
(2006) 04 KL CK 0010

In the High Court Of Kerala

Case No : Writ Petition (C) No. 20959 and connected cases of 2004

Somarajan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 05-04-2006

Acts Referred:

Citation : (2006) 2 ILR (Ker) 490 : (2006) 2 KLT 909

Hon'ble Judges : K.S. Radhakrishnan, J;K.M. Joseph, J

Bench : Division Bench

Advocate : Kallada Sukumaran and K. Vijayamma, for the Appellant; B.S. Swathi Kumar, Spl. Government Pleader, T.R. Ramachandran Nair, K.S. Manu Punukkonnoor and P. Sreekumar, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The question that has come up for consideration in this batch of cases is whether a Society which has not renewed its affiliation with the State Co-operative Union as per Sub-section(2) of Section 90 of the Kerala Co-operative Societies Act, 1969 (for short "the Act") and is not functioning shall have the right to vote and contest the election in the Circle Co-operative Union.

2. Learned single Judge of this Court in Raju John v. Assistant Registrar of Cooperative Societies 1991 (1) KLJ 693 has taken the view that failure to renew the affiliation with the State Co-operative Union would not take away the right to vote and contest the election in the Circle Co-operative Union but only take away the privileges enumerated in Sections 35 to 41 of Chapter V of the Act. Justice M. Ramachandran, another Judge of this Court in Sudhakara Kurup Vs. Returning Officer, referring to the above mentioned decision has also taken the same view holding that non affiliation or non renewal of affiliation would operate only in a limited field, and that the right to vote and participate in the election to the Circle Co-operative Union would not be lost. Justice P.R. Raman, while dealing with similar question, noticed that Raju John's case was decided on the interpretation of Section 90 of the Act and felt that the impact of Sub-section (5)

of Section 88 of the Act which confers right to vote only to the affiliated society was omitted to be considered in the earlier decisions and hence calls for an authoritative pronouncement by the Division Bench. Later, the learned Judge who authored Sudhakara Kurup's case also has referred similar matters to Division Bench and hence these matters have been placed before us.

3. Government in exercise of the powers conferred u/s 89 of the Act has established the State Co-operative Union by notification in the gazette so as to organise, assist and generally develop co-operative societies to carry on co-operative agenda, to spread education on co-operative principles and practices, to participate in the development activities and decentralised planning of local authorities and to perform other functions prescribed. State Co-operative Union consists of (a) a general body, and (b) a managing committee. Each of the Circle Co-operative Union, Apex Societies, District Co-operative Banks and Central Societies other than the District Co-operative Banks shall elect a delegate in such a manner as may be prescribed, and all such delegates, the employees' representatives, the representative of the women members, the representatives of the members belonging to scheduled castes and scheduled tribes, the ex-officio members and the Government nominees in the managing committee of the State Co-operative Union shall constitute the general body of the State Co-operative Union. Section 90 of the Act deals with affiliation of Co-operative Societies with State Cooperative Union, which states that every Co-operative Society in the State shall, within a period of six months from the commencement of the Act or within a period of six months from the date of its registration, whichever period expires later, get itself affiliated to the State Co-operative Union. Sub-section (2) of Section 90 states that the affiliation under Sub-section (1) shall be in force for a period of one year from the date of affiliation and shall be renewed on the date of expiry of that period. Sub-section (4) of Section 90 states that if any Co-operative Society fails to affiliate to the State Co-operative Union as required by Sub-section (1) or to renew such affiliation as required by Sub-section (2), such society shall not be entitled to any of the privileges conferred on a co-operative society under Chapter V of the Act. Consequence of non renewal is therefore provided in Sub-section (4) of Section 90. Raju John's case (supra) was decided on 6.3.1991 holding that the only consequence of non affiliation or renewal of affiliation would be that the society would not be entitled to enjoy the privileges enumerated in Chapter V of the Act. Subsequent to the decision in Raju John's case, supra, it may be pointed out that an amendment was effected to Section 88 by Act 15 of 1997 published in the gazette dated 29.12.1997 with effect from 3.6.1997 of which we are concerned with Sub-section (5) of Section 88. Section 88 is extracted below for easy reference.

