
(2013) 11 KL CK 0076

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26652 of 2013 and connected cases

Prakashkumar

APPELLANT

Vs

State Co-operative Election Commission

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2014) 1 KLT 68

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : B.S. Swathi Kumar, Remya Murali and Ashish Mohan, for the Appellant; P. Vishwanathan, K.V. Vinod, Sunil N. Shenoi, V.G. Arun, T.R. Harikumar and D. Somasundaram, Spl. Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K. Vinod Chandran, J.—W.P. (C). No. 26225 of 2013 is filed by a member of the 6th respondent, Co-operative Bank, challenging the actions of the 7th respondent, the Administrative Committee, in enrolling members during its tenure. The Writ Petition also challenges Exhibit P7 order of the Electoral Officer bearing No. 2724/2013 dated 18.10.2013. W.P. (C). Nos. 26652 of 2013 and 26698 of 2013 are Writ Petitions raising the very same challenge, however with a challenge, inter alia, of the acceptance of the nominations of respondents 4 to 13, impleaded in W.P. (C). No. 26652 of 2013, on the ground of their having no valid membership in the Co-operative Bank. The Co-operative Bank as also the Administrative Committee have also filed a counter affidavit in W.P. (C). No. 26225 of 2013 and the respondents 4 to 13, whose nominations were challenged, have filed their counter affidavit in W.P. (C). No. 26652 of 2013. The Electoral Officer has also come forward with a counter affidavit in W.P. (C). No. 26225 of 2013. The counter affidavits shall be referred by the name of their deponents. The respondent-society, being a Co-operative Bank, was incorporated in 2001, the Managing Committee of which was superseded as early as in 2007. Respectively, Administrators and Administrative Committees were appointed and

they have been continuing till date, the details of which are not relevant for the present Writ Petitions. Suffice it to say that an election has been declared to the Society as per Exhibit P1 (W.P. (C). No. 26698 of 2013), which is scheduled to be held on 14.11.2013. The draft voters list was published on 10.10.2013 and the time for filing of objections was till 17.10.2013. Admittedly, objections were filed by the petitioners, which were rejected by Exhibit P7 order.

2. The objections were with respect to 675 members, who were said to be ineligible to participate in the said elections, by reason of their ineligibility to have membership in the society. The majority of the persons against whom objections were raised, numbering nearly 600, were said to be members appointed by the Administrative Committee. The remaining persons against whom objections were raised, were persons who had not remitted the additional enhanced amount of share value, which was brought in by way of a valid amendment. However, in considering the said objections, it is seen that the Electoral Officer has in 1st paragraph of Exhibit P7 found that the exclusion of members who had not paid the enhanced share value was proper and their non-inclusion was perfectly legal. When the objection was with respect to inclusion of 78 members, who allegedly had not paid the enhanced share value and were said to have been removed by the Managing Committee, the consideration was with respect to the non-inclusion of members who were said to have been removed. In any event, it is to be noticed that the objections itself produced as Exhibit P6 in W.P. (C). No. 26225 of 2013 and Exhibit P3 in W.P. (C). No. 26698 of 2013 with respect to the inclusion are vague and not determinative, specific or definite. Hence, following the dictum laid down in K.V. Vijayakumar Vs. The Joint Registrar of Co-operative Societies and Others, the inclusion of the said 78 members having not been named, is found to be not a proper objection raised for consideration of the Electoral Officer. No interference to Exhibit P7 is called for with respect to the said 78 members and the contentions of the respective parties are left to be agitated under S. 69 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act"), if so advised.

3. However, with respect to the objection of 600 members, on a reading of Exhibit P7, the same is found to be definite and raised on the count that the said 600 members having been enrolled by the Administrative Committee. The Electoral Officer, on a consideration of the said objection, lists out the brief history of the supersession of a validly elected Managing Committee in 2004 and briefly delves upon the various measures taken by the Administrative Committee to put the respondent-Bank back on its feet after the superseded Managing Committee, by its misdeeds, put the society in a tottering financial condition. The Electoral Officer also notices that by a General Body decision on 15.09.2013, all the A-Class shares allotted by the Administrative Committee was approved. On this ground, the said objection was also rejected and the draft voters list, as was forwarded by the Administrative Committee, was approved. Admittedly respondents 4 to 13 in W.P. (C). No. 26652 of 2013 were members so enrolled by the Administrative Committee, who had submitted nominations for the elections,

which also have been accepted.

