
(2016) 02 KL CK 0092

In the High Court Of Kerala

Case No : Writ Petition (C).No. 4328 of 2016 (M)

Narayanan Kutty

APPELLANT

Vs

Joint Registrar of Co-Operative Societies (General)

RESPONDENT

Date of Decision : 16-02-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Act, 1969 — Section 28
Kerala Co-operative Societies Rules, 1969 — Rule 18A

Citation : (2016) 4 KLT 43

Hon'ble Judges : Mr. Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : Spl. Govt. Pleader, Sri. D. Somasundaram, for the Respondent Nos. 1 to 5; Sri. George Poonthottam and Smt. Nisha George, Advocates, for the Respondent No. 6; Sri. M. Sasindran and Sri. V. Venugopal, Advocates, for the Petitioners

Final Decision : Dismissed

Judgement

Mr. Dama Seshadri Naidu, J. - Facts:

The petitioners, being the members of the sixth respondent Society, laid challenge against Exhibit P2 amended bye-laws and also Exhibit P1 election notification on two grounds:

(a) In contravention of the third proviso to Section 28 (1) of the Kerala Co-operative Societies Act (for short "the Act"), the Society has divided its area into six wards instead of eleven, the total number of wards; and (b) despite the statutory mandate that the Society should maintain a Form 32 Register in terms of Rule 18A of the Kerala Co-operative Societies Rules (for short "the Rules"), it is going to hold election without maintaining any register.

Rival Submissions:

Petitioners":

2. In the above brief factual backdrop, Sri. M. Sasindran, the learned counsel for the petitioners, has drawn my attention to the third proviso to Section 28(1) of the Act to hammer home his contention that if eleven members have to be elected to the Managing Committee, inclusive of the reserved categories, the area of the Society ought to have been divided into eleven wards. In support of his submissions, the learned counsel has placed reliance on *Mathai v. State Co-operative Election Commission*, 2007 (2) KLT 789.

3. The learned counsel has, drawing my attention to Rule 18A of the Rules, further contended that the provision is imperative in nature: The Society ought to maintain Form 32 Register so that any member of the Society could verify the status of a member-whether he is active or inactive as per Section 16A of the Act.

Respondent Society's:

4. Sri.George Poonthottam, the learned counsel for the sixth respondent Society, has submitted that Section 28 underwent an amendment on 14.02.2013, when the third proviso was added. According to him, though the division of the area should be on a ward basis, it should be as had been reflected in the bye-laws. According to him, the bye-laws take precedence.

5. In elaboration of his submissions, the learned counsel has contended that, in the present instance, the general body of the Society passed a resolution that there should be six wards for the candidates from the general category and the women and SC/ST members should be contesting without reference to any ward-taking the entire area as one ward ("non-ward" basis).

6. The learned counsel has further contended that there is no whisper in the pleadings that the petitioners raised their objections in the general body meeting, but they were disregarded. He has also, further, contended that after the issuance of the notification, at the eleventh hour, when the election was about to be held, the petitioners approached this Court without exhausting their alternative remedies under Section 83(1)(j) of the Act.

7. In support of his submission that candidates from the reserved category could contest without confining themselves to any particular ward, the learned counsel has placed reliance on the decision of a learned Division Bench in *Thiruvalla East Co-operative Bank Ltd. v. S.Sasidharan Pillai*, 2012 (1) KLT 350 (DB).

8. Addressing the issue of the Society not maintaining Form 32 Register, the learned counsel has submitted that the issue as regards active members has already engaged the attention of a learned Full Bench of this Court. According to him, it is at best a technical objection which prejudices the cause of no member, apart from being sub judice.

Department's:

9. Sri.D.Somasundaram, the learned Special Government Pleader, has taken me through the statutory scheme of the Act and also the constitutional principles

involved in the reservation of seats for women, candidates from SC/ST communities, and also the depositors. Initially, he has drawn my attention to Article 243-ZJ of the Constitution to stress that the reservation had been constitutionally protected. Further, he has referred to Section 28A and 28(1C) of the Act to emphasise that all along those provisions have contemplated in mandatory terms that there ought to be a reservation, but not the division of wards, as far as the reserved seats are concerned.

10. According to the learned Special Government Pleader, Section 12 is clear to the effect that once the bye-laws have been registered, it is a conclusive proof that they have been duly registered. If at all the petitioners have any objection concerning Exhibit P2, contends the learned Special Government Pleader, they ought to have taken recourse to Rule 176, thereby approaching the Registrar of Co-operative Societies to have the resolution passed by the general body of the Society rescinded.

