

(1992) 08 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 7531 and 7981 of 1990

M.S. Paul and Another

APPELLANT

Vs

Alakode Service Co-op. Bank and Others

RESPONDENT

Date of Decision : 14-08-1992

Acts Referred:

Co-operative Societies Rules — Rule 26

Citation : (1992) 2 KLJ 541

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

Bench : Single Bench

Advocate : O.V. Radhakrishnan, for the Appellant; P.V. Narayanan Nambiar, T.S. Rajan, T.P.K. Nambiar, M.K. Damodaron, V.N. Achutha Kurup, Jose J. Mathiakal and T.R. Ramachandran Nair, Govt. Pleader, for the Respondent

Judgement

K.P. Balanarayana Marar, J.—O.P. No. 7531 of 1990 is a petition filed by one M.S. Paul, a member of the first respondent society. Election to the Managing Committee of the society was held on 21-2-1988. At that time the society was under the management of an administrator. Alleging that the administrator had enrolled new members and had included them in the voters list for the ensuing election petitioner filed O.P. No. 9006 of 1987. The Original Petition was disposed of With a direction to take steps for holding the election on the stipulated date. It was also observed that any of the aggrieved members can raise objection before the returning officer regarding enrolment of Ineligible members. Petitioner filed objections before the returning officer which were oven tiled by him. The election was conducted as scheduled on 21-2-1988. The election was challenged before the Assistant Registrar of Co-operative Societies. That arbitration case was dismissed, against which an appeal was preferred before the Co operative Tribunal. The tribunal by its judgment dated 11-7-90 allowed the appeal and found the persons enrolled by the administrator ineligible to vote. The returning officer was directed to hold a fresh election. A petition was filed before the 4th respondent to appoint an administrator u/s 33 of the Societies Act to manage the affairs of the society. Request was also made to direct the returning officer to

conduct the election. Third respondent was appointed as the administrator. It is averred in the petition that he is taking steps to publish the voters list including the persons enrolled by the administrator on 30-11-1987 and 1-12-1987 who were found ineligible by the tribunal's judgment. Hence the original petition seeking to quash Ext. P4 by a writ of certiorari and for issue of a writ of mandamus directing respondents 2, 8 and 9 not to take steps for holding the election in furtherance of Ext. P4 and to conduct election in compliance with Ext. P2 judgment. A direction to third respondent is also sought to publish the voters list showing the names of members who have exercised their franchise at the election conducted on 21-2-1988 excluding the members enrolled by the administrator on 30-11-1987 and 1-12-1987.

2. In the counter affidavit filed by respondents 1 and 2 it is contended that the administrator has all the power of the managing committee and was entitled to enroll new members. Only persons admitted in violation of rule 26 are prevented from exercising the vote or participating in the general body meeting. The returning officer was appointed only on 18-8-1990 and as such persons who have enrolled 60 days before the date of resolution to conduct election are eligible to take part in the election.

3. The third respondent in his counter affidavit stated that he is not the returning officer appointed to conduct the election.

4. The other petition, O.P. No. 7981 of 1990 is filed by another member of the society seeking a writ of certiorari to quash the judgment of the Co - operative Tribunal and a direction to the bank to prepare the voters list in accordance with the law existing at present and to prepare the eligible list of voters as it stood 60 days prior to 21-10-1990, the date fixed for election. Counter affidavit was filed by Sri. M.S. Paul who is the second respondent therein, wherein it is inter alia contended that petitioner is not a member of the society and that he had paid only one rupee as against the share money of Rs. 10,25. The balance share money has not been paid so far. The mere allotment of a membership number is immaterial and inconsequential. Fifteenth respondent has filed a counter affidavit opposing the application and contending that the directions in the judgment of the Co-operative Tribunal had not been complied with.

5. Since both these petitions relate to the election to the managing committee of the same society they were heard jointly and are being disposed of by this common judgment.

