(1966) 12 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 4892 of 1965

S. Doraiswami Mudaliar APPELLANT

Vs

Balasubramaniam and Others RESPONDENT

Date of Decision : 05-12-1966

Acts Referred:
Contract Act, 1872 — Section 11, 18

Citation : AIR 1968 Mad 94 : (1967) 80 LW 246

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Judgement

Kailasam, J.—This petition is filed for the issue of a writ of certiorari calling for the records connected with the proceedings of the Scrutiny

Committee of the Uthukottai Co-operative Supervising Union (Chingleput) for the election of a director to the Kancheepuram Co-operative

Central Bank, Ltd., Kancheepuram, dated 24-12-1965 and to quash the said proceedings.

2. The petitioner is a member of the Uthukottai Co-operative Supervising Union. The Conjeevaram Co-operative Central bank, Ltd., has a

directorate consisting of 24 members. A 1-1-1966, and one of the directors, who retired, was from the Uthukottai Co-operative Supervising

Union was called upon to elect another representative to the Board of Directors of the Conjeevaram Co-operative Central Bank Ltd. The

representative of the uthukottai Co-operative Supervising Union is to be elected from the several co-operative credit societies affiliated to the

union. The Kallanur Co-operative Credit Society, of which the petitioner is a member, is one such society. The petitioner filed his nomination as a

delegate of the Kallanur Co-operative Credit Society to the Uthukottai Co-operative Supervising Union. The petitioner''s nomination was rejected

on the ground that the Kallanur Co-operative Credit Society was ''overdue'' to the Conjeevaram Co-operative Central Bank. The rejection of the

nomination of the petitioner is challenged as illegal and contrary to the provisions of the Madras Co-operative Societies Act, 1961, and the rules

and by-laws of the Conjeevaram Co-operative Supervising Union and the Kollanur Co-operative Credit Society. Sec. 28(1) of the Madras Co-

operative Societies Act, 1961 (Act 53 of 1961) provides--

1. No person shall be eligible for being elected or appointed as a member of a committee if he......... (a)........... (b) (i) is in default to the society or

to any other registered society in respect of any loss or loans taken by him for such period as is prescribed in the by-laws of the society concerned

or in any case for period exceeding three months.

The only question that has to be decided is whether the disqualification on the ground of default by the Society is confined to an individual member

or to a co-operative society. Certain provisions of the Act and the by-laws of the concerned societies may be referred to in this connection. Sec.

17(1) provides--

17(1) Subject to the provisions of S. 18--(a) any individual competent to contract under S. 11 of the Indian Contract Act, 1872, (b) any other

registered society, (c) the Government, and (d) any body of person whether incorporated or not and whether or not established by or under any

law, if such body is approved by the Government in this behalf by general or special order, shall be eligible for admission as a member of a

registered society.

It will be seen that under Cl. (b) of sub-section (1) of Sec. 17 a registered society is eligible for admission as a member of another registered

society. Sub-section (2) prescribes how a person qualified for membership be admitted to the different kinds of co-operative societies. Sub-

section (3) provides that no member of a registered society shall exercise the rights of a member unless and until he has made such payment to the

society in respect of membership or acquired such interest in the society as may be prescribed by the rules and the bye-laws. The word ""member

in sub-section (3) would include a registered society and it is incumbent on the registered society to make such payment to the society in respect of the membership in order to enable it to exercise the right of a member. Section 18 enumerates various disqualifications for membership of a

society. The clauses in the section are applicable to individuals and not to registered societies. Section 19 refers to the right of members to services

by registered societies. Section 20 relates to expulsion of members. Section 21(1)(a) relates to the rights of members to vote. There can be no

doubt that in this section the word ""member"" would also include a registered society.