11. In the alternative, the learned Special Government Pleader has also contended that if the petitioners, for whatever reason, have found that it is inadvisable for them to lay challenge under Rule 176 of the Rules, they could have as well taken recourse to Section 83 (1)(j) of the Act.

12. Further, referring to Section 28(1C) of the Act, the learned Special Government Pleader has submitted that reservation has to be provided for a depositor, too. If at all the division of wards is strictly insisted upon, the persons at the helm of the affairs would as well ensure that a particular ward was reserved for a depositor, though the said ward may not have any depositor. It, therefore, defeats the chances of any other prospective candidate under, say, general category.

13. Eventually, the learned counsel for the sixth respondent and the learned Special Government Pleader have, in unison, submitted that the petitioners have not been prejudiced merely because the area of the Society has not been divided into eleven wards. So long as the candidates from the reserved categories are allowed to contest, it is, according to them, unobjectionable.

14. Both the learned counsel have further contended that even the general candidates contesting from particular wards are required to have votes from across the entire spectrum of members. As such, the bye-laws amended dividing the society into only six wards and the consequential Exhibit P1 notification proposing to hold elections accordingly do not cause any prejudice to the petitioners.

Reply:

15. In reply, the learned counsel for the petitioners has submitted that as far as registration of the bye-laws is concerned, no appeal lies. In support of his submission, the learned counsel has placed reliance on *Abdul Rahman. K.A. v. Cheranelloor Service Co-operative Bank Ltd., Ekm and Others*, 2015 (1) KHC 46

(DB). As regards the challenge vis-à-vis the bye laws, the learned counsel has referred to paragraph one of the writ petition to refute the rival contention that there are no foundational pleadings.

16. Heard the learned counsel for the petitioners and the learned counsel for the sixth respondent Society, as well as the learned Special Government Pleader, apart from perusing the record.

Discussion:

Statutory Scheme:

17. The third Proviso to Section 28(1) of the Act mandates that in the case of the societies enumerated therein, which include the respondent Society, the election shall be conducted "on ward basis in accordance with the bye-laws". Section 28(1C), on its part, reserves one seat on the committee of the society for the members having a deposit of Rupees ten thousand and above.

18. Rule 28(1) of the Rules imposes a restriction on the right of the member to vote: The member ought to have acquired sixty days prior to the date fixed for "meeting" such number of shares for the membership as may be provided in the bye-laws of the society of which he is a member.

19. To ensure participation of the members in the affairs of the Society, Section 16A read with Rule 18A of the Rules hedges the member's rights in certain participatory pre-conditions: No member shall be eligible to continue to be a member of a co-operative society, if he is not using the services of the society for two consecutive years in the manner indicated under the said provision. Thus, it has brought into play the dichotomy of "active" and "inactive" or "passive" members of the society. Rule 18A(2)(a) requires a register in Form 32 to be maintained by every society; the responsibility of maintaining the said register is cast on the Chief Executive of the society, the Secretary.

20. Indeed, the details concerning each and every member of a society shall be made up-to-date and placed before the Committee within sixty days on completion of every year. Further, once the register is placed before the Committee, it shall within thirty days examine and certify the register as to the details so recorded by the Chief Executive. After further statutory formalities, the Chief Executive of the Society shall submit the register to the Electoral Officer for verifying the eligibility of members who are qualified to vote at the election.

21. Rule 16A, on the other hand, deals with the issue of the identity of the members of the society. It delineates the process of issuing identity cards to the members and maintaining relevant records in that regard.

22. One of the principal statutory provisions for our discussion is Section 28A, which provides for reservation on the committee for women members and members belonging to Scheduled Castes or Scheduled Tribes(SC/ST). Beginning with a non-obstante clause, the provision mandates that there shall be

reservation on the committee of every society, three of the total seats for women members and one seat for a member belonging to the SC/ST category.

23. The members of the reserved category can as well, in terms of sub-section (2) of Section 28A, get elected to the non-reserved seats on the committee. The provision also speaks of the Government's nominating women members or members belonging to SC/ST communities in the absence of their participation. Any elaboration on the issue is obviated given the fact that there are already members from the reserved category in the fray.

24. Section 83(1)(j) of the Act provides for an appeal to the Government against any order made by any person exercising all or any of the powers of the Registrar. In turn, Rule 176 of the Rules delineates the powers of the Registrar to rescind any resolution passed by the society, if such resolution is ultra vires of the objects of the society, is against the provisions of the Act, etc.

Issues:

25. In the above statutory backdrop, let us examine the issues that have arisen in this writ petition.

I. Have the petitioners the necessary standing to file the writ petition?

II. Does the failure of the Society to divide its area into as many wards as the number of members on the managing committee vitiate the whole election process?

