

(2021) 07 KL CK 0381

In the High Court Of Kerala

Case No : Writ Petition (C) No. 14828 Of 2021©

Sarath Babu

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 30-07-2021

Acts Referred:

Kerala Cooperative Societies Act, 1969 — Section 16, 16(2), 16(2A), 16(2B), 16(3), 83(1)

Citation : (2021) 07 KL CK 0381

Hon'ble Judges : Sunil Thomas, J

Bench : Single Bench

Advocate : George Poonthottam, Nisha George, K.P.Harish, M.Sasindran, Lakshmi Narayanan

Judgement

Sunil Thomas, J

1. The writ petitioner in W.P.(C) No.14828/2021 is a member of the 3rd respondent society and as such was the honorary secretary of the Society till the expiry of the term of the Managing Committee. Writ petitioner in W.P.(C) No.14501/21 is a member of the Society and proposes to contest the present election. Before the expiry of the term of the earlier committee, society had recommended election to be conducted to the society on 11/12/2020. The recommendation was not forwarded by the second respondent Joint Registrar and the Asst. Registrar, for necessary action, on the pretext that W.P.(C)No.15278/2020 was pending. This was under challenge in separate proceedings. Since the time was over when the W.P. (C) No.15278/2020 was taken up and considered, the above writ petition was closed considering that in the meanwhile, by a resolution dated 26/11/2020, fresh election was recommended to be held on 6/2/2021. Thereafter, W.A

No.320/2021 was filed challenging the judgment in W.P.(C) No.23431/2020 and W.A.No.114/2021 was filed against the judgment in W.P.(C) No.15278/2020. Both the writ appeals were heard together and by Ext.P3 judgment dated 31/5/202, they were disposed of with specific observations.

2. According to the writ petitioners, by Writ Appeal Judgment, the Division Bench had observed that the society cannot be compelled by way of issuance of a mandamus to determine the eligibility of persons to be 'A' class members of the society and further to direct the society to grant 'A' class membership to the petitioners in those proceedings. It was also held that denial of membership cannot be described as arbitrary and illegal and hence, if any D class member was denied A class membership, it was for them to take up the matter before the Registrar/Government appropriately in accordance with the statutory provisions. The Division Bench had directed the Administrative Committee to forward the the resolution to be notified and it was specifically observed that the steps to be taken shall be for conducting election in continuance of the earlier election resolution passed by the Committee fixing the date of election.

3. According to the petitioners, though the election notification was issued as Ext.P4 on 22/6/2021, it was published only on 21/7/2021. In the meanwhile, persons having D class membership and working outside the jurisdiction of the society had effected payment of membership fee through Google pay mode, without application and without registration. It was also alleged that when the draft voters list was published on 21/7/2021, the list contained an addition of 246 members, whose names were not included by the elected committee while approving the voters list. Therefore, it was contended that the inclusion of the said persons was illegal. It was also contended that the 4th respondent herein was a C class member of the society for long. The allegation of the writ petitioner was that those persons were included by the Administrative Committee pursuant to the direction contained in Ext.P6 in W.P.(C) No.14828/2021.(Hereinafter referred to as Ext.P6). There is a further allegation that the hearing was conducted through Google meet on 30/6/2021 and membership fee was paid on 29/6/2021. The specific contention of the writ petitioner is that the hearing provided was nothing but a mockery. There is a further allegation that the decision of the committee was defended by the petitioner in W.P.(C)

No.14828/2021 by filing appeal before the Division Bench with leave, it was incumbent on the part of the Government to hear the petitioner also. It

was further contended that there was a specific direction in Ext.P6 to the Administrative Committee to grant A class membership to the applicants

who have already submitted application and remitted the share value based on the statutory qualification providing all rights from the date of

remittance of the share.

