

Box No. II

Box No. III

Total

undisputed

49256 to 50880

50881 to 51207

Second Petitioner 2458

381

64

2903

Fourth respondent 2558

166

46

2770

If reference is answered holding that all the members who were admitted prior to 60 days of election are entitled to vote petitioners in O.P.No. 11459/99 will have to be declared elected and consequently respondent Nos. 3 and 4 who were provisionally elected to the managing committee as per the interim order will have to go out. Therefore, first we have to answer the question referred by the learned Single Judge.

3. The relevant rules are rules 26 and 28. Before the rule was amended by SRO.No. 1485/89 rule 26 was as follows:

26. Prohibition on admission of member and transfers of shares on the eve of general body meeting:

(1) No registered society shall admit members or approve the transfer of shares within 30 days prior to the date of issue of notice for the general body meeting.

(2) Any person admitted as member and any person in whose favour the transfer of shares have been approve in contravention of this rule shall not have the right to membership or the right to vote at the said general meeting or at any meeting held subsequent thereto for the purpose of election.

Rule 28 reads as follows:

28. Restriction on the right of vote at the election: No member of a society shall be eligible to vote at the meeting fixed for any election to the committee of that

society, unless 30 days prior to the date of such meeting he acquires the number of shares for membership as may be provided in the bye-laws of the society of which he is a member.

As per rule 35(1) the managing committee shall meet at least 60 days in advance of the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of the election of the new committee. Reading these provisions together a view was taken by this court that rule 28 read with rule 26 and other rules, a person can vote at the election only if he was a member prior to 90 days of the election. Therefore, in view of the above rule 26 was amended subsequently which at present reads as follows:

26. Prohibition on admission of members and transfers of shares on the eve of general body meeting: (1) No society shall admit members or approve the transfer of shares within sixty days prior to the date of election or the date of the general body meeting:

(2) Any person admitted as member and any person in whose favour the transfer of shares have been approved in contravention of this rule shall not have the right to membership or the right to vote at the said election or at the general body meeting.

Rule 26 is very clear now that no society can admit members within sixty days prior to the date of election. He must have paid full dues and acquired membership rights before 30 days as per rule 28 as there was no amendment to rule 28. The contention of the Returning Officer as well as the other respondents is that this rule was considered by the Division Bench in Vijayakumar's case and law is correctly laid down in para. 14.

14. We are, however, of the view that all voters no doubt must be members, but all members may not necessarily be voters. Merely by virtue of being a member, one does not acquire the right to vote automatically. A member for example, shall not be eligible to be a voter unless 30 days prior to the date of the meeting held for passing the resolution for the election to the committee of the society, he acquires the number of shares for membership as may be provided in the bye-laws of the society of which he is a member. If a member has not complied with the condition laid down in Rule 28, he does not cease to be a member. What is restricted is his right to vote in the election.

In view of the above observations it was argued that even after the amendment, the legal position continues to be same. It is also pointed out that the present rule was quoted in the above decision and argued that if a different view is to be taken it can be done only by a Full Bench of this court. Based upon the amended rules, earlier, a Single Bench of this court in M.S. Paul's case (supra) held that a person admitted prior to sixty days are entitled to vote.

4. Questions formulated for consideration by the Division Bench in Vijayakumar's case were mentioned in that judgment itself. We quote para.2 of the above

judgment:

The questions that arise for consideration are:

(1) Whether the Returning Officer appointed under Rule 35 of the Kerala Co-operative Societies Rules, 1969 has the power to make an enquiry into the question of eligibility of a voter before the publication of the final list of voters to elect members of a committee of the society if and when an objection under Rule 35(3)(b) of the Rules is received in this regard and if so what is the scope of the enquiry.

(2) Whether in these cases, there was any scope to hold an enquiry before publication of the final list of voters.

