

(2016) 12 KL CK 0020

In the High Court Of Kerala

Case No : W.P. (C) Nos. 32578, 34708 and 35236 of 2016

Ramakrishnan

APPELLANT

Vs

State Co-Operative Election Commission

RESPONDENT

Date of Decision : 07-12-2016

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 101, Section 16A, Section 19A
Kerala Co-operative Societies Rules, 1969 — Rule 18A

Citation : (2017) AIRCC 855

Hon'ble Judges : Mr. P.B. Suresh Kumar, J.

Bench : Single Bench

Advocate : Smt. Anitha Ravindran, Advocate, for the Petitioner; Sri. K.S. Mohammed Hashim, Special Government Pleader, for the Respondent Nos. 1 to 3; Sri. Alan Papali, Sri. Gilbert George Correya, Sri. Nishil, P.S., Advocates, for the Respondent Nos. 4 and 5

Final Decision : Partly Allowed

Judgement

Mr. P.B. Suresh Kumar, J.—Among these writ petitions, WP(C).Nos.34708 and 35236 of 2016 are instituted challenging the order of the Government dated 15.10.2016 by which all societies which are affected by Sections 16A(1) and 19A of the Kerala Co-operative Societies Act ("the Act") are exempted from the purview of the said provisions retrospectively from 01.01.2016 till 14.02.2017. WP(C).No.32578 of 2016 is an earlier writ petition filed by the petitioner in WP(C).No.34708 of 2016 substantially for the same relief sought in WP(C).No.34708 of 2016 without incorporating a challenge against the order of the Government referred to above. The Exhibits in W.P.(C) No.34708 of 2016 are referred to in this judgment for convenience.

2. The facts relevant for adjudication of the issues raised in the writ petitions are the following:

The petitioner in W.P.(C) No.35236 of 2016 is a co-operative society registered under the Act and the petitioner in the remaining writ petitions is a member of

the fourth respondent co-operative society in WP(C).No.32578 of 2016, which is also a co-operative society registered under the Act. By virtue of Act 8 of 2013, two new provisions were introduced in the Act with effect from 14.02.2013 as Sections 16A and 19A. Among the said provisions, Section 16A provides that no member of a society is entitled to continue as a member of the society if he is not using the services of the society for two consecutive years or using the services below the minimum level as may be prescribed in the rules or the bye-laws and if he has not attended three consecutive general meetings of the society and such absence has not been condoned by the members in the general meeting and Section 19A of the Act provides that no member of a society shall exercise the right of a member unless he has attended the minimum required general body meeting and minimum level of services as may be prescribed. Immediately after the introduction of the aforesaid provisions in the statute, the Registrar of Co-operative Societies has reported to the Government that the societies have to prepare a register of members after ascertaining the eligibility of the members as provided for under Sections 16A(1) and 19A of the Act; that Section 16A does not provide for any time limit or exemption to societies where election process has commenced already under the provisions existed prior to the introduction of the aforesaid provisions and recommended the Government to exempt all societies which are affected by the operation of Sections 16A(1) and 19A of the Act for a period of one year from the date of commencement of Act 8 of 2013. On the said recommendation, as per Ext.P1 order, the Government exempted all societies which are affected by Sections 16A(1) and 19A of the Act for a period of one year from the date of commencement of Act 8 of 2013. The Kerala Co-operative Societies Rules ("the Rules") was also amended later to give effect to the newly introduced provisions in the Act by incorporating Rule 18A with effect from 26.11.2014. It is seen that even thereafter, the Registrar of Co-operative Societies has reported to the Government that though the Rules are amended as indicated above, by virtue of S.R.O. No. 733/14 with effect from 26.11.2014, the societies have requested adequate time for implementation of the relevant provisions of the Act and the Rules by preparing the register of the members who are eligible to vote for conducting election to the Board of Directors and recommended the Government to extend the exemption granted as per Ext.P1 order retrospectively from 14.02.2014 to 31.12.2015. On the said recommendation, as per Ext.P2 order, the Government exempted all societies which are affected by Sections 16A(1) and 19A of the Act for the aforesaid period. It is seen that this Court had stayed Ext.P2 order in W.P.(C) No.17041 of 2015 on 08.06.2015 for a period of three months. Later, the said writ petition was referred to a Division Bench and then to a Full Bench along with a few other writ petitions involving issues relating to the implementation of the provisions contained in the newly introduced Sections 16A and 19A of the Act. The Full Bench in *Pradeep v. Kerala State Co-operative Election Commission* (2016 (3) KLT 551) has held that though Sections 16A and 19A were introduced with effect from 13.02.2013, the said provisions came into operation only on the introduction of Rule 18A of the Rules on 26.11.2014 and

