
(1995) 03 KL CK 0064
In the High Court Of Kerala
Case No : W.A. 247 of 1995

P. Padmanabhan

APPELLANT

Vs

Joint Registrar and Others

RESPONDENT

Date of Decision : 10-03-1995

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 110(2)(ii)

Citation : (1995) 1 KLJ 492

Hon'ble Judges : M.M. Pareed Pillay, C.J;T.V. Ramakrishnan, J

Bench : Division Bench

Advocate : T.A. Shaji, for the Appellant; K. Balakrishnan and Govt. Pleader Jose K. Kochupappu, for the Respondent

Final Decision : Allowed

Judgement

Pareed Pillay, C.J.—Appellant is the petitioner in O.P. 1436 of 1995. He filed the Original Petition challenging Exts. P-1 and P-2 orders of the Joint Registrar of Co-operative Societies, Kottayam (First respondent). As per Ext. P-1, the elected Board of Directors of Udayanapuram Service Co-operative Bank was replaced by appointing an Administrator invoking section 33 of the Kerala Co-operative Societies Act on the ground that there is no quorum for the Board of Directors. As per Ext. P-2 the first respondent informed the Secretary of the Bank that the resolution 118 dated 19-10-1994 Co-operative Smt. Maniyamma to the Board of Directors cannot be ratified as the Act or Rules do not provide for Co-operative. The election to the Board of Directors of the Bank was held on 17-1-1993. The term of office is for three years. The strength of the Board of Directors was 11. The one woman member Smt. Vijayamma resigned on 3-8-1994. Out of the remaining 10 members 4 others also resigned. One member was disqualified. On 19-10-1994 as per Resolution No. 118 a woman member was Co-operative under Clause 36 of the Bye-laws. Contention of the appellant is that as a result of the Co-operative there is quorum and the first respondent was not justified in issuing Ext. P-1 order.

2. In Ext. P-1 it is stated that ineligibility of Sri. M.K. Sebastian as a member of the Board of Directors of the Bank has become a reality and as 4 out of the 10 members of the Board of Directors of the Bank have resigned the remaining 5 members cannot constitute quorum. As per Ext. P-2 order, Co-operative of Smt. Maniyamma as a Board member was not accepted by the first respondent.

3. Contention of the appellant is that Ext. P-1 order was passed on the assumption that there is no quorum for the Board of Directors having a total strength of 11 members and as the assumption is basically wrong as Co-operative of Smt. Maniyamma was not taken into consideration Exts. P-1 and P-2 cannot be sustained.

4. The point that arises for consideration is whether the Co-operative of Smt. Maniyamma to the Board of Directors of the Bank is valid or not. The only reason stated by the first respondent is that Act or Rules do not provide for Co-operative. If the Co-operative is legally valid, it cannot be said that there is no quorum.

5. Section 28 of the Act provides that the general body of a society shall constitute a committee, for a period not exceeding three years, in accordance with the bye-laws and entrust the management of the affairs of the society to such committee. Rule 38(15) states that casual vacancy of an elected member of the committee shall be filled up by election in the manner provided in the rules and in the case of nominated members the vacancies will be filled up by fresh nomination subject to the provisions in Rule 37. Learned Counsel for the 4th respondent submitted that Rule 38(5) expressly prohibits Co-operative and the only course open in a case of casual vacancy of an elected member of the committee is to fill up the same by election and as Rule 38(5) specifically says so appellants' contention that Co-operative is valid can never be accepted.

6. To resolve the controversy, reference to Section 110 would be apposite. Section 110(2) (ii) provides that any society existing in the State on the date of commencement of the Act which has been registered or deemed to be registered under any of the aforesaid repealed Acts shall be deemed to be registered under the Act; and the bye-laws of such society shall, so far as they are not inconsistent with the provisions of the Act, continue in force until altered or rescinded. The Bank was registered under the Travancore-Cochin Co-operative Societies Act, 1951. The Kerala Act came into force on 15-5-1969. As the Bank was in existence prior to the commencement of the Kerala Act, in view of Section 110(2) (ii), this Bank has to be deemed to be registered under this Act. That being the position, the bye-laws of the bank so far so they are not inconsistent with the provisions of the Act (Kerala Act will continue to be in force until they are altered or rescinded. Clause 36 of the bye-laws of the Bank specifically empowers the Board members to Co-operative any one whenever the vacancy occurs. As the above clause undoubtedly authorises the elected directors to fill up the vacancy for the remaining period and as Section 110(2) (ii) recognises the supremacy of the bye-laws so far as the societies which were in existence prior

to the commencement of the present Act are concerned, the Co-operative exercised by virtue of the bye-laws cannot be held to be invalid. Rules cannot travel beyond the specific provisions of the Act. As Section 110(2) (ii) specifically gives due importance and significance to the bye-laws of the society which existed prior to the commencement of the Kerala Act it cannot be brushed aside. In view of the above specific provision, contention of the respondents that the Act or Rules do not provide for Co-operative and hence exts. P-1 and P-2 cannot be assailed is without any legal basis. In view of the above specific provision, we hold that the Co-operative of Smt. Maniyamma made by the Board members is in order.

7. In a case where a society was registered prior to the commencement of the present Act its bye-laws will prevail. That has been explicitly stated in Section 110(2) (ii).

8. As the Co-operative is in order, there is quorum for the Board of Directors of the Society. That being the position, Exts. P-1 and P-2 cannot be sustained. The judgment of the learned Single Judge is set aside. Exts. P-1 and P-2 are hereby quashed. Respondents 1 and 3 are directed to hand over the administrative charge of the bank to the erstwhile Board of Directors of the bank with the appellant as President.

The writ appeal is allowed as stated above.