So, the question that was considered by that Division Bench in Vijayakumar's case was entirely different. What was decided by the court was whether the Returning Officer is entitled to make an enquiry into the question of eligibility of a voter or whether the matter should be referred to a committee again. The Division Bench held as follows:

.... The powers to consider the objections has been conferred on the Returning Officer alone. There is nothing in the Act or Rules to show that he can delegate or abdicate his functions in favour of any authority of the society. The returning Officer is required to give his own ruling on the objection. He cannot rule out any objection or sustain it arbitrarily. In order to arrive at a proper decision it is open to him to conduct a summary enquiry to be satisfied about the sustainability or otherwise of the objections.

It was further held that if the objections are not specific or vague, he is not bound to conduct any enquiry and if returning officer declares a member to be an ineligible voter he does not expel him from membership of the society. It was also held as follows:

.....If the Returning Officer declares a member to be an ineligible voter, he does not expel him thereby from the membership of the society. A member who is disqualified as a voter may still continue to be a member of the society if he is not otherwise disqualified to be a member.

The power of the returning officer under rule 35 was the question that was considered by the learned Judges in Vijayakumar's case and not the interpretation of Rule 26. It did not lay down a proposition that after the amendment of rule 26, a person who is admitted to the membership of the society within 90 days of the election is ineligible to vote. Passing observations in para. 14 is only an obiter.

5. The very same question referred to us for our decision was considered by a Division Bench of this court earlier in M.K. Vasavan Vs. District Coir Project Officer and Others, . Justice M. Jagannadha Rao, Chief Justice (as he then was), after considering sections 16 and 19 of the Act and rules 16, 20, 26 and 28 of

the Rules held as follows:

6. Coming to rule 26, it deals with the limited question, namely, prohibition on admission of members and transfers of shares on the eve of general body meeting. It prohibits a society from admitting members or transferring shares within sixty days prior to the date of election or the date of general body meeting. Sub-rule (2) of Rule 26 provides that any person admitted as member and any person in whose favour the transfer of shares has been approved in contravention of rule 26 shall not have the right to membership or the right to vote at the said election or at the general body meeting.

Again, it held in para.10 as follows:

10. In our view, rule 28 merely deals with the right to vote. The right to vote must be distinguished from admission as a member. While Rules 16 and 20 deals with conditions for admission, rule 26 deals with prohibition for admission to membership within a particular period. Rule 16 and 20 go together. Rule 26 and Rule 28 are applicable to different situations, as stated above. Therefore for the purpose of Rule 28, a person may still be a member, even before he acquires a right to vote. Such a right to vote accrues on payment of the full share capital.

The operative part of the decision is as follows:

11. For the aforesaid reasons, the learned single Judge was right in holding that 50 persons in question were admitted to membership on 4-1-1992, which was the date beyond 60 days from the original date of election on 16-9-1992 which was postponed to 29-11-1992. Therefore, there was no violation of rule 26 inasmuch as these 50 persons had paid the entire share capital by 28-7-1992, which was far beyond 30 days before the date of election as provided in Rule 28. Therefore, they were entitled to vote in the election which took place on 29-11-1992.

Therefore, directly, this question came up for consideration before the earlier Division Bench. In fact, in Vijayakumar's case this decision was also referred to and the learned Judges did not dissent from the Division Bench of 1993 as in paragraph 10 in Vijayakumar's case it is stated that the question referred for consideration of that Bench did not directly arise for the consideration of 1993 decision. Therefore, we are in respectful agreement with the observations contained in Vasavan's case which considered directly the question referred to us wherein in Vijayakumar's case the matter considered was entirely different and passing a reference in para. 14 makes no difference as that case did not differ from the observations of the Division Bench in Vasavan's case.

6. According to us, apart from the various decisions quoted, the wording in the present rule 26 is very clear. The reason for amendment of the rules is stated in the Explanatory Note in the official gazette while publishing the notification. It is stated as follows:

As per the existing sub-rule (1) of Rule 26 of the Kerala Co-operative Rules,

1969, admission of members or approval of transfer of shares within 30 days prior to the date of issue of notice for the general body meeting is prohibited. Different interpretations have been made regarding the date of issue of notice for the general body meeting. In order to ensure certainty of law in this regard, it was decided to adopt the date of election or the general body meeting, as the case may be, as the crucial date. Accordingly, it was decided to prohibit the admission of members or approval of the transfer of shares within sixty days prior to the date of election or the general body meeting.

