

(1970) 04 KL CK 0001
In the High Court Of Kerala
Case No : O.P. No. 4339 of 1969

M.P. Pavithran

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 08-04-1970

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 109, 109(2)
Kerala Co-operative Societies Rules, 1969 — Rule 37(4)

Citation : (1970) KLJ 711

Hon'ble Judges : V. Balakrishna Eradi, J

Bench : Single Bench

Advocate : K. Velayudhan Nair, N.R.K. Nair, K.J. Joseph and V.S. Moothath, for the Appellant; K. Chandrasekharan and T. Chandrasekhara Menon for Respondents 2 and 3 and C.M. Kuruvilla for Respondent 6 and 7, for the Respondent

Final Decision : Allowed

Judgement

V. Balakrishna Eradi, J.—The question raised in this writ petition relates to the validity of the Order Ex. P-1 dated 16-10-1969 passed by the Government of Kerala whereunder respondents Nos. 4 to 7 have been nominated to the Board of Directors of the Alleppey Central Coir Marketing Co-operative Society Ltd. (respondent No. 3) and exemption is granted to them from the restrictions imposed as per Section 20 (b) and Section 31(3) of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the Act) in voting for election of office-bearers of the Society and in taking part in the discussion of any no-confidence motion or voting confidence on such motion. The petitioner is a member of the Co-operative Society mentioned above and he is one of the persons elected to the Board of Directors at the election held on 4-10-1969. Respondents 4 and 5 have been nominated as members of the Board of Directors of the Society by the impugned order in exercise of the powers vested in Government under Clause 19 of the bye-laws of the said Society. Ex. P-1 also approves the proposal of the Special Officer (Coir) to appoint respondents 6 and

7 as members of the Board of Directors of the Society. The petitioner contends that the action taken by the Government in nominating respondents 4 and 5 as members of the Board is not bona fide and has been motivated by political considerations unrelated to the object of safeguarding or preserving the interests of the Society and is hence void. With respect to the appointment made by the Special Officer of respondents 6 and 7 as members of the Board of Directors of the Society the case put forward by the petitioner is that the action so taken by the Special Officer and its purported approval by the Government under Ex. P-1 are ultra vires and devoid of jurisdiction since there is nothing in the Act which confers such powers on the Special Officer who is the Registrar of the Society.

2. The petitioner contends that Rule 37(4) of the Kerala Co-operative Societies Rules, 1969 which empowers the Registrar to appoint, if he considers it necessary, two persons to serve on the committee of any Society in order to represent appropriate interests, is ultra vires and void since it is beyond the scope of the rulemaking power conferred on the State Government by Section 109 of the Act. It is urged by the petitioner that the provision contained in the impugned rule is wholly opposed to the scheme of the Act and cannot therefore be legitimately regarded as a rule framed to carry out the purposes of the Act. It is also pointed out that subsection (2) of Section 109 contains a detailed enumeration of the various matters with respect to which the Government have been authorised to make rules and that the impugned rule will not be covered by any of the clauses (1) to (XXXVIII) of the said sub-section. The last point raised by the petitioner is that in any event Government have acted completely without jurisdiction in exempting respondents 4 to 7 from the restrictions imposed by Section 20(b) and Section 31(3) of the Act in the matter of voting for the election of office-bearers and taking part in the discussion of any no-confidence motion or voting on such motion. In support of this contention the petitioner urges that section 101 of the Act which has been relied on by the Government as a source of power for granting the impugned exemption, does not empower the Government to exempt any particular individuals from the restriction imposed by a part of a Section but only warrants exemption being granted to any Society or class of Societies from any of the provisions of the Act.

3. I shall first deal with the petitioner's contention regarding the validity of the action taken by the Government in nominating respondents 4 and 5 to the Board of Directors of the Society. Reference was made by the petitioner in this connection to Section 31(1) of the Act which empowers Government to nominate not more than three persons to the committee of a Society in cases where the Government have subscribed to the share capital of a Society or assisted indirectly in the formation or augmentation of the share capital, or guaranteed the repayment of principal and interest on debentures issued by it or on loans and advances made to it. Special stress was made by the petitioner's counsel on the provision contained in sub-section (3) of this Section wherein it is enjoined that a person so nominated to the committee shall not take part in the discussion of any no-confidence motion or vote on such motion. The 3rd respondent Society

admittedly falls within the scope of the Section since the Government have advanced large amounts to it as working capital. Hence, it was open to the Government to exercise its powers u/s 31(1) and make nominations to the Board of Directors of the Society, and in the event of such action being taken the restriction contained in sub-section (3) would ordinarily operate. In the present case, however, it is clear from Ex. P-1 itself that the nomination of respondents 4 and 5 has not been made by Government by exercising the power conferred by Section 31(1) but that on the other hand it was done only in pursuance of the power vested in them by clause 19 of the bye-laws of the Society.