that therefore the eligibility of the members of the societies to cast vote has to be assessed with reference to the position as on the date of close of the cooperative year after commencement of Rule 18A, viz, 31.03.2015. It was also clarified by the Full Bench, in the light of the said finding, that election has to be conducted in accordance with the unamended provisions of the Act in societies where preliminary voters list/final voters list were published for election pursuant to notifications issued prior to 31.03.2015 and that election has to be conducted in accordance with the amended provisions of the Act in societies where the preliminary voters" list was published after 31.03.2015. It is seen that the Full Bench has not considered the challenge against Ext.P2 order in W.P.(C) No.17041 of 2015 on merits. Instead, the said writ petition was also remitted along with the remaining matters for decision to the learned Single Judge and it is seen that the same was disposed of later without adjudicating the issues raised therein, obviously, for, the petitioner therein did not pursue the challenge against Ext.P2 order. After the decision of the Full Bench referred to above, the Government have issued Ext.P3 order stating that it was brought to the notice of the Government that annual general body meeting could not be conducted in some societies for the last three years and above and some members of some other societies could not avail the minimum level of services provided for under Section 16A(1) of the Act and that the Government, therefore, is satisfied that it is necessary in public interest to extend the exemption granted as per Ext.P2 order for a further period upto 14.02.2017 retrospectively from 01.01.2016 to societies where annual general body meeting could not be conducted for the last three years and above and in case of societies where some of their members could not avail the minimum level of services as provided for under Section 16A(1) of the Act. Accordingly, as per the said order, the Government have accordingly exempted all societies which are affected by Sections 16A(1) and 19A of the Act for the said period. Ext.P3 is under challenge in these writ petitions.

3. Heard the learned counsel for the petitioners as also the learned Special Government Pleader.

4. The learned counsel for the petitioners, relying on Section 101 of the Act, contended that the power conferred on the Government under the said provision can be invoked by the Government only in respect of a society or a class of societies and that the said power cannot be invoked to exempt all the societies registered under the Act from the purview of the statute or any provision therein. According to the learned counsel, the intention of the legislature while incorporating a provision in the nature of Section 101 is to exempt a society or a class of societies from the provisions of the Act having regard to the peculiarities available to that society or class of societies and that a blanket exemption of all societies in the State from all or any of the provisions in the Act is not one contemplated by the statute. It is also contended by the learned counsel for the petitioners that, at any rate, the Government have no power to exempt a society from any of the provisions contained in the Act retrospectively. As regards WP(C).No.34708 of 2016, the learned counsel for the petitioner contended that

election to the society of which the petitioner is a member has been notified long prior to Ext.P3 order and that therefore election to the said society at any rate, shall be conducted in accordance with the amended provisions. Per contra, the learned Special Government Pleader supported Ext.P3 order contending that the Government have the power to issue an order of exemption in the nature of Ext.P3.

5. I have considered the contentions of the petitioners anxiously. Section 101 of the Act reads thus:

"S.101: 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."