Section 28 uses the word ""person"" and not ""member"" and the contention is that the word ""person"" would not include a registered society, though it

is a member. Though most of the disqualifications mentioned in Sec. 28 are applicable to an individual, it cannot be said that the word ""person

could not include a registered co-operative society, which is entitled to become a member of another society. It appears that the word ""person"" is

used as it relates to an individual or a society eligible for being elected or appointed as a member of the committee. The word ""member"" cannot be

used in the context as the person becomes a member only after being elected to the committee. Though several of the clauses are applicable to

individuals, there cannot be any obstacle in applying the disqualifications to registered co-operative societies wherever they are applicable. This

conclusion is strengthened by a reference to Sec. 28, sub-section (2) which provides that a member of the committee shall cease to hold office if

he becomes subject to any of the disqualifications mentioned in sub-section (1). When a registered society is elected as a member, it becomes

disqualified by any of the disqualifications mentioned in sub-section (1), namely, by being in default to a registered society in respect of any loan or

loans taken by it. When a default by a society would result in putting an end to the membership of the society, it cannot be contended that a default

by a society would not be a disqualification for being elected to another society.

3. A perusal of several sections of the Act, the byelaws of the Conjeevaram Co-operative Central Bank and the Uthukottai Co-operative

Supervising Union makes it clear that the disqualification is also attached to the registered Co-operative Society. There are 27 directors in the

directorate of the Conjeevaram Co-operative Credit Bank. Of these 18 directors are elected from different Unions. Three directors are ex-officio

Deputy Registrars. One director is from Weavers'' Society, one from Employers'' Co-operative Society, one from stores and two from

shareholders. it will thus be seen apart from five directors, two of whom represent the shareholders and three ex-officio Deputy Registrars, the

others are from institutions Representations is to the various societies concerned and members from the executive of the societies are sent as

delegates representing the societies. Bye-law 7(3) of the byelaws of the Conjeevaram Co-operative Central Bank, Ltd., provides that a delegate

of a society affiliated to the Bank ceases to hold office on the supersession of the committee of such society. The byelaws also provide for the

society removing a delegate and appointing another in his place. According to byelaw 26, the General Body of the Bank shall consist of (1)

individual members, (2) society members affiliated to the bank, (3) the State Co-operative Bank, Ltd., and (4) the State Government if they hold

shares in the bank.

The byelaw also provides that the Board of Management shall maintain a list of members on rolls of the Bank, who are qualified to vote at the

general body meetings and shall bring such lists up to date 30 days before the meeting of the general body and that it shall be the duty of the

Secretary to supply copies of such lists to such of the members as desire to have them on payment of such fees as may be prescribed by the Board

in this behalf and that the Register of members shall be closed 30 days prior to the date of the general meeting. According to this by-law, a list was

prepared by the Uthukottai Co-operative Supervising Union, which showed that the Kollanur Co-operative Credit Society was a defaulter.

Reading this by-law, it is clear that the list of members on the rolls of the Bank would consist of the various societies and if the societies are in

default they will not be qualified to vote. The by-laws of the Uthukottai Co-operative Supervising Union also make the position clear. The by-laws

of the Uthukottai Co-operative Supervising Union also make the position clear. By-law 10 of the Union provides that the members of the

governing body shall be elected by the general assembly of the Union from among the delegates of affiliated societies. An affiliated society is

entitled to withdraw its delegates at any time and send another in his stead, and any delegate who is so withdrawn ceases to be a member of the governing body, if he happens to sit on that body at the time of withdrawal.

The by-laws of the Conjeevaram Co-operative Central Bank Ltd., as well as the by-laws of the Uthukottai Co-operative Supervising Union make

it clear that the member is only a registered society which elects one or two amongst the executive as delegates to the union. I do not see any

justification for holding that the disqualification in Section 28(1)(b)(i) does not attach itself to a registered society, which is a member. As already

stated, it is not disputed that the Kollanur Co-operative Credit Society was a defaulter. The rejection of the nomination of the petitioner, who was

a delegate of Kollanur Co-operative Credit Society, is therefore right.

4. In the result the petition is dismissed with costs. Counsel''s fee Rs. 150.

5. Petition dismissed.