

(2022) 10 KL CK 0025

In the High Court Of Kerala

Case No : Writ Petition (C) Nos. 21721 Of 2020 & 16452 Of 2021

Selvaraj A

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 07-10-2022

Acts Referred:

Kerala Co operative Societies Act, 1969 — Section 17, 69, 70A
Kerala Co operative Societies Rules, 1969 — Rule 16(1), 16(2), 16(3), 18

Citation : (2022) 10 KL CK 0025

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : K.T.Thomas, Mathew B. Kurian, Nikhil Berny, Bimal K. Nath,
N.Raghuraj, A.V.Ravi

Final Decision : Allowed

Judgement

T.R. Ravi, J

1. The issue involved in both these writ petitions are intrinsically connected and hence they are being disposed of by this common judgment.

2. The petitioners in W.P.(C)No.21721 of 2020 are members of the 3rd respondent Society. The 3rd respondent Society has preferred W.P.(C)No.16452 of 2021. Parties are referred to in accordance with their status in W.P.(C)No.21721 of 2020. The 3rd respondent Society is engaged in Dairy Development and was registered in the year 1991. The area of operation of the Society is Ward Nos.6 to 9 of Puthussery Panchayat in Palakkad District. The petitioners submit that the Society is running on profit for the last more than six years and that there are more than 400 milk producers. According to the petitioners, the President of the Society took advantage of the successful functioning of the Society and involved in committing acts of misappropriation and diversion of funds, regarding which several complaints have been preferred. Protesting the above said acts, six members of the Managing Committee resigned, which resulted in the appointment of an Administrative Committee for

a period of six months. Based on orders issued by this Court in W.P. (C)No.8983 of 2021, elections were held, and the present Managing Committee headed by the very same President took charge. It is submitted that one of the members Sri S.Ramesan has filed arbitration case under Sections 69 and 70A of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the Act) before the Co-operative Arbitration Court, seeking to set aside the election, and the same is pending consideration. The petitioners submit that the President of the new Managing Committee started harassing the petitioners and other members who had worked against him in the elections. The petitioners state that they were not permitted to supply milk, and, on several occasions, they had to throw the milk away.

3. The President issued notices to the petitioners and two other members under Rule 16(3) of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as the Rules) directing them to show cause why they should not be removed from the membership of the Society. The reason alleged is that they had obstructed the functioning of the Society by locking the gate and assaulting the employees and insisted on the issuance of receipt in the name of others, in respect of milk supplied by them. Subsequently, a notice dated 07.01.2020 was published stating that the petitioners and two other members have been removed from the membership of the Society under Rule 16(3) of the Rules. W.P. (C)No.1571 of 2020 was preferred by the petitioners and two other members and by Ext.P3 judgment, this Court directed the 2nd respondent to consider and pass orders on the complaint raised by the petitioners against the action of the Society, after hearing the petitioners and the Society. The 2nd respondent by Ext.P5 order dated 19.3.2020 cancelled the decision dated 04.01.2020 of the Managing Committee of the Society, expelling the petitioners and two other members from the membership of the Society. Even though in Ext.P5 order the decision to remove the petitioners from the membership had been set aside, the petitioners submit that they were not permitted to supply milk.

4. While so, two of the members who were also expelled from membership along with the petitioners, filed W.P.(C)No.9740 of 2020 before this Court challenging the actions of the respondents. This Court issued an interim order permitting the petitioners therein to supply milk to the Society in their capacity as members of the Society. Ext.P6 is the interim order granted. The 3rd respondent also filed W.P.(C)No.10096 of 2020 praying for a direction to the Government to dispose of the appeal preferred by the Society against Ext.P5 order. W.P.(C)Nos.9740 of 2020 and 10096 of 2020 were heard together and disposed of as per Ext.P7 judgment. This Court directed the Government to dispose of the appeal and stay petition preferred by the Society and the appeal to be preferred by the members against certain observations made in Ext.P5 order. It was also directed that the petitioners in W.P. (C)No.9740 of 2020 shall be permitted to supply milk pending consideration of the appeals by the Government. Even though the petitioners were entitled to similar treatment, they were not permitted to supply milk, which led to the filing of W.P. (C)No.21721 of 2020 praying for a direction to

respondents 3 and 4 to accept milk from the petitioners in the light of Ext.P5 order. On 20.10.2020, this Court issued an interim order directing respondents 3 and 4 to accept milk from the petitioners in their capacity as members of the Society.

5. While so, the Government considered the appeals filed by the petitioners in W.P.(C)No.9740 of 2020 and the 3rd respondent, and by order dated 12.7.2021, rejected both the appeals. The order of the Deputy Director rescinding the decision of the Society was upheld. The order dated 12.7.2021 is challenged by the Society in W.P.(C)No.16452 of 2021. The order has been produced as Ext.P10 in the said writ petition.

