(1993) 01 KL CK 0048

In the High Court Of Kerala

Case No : W.A. No. 16 of 1993-B

N.K. Vasavan APPELLANT

Vs

The District Coir Project Officer and Others RESPONDENT

Date of Decision : 06-01-1993

Acts Referred:

Citation : (1993) 1 KLJ 348

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : K.S. Radhakrishnan, for the Appellant; E. Subramani, for Respondents 4 to 7, for the Respondent

Judgement

M. Jagannadha Rao, C.J.—This is an appeal, preferred against the judgment of the learned Single Judge in O.P. No. 10687 of 1992, dated 14th December 1992 by which the writ petition was dismissed. The matter relates to election to a co-operative society. The contention of the writ Petitioner-Appellant is that 50 persons had obtained membership within sixty days, from the date of election, and therefore they ought not to have been allowed to vote. The learned Single Judge found that the admission of the said fifty persons was not within sixty days from the date of election, and that therefore their inclusion in the voters list and their participation in the election were valid. A point was however raised before the learned Single Judge that the share-capital was not fully paid by these fifty persons on the date on which they made their applications for admission and they were permitted to pay the share-capital in installments under the bye law of the society and that therefore unless all the installments were paid well before the prohibited period of sixty days before the date of election, they would not be entitled to be admitted as members. This contention was rejected by the learned Single Judge. This appeal is preferred against the said judgment.

2. The following are the facts. The above said fifty persons submitted their applications for membership on 4th January 1992, and paid Re. 1 towards application form and Rs. 14 towards partial subscription for the share-capital.

Each of them paid the remaining Rs. 36 on 28th July 1992. In so far as their admission as members is concerned, resolution admitting them as members was even passed on 4th January 1992 itself. Election notification was issued on 31st July 1992 as per Ext. P-3 fixing the date of election as 16th September 1992. Objections were filed by the Petitioner as per Ext. P-1 and P-2 on 7th August 1992, but the same were rejected and preliminary voters'' list was published and the same was finalised and election, which was scheduled to take place on 16th September 1992 was postponed and elections were held on 29th November 1992. As stated earlier, the application fee of Rs. 1 and Rs. 14 towards share capital were paid on 4th January 1992, and the balance of the share-capital was paid on 28th July 1992 by each of these fifty persons.

3. According to the learned Counsel for the Appellant, all the fifty persons would be entitled to be admitted as members only on or after 28th July 1992, when they paid the entire share capital, and that unless the said date is out of sixty days from the date of election, the admission of the said members is violative of Rule 26 of the Kerala Co-operative Societies Rules, and is therefore invalid.

4. For the purpose of understanding the above contention, it is necessary to refer to the relevant provisions of the Act and rules. Section 16 deals with qualification of persons to become members. Section 19 reads as follows:

19. Member not to exercise rights till due payment made: No member of a society shall exercise the rights of a member unless he has made such payments to the society in respect of membership or has acquired such interest in the society, as may be prescribed by the rules, or the bye-laws.

Rule 16 of the rules deals with conditions to be complied with for admission for membership. It reads as follows:

16. Conditions to be complied with for admission for membership.- (1) No person shall be admitted as a member of a society unless-

(a) he has applied in writing in the form if any laid down by the society.

(b) his application is approved by the committee of the society.

(c) he has fulfilled, all other conditions laid down in the Act, rules and bye-laws.

(d) * * * *

Rule 20 deals with payment to be made to acquire rights of a member, and it reads as follows:

20. Payment to be made to acquire rights of a member. The payments to acquire right of membership shall include-

(i) admission fee.

(ii) subscription to share capital

(iii) any other payments required to be made under the bye-laws.

Rule 26 deals with prohibition on admission of members and transfers of shares on the eve of general meeting. It reads as follows:

26. Prohibition or admission of members and transfer of shares oft the eve of general meeting.- (1) No society shall admit members or approve the transfer of shares within sixty days prior to the date of election or the date of general body meeting.

(2) 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.

Rule 28 deals with restriction on the right of vote at the election and it reads as follows:

28. 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.

5. On a reading of the above said provisions, it is clear that Rule 16 lays down the conditions to be complied with for admission to membership. Rule 20 deals with payment to be made to acquire the rights of a member. Sub-clause (ii) of Rule 20 which deals with subscription to share capital would ordinarily mean that a person gets a right of membership if he makes subscription to the share capital, apart from complying the other Sub-clause of Rule 20. The words ''subscription to share capital'' do not mean payment of the entire share capital. It will be sufficient, if subscription is made in accordance with the mode prescribed in the bye-laws of the society. In the present case, it is admitted that bye-law 4 permits payment of share capital of Rs. 50 in twenty two installments, of which 21 installments at the rate of Rs. 2 and the 22nd instalment will be Rs. 3. It is not in dispute that on 4th January 1992 when the application for admission was submitted, the application fee of Re. 1 was paid along, with Rs. 14 towards share capital by each of the fifty persons, and the balance share capital of Rs. 36 was paid on 28th July 1992 by each of the fifty persons. Therefore, there is compliance with the provisions of Rule 20 and the bye-law.

