(1987) 10 KL CK 0016

In the High Court Of Kerala

Case No : W.A. No. 659 of 1987

Mohammad Basheer APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 28-10-1987

Acts Referred:

Citation : (1987) KLJ 1346

Hon'ble Judges : V.S. Malimath, C.J;V. Bhaskaran Nambiar, J

Bench : Division Bench

Advocate : K.K. Krishna Pillai, for the Appellant; Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Bhaskaran Nambiar, J.—Where the Managing Committee of a Co-operative Society is elected in April 1985, for a term of three years, does the term expire in 1987 or in 1988? A learned Single Judge has held that the term expires in 1987 and not in 1988. Hence this appeal.

2. The Appellant is the President of the Managing Committee of Mannancherry Service Co-operative Bank, a society governed by the provisions of the Kerala Co-operative Societies Act, the rules and its own bye-laws. The Managing Committee was elected to office on the 24th of April 1985. Under the bye-laws, the term of the committee was for three years from the date of election. The Appellant believed that this committee can continue in office till 1988. But the department seemed to think otherwise and apprehending that an administrator would be appointed displacing the committee on the ground that the term of office of the committee has expired and no new committee has been constituted, the Appellant filed O.P. No. 5066 of 1987 on 24th June, 1987 for the issue of a writ of prohibition or any other appropriate writ, order or direction directing the authorities not to terminate the term of the managing committee of the society till 21st April, 1988 and for appropriate relief. A learned Single Judge of this Court by his judgment dated 4th August, 1987, held that the first year of the

committee elected for a three year term on April, 1985 expired two months later in June 1985, the second year in June 1986 and the third year in June, 1987. The learned Judge followed his own reasoning in an earlier decision in Vadakkekara S. Co-op. Bank v. Jt. Registrar 1987 (2) KLT 391. In that decision the learned Judge dissented from his earlier view in Koshi Mathew v. Jt. Registrar of Co-operative Societies 1987 (2) KLT 179. In this view, it was held that there was no justification to restrain the authorities from appointing an administrator. If the learned Judge was wrong in his interpretation of the relevant bye-laws and the rules, the Appellant is entitled to succeed and he can continue in office till 1988. We shall proceed to read and understand the relevant bye-laws and the rules and refer to the decisions of this Court a little later.

3. u/s 28 of the Act, the general body of a society shall constitute a committee in accordance with the bye-laws and entrust the management of the affairs of the society to such committee.

4. The relevant bye-laws of the society, read thus:

33. Elected members of the Board of Directors will be in office continuously for three year.

35. The term of office of the Board of Directors will be for three years from the date of election. The new Board of Directors is to be elected in advance to assume charge of office as and when the term of office expires.

5. Rule 39(1) providing for election and expiry of the term of the members of the committee reads thus:

The byelaws of every society shall provide that the term of its committee shall expire on the same date as may be specified. All the members of the committee (including those elected in casual vacancies) whether representing societies or individuals shall vacate their office on the date specified irrespective of the date on which they were elected as members of the committee. If no such date is specified in the bye-laws the date of expiry shall be 30th of June of that year in which the term expires.

6. Let us therefore first understand the content of Rule 39. Rule 39(1) does not fix the term of office of the elected members and thus does not prescribe the period during which the elected members should perform their functions, hold their office and enjoy its privileges. The term of office is fixed under the bye-laws and not under the Act or the Rules. Rule 39(1) however, only deals with the date of expiry of the term of a committee elected to office and makes provision for a uniform principle to be followed by all the societies governed by the same Act. This rule also intends that the date of expiry of the term shall remain constant and cannot vary from time to time dependent on the date of election or on any other eventuality. The bye-laws may fix that the term of office may expire in any year; or it may also fix the date of expiry dependent on varying factors like the date of election, the date of assumption of office etc. It may also fix an

ascertained and fixed date of expiry. When the bye-laws fixes that constant date, the same date for every year, Rule 39 insists that the term expires on that date and the elected members shall vacate their office on that date without reference to the date on which they were elected to their office, The specification of the same date of expiry is an advance information of the exact expiry of the term and Rule 39, therefore, recognises this principle of maintaining uniformity and certainty in the date of expiry of the term. When, however, this date, a date certain and remaining constant is not specified in the bye-laws, Rule 39(1) provides that "the date of expiry shall be the 30th of June of that year in which the term expires". This interpretation of the rule, as we understand, does not do violence to the language of the rule, and at the same time secures the discipline of uniformity which the rule making authority seeks to impose.

