

(2013) 09 KL CK 0093

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 21218 of 2013

Muhammed Basheer R.V.

APPELLANT

Vs

Pravasi Co-Operative Society and Others

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2013) 4 KLJ 550 : (2013) 4 KLT 398

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : P. Ramakrishnan and Preethi Kesavan, for the Appellant; P.N. Mohanan and D. Somasundaram, GP, for the Respondent

Judgement

K. Surendra Mohan, J.—The first respondent is a co-operative society registered under the Kerala Co-operative Societies Act, 1969 and the Kerala Co-operative Societies Rules, 1969, hereinafter referred to as the "Act" and the "Rules" respectively. The society was formed and was granted registration on 17.3.2012. The petitioner claims to be one of the founder members of the society. The first general body of the society was held on 17.4.2012. On the said date, a committee was constituted and 13 members were elected for managing the affairs of the society for a period of three months. The period of three months for which the Managing Committee was elected, expired on 17.6.2012. However, in spite of the expiry of its term, the committee continued in administration of the society. Finally, on 19.4.2013 as per Ext. P2, the Joint Registrar appointed an Administrator who has been in administration of the society ever since. For the purpose of electing a new Managing Committee of the Society an election has been scheduled as per Ext. P3 proceedings dated 3.8.2013. The actual polling is scheduled to be conducted on 8.9.2013. According to the petitioner, as many as 404 persons have been inducted to the membership of the society by the Managing Committee after the expiry of its term and therefore, they are not entitled to continue as members of the society or to exercise voting rights. Therefore, their names are to be removed from the voters' list. For the purpose,

the petitioner had submitted Ext. P4 objections to the Voters list on 19.8.2013. The time stipulated for submission of objections to the draft voters' list was up to 19.8.2013. Therefore, the petitioner's objections were submitted within time. In spite of the above, it is contended that his objections were not considered. Instead, on the very same day the final voters' list has been published, which is Ext. P5. On the basis of Ext. P5, the polling is also being proceeded with, which is to take place on 8.9.2013. Therefore, the petitioner seeks the issue of appropriate directions for removing the ineligible members from the voters' list and for having an election conducted permitting only the eligible members to participate.

2. According to Adv. P. Ramakrishnan, as per the first proviso to Section 28 of the Act the first committee that is to be constituted after a society is registered can continue only for a period of three months. The said period having expired on 17.6.2012, the continuance of the committee thereafter was without any authority whatsoever. It has to be treated that there was no committee in office at all. Therefore, the decision taken by the said committee to induct persons as members of the society is of no consequence and is liable to be ignored. In view of the fact that persons so inducted are not members of the society, their names are liable to be removed from the final voters' list. The counsel therefore seeks the issue of appropriate directions for the purpose. Adv. P.N. Mohanan appears for the second respondent. According to the counsel, the committee had overstayed its term. However, the defect was not noticed because there was no complaint from anyone. According to him, the contention that 404 persons had been admitted by the Managing Committee after the expiry of its term is not correct. 76 persons were inducted as members on 1.6.2012. Therefore, the complaint of the petitioner cannot apply to the said persons. The committee having taken a number of decisions during the period that they continued in office, it is not in the interests of anyone to upset the said decisions at this length of time, it is contended.

3. The Special Government Pleader Shri. D. Somasundaram appears for the third respondent. The counsel submits on instructions obtained by him that the Managing Committee appointed on 17.4.2012 had continued in office despite the expiry of its term, without any complaint from any quarter. As many as 15 meetings were conducted after the expiry of its term, during which a number of decisions were taken including the decision to admit new members to the society. The persons who were so admitted to the membership of the society have paid their entire share value. They are also persons who are eligible to be members, as per the provisions of the bye laws. Their names have been included in the register of members of the society also. Thereafter, the Joint Registrar has by proceedings dated 19.4.2013 appointed an Administrator for the society who is in charge of the affairs thereof. It is further stated that the newly inducted members have made deposits in the society and had entered into various transactions with the society. The above being the position, it is stated that disregarding the objections submitted by the petitioner, the voters list was

finalised with the names of 430 persons. In view of the above, according to the learned Special Govt. Pleader, no interference with the process of election at this stage is either called for or necessary.

