
(1992) 06 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 6534 of 1992

M.J. Mathew and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-06-1992

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 16(3), 35(3)(b)

Citation : (1992) 2 KLJ 91

Hon'ble Judges : K.P. balanarayana Marar, J

Bench : Single Bench

Advocate : Antony Dominic, for the Appellant; D. Somasundaram and K. Gopalakrishna Kurup, for the Respondent

Final Decision : Dismissed

Judgement

K.P. balanarayana Marar, J.—Petitioners, members of a Service Co-operative Bank seek a writ of certiorari to quash Ext. P1 notification of election to the managing committee and the order of the Joint Registrar Ext. P7 dated 20-5-1992. A direction to respondents 3 and 4 to consider and pass appropriate orders on Exts. P2 to P6 representations is also sought. The tenure of the present board of directors is to expire on 30th June 1992. The committee now in office had prepared a list of members A Returning Officer was appointed for conducting the election. Ext. P1 is a true copy of the publication by the Returning Officer. First Petitioner along with another member of the society filed objection wherein it was pointed out that persons who reside outside the area of operation had been included in the voters list. It was also pointed out that names of persons who are dead figured in the list. The Returning Officer was requested to cure the defect in the voters list. He was also informed the necessity of issuing identity cards to the voters. Lists containing the names of persons who are dead and persons who reside outside the area of operation were also furnished to the Returning Officer. Instead of considering those objections the final list of voters was published on 15-5-1992. It is averred in the petition that 4th respondent has

a duty to consider the objections raised by petitioners and to delete the names of persons who are Ineligible to continue in the rolls of the Society. Hence the original petition seeking the reliefs aforementioned. One Sadasivan Nair filed an application for getting himself impleaded. He claims to be a member of the 5th respondent Society. He is a candidate in the ensuing election which is proposed to be conducted on 13-6-1992 in the affidavit in support of his petition for impleadment it is averred that the Returning Officer is not expected to entertain objections regarding the inclusion of persons in the voters list nor has he the authority to delete those persons from the voters list. Since rule 152 of the High Court Rules enables any person who desires to be heard In the matters at the time of hearing of the petition for admission to be heard the petition for impleadment was allowed and the petitioner was impleaded as additional 6th respondent.

2. Heard counsel for petitioners and sixth respondent and Government Pleader.

3. It is urged by learned counsel for petitioners that the challenge is to the validity of the electoral roll and the defect goes to the root of the jurisdiction. The grievance of petitioners is that persons residing outside the area of operation of the Society are included in the voters list and the names of dead persons find a place therein. The contention is that the voters list has been manipulated by the present managing committee so as to obtain a majority for the directors who are now in power. Though representations had been made to the Returning Officer and the lists of the names furnished to him he has not made any enquiries, according to petitioners.

4. Complaint was preferred to the Joint Registrar, Kottayam who by Ext. P7 proceedings dated 20-5-1992 informed petitioners that the request for stay of election cannot be considered since the election process was already underway. Petitioners were further informed that they could invoke the aid of Subsection (3) of Section 69 if they had any dispute in matter. The original petition is filed to quash Ext. 7 proceedings and Ext P1 notification of election. A writ of mandamus is also sought for a direction to respondents 3 and 4 to consider Exts. P2 to P6 representations and pass appropriate orders thereon.

5. The notification for election and the proceedings of the Joint Registrar rejecting the request of petitioners to postpone the election are sought to be quashed in this original petition. Request is made for a direction to the Returning Officer and the Joint Registrar for consideration of the representations made by petitioners objecting to the inclusion of ineligible members in the voters list. A correct voters list showing the names of the eligible persons has therefore to be prepared according to petitioners before conduct of election. Learned Counsel for 6th respondent vehemently contends that both the reliefs are not sustainable since the Returning Officer is not empowered to delete any name from the voters list or to include any name therein.

6. Any person can be admitted as a member of Society u/s 16 of the Act

provided he has attained the age of 18 years and fulfils the other requirements contained therein. Any member so admitted may be expelled upon a resolution of the general body passed at a special meeting convened for the purpose by the votes of not less than two-thirds of the total number of members present and voting at the meeting if he has acted adversely to the interest of the Society. Vide Section 17(1) of the Act. Before expulsion an opportunity has to be given to that member to make his representation in the matter. A copy of the resolution expelling a member shall be communicated to the member within a period of 15 days from the date of passing, of the resolution.