4. In the writ petition (W.P.(C) No.14828/2021, the above direction is assailed on the ground that the direction given to the Administrative Committee

to give A class membership to the applicants who had already submitted the applications and remitted the shares based on the statutory qualification

was contrary to the specific direction contained in Ext.P3 judgment, as the Law declared by the Apex Court, which is consistently followed by this

court, had held that the Administrator/Administrative Committee lacked authority to give membership while they were in office. It was contended that

the Government Order was issued in a pre planned systematic manner to ensure that the persons so chosen are given membership dehors the

direction contained in Ext.P3. It was contended that Ext.P6 revealed the orders were passed pursuant to a representation which cannot be a substitute

for a statutory appeal, as specifically directed in Ext.P3 and for that reason also the impugned order is not legally sustainable. The reliefs sought in

W.P.(C) No.14828/2021 was for a direction to quash Ext.P6 and to declare that the Government was not entitled to entertain a representation in lieu

of a statutory appeal and to issue directions in the nature contained in Ext.P6. In W.P.(C) No.14501/2021, petitioner assailed the impugned order and

sought a prayer not to include any person in the draft or final voters list, other than 275 members.

5. In view of the urgency expressed by the learned senior counsel for the writ petitioner that the election process now stands posted to 30/7/2021 for

declaration of the final voters list, the matter was posted for final hearing on 28/7/2021. Mr.K.P.Harish, the learned senior Government Pleader

representing respondent Nos. 1 and 2 and Mr.P.C.Sasidharan, the learned counsel for the 4th respondent, who also represented persons who had

sought to be impleaded in W.P.(C) No.14501/2021 sought time for filing separate written objections. The matter was heard on the basis of the

available records. Heard Mr.Lakshmi Narayan the standing Counsel for the Election Commission and Mr.M.Sasindran representing the 3rd

respondent society who had filed a separate written objection.

6. The learned senior counsel for the petitioner assailed Ext.P6 proceedings on three separate specific grounds. Firstly, it was contended that the

impugned order ought to have been passed only on a properly instituted appeal as specifically directed by the Division Bench, in Ext.P3 judgment. The

parties were relegated to the Government by the Division Bench, for an appropriate decision on appeal. It was contended that. Ext.P6, ex facie,

showed that only representations were submitted and not appeals as contemplated under the Co-operative Societies Act and Rules. To counter this,

the Society had filed a counter affidavit along with a copy of the appeal submitted before the Government, which indicates that it was in the form of

an appeal under section 16 (2B) read with section 83(1) of the Act, though mentioned by the authority in Ext.P6 as representations. This factual

contention of the learned senior counsel hence cannot be considered.

7. The second contention set up by the learned senior counsel was that the impugned order was passed with mala fide motives and was not legally and

factually sustainable. To support this contention, it was specifically submitted by the learned senior counsel that the writ appeal judgment was

delivered on 31/5/2021. The representation was submitted on 7/6/2021 and the share value payable by each of the applicant was paid by Google pay

on 27/6/2021. Parties were heard through Google meet on 30/6/2021. Ext.P6 order was passed on 9/7/2021. This showed a common pattern of an

organised process of rushing through the process of decision making to induct new members, to upset the collective will of the members. It was also

contended that it was a last minute attempt to induct new persons to satisfy the interest of certain group of persons and to scuttle the election process

their favour. The further contention was that the finding regarding A class membership was improper and not substantiated by any material on record.

That non application of mind was also patent from the records, it was argued.

8. Vehemently opposing these contentions, learned senior Government Pleader contended that the competent authority has taken a proper decision on

the basis of materials placed on it and had acted fairly. It was also contended that parties were given every reasonable opportunity and in the peculiar

facts and circumstances of the case, since a physical hearing was not possible, parties were heard by Google meet. The spirit of the judgment of the

Division Bench was assimilated, imbibed and decision was taken consciously in accordance with law. It was also contended by the learned Senior

Government Pleader that the judgment of the Division Bench clearly indicated that the Government was the competent authority and there was no bar

against passing an order on merits and consequential directions.

9. Yet another specific contention set up by the learned senior counsel was that even assuming on facts, the competent authority was justified in his

conclusion that appeals were liable to be allowed, he could not have issued any direction to the Administrative Committee to effect to directions, since

virtually it would amount to commanding the Administrative Committee, which had no legal authority to induct new members. Their duty was only to

administer the society duly in the interregnum till a new elected committee was constituted. It was also contended that direction given by the authority

was absolutely with mala fides, ultravires and beyond jurisdiction.

10. This was answered by the learned counsel for the society as well as the 4th respondent by contending that the authority was competent to issue

such orders. It was contended that though the Administrative Committee is generally held to be incompetent to admit new members virtually, the

appeal was in continuation of the earlier proceedings against the rejection of their application by the Managing Committee. The applications were filed

while the Managing Committee was in office and in continuation of that, appeals were allowed by the competent authority. Hence, it is not a direction

for an admission of new members but a direction to induct members whose applications were moved much before the Administrative Committee had

taken charge.