88 (1). Constitution of Circle Co-operative Unions:

(1) The Government shall, by notification in the Gazette, constitute a Circle Co-operative Union for each circle in the State with the following members, namely-

(a) seven members elected, in such manner as may be prescribed, by the

members of the committees of the affiliated societies within the circle, from among themselves.

(b) xxx xxx xxx (c) two members elected, in such manner as may be prescribed, by the employees of the affiliated Co-operative Societies within the circle, from among themselves;

(d) xxx xxx xxx (e) one member elected belonging to the scheduled castes or scheduled tribes elected by the scheduled caste or scheduled tribe members of the committees of the affiliated societies referred to in Clause (a), from among themselves.

(5) The affiliated and functioning societies alone shall have the right to vote and contest in the election in the Circle Co-operative Union.

(emphasis supplied)

Learned single judge in Sudhakara Kurup's case, supra, referred to Sub-section (5) of Section 88 and felt that inaction on the part of the Director Board of the Society not to renew the affiliation shall not affect the employees and also the members of the committee since they have no direct hand in the remittance of fee or forwarding of application for affiliation. In that perspective, learned single Judge took the view that non affiliation of a co-operative society with the State Co-operative Union would not take away the right to vote or contest in the election to the Circle Co-operative Union.

4. State Co-operative Union has been established by the Government as per Section 89(1) of the Act. Sub-section (4) of the Act deals with the composition of managing committee of the State Co-operative Union. Sub-clauses (d), (e) and (f) are relevant for our purpose. We may extract Section 89 for easy reference.

89. Establishment of State Co-operative Union-

(1) The Government shall, by notification in the Gazette, establish a State Co-operative Union.

(2) The State Co-operative Union shall consist of -

(a) a general body; and

(b) a managing committee

(3) Each of the Circle Co-operative Unions, Apex Societies, District Co-operative Banks and Central Societies other than the District Co-operative Banks shall elect a delegate in such manner as may be prescribed, and all such delegates, the employees' representatives, the representative of the women members, the representatives of the members belonging to the scheduled castes or scheduled tribes, the Ex-officio members and the Government nominees in the managing committee of the State Co-operative Union shall constitute the General Body of the State Co-operative Union.

(4) The Managing Committee referred to in Clause (b) of Sub-section (2) shall consist of the following members, namely;-

(a) one member from each Revenue District in the State, elected, in such manner as may be prescribed, by the delegates of the Circle Co-operative Unions, from among themselves;

(b) two members elected, in such manner as may be prescribed, by the delegates of the Apex Societies in the State, from among themselves;

(c) one member elected, in such manner as may be prescribed, by the delegates of the District Co-operative Banks, from among themselves.

(d) one member elected, in such manner as may be prescribed, by the members of the Circle Co-operative Union elected under Clause (c) of Sub-section (1) of Section 88 from among themselves:

(e) one member elected, in such manner as may be prescribed, by the members of the Circle Co-operative Union elected under Clause (d) of Sub-section (1) of Section 88 from among themselves;

(f) one member elected, in such manner as may be prescribed, by the members of the Circle Co-operative Unions elected under Clause (e) of Sub-section (1) of Section 88, from among themselves:

(g) two members nominated by the Government;

(h) the Secretary of the State Co-operative Union, ex officio.

Managing Committee of State Co-operative Union therefore consists of one member elected under Clause (c) of Sub-section (1) of Section 88 by the members of the Circle Co-operative Union; so also one member elected, in such manner as may be prescribed under Clause (d) of Sub-section (1) of Section 88 from among themselves and one member elected in such manner as may be prescribed, by the members of the Circle Co-operative Union elected under Clause (d) of Sub-section (1) of Section 88 from among themselves. Section 90 of the Act states that every co-operative society in the State shall, within a period of six months from the commencement of the Act or within a period of six months from the date of its registration, whichever period expires later, get itself affiliated to the State Co-operative Union, which we have already indicated. Every co-operative society has to get itself affiliated to the State Co-operative Union which is an independent body having a common seal. Rule 147 of the Kerala State Co-operative Societies Rules states that the office of the State Co-operative Union shall be at Thiruvananthapuram and the Union shall have a seal and the Union shall undertake activities incidental or conducive to the furtherance of its objects specified in the Act. Rule 148 states that application for affiliation under Sub-section (1) or renewal under Sub-section (2) of Section 90 shall be sent to the Secretary, State Co-operative Union in Form No. 14 along with fee at the rate specified in Sub-section (2) thereof. We may refer to Rule

148 for easy reference.