It is clear from the words used in Section 101 of the Act that the statute confers power on the Government to exempt any society or class of societies from the provisions of the Act or direct that such provisions shall apply to such society or class of societies subject to such modification as may be specified in the order, if the Government is satisfied that it is necessary to do so in public interest for the reasons recorded in the order. As clarified by the Full Bench in Pradeep's case (supra), Sections 16A and 19A of the Act came into operation on 31.03.2015. It was while so, the Government issued Ext.P3 order on 15.10.2016. As noted above, it is stated in Ext.P3 order that the Government is satisfied that in some societies annual general body meeting could not be conducted for the last three years and above and some members in some other societies could not avail the minimum level of services and that therefore such societies are to be exempted from the purview of the newly introduced provisions in public interest retrospectively from 01.01.2016 to 14.02.2017. It is, therefore, clear that the Government have exempted only societies where annual general body meeting could not be conducted for the last three years and above and societies where its members or some of them could not avail the minimum level of services. In other words, the benefit of Ext.P3 order will not be available to societies where annual general body meeting could be convened during the last three years and above and where its members could avail the minimum level of services as provided in Section 16A of the Act. In such societies, the members who have not attended the minimum annual general body meetings will not be entitled to cast vote in the elections. It is, therefore, clear that the exemption provided in Ext.P3 order is not a blanket exemption and it applies only to societies specified in the order of exemption. The first contention of the learned counsel for the petitioners that Ext.P3 order is a blanket exemption which is not contemplated by the statute, therefore, fails.

6. But, I find force in the contention advanced by the learned counsel for the petitioners that there cannot be any retrospective exemption under Section 101 of the Act. The law in this area is well settled that unless a statute confers on the

Government an express power to make an order with retrospective effect, it cannot exercise such a power. The said proposition has been reiterated by the Apex Court in *I.T. Officer, Alleppey v. M.C. Ponnose* (AIR 1970 SC 385) thus:

"Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the Legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the Courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect."

Following the said decision of the Apex Court, it is held by this Court in *Benny Peruvanthanam v. Kerala State Cooperative Consumers' Federation Limited, Kochi and others* (2013 (4) KHC 791) that Section 101 of the Act does not grant any power to the Government to exempt the provisions of the Act retrospectively. Further, since Sections 16A and 19A of the Act came into operation with effect from 31.03.2015 as clarified by the Full Bench in *Pradeep's* case (supra), the elections held thereafter in accordance with the amended provisions are valid and a retrospective exemption of the provisions referred to above would not only take away the accrued rights of members of such societies, but would also create utter chaos as regards the administration of such societies. I have, therefore, no hesitation to hold that the retrospective effect given in Ext.P3 is invalid.

7. Coming to WP(C).Nos.32578 and 34708 of 2016, it is seen that the process of election to form a new managing committee for the fourth respondent society in WP(C).No.32578 of 2016 has commenced by a notification dated 30.9.2016 and pursuant to the said notification, a preliminary voters' list was also published on 3.10.2016. In so far as a preliminary voters' list has already been published pursuant to a notification issued prior to Ext.P3 order of exemption, I am of the view that the election to the said society shall be conducted in accordance with Sections 16A and 19A of the Act. Similar is the view taken by the Full Bench in *Pradeep's* case (supra) on identical situation. To be more precise, in respect of societies where preliminary voters list were published prior to 31.03.2015, the Full Bench directed that the election shall be conducted in accordance with the unamended provisions of the statute, notwithstanding the fact that the amended provisions came into being on 31.03.2015.

8. In the result, the writ petitions are allowed in part holding that Ext.P3 order of exemption is invalid only to the extent it exempts societies referred to therein from the provisions contained in Sections 16A and 19A of the Act retrospectively. WP(C).Nos.32576 and 34708 of 2016 are disposed of directing the third respondent in WP(C).No.34708 of 2016 to conduct election pursuant to Ext.P4 therein in accordance with Sections 16A and 19A of the Act.