(1990) 04 KL CK 0012

In the High Court Of Kerala

Case No : O.P. No. 4081 of 1988

M.N. Gopalakrishna Panicker and another APPELLANT

Vs

State and others RESPONDENT

Date of Decision : 11-04-1990

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 69
Kerala Co-operative Societies Rules, 1969 — Rule 67(7)(a)(II)(i)

Citation : (1991) 1 KLJ 75

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : K.S. Rajamony and K.K. Gopinathan Nair, for the Appellant; M.K. Damodaran and, Govt. Header P.K. Balakrishnan Nair, for the Respondent

Final Decision : Allowed

Judgement

T.L. Viswanatha Iyer J.

1. The Kerala State Co-operative Union (referred to hereinafter as the State Union) is one established u/s 89 of the Kerala Co-operative Societies Act, 1969, (the Act). It consists of a general body and a managing committee. The latter consists inter alia of "two members elected from among themselves in such manner as may be prescribed by the members of the circle co-operative unions, elected under clause (d) of sub-section (1) of section 88." Section 88 deals with the constitution of circle co-operative unions (circle union for short). Under sub clause (d) of clause (1) thereof, two of the members of a circle union are elected by the employees of co-operative societies within the circle. These employee members of the various circle unions have to elect two from among themselves as members of managing committee of the State Union, as mentioned earlier. An election was held for the purpose on February 6, 1988 at which four candidates namely the two petitioners and respondents 5 and 6 contested. The petitioners are employees of the Meenachrl Rubber Marketing and Processing Co-operative Society Ltd. and Mattanur Co-operative Rural Bank Ltd and had been elected as

members of the Meenachil Circle Co-operative "Union and Koothuparamba Circle Co-operative Union respectively, by the employees of co-operative societies within these circles. When the votes were counted after the polling, it was found that all the four candidates had secured 52 each. The procedure to be followed in such a contingency of equality of votes is prescribed in Rule 159 of the Kerala Co-operative Societies Rules, 1969 (the Rules), which provides that "in the case of equal division of votes, the result shall be decided by lots to be drawn by the Returning Officer". Accordingly, the Returning Officer decided to draw lots to determine the two successful candidates. The four contesting candidates also gave their consent in writing duly signed to the drawing of lots. The lots were made out in four pieces of paper of equal size with the name of each candidate written thereon, which were shown to all the candidates. The lots were then drawn after putting them in a container and tilting well. However, and instead of drawing the lots himself, the Returning Officer, with the intent of being very fair to the contesting candidates, called the watchman of the Co-operative Training Centre, where the election was held, to take the lots. This was also done with the consent of all the four candidates. When the first lot was taken, it contained the name of the first petitioner. The second lot contained the name of the second petitioner. The two petitioners were therefore, declared elected by the Returning Officer. The other two candidates namely respondents 5 and 6 accepted this declaration and did not challenge it at any time. They had, as a matter of fact, assented to, and acquiesced in, the entire procedure adopted by the Returning Officer for the drawing of lots. However, the fourth respondent, who was one of the voters at the election, filed a petition Ext. P1 under rule 154 of the Rules on February 9, 1988 for setting aside the election with the plea that it stood vitiated for the reason that the lots were drawn not by the Returning Officer himself but by the watchman. This, he said, was contrary to Rule 159 and therefore, the election was rendered void.

2. Rule 154 of the Rules provides that any dispute relating to any manner in the constitution of the managing committee of the State Co-operative Union shall be referred to Government, and that the decision of Government thereon shall be final. The procedure prescribed for the disposal of a reference u/s 69 of the Act shall mutatis mutandis apply to the disposal of this dispute, except that the authority to hear and dispose of the dispute shall be the Government. Petitions to revise any order passed at any stage of the constitution of the managing committee shall be filed within thirty days from the date of issue of the order sought to be revised.