7. The literal meaning of the wordings in rule 26 makes it clear that no society shall admit members within sixty days prior to the election. It makes a clear prohibition that no members can be admitted sixty days prior to the date of election. Rule 28 provides that a member admitted to the society as per its bye-laws as a member, 30 days prior to the date of election is eligible to vote if he has the required shares. Therefore, the member admitted should pay the entire share capital before 30 days of the election for entitling him to vote. According to the petitioners, all the members paid the entire share value on the date of admission itself. On the basis of the clear wording in rules 26 and 28 we are of the opinion that the concept of 90 days prior to the date of election is completely absent in the rules. Since a person cannot be admitted as a member within sixty days of the election, if any person admitted after that date cannot exercise the right to vote. As held by Viscount Simon L.C. in *Nokes v. Doncaster Amalgamated Collieries Ltd.* ((1940) 3 All ER 549) the golden rule is that the words of a statute must prima facie be given their ordinary meaning. The ordinary and literal meaning cannot be departed unless it can be shown that the legal context in which the words are used requires a different meaning and a different meaning cannot adopt by the Judges in the light of their use as to policy. *S.R. Das, J. in Jugalkishore Saraf v. Raw Cotton Co. Ltd.* (AIR 1955 SC 376) held as follows:

The cardinal rule of construction of statutes is to read the statutes literally that is, by giving to the words their ordinary, natural and grammatical meaning. If, however, such a reading leads to absurdity and the words are susceptible of another meaning, the court may adopt the same. But, if no such alternative construction is possible, the court must adopt the ordinary rule of literal interpretation. In the present case the literal construction leads to no apparent absurdity and therefore there can be no compelling reason for departing from that golden rule of construction.

Das Gupta J. referring to the rules of construction held in *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, as follows:

The intention of the legislature has always to be gathered by words used by it, giving to the words their plain, normal, grammatical meaning.

Here, the words used are very clear in rules 26 and 28 and as held by this court in *Vasavan's* case we are of the opinion that a person who was admitted to the

membership prior to sixty days of the election and who has paid the entire dues before 30 days of the election as per rule 28 is entitled to vote. We follow the decision in Vasavan's case and also affirm the decision of the learned single Judge in M.S. Paul's case.

8. It is not disputed that all the members mentioned in box Nos. 2 and 3 were also admitted as members before 60 days of the election. All the names were contained in the draft voters list published by the society. Returning Officer deleted their names only for the reason that they were admitted within 90 days of the election. That decision has to be set aside consequent to our answer to the reference and we do so.

9. As a result, the entire votes polled in box Nos. 2 and 3 have to be counted and result has to be declared. One of the contentions raised by the respondents is that if the disputed votes are also to be counted, a fresh election should be conducted after setting aside the entire election process. We see no force in the above contention. To avoid such a situation, undisputed votes were allowed to cast in separate ballot box. It was submitted by the petitioners that the direction of the learned single Judge was published in the local newspapers as new item. Their names are contained in the preliminary list published by the society and no original petitions were filed by any member of the society questioning the method adopted in the election. Against the interim order passed by the learned single Judge regarding voting also there was no appeal except for the direction for continuance of the managing committee in office even after the expiry of the term till the matter is finally decided. Since votes were polled in separate ballot boxes and votes were counted separately, there is no necessity to conduct fresh election as contended by the respondents in the O.P.

10. Another contention raised by the Returning Officer as well as other contesting respondents is that the votes polled in box No.3 are the votes polled by members who were admitted to membership by resolution dated 28-12-1998 by a sub committee. Only a committee alone can admit members and not by the sub committee. That is not the ground raised by the Returning Officer for removing the names from the voters list. Whether the persons were rightly admitted to the membership etc. was not considered with respect to the rules by the Returning Officer or any other authority empowered by law. It was held in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, that:

When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out.