6. The main aspect that falls for consideration is whether the returning officer has to proceed with the election on the basis of the voters (sic) which stood prior to the induction of the members by the administrator on 30-11-1987 and 1-12-1987 or whether those members and the persons admitted as members upto 60 days before the date of election can participate in the election. The election conducted on 20-2-1988 was challenged by petitioner on the ground that ineligible members had participated in the election. Though petitioner lost

before the arbitrator, the tribunal on appeal was of the view that the members inducted by the administrator were Ineligible to vote and for that reason the election was set aside and fresh election directed to be conducted by the returning officer. According to learned counsel for petitioner in O.P. 7531 of 1996 and Sri Kelu Nambiar, learned counsel appearing for 15th respondent in the other petition fresh election has to be conducted on the basis of the voters list as it stood at the time of previous election excluding the members inducted by then administrator. Allowing the members enrolled by the administrator would be rendering the order of the tribunal Ineffective and permitting ineligible voters to participate in the election, argues counsel. In support of this contention considerable reliance was placed on the observations of the Division Bench of this Court in *George v. Joint Registrar* (1985 KLT 836). The two questions which arose for determination in that case are (1) whether an administrator has power to admit new members and (2) who are the members entitled to participate in the election to the committee of a Co-operative Society. On the first question the Division Bench held that the administrator has every power to enroll new members subject to the provisions of the Act and the Rules. On the second question it was held in paragraph 26 thus:

A close and careful reading of rule 26 (2) keeping in view the object sought to be achieved, namely the purity of election, admits of only one interpretation, favour of a limited disqualification for members admitted in contravention of Rule 26 (1). Rule 26 (2) has to be read and understood thus. Any person admitted in contravention of Rule 26 (1) shall not have:

- a) the right to membership
- b) the right to vote.

at the said general meeting (or) at any meeting held subsequent thereto for the purpose of election. Thus the right of membership and the right to vote cannot be exercised at the next election meeting or at any meeting held subsequent thereto for the same purpose. The membership itself is not effaced.

It continues; but some rights alone are suspended. These members cannot participate in the next election meeting or any meeting held subsequent thereto for the purpose of the same election or vote at any of those meetings. Thereafter, the membership continues in all its vigour and strength.

7. Relying on the above mentioned paragraph Sri Kelu Nambiar would contend that the right of membership and the right to vote cannot be exercised at the next election meeting or at any meeting held subsequent thereto for the same purpose. It is his contention that a meeting is now held " for the same purpose, viz. election to the managing committee on the basis of the earlier notification, the election having been set aside by the tribunal. It has to be noted that the Division Bench categorically stated that the members admitted in violation of rule 26 (1) cannot participate in the next election meeting or any meeting held subsequent thereto for the purpose of the same election or vote at any of those

meetings. In all other respects the membership continues in all its vigour and strength. The Division Bench was interpreting the unamended rule 26 (2) of the Co-operative Societies Rules which read:

Any person admitted as member and any person In whose favour the transfer of shares have been approved In contravention of this rule shall not have the right to membership or the right to vote at the said general meeting or at any meeting held subsequent thereto for the purpose of election.

8. Learned counsel appearing for respondents would point out that the decision was rendered on interpretation of the unamended rule and that there is considerable change in the rule as amended in 1989. The sub rule after amendment reads thus:

Any person admitted as member and any person in whose favour the transfer of shares have been approved in contravention of this rule shall not have the right to membership or the right to vote at the said election or at the general body meeting.

9. By virtue of the amended rule the prohibition is only to admit members or approve the transfer of shares within sixty days prior to the date of election or the data of the general body meeting. The prohibition earlier was to admit members within 30 days prior to the date of issue of notice for the general body meeting. The amended rule therefore contemplates two dates, viz. the date of election and the date of the general body meeting. It cannot be said that the general body meeting referred to in rule 26 is the general body meeting convened for election. If that be so, the mention of the date of election is redundant. A general body meeting of a society shall be held once in a year for the purpose of

(a) approval of the budget with reference to the programme of the activities of the society prepared by the committee for the ensuing years;

b) election, if any, to the prescribed manner of the members of the committee other than nominated members;

c) consideration of the audit report and the annual report:

d) disposal of the net profit; and

e) consideration of any other matter, which may be brought forward in accordance with the bye-laws.

