
(1995) 12 KL CK 0017
In the High Court Of Kerala
Case No : O.P. No. 18241 of 1955-V

Pushpi Jose and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 20-12-1995

Acts Referred:

Citation : AIR 1996 Ker 210

Hon'ble Judges : K.T. Thomas, Acting C.J.; P. Shanmugam, J

Bench : Division Bench

Advocate : K. Ramkumar, for the Appellant; T.V. George, Govt. Pleader and P.C. Joseph Pazheparambil, for the Respondent

Judgement

K.T. Thomas, Ag. C.J.

1. The question commonly raised in these cases pertains to the validity of a Government order extending the life of the managing committees of certain co-operative societies in Kerala. Our answer to the said question seems to be sine qua non for disposal of the original petitions. Hence we would first proceed to consider the said question and then we can decide the incidental issues, if any, arising in individual cases.

2. Government of Kerala published a notification purportedly in exercise of powers u/s 101 of the Kerala Co-operative Societies Act (for short the Act) as G.O. (P) 156/95/Co.op. dated 6-11-1995 it will hereinafter be referred to as "the notification"). A directive issued by the Government of Kerala is published as per the notification that Section 28(1) of the Act shall apply to all primary co-operative societies where elections are due before 30-4-1996 with the modification that the words three years in the sub-section shall stand substituted by the words three years and six months. The contention commonly advanced by the petitioners in these original petitions is that Government have no power u/s 101 of the Act to issue such a notification. For appreciating the said contention we have to see the parameters of the section.

3. Section 101 of the Act reads thus:

"101. Power to exempt societies:--

The Government may, if they are satisfied that it is necessary to do so in the public interest, by general or special order for reasons to be recorded, exempt any society or any class of societies from any of the provisions of this Act or direct that such provisions shall apply to such society or class of societies subject to such modifications as may be specified in the order."

Learned counsel argued that the above power cannot be exercised for flouting a legislative mandate and the effect of the notification is to over-reach the mandate in Section 28(1) of the Act. Learned Government Pleader, on the other hand, contended that powers u/s 101 are for making subordinate legislation and Government are empowered even to modify any provision of the Act including curtailment of any period fixed therein.

4. In support of the said contention learned Government Pleader invited our attention to the decision of a Division Bench of this Court in *Joint Joint Registrar and Another Vs. M.R. Cherian and Others*, The bench dealt with another notification issued by the Government extending the period of one year envisaged in Section 28(1A) of the Act by a few months more (As per the said sub-section, Registrar of Co-operative Societies has power to appoint an administrator for a society, under certain contingencies, to manage the affairs of the society. But the sub-section has limited the maximum aggregate period during which the administrator can be allowed to manage such affairs, as one year). The Division Bench has pointed out that Government could, in exercise of powers u/s 101 of the Act, modify the said period.

5. Section 101 empowers the Government either to exempt any society (or any class of societies) from any of the provisions of the Act or to direct that such provision shall apply to such society subject to the modifications specified in the order. In other words, the modification of the provision is intended to effectuate the exemption envisaged in the section. It cannot be forgotten that the power in Section 101 is only to grant exemptions from the provisions of the Act.

6. What is meant by the expression "exempt" in the section.? It seems to be process by which a society is liberated from any trammes, condition, obligation or liability created under the Act. Exempting process cannot be stretched to deprive a society of any benefit or right under the Act. In Webster's dictionary the meaning of the word "exempt" is given as "to free or permit it to be free from any burden, promise or duty to which others are subject; to grant immunity to". Similar is the meaning attached to the word "exempt" in Oxford dictionary as "free from any (obligation)."

7. A learned single Judge has considered the position in *Fazaluddin Haque v. State of Kerala* (ILR 1994 Ker 92) and has adopted a reasoning akin to the one we made out now. Exemption, according to the learned single Judge, cannot be

stretched to deny any benefit or right created by the Act. (Of course, learned counsel pointed out that the said decision has been reversed by a Division Bench of this court on facts. Even then, we are only dealing with the reasoning adopted in the judgment).

8. Be that so. But the said interpretation is not enough to quash the notification. The effect of the notification is only to direct that the term three years specified Section 28(1) shall be read as three years and six months. What is the legal impact of it on the practical operation of Section 28(1). To gauge it we extract the sub-section here (without the provisos).

"28. Appointment of committee. -- (1) 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."

This provision apparently confers power on the general body of a society to constitute a committee and laid down certain parameters for it. The said provision did not confer on the Government or on any other authority under the Act any power for constituting the managing committee of the society. In other words, the only authority to constitute a managing committee for the society is the, general body and none else. While constituting the committee the general body is first under a restriction that they shall not give a duration to the committee for more than three years. However, it was open to the general body to fix the duration of the committee for a lesser period i.e. six months or one year or two years or even three years, but not more than three years. The above power conferred on the general body could be exercised either at the time of constituting the committee or even thereafter. After the notification a general body, if it wants, can extend the duration of the committee for such primary society up to 3 1/2 years. This alone is the utility of the notification.

9. According to us, the impugned notification has no application to a committee already constituted by the general body of a society, unless such general body wants to re-fix the period. The notification would apply to the general body which is yet to constitute a managing committee and in such case general body can fix the duration of the committee up to 3 1/2 years.

10. When we have understood the notification thus, it is unnecessary to consider whether it is invalid due to any reason whatever. Even so, we would point out that petitioners have not established any case to declare the notification invalid. So the period fixed by a general body, as for the committee constituted by it would run out according to the "fixation made by the general body unaffected by the notification.

11. In the light of the above view, we have to direct the Registrar (or the Joint Registrar concerned) to exercise powers u/s 33 of the Act in respect of the societies involved in these cases the term of which has already run out. Such Registrars shall appoint either a new committee or an administrator (or

administrators) as envisaged in the section but only for the purpose of holding elections to the new committee. Immediate steps shall be resorted to by such new committee or administrator, as the case may be, for holding such elections.

12. Regarding O.P. No. 18241/95, we are told that though election was already notified, it was not held on account of the impugned notification. We therefore direct the Returning Officer concerned to re-schedule the dates for election and complete the same as expeditiously as possible.

Original petitions are disposed of as above. Issue photocopy on usual terms.