4. A copy of the printed by-laws of the Society has been produced and marked in this case as Ex. P-2. Clause 19 of the bye-laws states that the administration of the Society shall, subject to the direction of the General Body, vest in a Board of Directors and it proceeds to lay down the principles governing the constitution and strength of the Board. It prescribes that the Board shall consist of eleven members of whom two persons may be nominated by Government; of the remaining nine, eight places are to be filled in by election from amongst the member Societies by the General Body of the Central Society and one place is set apart for the Registrar or his nominee who shall be an ex-officio member. The President of the Board is to be elected by all the members of the Board. There is no provision in the bye-laws making any differentiation between the elected members and the nominated and ex-officio members in the matter of their right of participating in the election of office bearers and in the discussion of any no-confidence motion or voting on such motion. The power of nomination conferred on the State Government by bye-law 19 is an independent and self-contained power totally unconnected with the limited power conferred by Section 31(1) or the Act.

5. Although the petitioner has put forward a contention that the action taken by the Government in nominating respondents Nos.4 and 5 to the Board of the Society was motivated by political considerations and was not bonafide there is nothing whatever in the records produced before me which would substantiate this allegation. In the counter-affidavit filed on behalf of the 1st respondent by the Deputy Secretary of the Government, Industries Department it has been averred that the nominations of respondents 4 and 5 came to be made only because the Government honestly considered that both these nominees being persons with considerable experience in the working of Coir Co-operative Societies it would be in the best interests of the Society, if they are nominated to its Board of Directors and that in making such nominations Government had not been influenced by any political considerations. I have no hesitation to accept as true these statements contained in the counter-affidavit. Hence it must follow that there is no illegality whatever in the action taken by the Government in nominating respondents 4 and 5 to the Board of Directors of the Society in the exercise of the power conferred by Clause 19 of the bye-laws of the Society and the petitioner's challenge against Ext. P-1 in so far as it deals with the nomination of these two persons has only to be rejected. I do so.

6. In defence to the attack made by the petitioner against the appointment of respondents 5 and 6 as members of the Board the stand taken in the counter-affidavit is that the Special Officer (Coir) who is the Registrar for this Society has made the appointment in exercise of the power conferred on him by Rule 37(4) of the Kerala Co-operative Societies Rules, 1969 in order to secure representation of appropriate interests. It has, therefore, become necessary to consider the question of the validity of the said Rule which has been challenged by the petitioner as ultra vires. Rule 37(4) is in the following terms:

In order to represent appropriate interests the Registrar shall have power to appoint if he thinks it necessary, two persons to serve on the committee of any society. The committee members so appointed shall hold office till the next election of the committee.

I may also extract the relevant portion of Section 109 of the Act which confers on Government the power to make Rules:

109. Power to make rules: (1) The Government may, for the whole or any part of the State and for any class of societies, after previous publication, by notification in Gazette make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

* * *

(xxxviii) any other matter required or allowed by this Act to be prescribed.

It is not contended on behalf of the State Government that the subject-matter of Rule 17(4) comes within any of the various matters enumerated in detail in clauses (i) to (xxxvii) of Section 109(2); nor will it be covered by clause (xxxviii) since the conferment of power on the Registrar to appoint persons to the Board of Directors is not a matter specifically required or allowed by the Act to be prescribed. Hence, the source of power for the framing of the rule has to be searched for only in sub-section (1) of Section 109 which authorises the making of rules to carry out the purposes of the Act.