III. Has any of the constitutional or civil rights of the petitioners been affected by the society's holding the election?

IV. Does the failure of the Society to maintain the statutory Form 32 Register prove fatal for holding the election in its absence?

V. Do the petitioners have an efficacious alternative remedy?

Issue No. I:

26. Tracing the constitutional contours of Article 226, we may observe that it is a remedy in public law, however, imbued with and permeated by equity principles. It does confer very wide powers on the High Court, which has imposed upon itself certain self-imposed restrictions as to its exercising the said extraordinary jurisdiction. The High Court invokes its remedial jurisdiction not only for the enforcement of fundamental rights but also other constitutional and civil rights. It is, however, noteworthy that in the cases other than those involving the breach of fundamental rights, the remedy is only discretionary.

27. In *S.P. Gupta v. Union of India*, AIR 1982 SC 149, a Seven-Judge Bench of the Supreme Court has held that the traditional rule in regard to locus standi is that the judicial redress is available only to a person who has suffered owing to the impugned action of the State, a public authority, etc., a legal injury because of the violation of his legal right or legally protected interest. The remedy can

also be invoked by any other person who is likely to suffer a legal injury by reason of threatened violation of his legal right or legally protected interest by any such action. The basis of entitlement to judicial redress is a personal injury to property, body, mind, or reputation arising from the violation, actual or threatened, of the legal right or legally protected interest of the person seeking such redress.

28. The Apex Court has, however, served a word of caution that where an applicant, obviously, has a legal right or a legally protected interest, the violation of which would result in legal injury to him, there must be a corresponding duty owed by the other party to the applicant. This rule regarding locus standi thus postulates a right-duty pattern which is commonly to be found in private law litigation. Narrow and rigid though this rule may be, however, there are to it a few exceptions, which have been evolved by the Courts over the years.

29. When we examine the issue in the above judicial perspective, evidently this writ petition is not, without cavil, *pro bono publico*; it is at the behest of those who are said to be affected. We may, therefore, be required to examine what rights of the petitioners have been affected and whether they are entitled to the discretionary remedy. In other words, is there any substantial injury to the rights of the petitioners?

30. Before proceeding further, given the factual backdrop of the case, we may conclude that the petitioners, indeed, are the persons interested, but not persons affected. True, there is no gainsaying the fact that a writ is maintainable at the behest of a person interested, too; but the approach of the Court may have the subtlety of weighing the preponderance of probabilities under slightly changed circumstances. The sense of urgency as is available in the case of an affected person yields to the concept of comparative damage to the rival suitors in the case of interested persons.

31. It is further pertinent to observe that the Hon'ble Supreme Court in *Indian Bank v. N. Venkataramani*, (2007) 10 SCC 609, quoting with approval its earlier judgment in *S.D.S. Shipping (P) Ltd. v. Jay Container Services Co. (P) Ltd.* (2003) 9 SCC 439, has observed that the High Courts and the Supreme Court, while exercising their equity jurisdiction under Articles 226 and 32 of the Constitution as also Article 136 thereof, as is well settled, may not exercise its jurisdiction in appropriate cases. According to their Lordships, the superior courts in India may not strike down even a wrong order only because it would be lawful to do so. Discretionary relief may be refused to be extended to a suitor in a given case although the Court may find the same to be justified in law.

32. The conclusion as regards issue No. I is that the petitioners are not the affected persons but are interested persons. The question whether any of their constitutional or civil rights had been affected needs to be resolved on further discussion of the matter. It is undertaken herein below.

Issue No. II:

33. The first and foremost concern of the petitioners is that the Society has not divided its area into eleven wards; instead, it has split it into six wards, leaving the remaining five candidates to contest on a non-ward basis.

34. To put the issue in the correct perspective, we may further examine the precedential position in this regard. In *Mathai (supra)*, the facts in brief are that the byelaws of the Society specifically stipulate that election shall be on a ward basis. However, the Managing Committee has adopted a resolution to conduct the election without the division of wards. In the light of challenge to the election without delimitation of wards, a learned Single Judge of this Court has held that when Clause 31(b) stipulates that election to the Committee shall be on a ward basis, it means that seven out of nine Board Members, excluding the two nominated members, should represent seven wards.

35. In other words, the area of operation of the Society has to be divided into seven wards; each ward must be represented by a distinct member. This is, according to his Lordship, like delimitation of constituencies in elections to the Parliament, State Assemblies, and the local bodies.

