
(1981) 02 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 4317 of 1980-D

The Edavanna Service Co-operative Bank Ltd.	APPELLANT
Vs	
P.V. Shoukathali and Others	RESPONDENT

Date of Decision : 13-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1982 Ker 84 : (1981) 2 ILR (Ker) 467

Hon'ble Judges : G. Balagangadharan Nair, J

Bench : Single Bench

Advocate : Mani J. Meenattoor and M.M. Abdul Aziz, for the Appellant; M.V. Joseph, for the Respondent

Final Decision : Dismissed

Judgement

G. Balagangadharan Nair, J.—Petitioner is a Co-operative Society with a Board of Directors consisting of seven members -- five elected and two nominated. The five members were elected on June 30, 1980. The Unit Inspector and the Inspector of Co-operative Societies ARC & EPS Manjori who had been nominated directors on July 14, 1980 submitted their resignations on October 23, 1980. The following day, October 24, 1980 respondent 3, who is the Deputy Registrar of Co-operative Societies (General), Malappuram nominated respondents 1 and 2 as Directors in their places. Ext. P1 is a copy of the relative proceedings. The Society represented by its President seeks to quash Ext. PI. Petitioner challenges the nomination of respondent 1 on the ground that he is an accused along with two others charged with criminal misappropriation of the Society's funds and that the result of nominating him a Director is to make the accused and the complainant the same, which is highly detrimental to the interests of the Society. The petitioner states that it was under the influence of the Minister for Forests who is related to respondent 1 that respondent 3 engineered the resignations of the former two nominated members and replaced them by respondents 1 and 2. Respondent 3 has thus exercised his power not bona fide or in the interests of

the Society but under extraneous influence and irrelevant considerations, overlooking the disqualification and unsuitability of respondents 1 and 2. As against respondent 2, it is stated that he is a debtor of the petitioner-Society for over three months and is therefore disqualified to be a Director under Rule 44 (1) (c) of the Co-operative Societies Rules.

2. Respondent 1 has stated in his counter-affidavit that he is a co-operator of long standing and that he has been falsely implicated in the prosecution by his political rivals. He denied that he was related to the Minister for forests or that he was nominated under the Minister's influence. As for respondent 2, it was denied that he was a defaulter to disqualify him to be nominated Director,

3. In a counter-affidavit sworn by an Inspector of Co-operative Societies in the office of respondent 3 it is stated that the two original nominated members resigned for administrative reasons and that in their places respondents 1 and 2 were duly nominated. The prosecution mentioned by the petitioner concerns the alleged misappropriation of the sale proceeds of a Ration Shop, and the accused are the Manager of the shop (accused 1), the Secretary of the Society (accused 2) and respondent 1 (accused 3) who was the then President of the Society. The involvement in a prosecution does not disqualify respondent 1 to be nominated a Director under Rule 44. The counter-affidavit denies that the nominations were made under political pressure. With respect to respondent 2, it is stated that if he was disqualified, the petitioner could have made a complaint under Rule 44 (3) and if he was satisfied respondent 3 would have taken appropriate action. The counter-affidavit proceeded to state that the nominations were made in conformity with the Act, Rules and Bye-laws and are not liable to question under Article 226.

4. Although the petitioner has made allegations of mala fides and exercise of extraneous influence in the nomination of respondent 1 and 2, there is hardly any material in their support nor were they pressed at the hearing. I reject these allegations.

5. I cannot however help remarking that in the nature of the allegations against him, respondent 3 should have himself sworn to an affidavit instead of leaving it to a subordinate to repudiate them. If in the event the allegations go unaccepted it is not because of the effective live denial of them on oath by respondent 3 but because the petitioner has failed to prove them.

6. I now turn to the disqualifications urged against respondents 1 and 2. The petitioner states -- and that is also admitted -- that respondent 1 is an accused in a prosecution touching the Society. Petitioner contends that the nomination of respondent 1 as a Director makes the accused the prosecutor also and thus renders him ineligible to be on the Board of Directors. The statements in the original petition and counter-affidavits show that it is a State prosecution over which even the Society, leave alone the individual Directors, has little control. That apart, neither the Act nor the Rules disqualify a person in the position of

respondent 1 for being a Director. While it might have been desirable to keep out such a person from the Board of Management it is not possible to invalidate his (nomination as a Director.