4. Adv. Rajit submits that he has filed an I.A. 11895/2013 on behalf of a third party to get himself impleaded. However, the said petition is not seen in the records. Therefore, I refrain from considering the said petition.

5. Section 28(1) of the Act is reproduced hereunder for convenience of reference:-

28. Appointment of committee.-- (1) The general body of a society shall constitute a committee, for a period of five years, in accordance with the bye-laws and entrust the management of the affairs of the society to such committee. (Explanation. Notwithstanding anything contained in the bye-laws, for the purpose of calculating the term of committee, five years from the date of election will be taken to be the term of the committee).

Provided that in the case of society registered after the commencement of this Act, the persons who have signed the application to register the society may appoint a committee to conduct the affairs of the society for a period of three months from the date of registration or for such further period as the Registrar may consider necessary; but the committee appointed under this proviso shall cease to function as soon as a committee has been constituted in accordance with the bye-laws:

(Provided further that where the bye-laws so provide, the Government or the Registrar may nominate all or any of the members of the first committee, including the President or Chairman, for a period not exceeding twelve months.)
(Provided also that in the case of the following type of co-operative societies election shall be conducted on ward basis in accordance with the by-laws, namely:-

- a) Primary Agricultural Credit Societies/Service Co-operative Banks/Farmers Service Co-operative Banks/Rural Banks/Regional banks;
- b) Urban Co-operative Banks;
- c) Urban Co-operative Societies.
- d) Primary Agricultural and Rural Development Banks;
- e) Primary Housing Co-operative Societies.

(emphasis supplied)

The first proviso to the provision shows that the persons who have signed the applications to register the society are entitled to appoint a committee to conduct the affairs of the society "for a period of three months from the date of registration or such further period as the Registrar may consider necessary". Therefore, it is not an immutable rule that the term of the Committee should

expire with the three months" period for which the committee has been appointed by the persons who have registered the society. It follows that the term could be extended by the Registrar if necessary. It is no doubt true that in the present case no order was passed by the Registrar extending the term of the Managing Committee. However, it is not in dispute that the Committee has continued in office till 19.4.2013, without any complaint from anyone, including the petitioner. According to the respondents, the Committee had met on as many as 15 occasions during the said period and have taken various decisions for the proper administration of the society. The decisions to induct new members were also taken during the said period. The said decisions have been acted upon, new members have paid their share capital and have entered into transactions with the society. The petitioner who claims to be a founder member of the society does not offer any explanation as to why no complaint was made at any time during the period that all the above acts were done. Therefore, the stand adopted by the third respondent that there is no justification for refusing to accept the said decision of the Managing Committee at this length of time cannot be found fault with.

6. The learned Special Govt. Pleader also places reliance on Section 105 of the Act which reads as follows:-

105. Acts of societies not to be invalidated by certain defects:- No act of a society or any committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in the constitution of the society or the committee or in the appointment or election of the officer or on the ground that such officer was disqualified for his appointment:

Provided that nothing in this section shall be deemed to apply to any act done by any society or committee or officer in cases where such defect or disqualification was previously declared by a competent authority.

The above provision also supports the position that is adopted by the respondents that the membership of the persons against whom complaints are now raised do not merit consideration at this length of time. I also notice that there is no other objection to the membership of the said persons, except that they were inducted by a Committee whose term had expired. They are indisputably, persons who are eligible to be members of the society.

Apart from the above, it is not disputed that the election process has already commenced. According to Adv. P.N. Mohanan, counsel for the second respondent, some of the candidates have been elected unopposed. Only the process of polling remains to be completed, as far as the election is concerned. In view of the dictum laid down by the Apex Court in *Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others*, it is pointed out that any interference with the process of election at this stage is uncalled for. Since the election process is nearing completion, I find that there is no justification for interfering with the same on

the grounds raised in this writ petition. It is also worth noticing that if the petitioner is aggrieved he has the remedy of challenging the election in a properly framed election petition, after the process is completed.

For the above reasons I do not find any grounds to interfere with the process of election or to grant any of the reliefs sought for in this writ petition. The same is therefore dismissed.