6. Heard Sri K.T. Thomas on behalf of the petitioners, Sri N.Raghuraj on behalf of the 3rd respondent and Sri Bimal K.Nath, Senior Government Pleader on behalf of the official respondents.

7. Section 17 of the Act provides that a member who has acted adversely to the interest of the Society or has failed to comply with the provisions of the bye-laws, may be expelled by a resolution of the General Body passed at a special meeting convened for the purpose, with votes not less than 2/3rd of the total number of members present and voting at the meeting. Rule 18 of the Rules lays down the procedure to be followed for the expulsion of a member under Section 17 of the Act. Rule 16(3) of the Rules provides that where an admitted member is seen to have been ineligible for membership at the time he was admitted as a member or subsequently becomes ineligible, the Committee of the Society may remove him from membership after giving him an opportunity for making his representation. According to the petitioners, Rule 16(3) was invoked in their case, for the purpose of avoiding the rigour of the procedure contained in Rule 18. The above contention found favour with the 2nd respondent, who issued Ext.P5 order on 19.3.2020. In Ext.P5, the 2nd respondent found that it has been proved that the petitioner acted against the interests of the Society, but the Committee did not have the authority to expel the petitioners invoking Rule 16(3) of the Rules. Based on the above finding, the 2nd respondent cancelled the decision of the Committee by invoking Rule 176 of the Rules. The appeal preferred by the 3rd respondent against Ext.P5 order was rejected by the 1st respondent as per Ext.P10 order dated 12.7.2021 produced in W.P.(C)No.16452 of 2021. The 1st respondent found that Rule 16(3) can be invoked only in cases where a member subsequently becomes ineligible. The eligibility conditions are laid down in Rule 16(1) and (2). Since action is taken for acting against the interests of the Society, Section 17 alone applies, which can be invoked only by the General Body of the Society.

8. The reasoning in the above said orders issued by the 2nd and 1st respondents cannot be said to be not in accordance with law. When specific provisions are set out in the Act, to deal with different situations regarding the continuance of a person as a member of Society, action can be taken only in accordance with the said provisions. The 3rd respondent has no case that the petitioners had

"subsequently become ineligible" to be members. When the above jurisdictional fact was not available, no action could have been taken under Rule 16(3).

9. The only ground on which the 3rd respondent attempts to lay a challenge to Ext.P10 order produced in W.P. (C)No.16452/2021 is that there is violation of principles of natural justice. Reliance is placed on the notice of hearing of the appeal dated 03.04.2021, produced as Ext.P8 in W.P.(C)No.16452/2021. It is the contention that the reference in the letter is only to the appeal submitted by the petitioners and not to the appeal submitted by the 3rd respondent. It is difficult to countenance the above contention. Reliance is placed by the counsel for the petitioners, on the decision of the Hon'ble Supreme Court in *Ashok Kumar Sonkar v. Union of India & Ors.* [(2007) 4 SCC 54], to submit that on the facts of this case, affording another opportunity to the 3rd respondent, for the fact there was no specific mention of the appeal preferred by the 3rd respondent in Ext.P8 notice referred above, would only be a futile exercise, since the action against the petitioners under Rule 16(3) can never be legally justified. In *Ashok Kumar (supra)*, the Apex Court, while considering the case of a person whose selection was illegal as he was ineligible to be considered for appointment, held that the application of the principles of natural justice is not necessary.

10. The case of the petitioners, on facts, is much better placed than what is available in *Ashok Kumar (supra)*. Admittedly, the 3rd respondent was heard on the question of the correctness of Ext.P5 order by the 1st respondent. Ext.P9 produced in W.P.(C)No.16452 of 2021 is the argument note preferred by the 3rd respondent, before the 1st respondent. It is seen from the argument note that elaborate submissions are made justifying the action under Rule 16(3). There is also a specific contention that "As far as the appeal preferred (wrongly typed as referred) by this respondent Society is concerned, the Deputy Director has not mentioned what is the illegality in invoking Rule 16(3) of KCS Rules 1969". The 3rd respondent cannot be heard to say that there was violation of the principles of natural justice, since contentions had been advanced on the appeal preferred by the 3rd respondent also at the time of hearing.

11. The contentions raised by the 3rd respondent against the orders issued by the Deputy Director and the 1st respondent, holding that Rule 16(3) cannot be invoked, are not legally sustainable. On facts, the 3rd respondent was heard on the challenge to the order of the Deputy Director and no prejudice is caused by the mere fact that the appeal was not specifically shown in the reference in Ext.P8 notice produced in W.P.(C)No.16452 of 2021. No prejudice can also be claimed, since the action under Rule 16(3) was without authority and action ought to have been under Section 17 of the Act. W.P.(C)No.16452/2021 is hence dismissed. Since the petitioners are entitled to continue as members of the Society, they are also entitled to supply milk. W.P. (C)No.21721 of 2020 is hence allowed, directing respondents 3 and 4 to accept milk from the petitioners in their capacity as members of the Society.