36. In *The Thiruvalla East Co-Operative Bank v. Sasidharan Pillai* K.B. 2012 (1) KLJ 280, the short question that arose for consideration is whether the alleged insufficiency in the amendment to the Bye-laws by the Society pointed out by the petitioners in the writ petition justifies interference with the election notified. As regards the number of wards to be divided, the learned Division Bench has held as follows:

"8. The contention raised by counsel for the petitioner is that reservation provided for three women members, one for SC/ST and two members with banking experience or with professional qualifications and one member from depositors is not covered by any constituency reserved for them under the Election Sub-rules. Counsel appearing for the appellants and the Government Pleader, however, pointed out that elections to the said categories have to be made from electorate as a whole and no constituency is reserved for them. So much so, according to them, there is no defect or inadequacy in the Bye-law as introduced by the amendment. We are in complete agreement with this contention, because the Election Sub-rule as originally provided does not identify any constituency for the reserved category of members. In fact, under the Election Sub-rules as it existed before amendment also, two members from the reserved constituency, one from SC/ST and one female member, both were elected from the area of operation of the Bank as a whole. All what has happened under the amended provision of the Co-operative Societies Act is an increase in the number of members in the reserved category from 2 to 7, the categories of each of which are stated above. However, the method of election under the provision of the Election Sub-rules as it originally existed and even after amendment remains the same for the election to the reserved category, which is from the area of operation of the Bank as a whole. In other words, reserved category members will be elected from the electorate as a whole, i.e.,

from all members from the entire constituencies of the Bank. So much so, we do not find any substance in the contention of the petitioners that in the absence of identification of separate ward for reserved category, the election cannot be held under the Election Sub-rules as amended."

37. Seen from the above extract, there does not seem to be any statutory changes as regards the delimitation of wards. In fact, the General Body of the society has amended its bye-laws providing for the delimitation of the wards. The Administrator, in turn, carried out the amendment to the Election Sub-rules of the society in tune with the amended bye-laws. The learned Division Bench specifically observed that the Election Sub-rule as originally provided does not identify any constituency for the reserved category of members. The amended provision, the Bench further observed, has resulted in an increase in the number of members in the reserved category from 2 to 7. The method of election, however, even after the amendment remained the same for the election to the reserved category; it is from the area of operation of the Bank as a whole.

38. In that factual back drop, the learned Division Bench has held that "so far as the reduction of nine members under general category to six and their allotment to constituencies are concerned, what we notice is that bifurcation of the area of operation of the Bank into three wards with four Panchayats in each of the wards remains the same prior to the amendment and even after the amendment".

39. We may pertinently observe that whether a candidate contests from a particular ward after delimitation or from the area of operation of the bank as a whole, the fact remains that the candidate has to have the votes polled from all the members of the society casting their votes. It is not a case of a candidate getting votes polled only from the ward he is contesting from. It materially does not affect anybody's electoral prospects whether he or she contests on a ward basis or on a non-ward basis.

Why is the Division of the Area on Ward Basis?

40. Though Section 28 had been amended by Act 8 of 2013 by way of insertion of a proviso for holding election to certain types of society on a ward basis, it has not, however, provided any objects and reasons why particular types of societies have been compelled to have the election on a ward basis.

41. Clueless I was as regards the legislative intent in bringing about the amendment to Section 28 for having the area of a society divided into wards. I have, therefore, queried the learned Special Government Pleader, whose erudition on the subject of co-operatives is well known. He has, first, brought to my notice a recent judicial pronouncement of the Hon'ble Supreme Court in *Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited*, (2015) 8 SCC 1.

42. The learned Special Government Pleader has also submitted that unless the society is divided into wards and candidates are compelled to contest on a ward

basis, there is every likelihood of candidates from one particular area dominating the election. It marginalises the candidates from other areas.

43. Vipulbhai (supra) quotes from the International Cooperative Alliance Statement on the Cooperative Identity, adopted in Manchester, United Kingdom on 23-9-1995, the "seven cooperative principles" as guidelines by which the cooperatives put their values into practise. The principles are as follows: 1st Principle - Voluntary and open membership; 2nd Principle - Democratic member control; 3rd Principle - Member economic participation; 4th Principle - Autonomy and independence; 5th Principle - Education, training and information; 6th Principle - Cooperation among cooperatives; and 7th Principle - Concern for community.

44. On a closer scrutiny, we may observe that principle No. 5 emphasises that Cooperatives provide education and training for their members, elected representatives, managers, and employees, so they can contribute effectively to the development of their cooperatives. They inform the general public-particularly young people and opinion leaders-about the nature and benefits of cooperation. Further, Principle No. 7 highlights the service of the Cooperatives for the sustainable development of their communities through policies approved by their members.