3. The procedure prescribed for disposal of a reference u/s 69 of the Act is contained in Rule 67 of the Kerala Co-operative Societies Rules. Sub-rules (1) and (7)(a) which are relevant for purposes of this case may be extracted:

67. Reference of disputes, payment of expense and decisions on disputes:-

(1) The reference of any dispute to the Registrar u/s 69 of the Act shall be in writing. The application shall be accompanied by a list of relevant records on

which the despite is based and a receipted chalan to evidence payment of the fees fixed under clause (a) of sub rule (7), for deciding the dispute. In the case of an application filed for and on behalf of a society a certified copy of the resolution adopted by the committee, resolving to file the application, shall also be filed. Sufficient copies of the application for service on the defendant or defendants shall also be filed. Whenever necessary, the Registrar may require the party referring the dispute to him to produce a certified copy of the records on which the dispute is based and such other statements or records as may be required by him before proceeding with the consideration of such reference.

XX XX XX

(7) (a) The fees for deciding the dispute shall be as follows :-

I. Monetary disputes:-

Forty paise for claims of every Rs. 10 or part thereof, subject to a minimum of Rs 10 and a maximum of Rs. 500.

II. Non-monetary disputes.-

(i) For cases filed by the employees'' of the Society Rs. 50.

(ii) In other cases Rs. 500.

Note:- The fees shall be paid in advance into the nearest Government Treasury. All petitions and applications presented under this rule shall bear court fee stamps as required under the Kerala Court Fees and Suits Valuation Act, 1959. (10 of 1960).

4. The application Ext. P1 was accompanied by a fee of Rs. 50/- as if the case fell within the class of non-monetary disputes filed by employees of "the society", under Rule 67 (7) (a) (II) (i) extracted above. It did not bear any court fee stamp as stipulated in the Note to sub-rule (7)(a). The application was also not accompanied by a copy of the proceedings declaring the result of the election held on February 6, 1988. According to the petitioners, there were vital defects which affected the maintainability of the petition. They filed objections Exts. P4 and P4(a) inter alia challenging the maintainability of the application for not conforming to these requirements of such an application It was then: case inter also that the petition should be accompanied by a copy of the order declaring the result of the election for which they relied on sub-clause (1) of rule 67. It should be accompanied by a fee of Rs. 500/-under 67 (7) (a) (II) (ii), (and not Rs. 50), and it should besides be affixed with a court fee stamp of Rs. 2/- as required by the Note to the said sub-rule.

5. The issue of maintainability was decided as a preliminary point, and by the proceedings Ext. P5, Government overruled the petitioners'' objections. Petitioners have filed this original petition challenging. Ext. P5.

6. Two of the preliminary points raised by the petitioners were that the petition

under rule 154 was not accompanied by the institution fee of Rs. 500/-as required under sub-rule (7) (a) (II) (ii) of rule 67. Only Rs. 50/- was paid. It is also pointed out that the petition was not affixed with the necessary court fee stamp as required by the Note read with the Kerala Court Fees and Suits Valuation Act, 1959. The contention was that unless the election petition strictly complied with these requirements, it could not be entertained. Government, however held that the fee payable for the petition was only Rs. 50/- under sub rule (7) (a) (II) (i) and not Rs. 500/- as the election petition had been filed by an employee of a co-operative society; and that, though the petition was not affixed with the necessary court fee stamp, the election petitioner could be directed to furnish the necessary stamp before taking final decision in the matter. It was in this view that the preliminary objections were overruled. I shall examine whether Government was right in this conclusion of theirs.

7. The procedure for the decision of the election dispute in question is that prescribed for the decision of disputes u/s 69, namely the procedure laid down in Rule 67. Section 69 embraces within it various types of disputes including disputes arising in connection with election to the board of management or and officer of the society. I shall extract sub-sections (1) and (2) of Section 69 to understand the nature of the disputes which can be dealt with u/s 69:

69. Disputes to be referred to Registrar.-

(1) Notwithstanding anything contained in any law for the time being in force, if a dispute arises.