7. The real question that falls to be considered, therefore, is whether the making of a provision as contained in the impugned rule empowering the Registrar to appoint two persons as members of the Board of Directors of the Society can be regarded as a measure for carrying out the purposes of the Act. The purpose of an enactment has to be gathered from its preamble and from its general scheme as deducible from a reading of all its provisions as a whole. From the preamble to the Act it is seen that it has been enacted with a view to providing for the orderly development of the co-operative movement in accordance with the relevant directive principles of State policy enunciated in the Constitution of India. An examination of the various provisions of the Act discloses that its scheme is to permit the Societies registered under it to function as bodies corporate having perpetual succession endowed with power to hold property, enter into contracts,

institute and defend suits and to all things necessary for the purpose for which they have been constituted subject only to such restrictions and controls as have been specifically imposed by the Act with a view to ensure by timely supervision their proper administration. Save in regard to matters in respect of which express provision is contained in the Act making inroads into the ordinary powers of the Society as body corporate, the policy of the Act appears to me to be to leave the Societies free to conduct their own internal affairs including the determination of the composition and the selection of the Board of Directors or committee just as any other body corporate is entitled in law to do.

8. It is also of significance that the legislature has thought it fit to make a special provision in the Act (Section 31) investing the Government with the power to nominate not more than three persons to the committee of a Society only in respect of Societies where the Government have subscribed to the share capital or have assisted indirectly in the formation or augmentation of the share capital or have guaranteed the repayment of principal and interest due on debentures issued by the Society or on loans and advances made to it. In my opinion, this furnishes a clear indication that the legislative policy underlying the enactment is that there should be no interference by the authorities in the matter of the constitution of the committee of the Society except where governmental interests are directly involved by reason of the existence of any one of the factors mentioned in clauses (a) to (d) of Section 31(1) of the Act. Even in cases governed by Section 31(1) where a nomination is permitted, it has been specifically provided in sub-section (3) of that Section that the persons nominated to the committee under sub-section (1) shall not take part in the discussion of any no-confidence motion, or vote on any such motion thereby making it clear that the intention of the legislature was that, as far as possible, the choice of the persons who should be in charge of the administration of a Society's affairs should be left in the hands of its own members. Neither the learned Government Pleader appearing on behalf of the State nor the counsel appearing for the other respondents has been able to point out any provision in the Act which would tend to show that it was part of the purpose or policy of the Act to confer a general power on the Registrar to compulsorily induct persons into the Board of Directors of the Society for the purpose of ensuring that appropriate interests are represented as has been provided for by the impugned Rule. On the other hand, it is specifically stated in Section 27 of the Act that the final authority of the Society shall vest in the General Body of the members subject to the provisions of the Act, the Rules and the bye-laws. Section 38 provides that the General Body of a Society shall constitute a committee in accordance with the bye-laws and entrust the management of the Society to such committee and the second proviso to this Section which is very significant reads thus:

Provided further that where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the committee for such period as may be specified in the bye-laws.

Section 29 lays down that a General Body meeting of a Society shall be held once in a year for the purpose of election, if any, in the prescribed manner of the members of the committee other than nominated members. The only provisions in the Act relating to nomination are those contained in the second proviso to Section 28 and in Section 31(1) which have been already referred to by me.

9. A combined reading of Section 27 to 29 and 31 leaves no doubt in my mind that the policy and purpose of the Act is to leave to the General Body of the Society the freedom to choose the committee in accordance with the bye-laws and that excepting for the nominations that may be made by the Government or the Registrar in pursuance of any powers expressly conferred by the bye-laws or the nominations that may be made by the Government under sub-section (1) of Section 31, no interference by the Government or the Registrar with the constitution of the committee of the society is warranted under the Act.

10. Rule 37(4) confers power on the Registrar to appoint two persons to serve on the committee of any Society if he thinks it necessary to do so in order to represent appropriate interests. Unlike in Section 31, there is no restriction whatever in Rule 37(4) that the power of appointment conferred by it should be exercised only in respect of Societies in whose working Government have a special interest by reason of financial involvement and the members appointed by the Registrar under this rule are not subject to any restriction regarding their right to participate in the election of office-bearers or in the discussion or voting on a no-confidence motion.

