
(2004) 07 KL CK 0031
In the High Court Of Kerala
Case No : Writ Petition (C) No. 9268 of 2004

Shaji	Vs	APPELLANT
Co-operative Elections		RESPONDENT

Date of Decision : 01-07-2004

Acts Referred:

Citation : (2004) 2 KLT 1084

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : M. Sasindran, for the Appellant; B.S. Swathi Kumar, T.M. Sunil and Thomaskutty, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—Petitioner claims to be a member of the 5th respondent society, named as Palakkad District Autorikshaw Drivers Co-operative Society Ltd. The contentions that has been raised in this Writ Petition and which has been pressed come mainly under two heads. One is that the election to the Managing Committee proposed by Ext.P1 notification by the State Co-operative Election Commission is unauthorised since they have no power to prescribe election to a society in the nature of the 5th respondent. The other is with reference to the eligibility of about 282 members to partake in the election proposed. On the date notified, the election had not taken place as the parliamentary elections came to be declared. The next date is yet to be notified.

2. On the first issue, argument rests on Section 28 B of the Kerala Co-operative Societies Act. It had been brought by amendment effective from 1.1.2000. In respect of certain categories of societies, viz. Credit Societies, Apex Societies, Central Societies and Federal Societies, the Co-operative Election Commission was shown as the authority to hold the process of election. Rules have been also prescribed. Petitioner submits that the 5th respondent has been classified under Rule 15 in the category of Commercial society, as an Autorikshaw Society coming within Rule 15(ii) as a Miscellaneous Society and therefore does not qualify to be

considered as a Credit Society. If so, the Registrar of Co-operative Societies continued to be the authority for controlling the election and every steps taken pursuant to Ext.P1 would have to be declared as having been resorted to without authority or jurisdiction.

3. On this point, I heard Sri. T.M. Sunil, who appeared for the society. He refers to Exts.R4(a) and points out that at the time of registration of the Society and thereafter, the society has been treated as a Credit Society. The document, viz., audit certificate shows it as a Credit Society. His submission is that it is not an Autorikshaw Society, but an Autorikshaw Drivers Society and is mainly engaged in the business of giving credit to Autorikshaw Drivers for self employment purposes. Ext.R4(b) is a certificate of a non Credit Society, and he points that in such cases, the procedure adopted for audit itself is different.

4. The petitioner has not been able to bring in any document to indicate that the classification of the 5th respondent is not something other than a Credit Society. An Industrial Society comes within an altogether different category. Therefore, I find that the objections as above cannot be sustained.

5. In respect of the next submission, there is not much of disputes about the facts. The previous committee which was holding the office had been superseded on 29.10.2001. As on that date, 2112 persons had been given membership (it may not be relevant whether any of them had gone away thereafter). According to the petitioner, when the voters list was published, it was found that the membership had reached up to 2404. According to him, it is obvious that the administrator who was in charge had given membership to many persons. That was an unauthorised act on his part. When the draft list was published, the petitioner had submitted objections, but it has not been taken notice of and the final list published as Ext.P4 contains names of all these persons.

6. The argument is that admission given to members was irregular. The membership should have remained static all through the period when a committee was not in charge. The members have been inducted mala fide, and so as to upset the equilibrium of the Institution, and when the irregularity is obvious, this Court should step in to see that the additional members are divested of any rights, including rights to partake in the election.

7. Highlighting the argument about this illegality, counsel had referred to a decision of the Supreme Court viz. Hassan v. Joint Registrar of Co-operative Societies (1998 (2) KLT 746), as also a Full Bench decision of this Court in Joint Registrar of Co-operative Societies v. T.A. Kuttappan (2000 (2) KLT 480). The Supreme Court had extensively examined the matter. According to Sri. Sasindran, it has been observed that when an Administrator is appointed in a society, he is not authorised to give membership to persons, but department thereby only ensures and see to it that the irregular functioning of the Society are appropriately rectified. Extracting the observations made, it is submitted that the conferment of membership by the administrator was unauthorised and it has

to be treated as ab initio void and persons who got membership because of such proceedings could not have claimed privileges or benefits of membership, in whatever manner.