148. Affiliation of Co-operative Societies. -

(1) Application for affiliation under Sub-section (1) or renewal under Sub-section (2) of Section 90 shall be sent to the Secretary, State Co-operative Union, in Form No. 14 along with fee at the rate specified in Sub-section (2).

(2) The affiliation fee and annual renewal fee payable by societies shall be at the following rates, namely:

Paid up share capital of the society Rate of Fee Rs (1) Rs 40 lakhs and above 1000 (2) Rs 20 lakhs and above but below Rs 40 lakhs 900 (3) Rs 3 lakhs and above but below Rs 20 lakhs 800 (4) Rs 1 lakh and above but below Rs 3 lakhs 500 (5) Rs 50,000 and above but below Rs 1 lakhs 300 (6) Rs 25,000 and above but below Rs 50,000 200 (7) Rs 10,000 and above but below Rs 25,000 150 (8) Rs 5,000 and above but below Rs. 10,000 100 (9) Below Rs. 5,000 50

(3) Application for renewal shall be sent at least one month before the date on which the affiliation ceases to be in force. Statutory form 14 is prescribed for submitting an application for affiliation as well as renewal thereof with the State Co-operative Union. Details of working capital as on 30th June which includes share capital, deposits, borrowing and other funds less investments in buildings and other fixed assets are to be furnished in the statutory form. Particulars of full time paid employees of the Society are also to be given. Resolution number and the date of the committee seeking renewal of affiliation has also to be given in the statutory form. Application for renewal should be in triplicate; one copy should be sent to the State Co-operative Union, second copy to the Co-operative Circle Officer and the third to the Registrar. Application for renewal shall be sent at least one month before the affiliation ceases to be in force.

5. Power is conferred on the managing committee of the State Co-operative Union to affiliate co-operative Societies and collect affiliation and renewal fees. Clause (a) of Rule 166 authorises the managing committee to affiliate co-operative societies and to collect affiliation fee. Above mentioned formalities have to be complied with by a co-operative Society for affiliation to State Co-operative Union as well as for renewal of its affiliation. Managing Committee of State Co-operative Union has to decide whether Society has to be affiliated or not after considering the details furnished by the Co-operative Society. Sub-section (4) of Section 90, as we have already indicated, would take away the privileges conferred on the Co-operative Societies under Chapter V of the Act if it is not affiliated to State Co-operative Union or fails to renew such affiliation.

6. Constitution of the Circle Co-operative Union is dealt with in Section 88 of the Act which states that the Government shall by notification in the gazette, constitute a Circle Co-operative Union for each circle in the State with the members enumerated in Clauses (a) to (g). Sub-section (5) of Section 88 specifically says that the affiliated and functioning societies alone shall have the

right to vote and contest in the election in the Circle Cooperative Union. Non affiliated society or society which has not renewed its affiliation in accordance with Section 90 read with Section 148 stands on the same footing. Society will have affiliation only when it gets affiliated to State Co-operative Union. Sub-section (2) of Section 90 states that the affiliation shall be in force for a period of one year from the date of affiliation and shall be renewed on the expiry of that period. Therefore, if the affiliation is not renewed after the period of one year of affiliation, under Sub-section (2) of Section 90 the Society will cease to have affiliation. Affiliated and functioning Society alone shall have the right to vote and contest in the election in the Circle Co-operative Union. The word "alone" used in the Sub-section (5) of Section 88 needs emphasis, which is used as an adjective which means single, by oneself, unaccompanied by any other etc. Statute has used the expression "affiliated and functioning". Affiliation with State Co-operative Union is therefore not an empty formality. Due to non renewal of affiliation the society will lose its privileges conferred on it under Chapter V of the Act, so also the right to vote and contest in the election to the Circle Co-operative Union as provided under Sub-section (5) Section 88 of the Act. Right to vote and contest in the election conferred only on those societies which satisfy the twin conditions of affiliation and functioning. Non functioning society though affiliated to the State Co-operative Union would not get the right to vote and contest in election and vice versa. A society which is defunct will not get the right to vote and contest in the election, so also a non affiliated society. Both the conditions have to be cumulatively satisfied. Petitioner society, it is stated, was not functioning from 1993-94 onwards.

