(2013) 07 KL CK 0140

In the High Court Of Kerala

Case No : Writ Petition (C) No. 16260 of 2013 (F)

P.V. Joseph, President, Kannankara Service Co-operative Bank Ltd. and Kannankara Service Co-operative Bank Ltd.	APPELLANT
Vs	
Joint Registrar of Co-operative Societies (General), Assistant Registrar of Co-operative Societies (General) and P. Sarngadharan, Deputy Registrar	RESPONDENT

Date of Decision : 03-07-2013

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 32

Citation : (2013) 07 KL CK 0140

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : S.P. Aravindakshan Pillay, Smt. N. Santha, Sri. K.A. Balan, Sri. Peter Jose Christo and Sri. S.A. Anand, for the Appellant; Rinny Stephen Chamaparambil, Government Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

K. Surendra Mohan, J.—The first petitioner is the President of the second petitioner, a Co-operative Society, registered under the provisions of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as Rs. the Act'' for short). The Society is conducting a bank. Amendments were effected to the bye-laws of the Society enhancing the share value from 10/- to 50/-. The amendments were duly approved by the 1st respondent. In terms of the amendments, the difference in share value, was to be paid within a period of six months. The said requirement was permitted to be notified to the members by publication in two news papers having wide circulation in the area. Accordingly, after due publication, the formalities were completed. However, by Ext. P4 proceedings, the first respondent extended the time limit for remitting the enhanced share value by a period of two months. It is also directed in Ext. P4 that the second petitioner should comply with the direction therein and submit a report containing their explanation. Accordingly, Ext. P6 explanation was submitted. But, it is contended that no further action was taken thereafter in the matter. The petitioners are aggrieved by Ext. P11, a show cause notice issued by the 1st respondent, directing them to explain why action should not be taken u/s 32 of the Act for non compliance with the direction in Ext. P4. According to Sri S.P. Aravindakshan Pillay, who appears for the petitioners, Ext. P4 was not preceded by any notice calling for their explanation. The petitioners had completed all the formalities in strict compliance with the stipulations contained in Ext. P1 amendment. Accordingly, they had effected the necessary publication in the news papers. The time limit stipulated has already expired. As soon as Ext. P4 was received, they have submitted their explanation Ext. P6, pointing out the difficulties in complying with the direction therein. Without hearing them or passing any orders in the matter, Ext. P11 has been issued, without any justification. If some orders had been passed pursuant to Ext. P6, it is contended that, the petitioners could have challenged the same in appeal. The omission to pass final orders has denied to the petitioner the benefit of their statutory remedy also. In the above factual background, it is submitted that, the issue of Ext. P11 is without any justification. It is further alleged that Ext. P11 has been issued with the ulterior object of superseding the elected Managing Committee, on political considerations. Therefore, it is contended that the Writ Petition is only to be allowed.

2. The learned Government Pleader Advocate Rinny Stephen Chamaparambil, opposes the contentions of the learned counsel for the petitioners. It is pointed out that Section 11(2) of the Act requires every member to be intimated personally whenever an enhancement in the share value is made. The said provision gives them an option either to remit the enhanced share value or to seek return of their share capital. The said valuable right available to the share holders cannot be denied to them by the process of not making proper publication as required by Section 104 of the Act. Therefore, it is contended that it was incumbent on the petitioners to have intimated each individual member by the issue of registered notices. The learned counsel for the petitioners counters the above contention by pointing out that as per the amendment in Ext. P1, the petitioners were permitted to comply with the requirement of notifying the individual members by publication in two leading newspapers. The 1st respondent, having registered the said amendment and permitted the petitioners to follow the said procedure, cannot now turn around and blame the petitioners alleging violation of the statutory provision.

3. The further contention of the learned Government Pleader is that Ext. P4 was issued after considering a complaint received from some of the members, which is Ext. P5. Ext. P4 was passed on 20.12.2012. Thereafter, as per Ext. P7, 15 members had sought permission to remit the enhanced share value on 08.01.2013. The petitioners had not submitted their explanation at that time. It was about a month thereafter that Ext. P6 was submitted. It was after waiting for about four months thereafter, that Ext. P11 show cause notice was issued for the reason that the petitioners had not complied with the directions contained in

Ext. P4. The same has been issued for valid reasons and cannot be described as vitiated by any mala fides. It is also pointed out that the Officer who was holding the office of the first respondent at that time is no longer holding the said post. Since no allegation could be leveled against the present incumbent in the office of the 1st respondent, it is submitted that the petitioners would be heard, their objections would be considered and only thereafter final orders would be passed in the matter. Therefore, he seeks dismissal of this Writ Petition. Heard. It is not in dispute that the bye-laws of the Society were amended permitting an enhancement in the share value. It is no doubt true that sufficient time has been stipulated by the amended bye-law provisions itself for remitting the share value. The enhancement also cannot be said to be significant for the reason that the share value has been increased only to 50/- from 10/-. It is not in dispute that the petitioners have complied with the requirement of notifying the members of the amendment, by publication in leading newspapers, as stipulated by the amended provision. However, what has been directed in Ext. P4 is only to extend the time limit by a period of two months so as to enable any of the members who have not remitted the enhanced share value, to remit the same. The direction has been given on the basis of Ext. P5 complaint received from 5 persons. The allegation in Ext. P5 is that though they had approached the office of the petitioners on a number of occasions, the enhanced share value was not received from them. In view of the above allegation, it cannot be said that extending the time limit for receipt of the enhanced share value is without any justification. However, the fact remains that Ext. P4 was not preceded by any notice calling for an explanation from the petitioners. What is directed in Ext. P4 is to comply with the directions therein and then to submit an explanation. If the direction was only to be complied with, then one fails to understand why an explanation was necessary to be submitted. If it was for considering the explanation, the said exercise should have preceded the issue of Ext. P4. Any how, it is not disputed that Ext. P6 explanation has been submitted and that no further orders have been passed in the matter thereafter. Therefore, the fact remains that despite submitting the objections Ext. P6, the 1st respondent has not applied his mind to the objections raised therein or passed any final orders thereon. Therefore, it is absolutely necessary that the objections of the petitioners are duly considered and final orders passed thereon, without further delay. It is only thereafter that further action on Ext. P11 could be justified. Therefore, the issue of Ext. P11 without passing final orders on the explanation Ext. P6, cannot be justified. Since there has been a change in the personnel who was holding the office of the first respondent, the petitioners can have no objection to their explanation Ext. P6 being considered and fresh orders passed.

In view of the above, this Writ Petition is disposed of with the following directions:

i) The first respondent is directed to treat Ext. P4 as a show cause notice, to consider the explanation Ext. P6 submitted by the petitioners and to take a final decision in the matter, expeditiously, after affording an opportunity of being heard to the petitioners as well as other interested parties.

ii) Until final orders are passed in accordance with the above direction, all further action based on or pursuant to Ext. P11 shall be kept in abeyance.