8. With reference to the judgment reported in *Govindan v. Deputy Registrar of Co-operative Societies* (1983 KLT 1038) the counsel submits that the fundamental factors are to be taken notice of and if there is a basic illegality or irregularity, this Court will not hesitate to take appropriate action, in exercise of powers under Article 226 of the Constitution. Preparation of a proper electoral roll is very important for the conduct of a proper election and when it is ex facie evident that irregularly membership had been granted, this Court would be justified in interfering with the same, and prescribe remedies, if the functionaries under the statute refrains from taking appropriate action on complaints.

9. Counsel also referred to the decision reported in *Pothanicaad Farmers Co-operative Bank Ltd. v. Joint Registrar* (2002 (1) KLT 857). A Division Bench had indicated that when there is an illegality or irregularity or when a circular or statutory prescriptions are violated by a Co-operative Society, this Court will not hesitate to interfere. The autonomous status would not have given them any immunity from surveillance. Cumulative circumstances of these observations, according to Sri. Sasindran, justifies this Court to interfere in the matter and declare that persons who had been admitted as members during the tenure of the administrator are ineligible to continue as members, and a fair election is to be made possible.

10. Learned counsel also refers to the decision reported in *Ahmednagar zilla Section D.V. & P. Sangh Ltd and Anr. v. Sate of Maharashtra and Ors.* (2002) 1 SCC 133) to show that if there is a basic error in the decision of an authority, it might have been possible for the Court to interfere in the matter as proceedings on a wrong foundation should not have been permitted to govern the situation.

11. The answer given by respondents 4 and 5 could now be adverted to. Learned counsel submits that this is not a conferment of membership which is to be considered as ab initio void or objectionable. The Supreme Court, according to him, has not laid down any principles in absolute terms. The Court had noticed extreme cases of wanton abuse of powers and when circumstances require, a discretion could have been validly exercisable even in the matter of admitting members. There might have been pressing situations where membership was to be granted. Here the administrator was in office for a fairly long period, viz. from October, 2001 onwards. It is not as if a genuine application for membership should have been possibly rejected taking notice of a technical plea. In the matter of giving membership, the discretion was vested in the committee or administrator, and the bye laws, and statutory provisions alone required to be followed. Another member, he submits, has no say in the matter.

12. On the facts, he submits that the need for membership, so as to facilitate young unemployed to acquire an autorikshaw through the agency of the Society

was a need of the community, and there were no other Societies capable of catering to such needs. To turn a blind eye to the demand would have been detrimental to the health of the Institution itself. There was no instructions from the Joint Registrar that giving of membership should be banned and no applications were to be entertained.

13. Mr. Sunil thereafter refers to Section 16 of the Kerala Co-operative Societies Act and points out that it is not as if the elected committee alone is authorised or empowered to give membership. The act takes notice of the situation where an application for membership submitted by a member is not entertained by the committee of the Cooperative society. The claim at this point, could be considered by the Registrar of Cooperative Societies and Government and in appropriate cases they are empowered to give membership. A departmental officer in the present case had given membership, over a period of years, to deserving cases. It could not have been characterised as an abuse of power. Rights available or recognised, possessed by the petitioner were never thereby violated. He had not been subjected to any inconvenience. The petitioner, according to him, is more interested in an election, and formation of committee and his chance for becoming a member of the director board. This was irrelevant, the counsel submits and only shows a biased if not a short sighted policy. They are only subsidiary issues, and the larger underlying objective in the formation of a Credit Society is improvement of the living conditions of the needy, and for welfare of the general public.

14. In the present case, according to him, the applications were acted upon in the best interest of the Society as also taking notice of the need of general public. The petitioner by himself definitely may not be considered as a person who is aggrieved about such resolution since it has not been possible for him to show that he has been put to any disadvantage because of the enrolment of one or more members.

15. Counsel also referred to the circumstance that loan to many members who have been so admitted had been granted and such transaction is an ongoing process spanning over years. The system was that from the District Co-operative Bank, loan amount is receivable in the name of the Society. It is given to the members on the security of the Autorikshaws that are purchased by them, and hypothecated to the Society. If the petitioner's contentions are accepted, according to him, it may lead to a situation whereby membership conferred has to be treated as ab initio void and such persons would not have been reckoned as member of the society for any purposes any time. The resolutions passed sanctioning grant of loan and other transactions which had been bona fide entered into would have been hit and it would have led to utter chaos. The loan transaction would have to be discontinued, and the vehicles in hundred would have to be repossessed, leading to colossal loss. Therefore he submits that the petitioner has not been able to show that himself or anybody else have been subjected to any disadvantage. The Writ Petition is experimental, and the

crusade by an individual, is with ulterior intentions. The technical contention raised by him has therefore to be ignored.