10. A general body meeting can therefore be convened either for the purpose of election or for any of the other purposes mentioned in Section 29 (1) of the Act. Any person admitted as a member of the society within sixty days prior to the date of a general body meeting convened for any purpose has no right to membership or right to vote at that general body meeting. In case of convening the general body for the purpose of election of the members of the committed then also this prohibition is applicable. A person admitted as a member in

violation of rule 26 (1) has no right to vote at the said election nor can he claim membership of the society claiming a right to vote in the said election. The "said election" mentioned in rule 26 (2) can only be the election held in accordance with a resolution adopted by the committee sixty days before the expiration of the term of the committee as contemplated under Rule 35 (1) of the Rules. There may be cases where a returning officer is not appointed as requested for in the resolution or the appointment is delayed by the Registrar. There can also be cases where the proceedings are interrupted or obstructed by riot or affray and the returning officer adjourns the proceedings at the time of presentation of the nomination paper or scrutiny of the same. There are also instances where the proceedings are Interrupted or obstructed by any riot or affray at any stage of the polling. When there is such interruption or " obstruction or if there is any other sufficient cause the returning officer can adjourn or postpone the election recording the reasons for his actions. In all such cases the election has to be conducted on the basis of the voters list as it stood sixty days before the date of election as fixed by the resolution even if the election is held on later dates. The question arises whether the same principle is applicable when the election has been set aside on an election petition presented by any of the members of the society.

11. It is the contention of petitioner that the reliefs granted by the tribunal will be rendered ineffective in case the members inducted by the administrator are also permitted to vote in the election. According to him the fresh election has to be conducted as per the directions of the tribunal. The previous election having been set aside and a fresh election directed to be conducted, it can only be on the voters list as it stood earlier excluding the ineligible members, argues counsel. Two aspects require consideration in this connection (i) Whether the election conducted in pursuance to Ext. P2 judgment is a fresh election. (ii) Whether the returning officer appointed earlier can proceed with the election process.

12. It cannot be disputed that the returning officer who conducted the election previously has become functus officio. In accordance with the rules he had already returned the ballot papers and all relevant records. He has no function thereafter. He cannot therefore be directed to conduct election. That part of the direction contained in Ext. P2 judgment cannot be complied with. If that be so, the only direction which can be followed by the Registrar and other concerned authorities is the direction to hold a fresh election. If a fresh election has to be conducted it can only be on the basis of a resolution adopted under Rule 35 (1). The date, time and place of the election can be fixed only by such a resolution and not by the Court. There is no provision in the Act or Rules enabling the court to fix a date, time and place for the conduct of the election. Vide the decision of the Division Bench in State of Kerala Thilothama (1992 (2) KLT 220).

13. In case a resolution has to be adopted that can be done only in a meeting held sixty days in advance of the date of expiration of its term. The term of the

managing committee has already expired and the question of passing a resolution sixty days prior to the date of expiry does not arise in this case. The society being under the management of an administrator, he has to pass a resolution fixing the date, time and place of election. That can only be sixty days ahead of the date of the resolution. The prohibition contained in Rule 26 is only in inducting members within sixty days prior to the date of election. When the date of election has to be declared by a resolution adopted by the managing committee or the administrator exercising the functions of the managing committee as the case may be the only prohibition in inducting members is the one contained in Rule 26. One has to see whether any member has been admitted within sixty days prior to the date of election.. The general body meeting mentioned in rule 26, as observed earlier does not relate to the general body meeting convened for election though a meeting has to be convened for the conduct of election also. On a reading of rules 26 and 35 together it would thus appear that there is no bar in admitting members to the society at any time before sixty days prior to the date of election.

14. Considerable change has been made in rule 26 by the amendment of 1989. The prohibition earlier was to admit members or approve transfer of shares within 30 days prior to the date of issue of notice for general body meeting. The issue of notice has no relevancy after the amendment of the rule. Since we are concerned only with election in these two petitions the only question to be considered is to what extent the restriction operates. After the amendment the restriction is only to admission of members within sixty days prior to the date of election. The words "prior to the date of election" indicate that one has only look at the date of election and calculate backwards in order to see whether a member is disqualified to vote in the election. The Division Bench in George's case (*supra*) was interpreting the unamended rule which disqualifies a member admitted within 30 days prior to the date of issue of notice for general body meeting held subsequent thereto for the purpose of election. In view of the amendment introduced in 1989 the interpretation sought to be made by Sri. Kelu Nambiar relying on that decision is of no assistance to him.

