

(1993) 03 KL CK 0064

In the High Court Of Kerala

Case No : O.P. No. 9527 of 1992 and 8372 of 1992

M. Jinadevan and others

APPELLANT

Vs

State and others

RESPONDENT

Date of Decision : 30-03-1993

Acts Referred:

Banking Regulation Act, 1949 — Section 28
Constitution of India, 1950 — Article 226

Citation : (1993) 2 KLJ 70

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : M.K. Damodaran, for the Appellant; Cyriac Joseph, N. Haridas and K.S. Radhakrishnan, for the Respondent

Final Decision : Dismissed

Judgement

1. The Idukki District Co-operative Bank, the respondent No. 3 in O.P. No. 9527/92 and the respondent No. 4 in O.P. No. 8372/92 is a central co-operative society as defined in Section 2(d) of the Kerala Co-operative Societies Act (the Act for brevity). In this judgment the Idukki District Co-operative Bank is referred to as the bank. The petitioner No. 1 in O.P. 9527/92 and the sole petitioner in O.P. No. 8372/92 is a member of the general body of the bank. The petitioners 2, 3 and 4 in O.P. 9527/92 are members the Board of Directors. The respondents 1, 2 and 3 are respectively the State of Kerala, the Registrar of Co-operative Societies and the Joint Registrar of Co-operative Societies. The respondent No. 4 in O.P. 9527/92 is the Administrator of the bank appointed u/s 33 of the Act.

In O.P. 9527/92, the order No. CB (3) 34963/1992 dated 16-7-1992, made by] the Registrar, in exercise of his power u/s 33 of the Act appointing administrator, is impugned. In O.P. 8372/92 the order No. CRB 1535/92 by which the Registrar held that the resolution No. 377 dated 16-3-1992, passed by the Board of Directors of the Bank was invalid as the presence of only 6 members out of the

sanctioned 14, does not constitute quorum for the meeting.

These petitions under Article 226 of the Constitution of India raise the question whether the existing numbers of the Board of Directors of the bank constitute quorum. This is the only question urged by the petitioners. I therefore propose to dispose them off by this common judgment.

2. O.P. No. 9527/92 was heard and disposed off by me on 24-2-1993. It was allowed. The order No. CB (3) 34963/1992 dated (6-7-1992 appointing Administrator of the bank was quashed and the Registrar of Co-operative Society was directed to withdraw the Administrator. However, the State of Kerala and the Registrar of Co-operative Societies filed Review Petition No. 54 of 1993 which I have allowed by a separate order. I heard the O.P. No. 9527/92 simultaneously with the review petition No. 54/93. That is how I am deciding the O.P. No. 9527/92 once again.

3. The facts giving rise to these petitions may be outlined. A number of members of the primary societies affiliated to the Bank were found to have been ineligible to be admitted as members. The Registrar of Co-operative Societies by separate orders rescinded the resolutions admitting them as members of the primary societies. Consequently they ceased to be members of the Board of Directors of the Bank, the offices which they held by reason of their status as delegates of the primary societies.

Abdul Shakoor ceased to be a member of the Board of Directors of the Bank from 23-7-1992 (O.P. 8314/92), C. A. Kurien from 10-7-1992 (O.P. 9159/92) and Sasidharan and Vasu from 14-7-1992 (O.P. 9529/92 and O.P. 10128/92). There are other members who too ceased to be members of the Board of Directors. The total number of the elected directors was reduced to four. These four and three members nominated by the Government together bring the total number of the Board of Directors to SEVEN.

Under byelaw No. 24 of the Bank, the Board of Directors shall consist of "not more than 11 members." Two members from each of the four Taluks and three elected by the general body constitute the elected component of the Board of Directors under byelaw No. 25. Byelaw No. 29 fixes the quorum for their meetings at six. However, the total number of members of the committee consists of only ten members. This includes the members who were disqualified. Election to one seat was not held. At the election held on 19-9-1989, the Returning Officer had notified elections to 11 seats on the Board of Directors (Ext. R2 (b) to the counter-affidavit of Respondents 1 and 2).

Upon receipt of a report from the Deput Registrar (Audit) the Registrar proceeded to act u/s 33 of the Act, as, according to him, the number of directors "cannot constitute the quorum for the meeting of the committee." The impugned order (sic) No. CB(3) 34963/92 dated 16-7-1992 made under sub-section (1) of Section 33 of the Act records that;

- (a) the absence of quorum had created administrative vacuum.
- (b) the delay in making alternative arrangements may cause inconvenience and difficulties to the co-operative institutions dependant for credit on the Bank, and
- (c) it is not reasonably practicable to publish notice inviting objections as envisaged by the first proviso to clause (b) of subsection (1) of Section 33 of the Act.

