(1992) 12 KL CK 0046

In the High Court Of Kerala

Case No : O.P. No. 16101 of 1992

N. R. Narayana Pillai — APPELLANT

Vs

Joint Registrar and others — RESPONDENT

Date of Decision : 14-12-1992

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 44(1), 44(2)(a)

Citation : (1993) 1 KLJ 440

Hon'ble Judges : M.M. Pareed Pillay, J

Bench : Single Bench

Advocate : M.K. Damodaran, for the Appellant; T.R. Ramachandran Nair, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Pareed Pillay, J.—Petitioner''s nomination was rejected by the Returning Officer (second respondent) on the ground that he is defaulter to the Society as a surety. It is the case of the petitioner that he has not taken any loan from the Society, that he was a surety for one of the members of the Society and that there cannot be arty question of default in the payment of the loan as recovery has been effected pursuant to attachment of the salary. Petitioner filed his nomination to contest from the general constituency to the Managing Committee of the Society and on scrutiny on 3-12-1992 it was rejected. Contention of the petitioner is that no notice was given to him as provided under Rule 44 (2) (a) of the Kerala Co-operative Societies Rules and so long as that was not done the rejection of the nomination can never be justified. Learned Government Pleader pointed out that no such notice is necessary in a case where a member of the Society seeks election to become a member of the Managing Committee.

2. The question that arises for consideration if whether notice contemplated under the proviso to Rule 44(2) (a) is mandatory in a case where a member of the Society seeks election to become a member of the Managing Committee. Rule 44(1) states that no member of the society shall be eligible for bung elected

or appointed as a member of the committee of the society u/s 28 if he suffers from any of the disqualifications enumerated thereunder. Sub-rule (1) (c) (f) makes the position clear that if a member is in default to the society or to any other society in respect of any loan or loans taken by him or loan in which he has stood surety, for such period, as is prescribed in the byelaws of the society concerned or in any case for a period exceeding three months or is a defaulter to the society or to any other society, he would be disqualified to be elected or appointed as a member of the committee. Whereas Rule 44(1) does not envisage notice to a member of the society who is a defaulter or a surety to another debtor, the proviso to sub-rule(2) (a) stipulates notice to a member of the committee to clear off the defaulted amount. Sub-rule(2)(a) provides that a member of the society shall cease to hold his office as such if he becomes disqualified under sub rule (1). Thus, a member of the committee may become disqualified under sub-rule (1) (c) (i). But the proviso to sub rule (2) (a) makes the position abundantly clear that the disqualification under sub-clause (1) of clause(c) of sub-rule(1) shall be deemed to be accrued only after expiry of a period of one month from the date of receipt by the member concerned of a notice from the society command him to clear off the defaulted amount specified therein and if he fails to remit or cause to remit the amount within the said period. Contention of the petitioner that the aforesaid proviso applies to a member of the society as well cannot be accepted. From a reading if Rule 44(1) and (2) it is apparent that the proviso to Rule 44 (2) (a) cannot have any application to a member of the society who seeks election to the managing committee.

3. It is the fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a Proviso. From the language of the proviso to Rule 44 (2) (a) it is not possible to hold that it applies to sub-rule (1) (c) (i) also is cannot be reasonably construed that it applies to sub-rules 1 (c) (1) as well. Rule 44 (1) (f) and Rule 44 (1) (g) are provided with separate provisos just as Rule 44 (2) (a). It is pertinent to note that Rule 44 (1) (c) stands without any proviso. More-over, the language of the proviso to Rule 44 (1),(a) cannot be construed to have more extensive operation so as to qualify Rule 44 (1) (c) as well. It is useful to refer to Dwarka Prasad Vs. Dwarka Das Saraf, where the Supreme Court held thus;

If, on a fair construction; the principal provision is clear, a proviso cannot expand or limit it. A proviso must be limited to the subject matter of the enacting clause. A proviso most prima fact be read and considered in relation to the principal matter to which it is a proviso it is not a separate or independent enactment.

4. Sub-rule (2) (a) specifically states that a member of the committee shall cease to hold his office if be becomes disqualified under s sub-rule (1). As sub-rule (1) mentions the disqualifications for a member of the society to become elected to the managing committee and as sub rule (2) (a) postulates that a member of the committee shall cease to hold Ms office on account of any

disqualification provided under sub-rule (1) it is not possible to hold that the proviso to sub-rule (2) (a) equally applies to sub Rule (1) also. As the notice contemplated under the proviso to sub-rule (2) (a) cannot have any application to sub-rule (1) (c) (i) contention of the petitioner that he was not given notice by the society for clearing the debt and so there was no justification in rejecting his nomination is not tenable.

The Original Petition is dismissed.

