

(2022) 11 KL CK 0179
In the High Court Of Kerala
Case No : Writ Petition. 17721 Of 2022

Mr.George Kutty C

APPELLANT

Vs

Deputy Director, Dairy Development Department Kollam
District, Mundakkal, Kollam, Pin 691001

RESPONDENT

Date of Decision : 15-11-2022

Acts Referred:

Kerala Co operative Societies Act, 1969 — Section 2(l)

Kerala Cooperative Societies Rules, 1969 — Rule 16, 16(1)(c), 16(2)(b), 16(3), 16(4)

Citation : (2022) 11 KL CK 0179

Hon'ble Judges : T.R.Ravi, J

Bench : Single Bench

Advocate : K.S.Mohamed Hashim, Jaffer Khan, S.Sreekumar

Final Decision : Allowed

Judgement

T.R. Ravi, J.

1. The writ petition has been filed praying for quashing Ext.P1 notice and Ext.P5 order, whereby the petitioner has been removed from the membership of the 3rd respondent Society. The petitioner became a member of the Society in the year 2019. From 12.10.2021 the Society has been governed by an Administrator. According to the petitioner, there are only 31 active members in the Society in terms of the byelaws. The first respondent issued Ext.P1 notice on 10.12.2021, calling upon the petitioner to show cause why he should not be removed from the membership. It is stated that similar notices were issued to 24 other persons mentioned in Ext.P7. Ext.P4 is the explanation submitted by the petitioner to Ext.P1 notice. By Ext.P5 order dated 15.3.2022, the first respondent removed the petitioner from the membership by invoking Rule 16 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as the Rules), on the complaint submitted by the Administrator of the Society. The first respondent has also removed 24 others, whose names have been mentioned in Ext.P7. The petitioner contends that Ext.P1 and Ext.P5 are in defiance of the interim order

dated 6.12.2021 and the judgment dated 15.3.2022 issued in W.P.(C)No.24563 of 2021. It is contended that since this Court had directed the Administrator not to take any policy decision and further directed to conduct the election to the Managing Committee, orders removing persons from the membership should not have been issued. It is submitted that the intention is to avoid election.

2. The first respondent has filed a counter affidavit. It is submitted that Section 2(I) of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the Act) defines a "member" as a person who has been admitted to membership in accordance with the Act, Rules and the byelaws. Section 16 of the Act provides for the eligibility of a member. One of the mandates is that only persons who reside within the area of operation of the Society shall be admitted as a member of the Society. It is submitted that under Rule 16(1)(c) a person intended to become a member of a Society has to satisfy all the conditions laid down in the Act, Rules, and byelaws. As per Rule 16 (2)(b), no person shall be eligible to become a member, if he is not a resident or does not own or possess land within the area of operation of the Society. Clause 3.1(1) of the byelaws of the Society also says that membership shall only be to persons who are residing within the area of operation of the Society. The relevant pages of the byelaws have been produced as an exhibit along with the counter affidavit. It is stated that the second respondent, after taking note of a complaint regarding the inclusion of ineligible members in the Society, had conducted an enquiry and submitted the report before the first respondent for further action. The report is produced along with the counter affidavit. As per the report, 34 persons had obtained membership in the Society in violation of the Act, Rules, and byelaws. It is stated in the report that the said persons are not residing within the jurisdiction of the Society. It is also submitted that some of the members among the said 34 persons are holding dual membership. The counter affidavit of the first respondent refers to the judgment in *Kunjiraman Nair vs. Joint Registrar* [2002 KHC 393], wherein it is held by this Court that a person becomes ineligible for both the reasons of dual membership either at the time of admission in the Society or subsequent acquisition of membership in a Society. Reference is also made to the decision in *Gopinathan Nair v. Joint Registrar* [2002 KHC 515], to submit that the Registrar as well as the Administrator/ Administrative Committee have the necessary power to remove a person from membership. It is further stated that notice was issued to the 34 members asking them to prove their eligibility to continue as members. Ext.R1(e) produced along with the counter affidavit is the reply submitted by the petitioner. Ext.R1(f) is the information received from the Elamkulam-Nadakkal Ksheerolpadaka Cooperative Society stating that 3 persons who have membership in the 3rd respondent Society are also members of the said Society. Ext.R1(g) is the information received from the Varinjam Milk Producers' Co-operative Society wherein it is stated that 10 persons including the petitioner in the writ petition are members of the Society. It is seen that the membership of the petitioner is with effect from 11.5.2016. That is to say, the petitioner was a member of the said Society at the time he

was inducted as a member of the 3rd respondent Society. The 3rd respondent has also filed a counter affidavit, in line with the contentions stated in the counter affidavit of the 1st respondent.

3. Heard the counsel for the petitioner, Sri Jaffer Khan, Senior Government Pleader for respondents 1 and 2 and Sri S.Sreekumar (Kollam) on behalf of respondents 3 and 4.

4. The main contention raised by the counsel for the petitioner is that Rule 16(4) of the Rules applies to persons who have become ineligible, subsequent to being admitted as member. Both Exts.P1 and P5 refer only to Rule 16(4). At the same time, the finding is that the petitioner was not eligible for membership even at the time he was inducted as member. It is hence submitted that the respondents could not have taken action under Rule 16(4), but only under Rule 16(3). It is further submitted that in the case of Rule 16(3), it is for the Committee of the Society to remove him from the membership. Admittedly, there is no Committee in office. Nor has the Committee issued any notice to the petitioner or any other person. The counsel for the petitioner submits that the decisions relied on by the 1st respondent cannot apply in the case of the petitioner since the very action is not authorised as per the Rules.

5. I find considerable force in the submission made by the counsel for the petitioner. True, going by the decisions in Kunhiraman Nair (supra) and Gopinathan Nair (supra), there is power available to remove a person from membership, if he was ineligible at the time of becoming a member or subsequently. However, the Rules also lay down the procedure for taking action. In the case on hand, no action is taken by the Committee or the Administrator administering the Society under Rule 16(3), on the ground that the petitioner was ineligible even at the time of being admitted as member. There is no case that the petitioner became ineligible subsequent to obtaining membership in the 3rd respondent Society. The specific allegation in Ext.P1 notice is that the membership was obtained illegally, since the petitioner was not a person residing within the jurisdiction of the Society. There is no case for the respondents that the petitioner subsequent to obtaining membership in the 3rd respondent Society had changed residence or that he had obtained dual membership after becoming a member of the 3rd respondent Society. In such cases, the power necessarily has to be exercised under Rule 16(3) and not under Rule 16(4).

6. For the aforesaid reasons, the writ petition is allowed. Ext.P1 notice and Ext.P5 order, are quashed. This judgment will not in any way affect the right of the respondents to take action to remove the petitioner from the membership if the fact situation warranting action under Rule 16(3) is available. Even though the petitioner has prayed for allowing the other persons mentioned in Ext.P7 also to continue as members, as there is no challenge raised by the said persons, who alone can be considered as the aggrieved persons, the relief cannot be granted in the present writ petition, and the request is rejected.