16. Yet another submission made by the respondents was with reference to Section 17 as well as Rule 16 (20) of the Co-operative Societies Act and Rules. It is pointed out that even if there was irregularity in the conferment of membership when one had been accepted as a member and had remitted the admission fee and price amount for a share, and had been thereafter exercising rights, it would not have been possible to hold that he was ineligible to continue as member for any defect in the transaction. If he is to be divested of membership, a notice has to be issued to the concerned individual seeking his explanation and thereafter only it would have been possible for him to be removed from the membership. A returning officer exercising limited jurisdiction was incompetent for carrying out these exercises and therefore, this Court also would not have compelled a conferment on him such duties for the fancy of an existing member.

17. The argument as above is impressive. Counsel had also referred to judgments which I had occasion to render in WP(C). 38603/2003 and WP(C). 17777/2004. I had held that it would not have been possible to expel a person from membership by orders of this Court and the procedure that had been prescribed by the Act and Rules were strictly to be followed. Even though the learned Counsel for the petitioner submits that such judgments have been challenged by way of an appeal, and appeals are pending, so long as they are not interfered with, for the sake of consistency at least, they have to be taken notice of.

18. A judgment rendered by a single Judge of this Court in WP(C). 334.97/2003 had also been referred to. This was in respect of the argument of Sri. Sunil, that after amendment was brought to Section 33(2) the entire scenario has been changed and the administrator had powers for enrolment of members. This position has not been accepted by the learned Judge. But on the facts of the case, it may not be necessary to advert to the above said decision.

19. Thus here is a case, where, for the reason that Ext.P4 contains the name of persons who had been admitted to membership during the tenure of the administrator, the petitioner requests this Court to interfere. He wants the electoral roll to be streamlined. This request, appears to be plainly unsustainable. Only for the reason that the administrator gave a few persons membership, it does not become void. I hold that in the appropriate cases, administrator will have to confer membership, taking note of the contingencies, especially those highlighted by the respondents in this case.

20. The Act prescribes that on an application, a decision has to be taken within two months thereof. If not, the Department and Government have been conferred with jurisdiction to issue appropriate direction. Also, being a movable property, a share is transferable property as spoken to by Section 23 of the Act,

subject to restrictions. When the administrator is in office for over two years, it is not conceivable that for years together, every such operation has to be kept in hibernation. The learned counsel was not able to point out that receipt of application, and grant of membership amounts to policy decision. These are regular and routine business transactions, and does not amount to any matter of policy. In fact the indication of the Act is quite the otherwise. The parameters have been laid down by Section 16 of the Act, and so long as a person satisfies it, and satisfy the conditions of the bye law, the decision is administrative in character. To impact a colour of policy to these areas are only self serving statements. Only in specified cases, coming u/s 16 (1) (d) of the Act, if at all there is an element of discretion. As rightly pointed out by the counsel for the petitioner, we cannot see any absolute principles laid down by the Full Bench of this Court or the Supreme Court. Exceptions can always be there and a prayer for declaration that the proceedings for grant of membership is void, is presumptuous and plainly self serving. We have to see the decision vis-a-vis, the objectives of the Society. To allege that it may change the character of a committee to be elected in future is pure absurdity, totally irrelevant and cannot be countenanced. One should not miss the woods by only noticing trees. Accepting the case of the petitioner, would push down the Institution to disrepute and litigation, especially when the administrator is not guilty of any indiscretion, and has exercised his discretion while dealing with the application.

21. I have already found that the Election Commission was competent to issue Ext.P1. Acceptance of the case of the petitioner will not advance justice, and will result in no advantage to any segment. Undue botheration about the colour or creed of the committee, will be illogical, and I should observe that sufficient havoc had already been created because of presentation encouragement and play of such cards. The impetus should be adjudged on the context viz. as to whether the steps taken were likely to advance the general interests of the Institution or for ulterior motives. I have to hold that if this is the touch stone, the decision for enrolment of members by the Administrator, here, cannot be considered as objectionable.

Consequences will be that the Writ Petition stands dismissed.