11. The subject of conferring on the Government or any subordinate authority specified by it in that behalf the power to nominate persons as members of the committee of a Society is a matter which has received due consideration at the hands of the legislature while enacting the statute and from the provisions incorporated in Section 28 (second proviso) and Section 31(1) it is legitimate to infer that the legislature decided that except in cases where the bye-laws of the Society provide that the Government or the Registrar may nominate all or any other members of the committee, the power of nomination of Directors should be given to the authorities only in respect of Societies in whose working Government have a special interest by reason of the Government having subscribed to its share capital or guaranteed the repayment of principal and interest due by it on debentures or loans etc., even in such cases, the legislature has taken special care to provide that not more than three person or one-third of the total number of members of the committee of the Society whichever is less shall be so nominated and that such nominated members shall not take part in the discussion of any no-confidence motion or voting on such motion.

12. If the legislature has expressly dealt with a particular act and prescribed the conditions under which it will be lawful and those under which it will be unlawful, the subordinate authority cannot, under the pretence of making a rule, alter the law as so declared by the legislature. It is a recognised principle of law that the rules made in pursuance of a delegated authority must be consistent with the

statute under which they came to be made. The authority conferred on the delegate should be exercised only in such manner as to achieve the end that the provisions of the statute may be the better carried into effect and not with the view of neutralising or contradicting those provisions. It has to be remembered that in purported exercise of the power to make rules the delegate is not entitled to enlarge the scope of the statutory provisions contained in the Act since that would amount to usurpation of the function of substantive legislation which the legislature alone is competent to perform.

13. As stated already, Rule 37(4) does not provide for any of the matters enumerated in sub-section (2) of Section 109 of the Act and hence it can be regarded as having been made by the Government only in exercise of the power conferred by sub-section (1) of that Section. Since Section 109(1) empowers the Government to make rules only "to carry out the purposes of the Act" the rules which are made in exercise of this power cannot travel beyond the four corners of the Act itself.

14. In the light of the opinion I have already expressed above regarding the policy and intendment of the legislature as disclosed by the preamble and the provisions of the Act taken as a whole, the conclusion appears to me to be inescapable that the provision contained in Rule 37(4) is not consistent with the object and purpose of the Act and that the making of such a rule is not within the scope of the authority conferred by Section 109(1) of the Act which empowers the State Government only to make rules to carry out the purposes of the Act. I therefore hold that Rule 37(4) is ultra vires and void.

15. Since the appointment made by the Registrar of respondents 6 and 7 as members of the Director Board of the Society has been sought to be supported by the respondents only on the strength of Rule 37(4) which has been held by me to be ultra vires it has necessarily to follow that the action so taken by the Registrar and its approval by the State Government under Ex. P-1 are without jurisdiction and hence illegal and void. In this view it is unnecessary to consider whether Ex-P-1 in so far as it purports to approve the appointment of these two respondents to the Board of Directors of the Society and to grant them exemption from the restrictions imposed by Sections 20(b) and 31(3) of the Act will stand quashed.

16. The only point that remains to be considered is petitioner's attack against the grant of exemption by the Government to respondents 4 and 5 from the operation of the restrictive provisions contained in Section 20(b) and Section 31(3). It has already been noticed that the nomination of these respondents has been made by the Government not in exercise of the power conferred u/s 31(1) of the Act but pursuant to the provision contained in clause 19 of the bye-Laws of the Society which states that out of the eleven members who are to constitute the Board of Directors two persons are to be nominated by the Government. The restrictive provisions contained in Section 20(b) and 31(3) of the Act have no application at all in the case of persons who are nominated by Govt. in the

exercise of the power conferred by the bye-laws of the Society and hence there was really no necessity at all for the Government to grant any exemption to respondents Nos.4 and 5 by invoking its powers u/s 101 of the Act. Persons who are nominated by Government as members of the Board of Directors of the Society under clause 19 of its bye-laws stand on the same footing as the elected members of the Board with equal rights in respect of all matters including taking part in the discussion of any no-confidence motion or voting on such motion. The grant of exemption by the Government was thus a mere superfluity in so far as these respondents are concerned and it has resulted in no legal injury whatever to the petitioner. Hence there is no merit in the petitioner's challenge against that portion of Ex. P-1 which deals with the above matter. In the result, the order Ex. P-1 in so far as it embodies the approval by the Government of the proposal of the special Officer (Coir) for the appointment of respondents 6 and 7 as members of the Board of Directors of the 3rd respondent Society is quashed and it is declared that the said appointment is illegal and void. The original petition is allowed to the above extent. I direct the parties to bear their respective costs.