
(2002) 01 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 35009 of 2001

Kunhiraman Nair

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 23-01-2002

Acts Referred:

Citation : (2002) 2 ILR (Ker) 303

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : P.K. Mohammed, for the Appellant; K.G. Cleetus, J. Mathikal and P.V. Lonachan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Kurian Joseph, J.—Which is the crucial date as far as disqualification on the ground of dual membership? What is the effect if at the time of action for removal there is only one membership?

2. Petitioner is a member of a Co-operative Society of which the second respondent is the President. Petitioner obtained the membership on 28.10.1991. It is not in dispute that at the time when the petitioner obtained the membership in the Society, he was a member of another Co-operative Society. Respondents 3 to 5 therefore, moved for disqualification of the petitioner under Rule 16 of the Kerala Co-operative Societies Rules (for short "the Rules"). This Court by the judgment in O.P. No. 22063 of 2001 directed the first respondent Joint Registrar to take a decision in the matter. Thereafter, the first respondent heard the parties including the petitioner and passed a detailed order, Ext. P3. In Ext. P3, the first respondent Joint Registrar also found that the petitioner had dual membership at the time of his admission in the Society in question. True, the petitioner was not a member in any other Society at the time when respondents 3 to 5 preferred a complaint on dual membership. But the relevant date under Rule 16(3) is the date on which a person was admitted as a member and on that basis the first respondent directed the Society to take action for removal of the petitioner's

membership within 20 days. It is also not in dispute that the petitioner is not entitled to have a dual membership going by the bye-laws of the Society of which the petitioner is presently the member.

3. Pursuant to Ext. P3 order passed by the Joint Registrar, petitioner was issued Ext.P4 show cause notice and he filed Ext.P5 objection. Though the petitioner filed this Original Petition on 19.11.2001, this Court did not grant any interim order. Therefore, the society proceeded with the matter and after considering the objection filed by the petitioner, Ext.P9 order was passed removing the petitioner from the membership of the Society. Ext.P3 order passed by the first respondent, Ext.P4 notice and Ext. P9 order passed by the Society are under challenge.

4. Before proceeding to analyze the contentions of the learned counsel for the petitioner, it will be profitable to refer to Rule 16(3) and (4) of the Rules which read thus:

"(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 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."

A reading of the above rule would show that the statutory provision is crystal clear that a person become ineligible for both reasons of dual membership either at the time of admission in the Society or subsequent acquisition of membership in the Society.

So long as there is no dispute on the factual position that the petitioner had another membership at the time of his admission in the Society referred to in the Original Petition, petitioner loses defence since the mandate in the Rule is "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".

5. It is not dispute that petitioner was a member of another Society at the time of obtaining membership in the second respondent Society. Petitioner's

contention is that subsequently he resigned from the membership of that Society and at the time of initiation of action he has membership in the present Society. That cannot save the petitioner. Here the disqualification relates back to the moment of membership, though the cessation takes effect only from the date of removal.

6. The emerging position is that the petitioner ceased to be a member of the Society, of which the second respondent is the President, pursuant to Ext. P9 order. It is for the petitioner to pursue his remedies either against Ext.P3 or against Ext.P9 or against both.

7. Petitioner has yet another grievance that now he is not a member of both Societies, though he resigned from the former hoping to remain in latter. Now the option is left open and it is for him to apply for membership and pursue the matter.

Without prejudice to such right of the petitioner in the matter, the Original Petition is dismissed.