4. The petitioners contend that the power of the Electoral Officer to consider objections and decide the eligibility of members to exercise franchise in the elections is well established and as has been reiterated in Abraham K. Mathew and Another Vs. Returning Officer to Thariodu and Others and Idukki District Police Co-Operative Society Vs. Electoral Officer to Idukki District Police Co-Operative Society and Another, The Electoral Officer's power, which is akin to that of a Returning Officer under R. 35 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as "the Rules") has been declared by a Division Bench of this Court as early as in 1996 in Vijayakumar's case (supra). The nature of powers under R. 35A and R. 35 has been held to be identical in Abraham K. Mathew (supra). The inability and incapacity of the Administrative Committee to enrol members requires no elucidation, the same having been declared in K. Shantharaj and another Vs. M.L. Nagaraja and others, Hassan Vs. The Joint Registrar of Co-operative Societies and Others and Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others, The power of this Court to interfere under Art. 226, despite the remedy of S. 69 of the Act being available, where there are instances of patent illegality has been upheld by a Division Bench of this Court in K. Pankajaksha Panicker v. N. Venugopalan Nair (1993 (2) KLT 641 : 1994 (2) KLJ 8), The petitioners hence seek for conduct of the election, without participation of the persons appearing in the final voters list, who are not entitled to be members and hence not entitled to exercise their franchise. Necessarily, it is contended, on such orders being passed, the nominations of respondents 4 to 13 will have to be set aside.

5. The learned Special Government Pleader (Co-operation), however, would urge that the power to enrol members is definitely vested with the Managing Committee. An Administrative Committee appointed under S. 32 or S. 33 of the Act, even if having no powers to enrol members, the same cannot obliterate the final authority of a Society vested in the General Body of the members as per S. 27 of the Act. Relying on the decision of the General Body of the members, which ratified the enrolment of the members by the Administrative Committee, the Electoral Officer in his counter affidavit seeks to sustain Exhibit P7 order. The further ground urged is that the petitioners had participated in the said General Body meeting and had not objected to the passing of the resolution. The learned Special Government Pleader would also place reliance on Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, to caution this Court from interfering with the election process, since the same has been set in motion and as per the binding precedent cannot be stopped merely for reason of an alleged illegality or breach of Rules in preparing the electoral roll. The petitioners, it is argued, has to be relegated to the remedy available under S. 69 of the Act.

6. The Administrative Committee through its counter affidavit produces the notice of the General Body as Exhibit R7(b) and contends that though the

ratification of enrolment of members was not an item in the agenda, the same was discussed with the permission of the Chair. The learned counsel appearing for the Administrative Committee also takes me through the Report appended to the notice to contend that though the item was not in the agenda, a reading of the Report would amply demonstrate that the Committee intended the General Body to ratify the memberships granted by the Administrative Committee. The learned counsel would also rely on a resolution moved by one of the members, produced as Exhibit R1(d) for conferring the franchise on all A-Class members enrolled by the Administrative Committee. Respondents 4 to 13 through their separate counter affidavit produces Exhibit R4(b), extract of the resolution purportedly passed by the General Body on 15.09.2013. Reliance was also placed on M. Subramanian and Others Vs. Devicolam Taluk Plantation Workers Co-operative Credit Society Ltd. and Others, to contend that the dispute now raised by the petitioners is a dispute arising at the stage of scrutiny of the nomination papers, which is a dispute arising at "a stage of the election" coming within the Explanation to S. 69(2)(c) of the Act. If the election is bad for reason of the disqualification of 600 members and the disqualification of respondents 4 to 13 affects their nomination; then, that is a dispute under S. 69 of the Act and this Court should not invoke the jurisdiction under Art. 226, is the plea.

7. The issue raised is with respect to the enrolment of 600 members, during the tenure of the Administrative Committee, which, according to the Administrative Committee, has been ratified by the General Body of the Society. There is no dispute that these members were enrolled by the Administrative Committee. Looking at the report appended to the notice of the General Body, it is evident that these persons were enrolled for the purpose of granting loans as has been permitted by the Joint Registrar by his order No. CRB 5147/2012, dated 11.07.2012. Hence, the question is as to whether in the absence of a duly elected Managing Committee and in the context of the Administrative Committee having no powers to enrol members; whether the ratification by the General Body would confer the right on such members enrolled by the Administrative Committee; the right to exercise franchise in the election.

