

(2014) 09 KL CK 0006
In the High Court Of Kerala
Case No : WP (C). No. 2303 of 2013 (K)

Padmanabhan Pallath

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Act, 1969 — Section 69

Citation : (2014) 09 KL CK 0006

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : M.M. Monaye and M. Paul Varghese, Advocate for the Appellant; D. Somasundaram, Govt. Pleader and R. Sudhish, SC, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner was aggrieved with the convening of election to the 5th respondent Society mainly on the ground that Societies who were not members in the District Co-operative Bank will be permitted to vote in the election. The above writ petition was filed at the time of publication of final voters list. The petitioner contended that there were only 374 primary Cooperative Societies members of the 5th respondent, as on 10.12.2007. The draft voters list produced at Ext. P5 evidently showed 427 members and the final voters list at Ext. P7 indicated 515 members eligible to vote. The specific contention with respect to the membership being restricted to 374 Societies was on the ground that notices for general body meetings were issued to only the said 374 Societies.

2. The learned Special Government Pleader, Co-operation, however contends that there were two deemed memberships which were taken into account in preparation of the voters list. One of these was on the strength of the amendment made as per Ext. P1. It is submitted that earlier all Societies could claim membership under the District Co-operative Banks. In the year 2009, by Act 9 of 2009, an amendment was brought in, restricting the membership in the

District Cooperative Banks to Credit Societies alone. The said came into force on 11.12.2009. Subsequently by Ext. P1, Act 13 of 2012, an amendment was made by which such Societies who lost their membership by virtue of the provisions of Act 9 of 2009 were deemed to have again become members of such District Co-operative Banks. The share amounts which stood transferred to the suspense account was also deemed to be the share amount in respect to the said Society.

3. Further deemed memberships were also to be allowed since sub-section (2) of Section 8A of the Kerala Co-operative Societies Act, 1969, provide for deeming a Society to be a member of the District Co-operative Bank, if an application made in that respect was un-responded for more than 60 days. With respect to the said deeming provision, there was a challenge on the ground that affiliation and membership should be considered as two different aspects which was negated by the Division Bench of this Court in W.A. 1281/2013.

4. Even then, the learned counsel appearing for the petitioner would point to the counter affidavit filed by the State. It has been noticed that there are 593 members who exercised their franchise in the election. The said fact, according to the learned Special Government Pleader, is only on account of the orders passed by this Court in petitions under Article 226 permitting individual Societies to exercise franchise in the elections.

5. These are all factual matters into which a roving enquiry would not be proper, in a petition under Article 226 of the Constitution of India. In fact, the petitioner ought to have initiated an Election Petition immediately after the results were published. However, the learned counsel specifically points out that this Court had directed conduct of elections and had directed the votes to be kept in separate boxes as also directed the results to be declared. However, such declaration of result was deemed to be provisional and subject to further orders in the writ petition as per the interim order dated 08.02.2013.

6. On a hearing of the writ petition, it may not be possible for this Court to examine as to which of the Societies in excess of the 374 pointed by the petitioner would come under either of the deeming provisions under Act 13 of 2012 or Section 8A and which of the Societies were permitted to vote by interim orders passed by this Court in separate writ petitions. All these would have to be necessarily, agitated before the fact finding authority which is provided for under Section 69 of the Kerala Cooperative Societies Act, 1969. *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, held that if the High Court has entertained a writ petition despite there being an alternate remedy, then ordinarily it would be unjustifiable to dismiss the same, relegating the petitioners to such remedies unless the High Court finds that on the factual disputes arising in the case it would not be desirable to deal with them in a writ petition. That is the case herein and the disputes arising here requires to be adjudicated after leading evidence, either way, on facts.

7. In the circumstances of the interim order of this Court having deemed the

elections to be provisional, on relegating the petitioner to the statutory remedies, the results declared would be considered as final. The said order having been passed today (24.09.2014) in disposal of the above writ petition, petitioner would have reserved his rights to approach the appropriate authority under Section 69 of the Kerala Co-operative Societies Act, 1969, within 30 days time as provided under Section 69 of the Kerala Co-operative Societies Act, 1969. The above procedure has been upheld by a Division Bench in The Sulthan Bathery Co-Operative Agricultural and Rural Development Bank Ltd. Vs. Jayaprakash P.R., . In fact, such a procedure adopted of extending the period of limitation, was upheld by the Division Bench when relegating the petitioner to the alternate remedy available.

The writ petition is disposed of leaving the parties to suffer their respective costs.