(a) among members, past members and persons claiming through members, past members and deceased members; or.

(b) between a member, past member, or person claiming through a member, frost member or deceased member and the society, its committee or any officer, agent or employee of the society, or

(c) between the society or its committee and any past committee, any officer, agent or employee, or any past officer, past agent or past employee, or the nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased employee of the society; or

(d) between the society any other society; or

(e) between a society and the members of a society affiliated to it; or

(f) between the society and a person other than a member of the society who has been granted a Joan by the society or with whom the society has or had business transactions or any person claiming through such a person; or

(g) between the society and a surety, of a member, past member deceased member, or employee or a person other than member who has been granted a loan by the society whether such a society is or is not a member of the society, or

(h) between the society and a creditor of the society, such dispute, shall be referred to the Register for decision, and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute.

(2) For the purposes of sub section (1), the following shall also be deemed to be disputes, namely:-

(a) a claim by the society for any debt or demand due to it from a member or the nominee, heirs of legal representatives of a deceased member whether such debt or demand be admitted or not;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor, whether such debt or demand is admitted or not;

(c) any dispute arising in connection with the election of the Board of Management or any officer of the society.

Government has taken the view that since the 4th respondent was an employee of a co-operative society, a petition, filed by him fell only under sub-rule (7) (a) (II) (i) of rule 67 chargeable with a fee of Rs. 50/-. The First question to be considered is whether this is correct. Sub-rule (7) (a) (II) states that in the case of no-monetary disputes, the fee for deciding the dispute is Rs. 50/- for cases filed by employees of the society and Rs. 500/- in all other cases. Can the petition filed by the 4th respondents be stated to be one filed by an employee of the society?

8. The 4th respondent who filed the election petition is undoubtedly an employee of a co-operative society. Equally undisputed is the fact that he is not an employee of the State Co-operative Union. (Were he one such, he could not have been a voter in this constituency, whose electorate consists of members elected to the Circle Unions by the employees of co-operative societies). Section 69 applies, amongst others, to disputes between a co-operative society and its employees - see sub-section (1)(c). Rule 67, which lays down the procedure generally for resolution of disputes, comprehends also applications filed by employees against the co-operative societies of which they are employees. It is for such applications that the fee of Rs. 50/- is prescribed under Rule 67 (7) (a) (II) (i), if it is a non-monetary dispute. This sub-clause applies only to such cases where a dispute is raised by an employee against his employer society as is evident from the use of the definite article ''the'' before "society". It cannot apply to disputes between a cooperative society and the employee of another society, qua employee, unless the person concerned is himself an ex-employee of the society. Section 69 itself does not apply to such cases unless the person is either an ex-employee, or he fills one or other of the rotes, as a member or otherwise, enumerated in the various sub clauses of sub-section (1). The concessional fee of Rs. 50/- is thus available only if the non-monetary dispute is one filed by an employee against his employer and not where the dispute is between him and

another society, not his employer. Otherwise the definite article ''the'' preceding ''society'' becomes meaningless.

9. The State Co-operative union is not a co-operative society registered under the Act. It is a body established u/s 89. The fourth respondent is not an employee of this union. It is true that he is an employee of co-operative society. But that is not sufficient to enable him to take advantage of the lesser fee of Rs. 50/-. For that purpose, he must be a member of the society to which the dispute relates.

10. Two conditions have to be satisfied to attract rule 67 (7) (a) (II) (i) namely, that there should be a "society" concerned in the litigation and the case should be one filed by a member of that society. Both these conditions are not satisfied in the case of the State Co-operative Union, and the 4th respondent, for the reason that the Union is not a co operative society, and the 4th respondent, is in any case, not an employee of the Union. Therefore the benefit of lesser fee of Rs. 50/- is not available to the 4th respondent. The proper fee payable on Ext. P1 was Rs. 500/-under the next sub clause (7) (a) (II) (ii).