7. So understood, the facts of the case and the conclusion to be arrived at pose no problem. The election in this case was held on the 24th of April, 1985. A three year term was fixed. The bye-laws provided that the term of office shall be three years from the date of election. It also stated that the election has to be held in advance before the expiry of the term and the new elected body shall assume charge of office as and when the term of office expires. Thus, the date of election cannot be the commencement of the term of the elected body, for, in that case, the term of the second elected committee will commence from a date when the previous committee was in office. On a harmonious construction of bye-law 35, it has to be held that under the bye-laws of this society, the term of three years shall be from the date of assumption of office. This date of election and the date of assumption may vary from year to year. It does not remain constant. Therefore this bye-law does not provide for a same date of expiry of the term of office. Thus Rule 39(1) operates and the term of office has to expire on 30th June of the year in which the term expires. The term in this case expires in the year 1988. Therefore the date of expiry of the term in that year, in 1988, is 30th June. This is the simple straight forward reasoning and conclusion based on the interpretation of Rule 39. It is, therefore, difficult to agree with the learned judge that the term of office expires in 1987 within 2 years of the election in 1985, even though the term is for three years.

8. Let us, however, understand the further reasoning of the learned Judge for his conclusion that the 30th of June of 1987 and not the 30th of June of 1988 is the date of expiry of the term. The learned Judge relies on the definition of the ''year'' in the Act which reads thus:

''Year'' means the period commencing on the first day of July of any year and ending with 30th of June of the succeeding year or in the case of any registered society or class of registered societies, the accounts of which are made upto any other date with the previous sanction of the Registrar, the year ending with such date.

Based on this definition clause, the year in Rule 39 is taken to be a co-operative year commencing on the first day of July every year and ending with 30th of

June of the succeeding year. Thus, it is held that the commencement of the term of office fell within the co-operative year 1984-85 as the election was held in April 1985. The first co-operative year, the first term of office, accordingly ended soon thereafter on the 30th June 1985 itself with the end of the co-operative year. The second year commenced in 1985 July, continued till 30th June 1986 and the third year ended on the 30th June, 1987. Even though there is no such detailed reasoning in the judgment under appeal, as the learned Judge followed his own decision in 1987 (2) KLT 391, all these reasons have been elaborately dealt with, in that reported decision.

9. With respect to the learned Judge, we cannot agree that the definition of the ''year'' as co-operative year has to be imported to interpret Rule 39, because the context does not require a restricted meaning being assigned to the word "year" and limiting it to a co-operative year. As stated in Black''s Dictionary, "when the period of a year is named, a calendar year is generally intended, but the subject-matter or context of a statute or contract in which the term is found or to which it relates may alter its meaning". Rule 39(1) is intended to fix the date of expiry as the 30th of June of the year in which the term expires in all cases where the bye-law has not fixed the same date of expiry of the term. The year when the term expires has thus to be gathered from the bye-laws. The bye-laws fix the term as three years. When the three years end, it is the 30th June of that year that matters. To invoke the definition clause and to apply an artificial definition for ascertaining the year when the term expires is to perpetuate patent injustice; defeat the objects intended to be achieved under the rule to substantially deny an elected body of its full term fixed under the bye-laws. The language of Rule 39 need not be so strained and the definition of the "year" in the Act imported out of context, to whittle down the effect of Rule 39(1) by unnecessary reducing the term of office, when none was intended or warranted under this rule. We are, therefore, with respect, not in agreement with the learned Judge in limiting the scope of Rule 39(1) with reference to the co-operative year.

10. Interpreting Rule 39(1) and particularly the last sentence therein, the learned Judge in 1987 (2) KLT 391 states thus:

Third part of Rule 39(1) refers to the date of expiry as 30th June. It is therefore clear that the year referred to is co-operative year which expires on the 30th of June. The term of office has to be reckoned on this basis. So also the commencement of the term and the end of the term. If the commencement of the term falls in a particular co-operative year, that year shall be regarded as first year of the term and on that basis the last year of the term has to be reckoned and the date of expiry shall be 30th of June of such last year.

11. With respect to the learned Judge, we are not inclined to agree on this aspect as well for yet another reason. The learned Judge seems to take the view that in interpreting Rule 39(1), the commencement of the term and the end of the term have both to be reckoned. Rule 39(1) does not deal with the commencement of the term which is left to the bye-laws. It does not deal with the year in which the

term expires. That also is provided in the bye-laws. Therefore, the date of commencement of the term is not to be reckoned with reference to Rule 39(1) but with reference to the relevant bye-law. When once the year in which the term expires under the bye-law is known, Rule 39(1) operates to decide about the date of expiry in that year when the term expires, and Rule 39(1) does not postulate the determination of the commencement of the term of office according to that rule. It provides only for the fixation of the date of expiry of the term, with reference to the year of expiry of the term. The year of expiry being known under the bye-laws, the rule fixes the day and the month of that year as the date of expiry.

12. For the reasons stated above, we do not, with respect, approve the decision of the learned Single Judge reported in 1987 (2) KLT 391. The learned Judge has dissented from his earlier view in 1987 (2) KLT 179. It is true that this judgment did not give stress to the expression "same date" occurring in Rule 39(1). This decision also proceeds on the wrong footing that Rule 39 contemplates the fixation of the date for commencement of the term. We, therefore, overrule both the decisions in 1987 (2) KLT 179 and 1987 (2) KLT 391.

