
(1990) 10 KL CK 0051
In the High Court Of Kerala
Case No : O.P. No. 3568/90

M. Kesari

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 09-10-1990

Acts Referred:

Citation : (1990) 10 KL CK 0051

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : Pirappancode and V. Sreedharan Nair, for the Appellant; A.N. Rajan Babu, Government Pleader and Govindan Nair, for the Respondent

Final Decision : Dismissed

Judgement

K.T. Thomas, J.—Petitioner is the President of Ayiroopara Farmers Service Co-operative Bank Ltd., (for short "the Bank") which is a Cooperative Society. The third Respondent, who is the Inspector of Co-operative Societies, gave a direction to the Bank to take steps for electing a new committee for the Bank. The directive was contained in Ext. P-2 communication, dated 16th March 1990. This Original Petition is for a declaration that the present committee of the Bank is entitled to continue till 8th June 1991. Another relief prayed for is to quash the above said directive contained in Ext. P-2.

2. The present committee took over on 9th June 1986. The relevant clause in the byelaws of the society says that the committee shall hold office for a period of 5 years. This much is admitted. On the strength of the said clause Petitioner claims right to continue in office till 8th June 1991.

3. The contention of the Petitioner would perhaps have been sustainable, but for the addition of Explanation to Rule 39(1) of the Kerala Co-operative Societies Rules, 1969 (for short "the Rules") which was brought into effect from 28th August 1989 onwards. As per Rule 39(1) the byelaws of every society shall provide that the term of its committee shall expire on the same date as may be

specified and all the members of the committee shall vacate their office on the date specified irrespective of the date on which they were elected. It is further provided in the sub-rule that if no such date is specified in the byelaws, the date of expiry shall be 30th of June of that year in which the term expires. Though no date as such is specified in the byelaws of the Bank, the relevant clause therein permitted the Board of Directors to continue in office for a period of five years. The question is, how to reckon each year in order to decide whether the committee can continue further. To find answer to the said question Explanation added to Rule 39(1) is to be read.

For the purpose of calculating the term of a Committee, an year shall be taken to be the period commencing on the first day of July of the year and ending with 30th June of the succeeding year. Each year of the term shall be calculated so as to end on 30th June of the year, irrespective of the date of election or taking charge of the Committee earlier in the year.

4. Learned Counsel for the Petitioner contended that the Explanation is intended to circumvent a particular interpretation given by a Division Bench of this Court to Rule 39 of the Rules [vide Mohammed Basheer v. State of Kerala 1987 (2) KLT 791] and hence the said Explanation may not be allowed to govern the rule. The contention cannot be supported, since it is open to the legislature to amend any statute or rule even if it is for the purpose of circumventing the effect of any judgment. As the position is well settled, it is unnecessary to cite authorities for it.

5. It was next contended that the Explanation is contrary to the rule itself and hence the Explanation is liable to be struck down. There is no merit in the said contention either. A provision cannot be understood divorced from the provisos and Explanations appended thereto. If the main body of the provision is not intended to be restricted or expanded, the legislature would not normally attach any proviso or explanation thereto. The very fact that an Explanation is added to a provision is indicative of the legislative intention that the entire provision together with the explanation should be understood as a whole. In *S. Sundaram Pillai and Others Vs. R. Pattabiraman and Others*, the Supreme Court has held that "it is now well settled that an Explanation added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision". The Supreme Court quoted with approval a passage from the "Interpretation of Statutes" by Sarathi. The passage reads thus:

The object of an explanation is to understand the Act in the light of the explanation.

A Division Bench of this Court has observed in *Hindustan Paper Corporation Ltd., v. Government of Kerala* 1985 KLT 915, that "what is sought to be explained with the help of a clause of explanation should not be construed as one limiting or

restricting the ambit of the main section. Explanatory clauses are employed by the legislature usually as a means to expand the sphere of the main body of the section concerned.

6. There is no contention that the rule making authority had no competence to make the said rule. Nor was there any contention that the explanation is contrary to any provision of the parent Act. I do not find any reason to hold that the Explanation to Rule 39(1) of the Rules is invalid. The Explanation admits of no doubt, though perhaps unfortunate it is, that the short period which preceded 30th June, 1986 must be counted as one year despite it being only a splint of a calendar year. When it is so counted, the committee headed by the Petitioner must be held to have already out-lived its term.

For the aforesaid reason, I am not inclined to afford the relief's prayed for.

Original Petition is accordingly dismissed.