11. The petition had also to be affixed with a court fee stamp of Rs 2/-. That was also not done.

12. The election petition Ext. P1 did not therefore conform to the requirements of Rule 67 (7) (a) (II) (ii) and the note appended thereto. It was not therefore properly filed.

13. Does this reader the petition invalid in law? That is the question. The rule in question is one pertaining to procedure. Procedural rules are not ordinarily mandatory. Whether a particular provision is mandatory or directory has to be construed with reference to its scheme and object (Montreal Street Railway Co. v. Normandin 1917 AC 170).

14. It has been the settled law that formalities relating to election petitions have to be complied with strictly, and that any deviation therefrom will prove fatal to the very maintainability of the petition itself. This is because the right to challenge an election is not a common law right, but a special, right which has to be specifically conferred by statute and therefore, the terms of the statute conferring the right have to be complied with before the petition Can be maintained and entertained. See Charan Lai Sahu v. Nandkishore Bhatt, AIR 1973 SC 2461 Public interest requires an expeditious culmination of the election process. (Satya Narain Vs. Dhuja Ram and Others,). Rule 154 (3) provides only for a short period of thirty days for the filing of an election petition regarding the State Union. Expeditious finality to the election process is thus sought to be achieved by the fixation of such a short period of time for raising the dispute. The delay, if any, in the disposal of an election petition should be minimal, once it is filed. It is an equally important facet of the election law that frivolous challenges to elections are discouraged and discountenanced. The process by which the verdict of the electorate has been given is a sacrosanct one, liable to

be honoured and not lightly to be set at naught.

15. In the light of this scheme and object of the provisions in Rule 154, I have no hesitation in holding that the conditions prescribed thereby read with rule 67 (7) regarding payment of fee for deciding the dispute and the court fee are mandatory. Any payment of the deficit fee or court fee has got to be done within the period of thirty days fixed by rule 154(3) for filing such application. Any payment made outside the period has to be treated as insufficient in law to validate the application, which is otherwise invalid.

16. In this view of the matter, Government was justified in holding that the institution fee of Rs. 50/- paid 6n Ext. P1 Was sufficient. A fee of Rs. 500/-ought to have been paid. The court fee of Rs. 2/- was also not paid within the period of thirty days from the date on which the result of the election was announced, namely February 6, 1988. Government erred in holding that the payment of the fee could be ensured at any time before the disposal of the election petition. Government does not have any such power to extend the period for paying the fee and court fee. Unless the full fee and the court fee are paid within the time prescribed, the election petition has to fall for non-compliance with the mandatory requirement of the rules.

17. There is one other preliminary point taken, which also, according to me, is fatal to the election petition. It is that a copy of the order declaring the election was not filed along with the election petition. This declaration forms the basis of the petition, and rule 67(1) requires all annexures to be produced along with the petition. When the very basis of the election petition is not produced, along with it as required, despite the mandate contained in sub-rule (1) of rule 67, I am afraid the petition has to fail for non-compliance with this mandatory requirement.

18. The preliminary objections raised by the petitioners should have found acceptance with government. The order Ext. P5 is invalid in law as one passed without taking note of the inherent infirmities in the election petition, which vitiated it and rendered it not maintainable. I therefore, quash Ext. P5, Since the petition is bad for non-compliance with mandatory statutory requirements, the election petition Ext. P1 will stand dismissed. I must mention that the election petition itself was filed on a highly technical plea, that the hand which drew the lots was not that of the returning officer, but of a person, agreed upon by all the contesting candidates. It is not in dispute that none of the candidates had any objection to the procedure adopted. They acquiesced in it and it was therefore, that the returning officer, who wanted to be very fair to the candidates, chose the hand of the watchman to draw the lots instead of doing it himself. If such a technicality could be urged by the 4th respondent in support of the election petition, I do not have any hesitation to hold that the election petition without complying with the statutory provisions with more substantial features is invalid in law.

The original petition is allowed.