The only reason mentioned by the Returning Officer for removing the member voted in box Nos. 2 and 3, is that they were not admitted to the membership not

prior to 90 days and not because their admissions were irregular or they were admitted by a sub committee. In view of Vijayakumar's case such rowing questions and detailed enquiry regarding correctness of admission itself apart from the eligibility to vote may not be within the jurisdiction of the returning officer. In any case, that matter was never considered and we leave the matter whether the returning officer has got power to examine; whether membership was granted correctly or not etc. open. Anyway, that is not the reason for disallowing these members to vote. Even if the votes in box No.3 are not counted but only votes in box No. 1 are counted, second petitioner in O.P.No. 11459/99 will have to be declared elected in the place of fourth respondent. However, if the votes polled in box No.3 is not counted, it may not affect the election of the third respondent. Persons voted in box Nos. 1 and 2 were admitted prior to 60 days of the election. We have already held that they are entitled to vote and the reasons given by the Returning Officer are wrong. In view of the law declared while answering the reference Ext.P5 in O.P.No.3762/99 is set aside. Hence all the votes kept in box Nos. 1, 2 and 3 have to be counted and the provisional declaration of the result as per Ext.P7 in O.P. No. 11459/99 has to be altered and petitioners 1 and 2 in O.P.No. 11459/99 have to be declared elected and provisional declaration of the election of the third and fourth respondent in O.P.No. 11459/99 has to be set aside. Necessary declaration should be made by the Returning Officer forthwith.

11. Yet another contention raised by the respondents is that O.P.No. 3762/99 (the first O.P.) was filed by the President of the Society. He ceased to be the President after the election and President of the Society has no locus standi to file the O.P. The O.P. was filed while he was the President of the Society and when a large number of members in the provisional voters list published by the society were deleted by the Returning Officer. Only because of paucity of time, without deciding the main question regarding the right to vote by disputed members, the learned single Judge in the interests of justice directed to cast the vote in separate ballot boxes and the questions has to be decided later and result of the election has to be declared as per the final decision of the court. On that basis the respondents also participated in the election and the interim order to cast votes in separate ballot boxes and count separately and declare the result subject to final decision of the O.P. was not challenged. The entire election process was thus regulated by this court subject to the rules made. In any event, while he was the President of the society he filed the O.P. and election was regulated by voting in separate boxes so that injustice is not caused to both sides and election was held according to the interim directions. Election result was declared only provisionally subject to the decision in the O.P. Now only we have answered the reference. Final declaration of the result can only according to law and the technical contentions are untenable. Now, in the interest of justice result of the election has to be declared finally according to the decision rendered in the reference and according to law and it is futile to contend at this distance of time that the O.P. was filed without locus standi.

12. Finally, it was contended that after the election was over, under Sec.69 of the Act arbitration can be raised regarding the conduct of the election and remedy of election petition has been provided and writ petition will not be maintainable, as election is now over. That contention is also not tenable because petitioner approached this court before the election and this court finding that very important question of law is there including interpretation of a Division Bench decision of this court, directed that declaration of the result will be subject to the result of the O.P. It cannot be stated that since election petition is maintainable parties now be relegated to the remedy of election petition after knowing the question of law. After the reference is answered there is no question to be decided in the election petition. Further, as held by the Supreme Court in K. Venkitachalam v. A. Swamickan and another, (JT 1999 (3) SCC 242 that Art. 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court its powers under Art. 226 of the Constitution can be exercised when there is any act which is against any provision of law and when recourse cannot be had to the provisions of the Act for the appropriate relief. Before the election was held the parties approached this court at that time, election petition was not the remedy and election was conducted as directed by this court and after answering the main point disputed, result of election has to be declared according to law laid down. Since the reason for deleting the members from the final voters list by the Returning Officer is wrong, the votes in box Nos. 1 and 2 also have to be counted and accordingly the result would be declared now. In any event, before declaration of result finally, no election petition can be filed as it will be premature. The contesting respondents 3 and 4 who may be affected were heard as they were made parties in O.P.Nos. 11459/99. All those interested parties who approached this court to make them parties were impleaded and all of them were heard before the question of law was decided. Ext.P7 in O.P.No. 11459/99 has to be altered and now the result has to be declared according to law forthwith by the Returning Officer.

Both the original petitions and the writ appeal are disposed of accordingly.