7. Rule 16 of the Co-operative Societies Rules prescribes the conditions to be complied with for admission for membership. He has to apply in the prescribed form and has to fulfil the conditions embodied in that rule. Sub-rule (3) of rule 16 stipulates that the committee of the Society may remove a person from membership after giving him an opportunity for making his representation 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 person concerned shall cease to be a member only if the committee of the Society takes a decision to remove such person. The Registrar also is empowered to declare that a person has ceased to be a member of the Society. He of his own motion or on a representation made to him by any member of the Society or by the financing bank may declare so. But before making such a declaration he shall give an opportunity to the member to state his objection to the proposed action and if need be an opportunity to be heard should also be afforded. Sections 16 and 17 of the Act and Rule 16 of the Rules thus provide for expulsion of a member of the Society and removal of a member who was ineligible for membership at the time when he was admitted or becomes ineligible since then. The question of expulsion of any member does not arise in the present case since a general body meeting has not been convened for that purpose nor was any resolution adopted in any general body meeting.

8. The grievance appears to be that names of ineligible persons included in the voters list and names of dead persons should have been deleted therefrom. In the case of ineligible persons the removal can be done only by the committee of the Society or by the Registrar of Co-operative Societies. It appears that a representation was made to the Joint Registrar as per Ext. P6 complaining about the conduct of the Returning Officer in not taking any action on the representation made by petitioners and one Varghese. Even in that letter no request is seen made for declaring that any member has become ineligible and has ceased to be a member of the Society. The only request is to stay the election till identity cards with photo affixed are issued to the voters. Unless a proper representation has been made to the Registrar in this behalf he is not bound to take any action under sub-rule (4) of rule 16. He could have of his own motion declared that a person had ceased to be a member. The Registrar having not chosen to pass any order on his own motion he is not expected to take any action on Ext P6 representation especially when no request is seen made therein

for declaring any person to have ceased to be a member of the Society. The result is that all persons whose names find a place in the voters list and who had not either been expelled u/s 17 of the Act or removed under sub-rules (3) and (4) of rule 16 are members eligible to vote in an election to the Managing Committee.

9. What are the objections which the returning officer can consider at the time of preparation of final voters list is the next aspect that requires consideration. The manner in which election of the members of the committee of the Society has to be conducted is prescribed in rule 35, A Returning Officer appointed by the Registrar for the conduct of the election has to give intimation regarding the details of election of the members of the committee to all members included in the final list of voters to vote at the election of the committee. The committee in office shall prepare a list of members qualified to vote at the election in accordance with the provisions of the Act, rules and the bye-laws as stood on a date 30 days prior to the date fixed for the poll. That list has to be supplied to the Returning Officer who shall publish copies of the list by affixing them to the notice board, at the head office of the Society and its branches. This publication has to be made not less than 15 days prior to the date fixed for election inviting objections if any in the matter within three days of publication. The Returning Officer has to publish a final list of eligible voters after considering the objections. A copy of the final list shall be supplied by the Society to any member on payment of prescribed fee as may be fixed by the committee.

10. A question arises whether the power given to the Returning Officer to consider objection to a voters list entitles him to remove any person from the list of voters. It cannot be disputed that any person who has become a member of the Society is entitled to vote in the election to the managing committee subject to the provisions contained in the Act, rules and bye-laws. A person who has been admitted as a member within 60 days prior to the date of election or the date of the general body meeting does not have the right to membership or the right to vote at the said election or at the general body meeting. If any person has been admitted in violation of rule 26 which prohibits admission of members or approval of transfer of shares within 60 days prior to the date of election or the date of the general body meeting any objection raised regarding such admission can be looked into by the Returning Officer at the time of consideration of objections contemplated in sub-rule (3) (b) of rule 35. In such a case the person so admitted has no right to membership nor has he the right to vote at the said election or at the general body meeting. This court in *Govindan v. Deputy Registrar of Co-operative Societies* 1983 KLT 1038 held that the mandate contained in rule 26 is in the nature of an Injunction or command against the registered Society. Any member so admitted or any person in whose favour transfer of share has been approved in contravention of this rule shall not have the right to membership or the right to vote at the said general body meeting or at any meeting held subsequent thereto for the purpose of election. The court was considering the legality of the election conducted with such

persons in the voters list. It was held that the consequent election held in, breach of the rule should be held to be totally infirm and illegal. It is therefore open to the returning officer to consider an objection regarding the inclusion of any member in violation of rule 26 and the claim of a person so admitted to exercise his vote in the ensuing election can be rejected and the final voters list could be prepared without the name of such a member in the list. But the position is different as far as members who had been admitted before the period of sixty days fixed in rule 26 and whose names find a place in the preliminary voters list. They continue to be members eligible to vote in the election so long as they are either expelled or removed from the membership.

11. Rule 35 enjoins a duty on the managing committee in office to prepare a list of members qualified to vote at the election in accordance with the provisions of the Act, the rules and the bye-laws as stood on a date 30 days prior to the date fixed for the poll and supply the same to the Returning Officer. He has to publish copies of the list and invite objections. The final list of eligible voters has to be published by him after considering the objections if any received by him. Regarding members admitted in violation of rule 26 there cannot be any dispute. The Returning Officer can on a perusal of the relevant admission forms and other papers ascertain whether the member was admitted in violation of the rule. Any such objection in that regard can be entertained and if substantiated the name of the member so admitted can be deleted from the list since rule 26 specifies that any person so admitted "shall not have the right to membership or the right to vote at the said election or at the general body meeting". The Returning Officer is therefore clothed with power under rule 35 to deny any such member the right to vote and his name has to be deleted from the voters list.

