
(1990) 09 KL CK 0009
In the High Court Of Kerala
Case No : O.P. No. 7097/90

P. Subair Kunju

APPELLANT

Vs

Joint Registrar and Others

RESPONDENT

Date of Decision : 10-09-1990

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 28(5)

Citation : (1990) 2 KLJ 502

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : Cyriac Joseph, for the Appellant; K. Janardhanan Govt. Pleader and Pirappancode V. S. Sudheer, for the Respondent

Judgement

K.T. Thomas, J.—Petitioner is a member of Trivandrum Taluk Marketing and Processing Co-operative Society Ltd., (for short "the Society"). He was also a member of the Board of Directors of the Society. On 12-7-90, the second respondent (a Joint Registrar of Co-operative Societies) as per Ext. P1 proceedings, removed the Board of Directors on the ground that the said Board lost its quorum. The third respondent was appointed as an Administrator of the Society in the place of the Board of Directors for a period of four months. Ext. P1 is challenged in this Original Petition. Ext. P1 proceeds on the assumption that the strength of the Board is eleven. As a matter of fact, there were only 7 members on the Board. Out of them, two persons later resigned and the authority of another person was withdrawn by the member society which nominated him. Consequently, the Board of Directors consisted of four persons with three vacancies. The 2nd respondent contended that the Board lost the quorum since its strength was reduced below fifty per cent.

2. Learned counsel for the petitioner contended that the strength of the Committee was only 7 and hence the resignation of two members and withdrawal of another's authority by his sender would not have, reduced the quorum below the level prescribed. On the other hand, learned counsel for the 3rd respondent

(Administrator) contended that as per Clause 5.1 of the Byelaws of the Society, the strength of the Board is 9, though elections have not been held for 2 seats.

3. The sole question to be decided in this Original Petition is whether the 2nd respondent's interpretation regarding the strength of the Board is correct or not.

4. Sec. 28 of the Kerala Co-operative Societies Act, 1969 (for short ("the Act")) is the relevant provision for the appointment and other functions of the Committee. (Board of Directors is the same as the committee. The Act uses the expression "committee" and not Board of Directors). Sec. 28 (5) of the Act reads thus:

The quorum for a meeting of a committee shall be such number of members just above fifty per cent of the total number of members of that committee.

An Administrator can be appointed in the place of a committee due to emergence of any one of the exigencies enumerated in Sec. 33 of the Act. Sec. 33 (1), which is relevant, says:

Where the term of a committee has expired and a new committee has not been constituted, or where a no confidence motion is passed by the general body against the existing committee or where the existing committee resigns enbloc or where vacancies occur in the committee either by resignation or otherwise and the number of remaining members cannot constitute the quorum for the meeting of the committee, or where the "committee fails to hold its regular meeting consecutively for six moths or the Registrar is satisfied..... Registrar, may either suo motu or on the application of any member of the society, after intimating the Circle Co-operative Union, appoint a new committee.....or one or more administrator or administrators....

5. Here it is admitted that two members of the committee had resigned and the authority of another was withdrawn by a member society which sent him. Clause 5.1 of the Byelaws of the Society reads thus:

Subject to such resolution as the General body may from time to time pass, the executive management of the affairs of the society shall vest in a Board of Directors. The Board of Directors shall consist of not more than 11 members of whom two shall be representatives of individual "A" Class members duly elected by the General Body by ballot as per Rules, seven shall be representatives of Co-operative Societies "B" Class members elected from among their delegates by themselves by ballot as per Rules and two representatives of the Government of Kerala nominated by the Joint Registrar of Co-operative Societies. The Managing Director of the Society will have a seat in the Board but shall not have a right to vote. A representative each of the Kerala State Co-operative Marketing Federation and the Financing Bank may be invited as special invitees but shall not have any rights to vote.

(Both sides agreed that the number eleven mentioned in the Clause shall be read as nine in view of the amendment made to Sec. 28 through Act 19 of 1987).

6. As per the above Clause, the upper limit of the strength of the committee has been fixed. Fixation of the upper limit does not mean that the strength of the committee shall always be of that number. It can be of any number below the upper limit in the same way as it can be of its maximum strength. Fixing the upper limit is to ensure that it shall not, in any contingency, exceed the number. The 2nd respondent has no case that the Society has at any time decided that the strength of the committee of the Society shall be nine. As a matter of fact, the committee had only seven numbers. That means the strength of the committee has never gone upto the maximum provided by Clause 51 of the Bylaws. In that view of the matter, absence of three members either by resignation or otherwise would not reduce the quorum, since four members will be sufficient to constitute quorum.

7. A different interpretation is likely to bring in unwanted consequences. For instance, if the upper limit had been fixed as 20 in the Byelaws, even all the existing 7 persons without anybody's resignation would not have constituted quorum. The functioning of the Society would be in jeopardy even when all these members are present in a meeting, had the interpretation been the One placed by the second respondent. It is thus clear that the 2nd respondent has proceeded on the erroneous assumption that the committee has lost its quorum. Ext. P1 is thus vitiated by an apparent error. I therefore, quash Ext. P1. As a follow up, I direct the third respondent to hand over the management of the Society to the committee, which existed prior to the passing of Ext. P1, within one week from the date of receipt of a copy of this judgment.

Photo copy of the judgment will be furnished to the counsel as well as the third respondent for expeditious compliance with the direction. Original Petition is disposed of in the above terms.