

(1992) 12 KL CK 0027
In the High Court Of Kerala
Case No : O.P. No. 10687 of 1992

N.K. Vasavan

APPELLANT

Vs

District, Coir Project Officer and Others

RESPONDENT

Date of Decision : 14-12-1992

Acts Referred:

Citation : (1993) 1 KLJ 122

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

Bench : Single Bench

Advocate : C.K.S. Panicker, for the Appellant; T.R. Ramachandran, Government Pleader for Respondents 1 to 3 and E. Subramani, for Respondents 4 to 7, for the Respondent

Judgement

M.M. Pareed Pillay, J.—Petitioner is a member of the Pattanakkad Coir Mats and Matting Co-operative Society Ltd. No. 405. Second Respondent published election notification dated 31st July 1992 fixing the date of election to the managing committee of the society on 16th September 1992. Preliminary voters list was published on 10th August 1992. The last date for filing objection was 17th August 1992. Contention of the Petitioner is that about 50 persons who obtained membership within 60 days from the date scheduled for election have been included in the voters list, that many of them remitted their full membership fee only on 28th July 1992, that Petitioner filed objection before the third Respondent with regard to the illegal inclusion of the members in the voters list and that the second Respondent has not properly scrutinised the same and arbitrarily included those persons as voters. It is contended that many of them did not pay the full share value to the society and on that sole score the action of the third Respondent in including their names in the voters list is without any justification.

2. In the counter affidavit filed by Respondents 4 to 7 it is stated by them that they were admitted as members of the society on 4th January 1992, that at the time of admission they had paid Rs. 1 each towards admission fee and Rs. 14

each towards the first installment of the share value. Their contention is that they have paid the full share value due to the society 30 days prior to the date of election as envisaged under Rule 28 of the Kerala Co-operative Societies Rules and so the Petitioner's challenge against their inclusion in the voters' list is without any basis. Learned Counsel for the Petitioner contended that as the full amount towards the share value was not paid before the stipulated time as provided under Rule 26 Respondents 4 to 7 and similarly situated persons could not have been included in the voters' list.

3. The date of election was fixed on 16th September 1992. As Respondents 4 to 7 and similarly situated persons became members of the society long prior to that Rule 26 obviously has no application.

4. The question that arises for consideration is whether the persons admitted as members of the society and given the right to pay the share value in installments can be denied of voting right in the election to the managing committee of the society on the ground that they did not pay the full share amount due to the society 60 days prior to the date of election. Rule 26(1) envisages that no society shall admit members or approve the transfer of shares within sixty days prior to the date of election or the date of the general body meeting. Rule 26(2) states that 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. As already pointed out, as Respondents 4 to 7 and similarly situated persons were given membership of the society long prior to the date of election Rule 26(1) and (2) cannot be invoked against them.

5. As Respondents 4 to 7 and other similar persons were admitted as members of the society the rule that requires consideration for resolution of the controversy is Rule 28. The rule states that no member of a society shall be eligible to vote at the meeting fixed for any election to the committee of that society, unless thirty days prior to the date of such meeting he acquires the number of shares for membership as may be provided in the bye-laws of the society of which he is a member. The bye-laws of the society enables payment of share value either in lump or in installments. Rule 28 specifically says that a person who has been admitted to the society as per its bye-laws on acquisition of the number of shares for membership thirty days prior to the date of election is eligible to vote in the election to the committee of the society. Thus in a case where the bye-laws of the society enable a person to be admitted as a member of the society on payment of the admission fee and portion of the share value will be entitled to voting right if he has paid the full amount 30 days prior to the date of election. Rule 28 gives due importance to the bye-laws of the society and makes the position clear. Contention of the Petitioner that Respondents 4 to 7 and other similarly situated persons have not paid the full share amount to the society sixty days prior to the date of election and so they are not entitled to be included in the voters' list as envisaged under Rule 26 is not tenable as that rule

only says that no new member can be admitted to the society within 60 days prior to the date of election. While Rule 26 imposes prohibition on admission of members within a particular date before the election. Rule 28 enables a member of the society to acquire eligibility to vote by payment of the share amount to the society at least 30 days before the date of election. There is no inconsistency between Rules 26 and 28. Rule 26 cannot have any application to a case where members have already been admitted to the society on payment of the usual admission fee and portion of the share value. As the bye-laws of the society enable the payment of the share value either in lump or in installments and as Respondents 4 to 7 and other similar persons were already admitted to the society on 4th January 1992 on payment of admission fee and portion of the share value and as they have paid the full amount due to the society as envisaged under Rule 28 Petitioner's contention that they were illegally included in the voters' list is only to be rejected.

Petitioner is not entitled to any of the reliefs sought for in the Original Petition. In the result the Original Petition is dismissed.