13. There is yet another decision of the same learned Judge in Sadanandan v. Joint Registrar 1985 KLT 136. It is not necessary to consider elaborately all the reasoning contained in the judgment. It is sufficient to note the conclusion reached thus:

The constitution of the committee as stated in Sub-section (1) of Section 28 of the Act is to be in accordance with the bye-laws. The expiry of the term of office also must be laid down in the bye-laws as made clear in Rule 39 of the Rules. If the exact date is not specified in the bye-laws, the date of expiry shall be 30th of June of that year in which the term expires. The statutory provisions are centred round the provisions of the bye-laws and not detract from the same. The bye-laws clearly state that the life of a committee shall be three years from date of election. That would be 30th of December, 1984. But the bye-laws do not specify the date on which the term shall expire. Therefore by virtue of Rule 39 the date of expiry shall be 30th June of the year in which the term expires, viz., 1984. That would show that the term of the committee expired on 30th June 1984.

This conclusion is in accord with our reasoning as well.

14. It only remains to consider the other reported and unreported decisions of this Court which the learned Judge has relied.

15. One of the earliest reported decisions is in Hydrose v. Dy. Registrar of Co-operative Societies 1971 K.T.L. 753. It was held thus:

The word ''year'' has been defined in Section 2(u) of the Act as meaning ''the period commencing on the first day of July of any year and ending on the 30th June of the succeeding year or in the case of any registered Society or class of registered societies, the accounts of which are to be made up to any other date with the previous sanction of the Registrar, the year ending with such date.'' In the present case the first part of the definition alone is applicable and hence in respect of the Co-operative Society with which we are concerned the year is the period commencing on 1st July and ending on the succeeding 30th day June. Since the Board of Directors took office on 31st January 1969, their term of office was therefore to expire on 30th June 1970 as rightly held by the Deputy Registrar and the Tribunal. The Petitioner''s contention that his term of office was to enure till 31st January 1971 cannot therefore be accepted.

We have already held that the definition of the ''year'' in the Act has no application to the interpretation of Rule 39(1). In this view, we cannot agree with the aforesaid reasoning as well. 1971 KLT 753 is thus overruled in this respect.

16. In the unreported decision of a Division Bench in O.P. No. 2523 of 1967, the bye-laws extracted in that judgment showed thus:

20. For the period of office of the members of the Board, the year shall begin from first July and end with 30th June irrespective of the date of election or assumption of office.

17. It is, therefore, clear that the bye-laws itself provided that the term of the committee shall commence from the beginning of the co-operative year and end with the cooperative year. It was this bye-law that was interpreted in that decision and the application of Rule 39(1) did not arise for consideration. This judgment cannot be of any help in ascertaining the scope and applicability of Rule 39(1).

18. There is yet another unreported decision of a learned Single Judge in O.P. No. 1349/1960 and O.P. No. 767/1961. In that judgment also, the learned Judge was interpreting bye-law 17 of that society which stated "for the period of office of the members of the board, the year shall begin from 1st July and end with 30th June". This Court was only interpreting the relevant bye-law and not Rule 39(1). It is sufficient to note that it was observed in that judgment thus:

Though the bye-law makes no mention of the co-operative year in terms and refers to the ''year'', the bye-law has furnished a definition of the term ''year'' in relation to the period of office, as that which commences on July 1, and ends with June 30. This is in effect a cooperative year under the Rules.

19. This decision also did not interpret Rule 39 and cannot support the reasoning and conclusion of the learned Single Judge.

20. In the result, we hold that the Appellant and his committee, having been elected to office on 24th April 1985 are entitled to continue till 30th of June of 1988 and the learned Judge was wrong when it was held that the term expired on 30th June 1987. No administrator could have displaced the elected committee during the currency of the term and no election could have been held before the term expired. The decision of the learned Single Judge that the authorities were competent to appoint an administrator in 1987, before the term expired cannot

also be sustained when the administrator was attempted to be inducted u/s 33 on the only ground that the term has expired.

21. The Government Pleader brought to our notice that pursuant to the judgment of the learned Single Judge, an administrator was appointed and an election was held and the new office bearers have assumed office. This election and assumption of office are only in pursuance of the judgment challenged in this appeal and pending this appeal. Now that we have held that the Appellant and his managing committee is entitled to continue in office till 30th June 1988, no administrator could have been appointed u/s 33 of the Act and no election could have taken place in 1987. We, therefore, direct that the Appellant and the committee elected on 24th April 1985, to the Managing Committee of the Mannancherry Service Co-operative Bank can continue in office till 30th June 1988 and shall forthwith take charge from the administrator or any elected body inducted in office in the meanwhile, which of course, shall also cease to function forthwith.

22. The judgment of the learned Single Judge is set aside, the appeal is allowed and the Original Petition is disposed of in accordance with the aforesaid directions. No costs.