8. Section 27(1) relied on by the Department as also the party respondents is extracted herein below:

27. Final authority in a Society:- (1) Subject to the provisions of this Act, the rules and the bye-laws, the final authority of a society shall vest in the general body of the members:

Provided that nothing contained in this sub-section shall affect the exercise by the committee or any officer of a society of any power conferred on such committee or such officer by this Act or the rules or the bye-laws.

Section 27(1), no doubt, vests the final authority of a Society in the General Body of the members. However, such vesting of powers by the proviso is declared to have no effect on the exercise by the Committee, any power

conferred on the Committee by the Act or the Rules of the bye-laws. That the power to enrol members is conferred on the Managing Committees by the Act is not disputed. It is in this background that the contentions raised herein are to be examined.

9. The first contention to be dealt with, is on the factual aspect, of the ratification said to have been made by the General Body. Evidently the ratification of enrolment of members is not an item figuring in the agenda of the notice of General Body. The contention of the Administrative Committee is that on a reading of the Report appended to the notice the intention would be clear. If the intention was clear, then, necessarily there should be an explanation as to why it was not made a specific item in the agenda. It cannot at all be said that the enrolment of 600 members in a Society, where the final voters list show a total 905 eligible members, is not an issue to be dealt with casually on the permission of the Chair. A reading of the Report appended to the notice would only indicate that the members were enrolled in the interest of the business of the Society and for the purpose of disbursing loans to such individuals. The interest accrued on such loans, would be an income for the Society.

10. The cherished, well-intentioned desire of the Administrative Committee, as expressed in the Report appended to the notice, cannot without something more, especially due notice, crystallize into a resolution and subsequent ratification by the General Body. It is also very pertinent that while the items in the agenda are numbered from 1 to 11, the resolutions said to have been taken by the General Body produced as Exhibit R4(b) in the counter affidavit of respondents 4 to 13, shows that the said resolutions were adopted as Items 1 and 2. At Item No. 10, specifically "the other items permitted by the Chair" has been headlined and it has been specifically noticed that no such item was placed. The bye-laws of the Society has not been placed on record by the respondents to substantiate a contention that the General Body can accept a resolution placed by a member before the Administrative Committee. The procedure by which a member could move a resolution in the General Body and the time stipulated for the filing of such a resolution and the procedure contemplated with respect to notifying the members of the General Body are all in the dark. Hence, on facts itself it is difficult to substantiate and uphold the claim of ratification by the General Body.

11. A Division Bench of this Court has in Vijayakumar (supra) succinctly declared that "all voters no doubt must be members, but, all members may not necessarily be voters. Merely by virtue of being a member, one does not acquire the right to vote automatically" (sic)(para 14). In the present case, admittedly the membership was granted to the 600 persons to facilitate the functioning of the respondent-Society, in the best interests of the business of the Society. The members so enrolled by the Administrative Committee had availed of loans from the respondent-Bank and this was the purpose for which the Joint Registrar had granted permission to the Administrative Committee. The Joint Registrar also could not have permitted the Administrative Committee to enrol members, since

the Administrative Committee by its very constitution lacked the power and authority to enrol members.

12. The role of the Administrator or a Committee appointed by the Registrar, while the Committee of Management is under supersession, as has been held in K. Shantharaj (supra) and reiterated in T.A. Kuttappan (supra) was to "bring on an even keel a ship which was in doldrums" (sic). Enrolment of new members is not a power specifically conferred on the Administrative Committee; nor is it intended, especially, in the nature of the functioning of a Co-operative Society, which definitely should be in a democratic manner. Hence, going by the binding decisions cited above, of a Full Bench of this Court and the Hon"ble Supreme Court, the Administrative Committee cannot enrol - members, which would involve alteration of the composition of the Society itself. The members in the Administrative Committee itself were not members of the Society; which is permissible under the provisions of the Act. But, that is not to say that when they are in power by virtue of an order of supersession by the Department, they could go ahead and enrol themselves and others to the membership of the Society. As has been noticed, they are independent Administrators appointed to bring the Society out of its travails, and not persons who are to embroil themselves in a campaign for membership to eventually come back to power, with the aid of the members they have enrolled and to whom they have sanctioned and disbursed loans. This would destroy the very democratic set up of the Society.