15. That leads us to the further question as to whether the election having been conducted prior to the amendment the rule applicable is the unamended rule 26. In case the returning officer who conducted election earlier has to proceed with the election after it was set aside by the tribunal it may be said that the election meeting is held for the purpose of election in pursuance to the notice for the general body meeting as contemplated in rule 26 as it stood then. But this question does not arise since the returning officer has become *functus officio* and election has to be conducted by another returning officer who can be appointed by the Registrar only on receipt of a resolution by the managing committee or the administrator. For that reason it has to be held that the meeting hereafter to be convened for electing the managing committee members is not a meeting held subsequent to the general body for the purpose of election as contemplated in rule 26 before the amendment.

16. The result of the discussions in the foregoing paragraphs is that Ext. P2 judgment of the tribunal can be enforced only in respect of the direction to hold a fresh election to the Board of Directors. A fresh election necessarily involves passing of a resolution under Rule 35 and all the procedures subsequent thereto as envisaged in that rule. A fresh election can be conducted only on the basis of such a resolution. The resolution to be passed being one after the amendment of rule 26 the restriction relates only to enrolment of members within sixty days prior to the date of election.

17. It appears that the administrator has passed a resolution to conduct election on 21-10-1990. The election could not be conducted in view of the order granted by this court staying all further proceedings pursuant to Ext. P4, the order of the Assistant Registrar appointing the returning officer. The question now arises as to whether only persons who were admitted 60 days prior to 21-10-1990, the date fixed for election by the returning officer are entitled to vote in the election or whether persons admitted as members since then are also eligible subject to the restriction imposed in Rule 26. Ordinarily if an election is not conducted in pursuance to the notification and a fresh resolution is adopted by the managing committee or the administrator the date of election shown in the second notification is the date to be reckoned in order to ascertain the eligibility of persons admitted as members. But in the present case all further proceeding pursuant to Ext. P4 order were stayed by this court till disposal of the original petitions. On the disposal of the original petition the stay order ceases to exist and the reliefs are to be worked out according to the directions in the judgment. Having found that a fresh resolution has to be adopted by the administrator the contention that the right to vote has to be limited to persons admitted before 60 days prior to 21-10-1990, the date fixed for election cannot be sustained. In view of the interpretation of rule 26 it has to be held that all persons who are admitted as members before 60 day prior to the date of election will be entitled to vote, The stay order granted by this court will not stand in the way of those persons exercising vote in the election though ordinarily the election process has to continue from the stage at which it was stopped. In the present case it was stopped since the notification of election. It may be contended that the process has to continue from that stage. But 8th respondent is not competent to appoint a returning officer on the basis of Ext. P2 judgment. That being so, Ext. P4 order is unsustainable and has to be quashed. The election process has therefore to be taken as not commenced by that appointment. It has to be started afresh by a resolution. There is therefore no legal bar in members admitted before 60 days prior to the date of election to be held hereafter on the basis of the resolution to exercise votes in the election to the managing committee.

18. O.P. 7531 of 1990 is therefore allowed in part and Ext. P4 is quashed and a direction is issued to respondents 8 and 9 to take steps for holding the election to the Board of Directors of the first respondent bank and to instruct the second respondent to pass a resolution as expeditiously as possible to conduct election. The request for excluding members admitted on 30.11.1987 and 1.12.1987 is

refused. The election has to be conducted on the basis of the voters list prepared in accordance with the rules.

19. The other Petition O.P. 7981 of 1990 is filed by a person who claims to be a member of the society. He seeks a direction to quash the judgment of the tribunal and to prepare the voters list in accordance with the law existing at present. The tribunal has given cogent reason to in-validate the election. The election had been set aside and an administrator had taken charge. He had been in management since then. The question of quashing the judgment of the tribunal does not therefore arise.

20. Regarding the other relief claimed, viz. preparation of the voters list the matter has been considered in detail in the foregoing paragraphs. Hence they need not be considered again. The maintainability of this petition is questioned for the reason that petitioner had not paid the requisite share money which alone enables a person to become a member of the society. He claims to be a member of the scheduled caste. The contention is that he does not belong to that community and having not paid the requisite share money cannot claim membership. A certificate issued by the Village Officer of Alakkode Village is also produced by 15th respondent to show that petitioner belongs to Bzhava community. The question whether petitioner is a member of the scheduled caste or not be decided in this case since the reliefs claimed in the petition are denied for other reasons.

O.P. 7981 of 1990 is dismissed.