7. Petitioner Society in W.P.C. No 20959 of 2004 has not renewed its affiliation from 1993-1994 onwards. Petitioner society received a communication from the fifth respondent notifying the list of those who have proper affiliation with the State Cooperative Union, Kottarakkara. Petitioner Society later renewed its affiliation on 26.6.2004, which falls within sixty days from the date of election. Preliminary voters list was prepared on 14.06.2004 and published on 29.06.2004. At the time of preparation of the preliminary voters list petitioner Society had no affiliation with the State Cooperative Union, Kottarakkara. Nomination for election to Circle Co-operative Union was received on 14.6.2004 which was scrutinised on 15.7.2004 and final list was published on 16.7.2004 by the fourth respondent. Election was conducted on 30.7.2004. Since petitioner Society was not affiliated with the State Co-operative Union within sixty days before the date of election, the name of the Society was not included in the voters list. Due to non renewal of affiliation with the State Co-operative Union before 60 days prior to the date of election, petitioner society disqualified itself in including in the voters list and in our view rightly. Petitioner has not produced any evidence to show that the Society was having affiliation with the State Co-operative Union prior to 60 days from the date of election. We have already found that only societies affiliated with the State Co-operative Union and functioning alone can be included in the voters list for election to the Circle Co-

operative Union. Payment of renewal fee in our view, is not an empty formality. Renewal is not automatic, but based on the details furnished in the prescribed statutory form which has to be approved by the managing committee of the State Co-operative Union. Requirement of affiliation, in our view, is a mandatory requirement, so also its functioning to vote and contest in the election to the Circle Cooperative Union as provided in Sub-section (5) of Section 88 of the Act. Due to non-renewal of affiliation the society not only loses the privileges conferred on it under Chapter V of the Act but also the right to vote and contest in the election to the Circle Co-operative Union. We therefore hold that Raju John's case and Sudhakara Kurup's case are not correctly decided and therefore stand overruled.

8. Sri. Kallada Sukumaran, counsel for the petitioner in W.P.C. 20959 of 2004 contended that second respondent has no authority to appoint an administrative officer on the expiry of the term of the Circle Co-operative Union. Referring to Section 88A of the Act, counsel submitted that Section 88 A empowers the second respondent to appoint such an officer of the Co-operative Department for the Union only in cases of elected members of the Union committing any act prejudicial to the interest of the Union and willfully disobeying or fail to comply with any lawful order or direction issued to them. No such contingency has arisen for invoking the jurisdiction of the second respondent u/s 88A. It was also contended that there is no resolution as provided under Rule 129(b) directing the Returning Officer to take steps for election of members of the Union. It was also contended that any requisition/resolution issued by the fifth respondent is without the authority of law and therefore Ext.P4 voters list published and Ext.P5 election notice issued by the fourth respondent is illegal and without jurisdiction.

9. We are of the view, above contention is not available to the counsel since we have already taken the view that petitioner Society was not affiliated to the State Cooperative Union prior to 60 days from the date of the election. At the time of preparation of the voters list of the Co-operative Union, the petitioner society had not renewed its affiliation with the State Co-operative Union. We have found that Raju John's case and Sudhakara Kurup's case are not correctly decided. We declare only those cooperative societies which are affiliated and functioning alone will have the right to vote and contest in the election to the Circle Co-operative Union. Societies which have not renewed their affiliation sixty days before the date of election and not functioning are not entitled to vote and contest in the election to the Circle Co-operative Union and therefore cannot be included in the voters list and hence disentitled to raise that contention. In view of the above mentioned declaration, all these Writ Petitions fail and are accordingly dismissed.