45. Veering back to the aspect of division of wards, we can visualise that the members ambitious of being at the helm of the affairs of a society, mostly, will ensure large-scale enrolment of members from their areas alone to the exclusion of other areas which may not have minimal representation. The resultant position is that there will not be even-representation of the members across the length and breadth of the society.

46. If a society is compelled, on the other hand, to have the elections on ward basis and the members are forced to contest from the wards they have been residing in, it ensures that the membership pattern avoids polarization, and the fruits of development of co-operative movement reach all the nooks and crannies of the society. Indeed, the reasoning assigned by the learned Special Government Pleader well accords with the co-operative spirit as has been adumbrated by the Hon"ble Supreme Court in Vipul Bhai (supra).

47. Keeping in view the above objective, we may examine whether the action of the society can be sustained in having the wards divided only concerning the general candidates but not reserved candidates. If at all even-representation and prevention of marginalisation are the objectives to be achieved, they equally apply to the reserved category: women and candidates belonging to SC/ST candidates. If the women and SC/ST candidates are permitted to contest without confining them to wards, the evil sought to be remedied by the amendment of Section 28 gets its entry, particularly, to the extent of women and SC/ST members.

48. Proverbially speaking, what is good for the goose is also good for the gander.

If the division of wards has a statutory objective to be achieved, it cannot be denied vis-à-vis women and other reserved categories of the society. Further, from the days of *Taylor v. Taylor*, 1876 (1) Ch D 426, the aphoristic judicial assertion that statutory conformity brooks no deviation looms large in the present instance, too. I therefore hold that division of wards in part to the exclusion of women and other reserved categories cannot be sustained.

Issue No. III:

49. That said, I hasten to add that as regards the prejudice being caused on account of non-division of wards as far as the reserved categories are concerned, it ought to have come from any of the persons affected thereby. In the present instance, neither a women candidate nor any other reserved category has made out any grievance in that regard. On the other hand, it seems that the candidates of reserved category have already filed their nominations on a non-ward basis.

50. The society's failure to divide the wards to accommodate the reserved categories, as it appears to me, does not substantially affect the statutory mandate, going by the doctrine of substantial compliance. This Court, in the absence of any challenge by an affected person, does not intend to interdict the election process. It is incumbent upon the society to have the wards divided at least in future so that the candidates from the reserved categories do not suffer any prejudice either on account of improper or inadequate representation or on account of uneven distribution of their memberships.

51. Indeed, *Sasidharan Pillai* (supra) is suggestive of the proposition that as regards the reserved categories, division of wards is not sine qua non. From the italicized portion of the above extracted judgment, I am to conclude that the decision turns on the facts of the said case and it cannot be said that the learned Division Bench has laid down any invariable principle of law that under all circumstances division of wards is to general candidates to the exclusion of the reserved categories. Further, though *Mathai* (supra) has substantial bearing on the issue, it cannot however be said that in the absence of proper challenge by the affected person behoves this Court to have the election process interdicted.

Issue No. IV:

52. The learned counsel for the petitioners has tried to lay specific emphasis on the issue that the society is not maintaining Form 32 Register. Without much cavil, I may observe that Form 32 Register has the salutary purpose of determining who the active members are, so that at the time of election only they can exercise their right to vote in terms of Section 16A of the Act read with Rule 18A of the Rules.

53. Indisputably it is not the case of the petitioners that any eligible members have been omitted or any ineligible members have been included in the final voters' list. Further, the issue as regards the dichotomy of active and inactive

members has already engaged the attention of a learned Full Bench of this Court. As a matter of fact, many writ petitions have already been filed involving various other societies on the issue of active and inactive members.

54. This Court has, in all the matters, taken a consistent view that the democratic process of having a managing committee at the helm of the affairs of the society by holding regular elections cannot be put on hold. On the other hand, it has observed that the elections thus being held shall be subservient to and contingent upon the judicial pronouncement to be rendered by the learned Full Bench in the course of time.

55. I therefore hold that any procedural deficiency on the respondent society's part in maintaining Form 32 Register does not sound the death knell to the election to be held in terms of Exhibit P2 notification.

Issue No. IV:

56. Vexatious is the question. This Court on more than one occasion including Mathai (supra) has held that ordinarily once the election process has commenced, it is inadvisable to entertain any writ petition. Instead, the parties aggrieved should be relegated to an election petition under Section 69 of the Act. Further, in the present instance, given the fact that this Court has declined even on merits to interdict the election, the very issue renders itself academic requiring no particular adjudication.

57. In the facts and circumstances, the writ petition stands dismissed. No order as to costs.