4. The Board of Directors at its meeting held on 16-3-1992 resolved to hold elections to five vacancies on 14-6-1992. The resolution was sent to the Registrar with a request to appoint a Returning Officer. The Registrar noticed that the meeting of the Board was attended by five elected and one nominated member - making the total number of members present six. According to him, having regard to the sanctioned strength of the Board which was 14 - eleven elected and three nominated - eight members constitute quorum. Since the resolution was not passed by a meeting which had the requisite quorum, the Registrar held the resolution No.377 invalid. By his letter No. CRB 1535/92 dated 23-4-1992, which is impugned in O. P. No. 8372/92, the Registrar of Co-operative Societies declined to act on such resolution.

5. On the arguments advanced by learned counsel the following questions arise for consideration:

- (i) Having regard to sub-section (5) of Section 28, is the prescription of quorum at six by the byelaw No. 29 (1) valid?
- (ii) Does the elected component of four together with the three nominated members constitute quorum for the meetings of the Board whose sanctioned strength is 14?

6. Clause (b) of Section 2 of the Act defines "byelaws" to mean "the registered byelaws of a co-operative society." Section 7 of the Act provides for the registration of societies and their byelaws. Clause (d) of sub-section (1) of Section 7 enacts that the proposed byelaws shall not be contrary to the provisions of this Act and the rules. If they are contrary to the Act or the Rules, the Registrar may refuse to register them. Since the byelaws of the Bank have been duly registered, they are valid. But on 25-8-1987 the Kerala Co-operative Societies (Amendment) Act - Act 19 of 1987 - introduced sub-section (5) in Section 28 of the Act. By this enactment, "quorum for a meeting of a committee" was defined to be "such number of members just above fifty percent of the total number of members of that committee." Thus, according to this statutory definition of quorum, if the total number of members of a committee is fourteen, the quorum would be eight.

Now, by reason of the subsequent legislative definition of quorum, the provision in the byelaw No. 29 that quorum for meetings of the Board of Directors shall be six has become inconsistent with the statutory definition of "quorum". In order to deserve registration the byelaw shall not be contrary to any provision of the Act.

To the extent to which it is inconsistent with the Act, the byelaw may become void. If the provision of the byelaw fixing quorum at six were presented for registration after 25-8-1987, when sub-section (5) was introduced in Section 28, it would not merit registration. A byelaw does not become a valid byelaw unless registered u/s 7 or 12 as the case may be. The byelaw in question being a subordinate piece of legislation, its continued existence in the original form would depend upon the amendment in the law whereunder such subordinate legislation is made. The byelaw depends for its validity on the enactment. The rule of construction in such cases is that the byelaw should be so read as to be consistent with the later enactment. The byelaw need not be rendered invalid. The correct way of reading the stipulation of quorum as six in the byelaw is to substitute for the existing words, the words in sub-section (5) of Section 28. Where an Act is amended, the byelaws under the former Act or section continue in force as amended by the later Act. (*Miller's Cash Stores Ltd. v. West Ham Corporation* (1955 (3) All E.R. 282).

When so construed the relevant sentence in byelaw No. 29 (1) should be read as "The quorum for a meeting of the Board shall be such number of members just above fifty per cent of the total number of members of the Board."

7. The quorum for meetings as defined in sub-section (5) of Section 28 has these features:

- (i) There must be a total number of members of a committee.
- (ii) Fifty per cent of such number of members should be ascertained.
- (iii) The number of members just above such fifty per cent becomes the quorum.

The first question is what is "the total number of members of that committee." The words "that committee" clearly have a reference to the committee referred to in sub-section (1) of Section 28 whereunder the general body of a society is enjoined to "constitute a committee in accordance with the byelaws." Therefore, "that committee" referred to in sub-section (5) of Section 28 means the committee constituted in accordance with the byelaws. Byelaw No. 24(1) lays down that the executive management of the affairs of the Bank shall vest in the Board of Directors consisting of "not more than eleven members." It is not necessary that the Board of Directors must consist of eleven members at all times. By virtue of sub-section (1) of Section 28, it is the general body that "constitutes a committee" which shall be in accordance with the byelaws. The byelaw fixes the strength of the committee as "not more than eleven members." In this case the committee consists of eleven members. The reason is that at the elections held on 19-9-1989 elections to the eleven seats on the Board of Directors were notified. Secondly it is not the case of the bank that the strength of the committee was fixed at TEN. What the Bank highlights is that the present number of the members of the committee is only TEN, by reason of the fact that election to one seat was not held. I therefore hold that the strength of the committee as fixed by the byelaws is eleven. As already stated, the words "that

committee" occurring in sub-section (5) of Section 28 refers to the committee constituted in accordance with the byelaws, as laid down in subsection (1) of Section 28. In the context of the facts of this case, therefore, the words "that committee" mean the committee consisting of eleven members.