13. That the members were enrolled by the Administrative Committee calls for no roving enquiry. The contention is that such enrolment has been ratified by the General Body. The resolutions said to have been moved by the individual member and the cherished desire of the Administrative Committee as is disclosed from the report are all with respect to conferring such members enrolled by the Administrative Committee; the power to exercise franchise. That is precisely what was laid down by a Division Bench of this Court when declaring that all members are not necessarily voters. The power to enrol members is definitely conferred exclusively on the democratically elected Managing Committee and the mere reason that the instant Society was continued under the management of an Administrator or the Administrative Committee appointed under S. 32, does not by the sheer weightage of the number of years in which such management was continued, confer any authority on the Administrative Committee to enrol members and then on ratification by the General Body grant the right to such members to exercise franchise. The vesting of final authority on the General Body of the Society under S. 27 read with the proviso; in the teeth of the binding precedents referred above, is of no avail.

14. It is trite that this Court would not normally interfere in an election process, especially when such interference would bring the election process which has started running to a halt. It is also trite that an election dispute is best left to be resolved in an Election Petition, which remedy is available under S. 69 of the Act.

However, as has been found by a Division Bench in *K. Pankajaksha Panicker* (supra) that where there is a patent illegality and the grounds on which an action is sought to be sustained is wholly unsustainable and in the context of there being no factual disputes to be resolved; this Court would not hesitate to invoke its inherent jurisdiction under Art. 226. The Division Bench stated so in paragraph 7:-

7. So far as the first contention for the appellants is concerned, we are clear, for reasons given in *Ravi v. Kottayam Co-operative Urban Bank Ltd.*, (1993 (1) KLT 644) and other rulings of this Court that where the rejection of the nomination papers is patently illegal, this Court could interfere under Art. 226 of the Constitution of India and need not always relegate the parties to an election petition. We reiterate the said view once again particularly in the light of the patent illegalities in the rejection of nominations which are wholly unsupportable. Further, on the facts of the case, there is no question of adducing any documentary or oral evidence and there is no need to adduce elaborate oral or documentary evidence.

15. It is also to be noticed that the orders intended to be passed by this Court under Art. 226 would not lead to a halt in the proceedings of the election; but would only result in a patent and obvious illegality being plucked out from the election process, ensuring that only validly enrolled members, are conferred with the right to exercise franchise. The Administrative Committee members, who were appointed to set right the house, cannot be permitted to usurp the ownership. The facts disclosed are undisputed and brook no dispute resolution. The members were enrolled by the Administrative Committee and their right to franchise is ratified by the General Body is the plea put forward; placing reliance on S. 27 of the Act. When the binding precedents of the Hon'ble Supreme Court and High Court divest the Administrative Committee of any power to enroll members; there can be no ratification by the General Body.

16. In the context of the consistent and overwhelming declarations on the lack of power of the Administrative Committee to enroll members, the judgment of the learned Single Judge in *Aomanathan Vs. Deputy Director, Dairy Development Society*, is of no avail. I find it difficult to persuade myself to bind myself to the said decision, which noticed the binding precedents and held otherwise. Much less is the persuasion of the ingenious argument of ratification, put forth by the respondents, for; when the statute prescribes for something to be done in a particular manner, it shall be done in that manner or not at all [*Taylor v. Taylor* (1875) 1 Ch. D 426]. In the context of the findings above, on facts as also on law, Exhibit P5 in W.P. (C). No. 26698 of 2013 is to be set aside, to the extent it confirms the 500 members enrolled by the Administrative Committee, in the final voters list Exhibit P6. Necessarily the nominations of respondents 4 to 13, if they are members so enrolled, falls to the ground on the principle of only the members who figure in the final voters list being permitted to contest the elections. Their nominations fail on the principle of "dependent orders" as dilated

by the Division Bench in K. Pankajaksha Panicker (supra). The final voters list, produced as Exhibit P6 in W.P. (C). No. 26698 of 2013 would stand modified to the extent of deletion of the members who have been enrolled by the Administrative Committee. There shall be a direction to the Electoral Officer to expeditiously amend the final voters list and the Returning Officer shall only permit such members who have validly enrolled to exercise their franchise in the election. The Writ Petitions are allowed. No costs.