(1992) 09 KL CK 0037

In the High Court Of Kerala

Case No : O.P. No. 11342 of 1992

K.D. Jose and Another — APPELLANT

Vs

Registerar, Ind. Co-op. Societies and Another — RESPONDENT

Date of Decision : 29-09-1992

Acts Referred:

Co-operative Societies Act, 1912 — Section 13
Kerala Co-operative Societies Rules, 1969 — Rule 16(1)(c)

Citation : (1992) 2 KLJ 969

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : N.P. Samuel, for the Appellant; T.R. Ramachandran Nair Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—Petitioners are A Class members of Avinissery Powerloom Industrial Co-operative Society Limited registered under the Co-operative Societies Act, its activities being confined to Avinissery Panchayat. Petitioners became A Class members having paid Rs. 100/- to the Society. Membership amount was later enhanced to Rs. 5,000/- for A Class members as per amended Clause 4(a) of the bye-laws of the Society. The amendment came into effect on 28-11-1987. Administrator (3rd respondent) issued notice Ext. P-1 for election to the Committee of the Society. A draft list of voters was published. Petitioners and others filed objections. In the draft list names of the petitioners and 56 others were seen excluded. Contention of the petitioners is that without considering the objections original voters'' list was published. The result of it is that only half of the original members are entitled to vote. Petitioners contend that the enhancement of the share in the Class A category has no application to them as they are already members of the Society.

2. The short question that arises for consideration is whether those who became members before the amendment are in any way bound to pay the enhanced

amount. Counsel for the petitioners submitted that being members of the Society and having not been removed by any process of removal known to law they can take part in the election notwithstanding the amended bye-law whereby a member of the Society coming under the category of A Class has to take share worth Rs. 5,000/-.

3. Learned Government Pleader pointed out that the bye-law came into force on 28-11-1987 when it was registered u/s 13 of the Act and as it holds the field petitioners cannot just ignore it. According to him, the amended bye-law which has been passed by the General Body governs all members and it does not exempt the existing members from payment of the enhanced amount.

4. Rule 16 provides for the conditions to be complied with for admission for membership in a society Rule 16 (1) (c) provides that no person shall be admitted as a member of a society unless he has fulfilled all other conditions laid down in the Act, Rules and Bye-laws. Clause 4(a) of the bye-laws says that A Class member has to pay up the share amount by taking loan from the Government or other financial Institutions. Amended Clause 7 states that every member should at least take one share. There is nothing in the bye-laws to indicate that Clause 4(a) will not apply to the existing members of the Society.

5. As it stands after amendment, a person who wants to become a member in the A Class will have to take a share of Rs. 5,000/-. Clause 7 specifically mentions that at least one share should be taken by a member. Rule 28 states that no member of a society shall be eligible to vote at the meeting fixed for any election to the committee of that society, unless thirty 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 amended Clause 4(a) of the bye-laws specifically mentions the share amount which one has to necessarily take to become A Class member and as Clause 7 prescribes taking of at least one share, contention of the petitioners that they being already members of the Society are not bound by the amended provisions la the bye-laws is not (enable. Bye-laws of a co operative society cannot be relegated to secondary importance. So far as a society is concerned, the bye-laws are in the nature of Article of Association of a company incorporated under the Companies Act (See Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, . Though they do not have the force of statute, it is binding on all the members of the society. As the amendment has been effected only by the will of the General Body of the Society, the bye-laws of the Society bind the petitioners. As Clause 7 specifically says that at least one share should be taken by a member and as the bye-laws of the Society do not exempt the existing members like the petitioners from the payment of the enhanced amount towards the share their contention that they are not liable to pay the same cannot be accepted. Rule 28 is also a bar to the petitioners in advancing their contention that they are not liable to pay the enhanced share amount. Rule 28 makes the position clear that a member of the 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 the petitioners have not paid the amount to become A Class members as provided the bye-laws, they cannot challenge Ext. P-2 voters'' list.

I find no reason to quash the voter''s list Ext., P5. The Original Petition is dismissed. No costs.