12. But the position is different regarding members admitted before sixty days prior to the date of election or the date of general body meeting. There is no embargo in rule 26 for enrolling members before sixty days of the date of election or the date of the general body meeting. The Act and the rules do not contain any provision disentitling them from voting in the election. Section 20 of the Act confers on every member of the Society a right to vote in the affairs of the Society. The manner of exercising the vote is prescribed u/s 21. The minimum requirement for voting in an election to the Managing Committee is that he should be a member of the Society. The Act contains provisions for expulsion of a member if he has acted adversely to the, interest of the Society. The procedure for removal of an ineligible member is contained in sub-rules (3) and (4) of rule 16. So long as a person is removed either under sub- rule (3) or sub-rule (4) he continues to be a member for all purposes and he has a right to vote in an election. The right for removal is conferred on the managing committee and the Registrar of the Co-operative Societies. The committee has not so far removed any member under sub-rule (3) of rule 16 nor has the Registrar acted either suo motu or on the representation by any member of the Society. In the circumstances, the Returning Officer has no authority to declare a person ineligible to continue as a member of the Society or to remove the name

of any such person from the final voters list prepared by him. The objections contemplated under rule 35 (3) (b) do not include objections relating to ineligibility of a member who had been admitted before 60 days prior to the date of election or the date of the general body.

13. Holding of election to the managing committee of a Co - operative Society is of paramount importance to the members of the Society and its beneficiaries. The election has therefore to be held in accordance with the time-bound programme contemplated in rule 35. Any interference in the process of such election will only jeopardize the smooth working of the programme and has therefore to be prevented. The fact that the, preliminary voters list contains the names of some ineligible persons cannot erase the process of election when once that process is underway. The election has to be held on the basis of the final voters list prepared by the Returning Officer after considering the objections which he can consider under rule 35 as found in the foregoing paragraphs. The filing of a representation to the Registrar will not have the effect of staying or postponing the election when once the election process has commenced by a resolution of the managing committee contemplated under sub - rule (1) of rule 35. But it is made clear that the conduct of election on the basis of such a voters list will not in any way disentitle any person to move the Registrar for declaring a person as ineligible or to get a general body meeting convened for that purpose. The aggrieved person has an efficacious remedy by way of a petition before the Registrar u/s 69 (2) (c) of the Act since objection regarding inclusion of ineligible member amounts to a dispute arising in connection with the election of the board of management of the Society.

14. The position that emerges is that objection regarding inclusion of names of members admitted after the resolution contemplated under rule 35(1) can be validly taken before the returning officer and he has to entertain that objection and if substantiated the name of such a member has to be removed from the list while preparing the final voters list. But the Returning Officer cannot probe into the eligibility or otherwise of a member who had been admitted before that date. The Act and the rules having conferred a right of expulsion or removal of a member on the managing committee and the Registrar of Co-operative Societies that power cannot be usurped by the Returning Officer in the guise of the authority given to him to consider the objections to the preliminary voters list prepared by the managing committee. The reason is that in the earlier case the person admitted has not become a member and thus not eligible to vote whereas in the latter he had become a member entitled to vote in an election and the consideration is as to his eligibility to continue as a member which is beyond the powers of the Returning Officer. The grievance of petitioner is that persons residing outside the area of operation of the Society had been admitted as members. The request is that those persons being ineligible are to be removed from the list. The names of dead persons also figure in the list, according to petitioners. Both these objections were not considered by the Returning Officer and that resulted in a petition before the Joint Registrar, argues counsel. Ext. P6

petition mentions about the publication of the final list in accordance with the preliminary list of voters. The final voters list having been published by the Returning Officer the election process has to continue and any dispute regarding the election has to be raised before the Registrar u/s 69 of the Act. In case any person residing outside the area of operation is included in the voters list the remedy as stated earlier is either to get a meeting of the general body convened or to move the Registrar under sub-rule (4) of rule 16. The Joint Registrar has refused to entertain Ext. P 6 representation and according to me rightly for the reason that the election process having commenced the request for stay of election cannot be granted. Petitioners were also informed about their right to move the Registrar u/s 69 (3) of the Act in case there is any dispute. The request of petitioners to quash Exts. P1 and P 7 has therefore to be refused, in the circumstances. The question of issuing a direction to the Registrar for considering Exts. P2 to P6 does not therefore arise.

For the aforesaid reasons the original petition is dismissed.