6. Coming to Rule 26, it deals, with the limited question, namely, prohibition on admission of members and transfer of shares on the eve of general body meeting. It prohibits a society from admitting, members or transferring shares within sixty days prior to the date of election or the date of general body meeting. Sub-rule (2) of Rule 26 provides that any person admitted as member and any person in whose favour the transfer of shares has been approved in contravention of Rule 26 shall not have the right to membership or the right to vote at the said, election or at the general body meeting. In a case where Rule

16 has been complied with by making proper application by payment of Rs. 1 towards the application fee, and by payment of the particular instalment of share capital as provided in the bye-laws and where the said application is approved by the committee, there can be no doubt that, the membership will start from that date. In the present case, these events have happened on 4th January 1992, and therefore the membership started from that date Bye-law 4 in the present case states that if there is default in payment of three consecutive installments, the membership shall cease. That itself would mean that till such default was committed, a person would have to be treated as member.

7. The question then is whether there is any admission of members within sixty days before the date of election. If, as stated above, Rules 16 and 20 and bye-law 4 had been complied with on 4th January 1992, admission to membership took place on 4th January 1992 and not on 28th July 1992, when the remaining installments of the share capital were paid by all the fifty persons. Therefore, this is not a case where any admission to membership has taken place on 28th July 1992, within sixty days before the date of election.

8. Rule 28 has a different context. It deals with restriction on the right to vote at the election. It 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 acquired the number of shares for membership as may be provided in the bye-laws of the society of which he is a member. That rule deals with the right to vote at the election. Unless a person acquires the number of shares as determined by the bye-laws of the society, he will not be entitled to vote, unless such purchase of shares in thirty days prior to the date of the general body meeting.

9. Learned Counsel for the Appellant has placed reliance on the decision of a learned Single Judge of this Court in Krishnan Ezhuthachan v. Assistant Registrar 1990 (1) KLT 695. In that case, the position was that the admission to membership took place on 14/16th November 1988, but on that date not even the application for admission was submitted by the persons. The applications were submitted on 13th December 1988. Application fee and the share capital amount were paid subsequently as is clear from the facts there. In that case, bye-law 3(2) required that the full share capital was to be paid on the allotment of share. There was no provision in the bye-law for payment of share capital in installments. In those circumstances, the learned Single Judge came to the conclusion that the admission of members was within the prohibited period of 90 days as Rule 26 then stood, before the date of election, i.e., 26th February 1989. We are in general agreement with the principle of interpretation of Rules 16, 20, 26 and 28 in the said judgment, except in respect of the statement of law in paragraph 15 which reads as follows:

15. I am unable to read Rule 28 as expressing any contrary intention. It has to be read in the context of Section 19 and Rules 16 and 26. The rules is very badly and inartistically drafted. It speaks of the person as a ''member'' and yet speaks

of his acquiring the number of shares for membership. Whatever this rule is intended to convey or lay down, it cannot certainly override Rules 16 and 26 or enable a person to vote at the election unless he was a member prior to 90 days thereof (as held by this Court on an interpretation of the relevant provisions in George v. State of Kerala 1985 KLT 836).

10. In our view, Rule 28 merely deals with the right to vote. The right to vote must be distinguished from admission as a member. While Rules 16 and 20 deals with conditions for admission, Rule 26 deals with prohibition for admission to membership within a particular period. Rules 16 and 20 go together. Rule 26 and Rule 28 are applicable to different situation, as stated above. Therefore for the purpose of Rule 28, a person may still be a member, even before he acquires a right to vote. Such a right to vote accrues on payment of the full share capital. If the full payment falls within the period mentioned in Rule 28, he cannot vote at any meeting falling within 30 days of such payment. To the extent that paragraph 15 in the said judgment in Krishnan Ezhuthachan''s case is contrary to the above said interpretation, we are unable to agree to that extent with the said judgment. In other respects, we are in agreement with the said judgment.

11. For the aforesaid reasons, the learned Single Judge was right in holding that 50 persons in question were admitted, to membership on 4th January 1992, which was the date beyond 60 days from the original date of election on 16th September 1992 which was postponed to 29th November 1992. Therefore, there was no violation of Rule 26 inasmuch as these 50 persons had paid the entire share capital by 28th July 1992, which was far beyond 30 days before the date of election as provided in Rule 28. Therefore they were entitled to vote in the election which took place on 29th November 1992.

Therefore the writ appeal fails and is dismissed.