8. It was urged by Mr. Damodaran, learned counsel for the petitioners that since admittedly only 10 seats on the Board of Directors were filled in, leaving one unelected, the committee means the committee consisting of ten members. For this purpose he relied upon the judgment of Thomas, J. in *Subair Kunju v. Trivandrum Taluk M & P Co-op. Society* (1990(2) KLT 548). In that case the order removing the Board of Directors for want of quorum proceeded "on the assumption that the strength of the Board is eleven", although as a matter of fact there were only seven members on the Board, out of whom two persons later resigned and the authority of another member was withdrawn by the society which nominated him. Consequently the Board of Directors consisted of four persons with three vacancies. The question was whether the committee consisted of eleven members or the committee consisted of SEVEN members. As in this case, in *Subair Kunju's* case also, the upper limit of the strength of the committee was fixed at ELEVEN. But the court held that the fixation of upper limit does not mean that the strength of the committee shall always be of that number, and that it could be any number below the upper limit. The upper limit was explained as a limit placed to ensure that it shall not in any contingency, exceed that number. The finding of the court was that, as a matter of fact, the committee had only seven members. That means "the strength of the committee has never gone upto the maximum provided by Clause 5. 1 of the Byelaws." In the case before me the strength of the committee was always eleven which is clear from the election notification already referred to. The fact that the strength of the committee never went upto the maximum provided by the byelaws went into the making of the decision in *Subair Kunju*. Thomas, J. held that in view of the fact that the committee consisted of SEVEN members four constituted quorum. He proceeded to hold that "in that view of the matter" FOUR members will be sufficient to constitute quorum. The decision was, therefore, based on the finding that the strength of the committee was SEVEN. The distinguishing feature between *Subair Kunju* and the case before me is that in the former, the strength of the committee was held to be seven and therefore four members were held to constitute the quorum. K.T. Thomas. J. had occasion to consider the judgment in *Subair Kunju v. Trivandrum Taluk M & P Co-op. Society* (1990(2) KLT 548) in a later decision in *V.V. Narayana Warriar v The Joint Registrar of Co-operative Societies* (O.P. No. 1853 of 1990 U) which he decided on 2nd November, 1990. In that case it was urged that the strength of the committee was only EIGHT. The Registrar of Co-operative Societies had proceeded to determine the quorum on the basis that the strength of the Board was eleven and not eight. The question was whether the strength of the Board was EIGHT. Reliance was placed on *Subair Kunju v. Trivandrum Taluk M & P Co-operative Society* (1990 (2) KLT 548). K.T. Thomas. J-explained the judgment in *Subair Kunju* in these words:

It has been pointed out in the said decision that the society has no case that it had at any time decided that the strength of the committee shall be consistent with the upper limit. Here the position is different. With the decision of the Board of Directors to hold election to the remaining vacancies the Board has treated the number of the committee as 11.

In view of his conclusion that the strength of the committee was eleven, he upheld the order of the Registrar superseding the Board of Directors. The principle that emerges is that the strength of a committee is the number which the Board of Directors decides. As in *V. V. Narayana Warriar* (O.P, No. 1853 of 1990) in this case too, the Board held elections to ELEVEN vacancies. Therefore the Board of Directors of the Bank treated the strength of the Board as ELEVEN, From the subsequent explanatory judgment in *V.V. Narayana Warriar* it is clear that the number of members of committee is not the actual present number of members but that number which the committee decides to be the strength of the committee.

9. For the reasons stated above, the committee referred to in sub-section (5) of Section 28 is the committee constituted under sub-section (1) of Section 28 and the byelaws. A committee consisting of ELEVEN members was always treated as the Board of Directors of the Bank. In my opinion, having regard to Section 28 and the the byelaws, strength of the Board of Directors of the Bank is and always was eleven. This is the number that has to be taken into consideration for the purpose of determining whether the meetings of the Board, comprising of SEVEN members constitute quorum.

10. It is undisputed that the total number of the members of the committee who may hold meetings is seven. FOURTEEN is the sanctioned strength of the Board of Directors. Fifty per cent of fourteen is seven. In order to constitute quorum the number of members of the Board of Directors must be "just above fifty percent of the total number of members of that committee." The number SEVEN falls just below fifty percent of the total number of members of that committee which is FOURTEEN. Therefore the Registrar was right in his conclusion that the present composition of SEVEN members does not constitute quorum.

11. Sub-section (1) of Section 33 empowers the Registrar to act "where vacancies occur in the committee either by resignation or otherwise, and the number of remaining members cannot constitute the quorum for the meeting of the committee." In view of the facts set out earlier the vacancies in the committee and the fact that the number of seven, members cannot constitute quorum, the Registrar was within his authority in proceeding to act under sub-section (1) of Section 33 of the Act.

12. The Registrar was right in holding that quorum for meetings of the Board is EIGHT. For this reason the orders impugned in both the original petitions are correct. The O.P. No. 9527 of 1992 and O.P. No. 8372 of 1992 are dismissed.