11. Close perusal of Ext.P3 judgment clearly shows that the Division Bench had repeatedly asserted that the proposed election should be in

continuation of the original process of election initiated by the Managing Committee. The legality of Ext.P8 order of the Committee which was under

challenge in W.P.(C) No.15278/2020 is referred to in para 11 of the judgment. It was held by the Division Bench that the contention that Ext.P8

referred to in W.P.(C) No.15278/2021 which was the order of the Managing Committee rejecting the request of certain members to grant A class

membership was based on a misconception of power under section 16 of the Kerala Co-operative Societies Act. The Division Bench accepted the proposition that the exercise of power under section 16 (2A) was required only in a case of non compliance with the stipulations contained in Section 16 (2) and (3) of the KCS Act and in the case at hand, it was the specific case of the society that in terms of the statutory mandate, the society had taken a decision on all the applications received for membership within two months from the date of receipt of an application. Therefore, there was compliance with the stipulations under section 16(2) and 16 (3) of the KCS Act and exercise of power under section 16(2A) was absolutely unwarranted. Consequently, it was held that when the decision was taken on an application for membership of the society, the remedy of the aggrieved party was to approach the Government. It was specifically held that since verification of factual aspects was involved in the matter of consideration, of grievance against such disuse or misuse, or inappropriate use of powers, it would be appropriate to decline jurisdiction by the Division Bench at that stage and to relegate the parties to approach the Government against the grievance regarding the decision on the application for membership. The court emphatically distinguished between the enrolment of members and election. It was held that the grievance in the former shall not be a reason not to hold the election to the Managing Committee. If either of the two election resolutions passed earlier were acted upon, election would have taken place much earlier in the society. This was the premise on which the Division Bench grounded its reasoning that the election process should continue in continuation of the earlier election process.

12. It is eminently clear that the matter was relegated to the appropriate authority since questions of facts were to be considered. To be an A class member certain factual criterias under section 16 of the Act and clause 5 (2) of the Bye Law are liable to be satisfied. There is nothing on record of the impugned order which discloses that such a factual enquiry was conducted. It seems that the authority by arriving at the conclusions in Ext.P6 has grounded its reasoning merely by referring to various clauses in the bye law alone. There is nothing on record to show that materials were produced before the authority since that was the way that they the members satisfied all the conditions. However, the reasons stated by the Managing

Committee for rejection of the individual applications were brushed aside by an omnibus reasoning that they are not obvious and the Act does not

contain such provisions indicate non application of mind and requires reconsideration. On the above reasoning, the impugned order appears to be

factually not grounded on well justified reasons to substantiate its conclusions.

13. As mentioned by the Division Bench, enrollment of members and election were distinctly different aspects and necessarily the realm of

adjudication by the appellate authority was only to decide whether the applicants in the appeals satisfied the minimum criteria to be a A class member

and also whether the decision arrived at by the Managing Committee to the contra by virtue of Ext.P8 in the W.P.(C) No.15278/2020 was sustainable.

Naturally, once a conclusion was arrived at that, the authority should have decided only on the question whether appellant were eligible to be

admitted as members. Since enrollment as members and election are two different distinct aspects as affirmed by the learned Division Bench, there

should not have been a direction by the authority to the the Administrative Committee, to grant membership to the members with effect from the date

of remittance of share based on statutory qualification providing all rights from the date of remittance. Possibly, even if such a direction could not have

been ordered is a contention of the learned senior counsel. It seems that, by giving such a direction impliedly that was giving direction to the authority

to include the names in the voters list thereby clubbing both the factors of membership as well as the election process. If any such implication is there,

definitely that goes against the spirit of the writ appeal judgment.

14. In the light of the above facts, I feel that the impugned order requires a detailed and closer consideration and accordingly, till the final decision is

taken, Ext.P6 order is liable to be stayed. Accordingly, operation of Ext.P6 is stayed until further orders. Necessarily, direction given to the

Administrative Committee to provide all rights from the date of remittance will also remain stayed and inoperational until further orders.

Post the matter for filing counter and for hearing on 11/8/2021.