7. The disqualification alleged against respondent 2 is different and calls for a longer consideration. Rule 44 (1) provides that "No member of the Society shall be eligible for being elected, or appointed as a member of the Committee of the Society u/s 28 if he :--

X X X X X X (c) (1) is in default to the Society or to any other Society in respect of any loan or loans taken by him or loan in which he has stood surety, for such period, as is prescribed in the bye-laws of the Society concerned or in any case for a period exceeding three months or is a defaulter to the Society or to any other Society."

The Original Petition states -- and this has not been contradicted -- that out of Rs. 2.500 borrowed by respondent 2, a sum of Rs. 834/- was to be repaid by him on or before April 4, 1980. Respondent 2 was thus in default for a period exceeding three months -- no provision in the bye-law prescribing a shorter period is relied upon -- when he was nominated a Director on October 24, 1980. The petitioner therefore contends that respondent 2 was ineligible for being "appointed" a member of the Committee. The respondents sought to meet this contention, pointing out that the disqualification operates only against "appointment as a member of the Committee" u/s 28 and not against nomination u/s 31 which is the Section under which respondent 2 was nominated. Section 28 deals with the appointment of Committees. Sub-section (1) empowers the general body of the Society to constitute the Committee to manage the affairs of the Society. Proviso 1 has no relevance in this context. Proviso 2 lays down that "where the byelaws so provide, the Government or the Registrar may nominate all or any of the members of the Committee for such period as may be specified in the byelaws." Sub-sections (2) to (4) have no bearing and need not be quoted.

8. Section 31 provides that in the situations therein contemplated -- generally stated, where the Government have an interest in the affairs of a Society --the Government or any authority specified by the Government in that behalf shall have the right to nominate not more than three persons or one-third of the total number of members of the Committee of the Society, whichever is less, to be members of the Committee, Sub-section (2) makes the nominated member's tenure depend upon the pleasure of the Government or the specified authority and Sub-section (3) disables him from taking part in the discussion of any no-confidence motion or voting on any such motion.

9. It is plain that there is difference between the nomination of a member under Proviso 2 to Section 28 (1) and u/s 31. The former can be made if only the byelaws so provide and for a limited period, again as provided in the bye laws. The members so nominated are as full-fledged as the members elected under Sub-section (1) or appointed under Proviso 1 to Section 28 (1) unlike the

members nominated by virtue of the statutory power u/s 31 (1). The rights of the latter are also curtailed at least in one respect (sub-section 3). The Government has been given the power to make nominations u/s 31 (1) where it has an interest in the Society and obviously to safeguard that interest. All this might account for the provision in Rule 44 (1) limiting the prescribed disqualifications to members either elected or nominated u/s 28. The different modes of nominations u/s 28 (1) and Section 31 (1) have also been noticed in Rule 44 as is obvious from the proviso to Clause (b) of Sub-rule (2). The respondents are therefore right in their contention on the terms of the provisions of Sections. 28 and 31 and Rule 44, on which the question falls to be decided, however much one might desire the same disqualifications uniformly to apply to all members, whether nominated or elected u/s 28 and nominated u/s 31. The result is respondent 2 did not suffer from the alleged disqualification and his nomination is not liable to invalidation.

10. Counsel for the petitioner quoted Kaamareddy Suryanarayana and Another Vs. The District Co-operative Officer-cum-Election Officer, The West Godavari Co-operative Sugars Ltd. and Others, in support of his contention that the expression "member" in Rule 44 (1) takes in elected as well as nominated members. The question in that case was whether the expression "Committee" in Section 21-C of the A. P. (Andhra Area) Co-operative Societies Act, 1964 which provided that a person who holds or has held office as a member of the Committee for two consecutive terms shall not be eligible for being chosen as a member of the Committee for a third term in continuation. The Full Bench held on a consideration of the Section and other related provisions that the expression "Committee" will take in both an elected Committee and nominated Committee, pointing out that the intention of the Legislature in enacting the restriction was to prevent the growth of vested Interests in Co-operative Societies by Imposing a break in continuity in office for more than two terms. The provisions here are entirely different and the decision has no application and cannot support the petitioner.

11. I dismiss the Original Petition but without costs.