(1988) 06 KL CK 0040

In the High Court Of Kerala

Case No : O.P. No. 4572 of 1988 T

P.K. Kuttappa APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 16-06-1988

Acts Referred:

Citation : (1988) 06 KL CK 0040

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : K.K. Krishna Pillai, for the Appellant; Government Pleader, for the Respondent

Judgement

Viswanatha Iyer, J.—Petitioner is the President of the Managing Committee of the Guruvayur Co-operative Urban Bank Ltd. The election to the present Committee took place on 27th November 1983 and the Committee took charge on 30th November 1983. As per clause the Bye-laws of the Bank, a copy of which is Ext. D-1, the term of the Committee is 5 years from the date of taking charge.

2. The 3rd Respondent, it appears, told the Petitioner on 4th May 1988 that the term of the Managing Committee will expire on 30th June 1988 and that an Administrator will be appointed on 1st July 1988. This alleged statement of the 3rd Respondent has prompted the Petitioner to file this original petition. According to the Petitioner, the Committee is entitled to continue in office till 30th June 1989 and therefore the 3rd Respondent''s threat to appoint an Administrator is misconceived. The prayer in the original petition is therefore an anticipatory one for a direction to the Respondents not to terminate the term of office of the present Managing Committee of the bank till 30th June 1989.

3. The learned Government Pleader appeared on receipt of notice and opposed the petition.

4. Both sides relied on the decision of the Division Bench in Mohammed Basheer v. State of Kerala 1987 (2) KLT 791 According to the Petitioner this decision is

authority for the proposition that the Managing Committee could continue in office till the expiry of the co-operative year, falling after the expiry of the five year term, while according to the Respondents, this decision has laid down that the committee should vacate office on the 30th of June of the calendar year in which the five year term expires. I am in agreement with the latter view.

5. Rule 39(1) of the Kerala Co-operative Societies Rules lays down that the expiry of the term of the Managing Committee shall remain constant and shall not vary from time to time dependant on the election or on any other eventuality. This rule deals with the date of expiry of the term of the committee and makes provision for a uniform rule to be followed by all the societies governed by the Co-operative Societies Act. The Division Bench has laid down in paragraph 9 of the judgment that the definition of "year" in the Act, namely a co-operative year, cannot be imported into Rule 39. The "year" in Rule 39 refers to the calendar year and not to the co-operative year. The language of Rule 39 should not be strained and die definition of "year" in the Act should not be imported out of context. After so laying down the law, the Division Bench went on to approve the following observation of Bhat J. in Sadanandan v. Joint Registrar 1985 KLT 136:

The constitution of the committee, as stated in Sub-section (1) of Section 28 of the Act is to be in accordance with the bye-laws. The expiry of the term of office also must be laid down in the bye-laws as made clear in Rule 39 of the Rules. If the exact date is not specified in the bye-laws, the date of expiry shall be 30th of June of that year in which the term expires. The statutory provisions are centred round the provisions of the bye-laws and not detract from the same. The bye-laws clearly state that the life of a committee shall be three years from the date of election. That would be 30th of December, 1984. But the bye-laws do not specify the date on which the term shall expire. Therefore, by virtue of Rule 39 the date of expiry shall be 30th June of the year in which the term expires, viz. 1984. That would show that the term of the committee expired on 30th June 1984.

6. The facts in Sadanandait''s case 1985 KLT 136 are as follows. The Managing Committee in that case was elected on 30th December 1981, but assumed charge of office only on 2nd May 1983 because of a stay from this Court. The term of office was three years from the date of election. The committee which took charge on 2nd May 1983 requested the Joint Registrar to allow them to be in office for three years from that day. The latter however purported to "extend" the term of the committee till 31st December 1984 or till a new committee was constituted. The request to allow the committee to continue in management for 3 years from 2nd May 1983 was rejected. The implication of the Joint Registrar''s order was that the normal life of the committee was only till 30th June 1984 and that it was being "extended" by six months. The order of the Joint Registrar was challenged before Bhat, J. The learned judge pointed out that as per the bye-laws the three years term of the committee will be till 30th December 1984. But

the bye-law''s did not specify any fixed date on which the term shall expire. Therefore, Rule 39 operated, and by virtue of Rule 39 the date of expiry was 30th of June of the year in which the term expired namely 1984. The committee bad to vacate office on 30th June 1984. The decision proceeded on the basis that "year" in Rule 39 referred to the calendar year in which the term of office of the Managing Committee expired, and if so, and in the absence of any specification in the bye-law, the term of the Board of Directors shall expire on 30th June.

7. The Division Bench stated that this conclusion arrived at by Bhat, J. was in accord with their reasoning as well. It is therefore, clear that ''year'' in Rule 39 refers to the calendar year in which the term of the committee expires. If the bye-laws of the Society do not prescribe a fixed date of expiry of the term, the term of the committee shall expire on the 30th of June of the calendar year in which the term expires. If the term expires on a day before 30th June, the committee can continue in office till 30th June (as happened in Basheer''s case) 1987 (2) KLT 791. If on the other hand, the term expires on a day after 30th June, the term of the committee gets curtailed and it expires on 30th June. The contention of counsel for the Petitioner that the committee can (in the latter class of cases) continue in office till the 30th of June following the expiry of the term of five years is not sustainable in the light of the decision in Basheer''s case 1987 (2) KLT 791.

8. The Petitioner''s committee took charge on 30th November, 1983. The term therefore, expires on 30th November 1988. By the operation of Rule 39, and as per the decision in Mohammed Basheer 1987 (2) KLT 791 the committee has to lay down office on 30th June 1988 i.e., the 30th June of the calendar year in which the five year term expires. The 3rd Respondent was therefore, justified in informing the Petitioner that the term of the committee will expire on 30th June 1988. There is no illegality in the information so conveyed.

The original petition is therefore, dismissed.

