

(2000) 08 KL CK 0040

In the High Court Of Kerala

Case No : O.P.Nos. 15987 and 16127 of 2000

Thomas Antony

APPELLANT

Vs

Addl. Registrar of Co-operative Societies

RESPONDENT

Date of Decision : 31-08-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 34

Citation : (2000) 2 KLJ 837

Hon'ble Judges : S. Sankarasubban, J; Kum. A. Lekshmikutty, J

Bench : Division Bench

Advocate : T.R. Ramachandran Nair and D. Somasundaram, for the Appellant; P. Ravindran and Johnson Maniyani and K. Janardhanan, Govt. Pleader, for the Respondent

Judgement

S. Sanakarasubban, J.—Both these Original Petitions have been filed challenging the order assed by the Registrar of Co-operative Societies dated 26.5.2000. The order is produced as Ext. P5 in both these cases. Petitioner in O.P. No. 16127 of 2000 is the present President of the Kerala High Court Advocates Co-operative Society Ltd., while the petitioners in the other Original Petition are members of the Managing Committee of the same Society.

2. The Kerala High Court Advocates Co-operative Society Limited is a Society registered under the Kerala Co-operative Societies Act. The Managing Committee of the Society consists of nine members. The second respondent in O.P. No. 16127 of 2000, Johnson P. John, was elected as President of the Society. The meeting of the Managing Committee was convened on 11.1.2000. In that meeting, certain allegations were made against the President with regard to the payment of Rs. 12,000/- made by the former President to the Printer, who has been assigned the work of printing diaries. The said payment was made without permission of the Committee.

3. On 19.1.2000, the Committee again met to transact other items in the agenda left to be considered in the previous meeting. The majority of the committee

decided that excess payment made by the former President to the Printer should be realised from him, as the payment was an action adverse to the better interest of the Society. In that circumstances, the then President openly declared that he was resigning from the post and further declared that he would render all his help to the Committee as a committee member. The Committee accepted his resignation. Thereafter, the petitioner in O.P. No. 16127 of 2000 was elected unanimously as President. The newly elected President then occupied the chair. Thereafter, the Vice President Radhakrishnan Nair also expressed his desire to relinquish the post and in his place, Biju Kuriakose was elected. These things are revealed from Ext. P1 minutes of the Committee dated 19.1.2000. It is further stated that another meeting was convened on 20.1.2000. That was adjourned for want of quorum to 2.2.2000. In that meeting, the Secretary reported that the excess amount paid by the former President has not been remitted by him. Hence, the Committee resolved to issue registered notice him. True copy of the minutes of the above meeting is produced as Ext. P2.

4. At this juncture, respondents 2 and 3 in O.P. No. 16127 of 2000, who are respondents in the other Original Petition, O.P. No. 15987 of 2000, approached the Joint Registrar of Co-operative Societies challenging the resolutions recorded in Ext. P1 minutes. The Joint Registrar issued notice to the newly elected President. Thereafter, the newly elected President requested for time to furnish explanation. But without providing time to submit explanation and without affording an opportunity of being heard, the Joint Registrar passed an order on 28.3.2000 rescinding the resolutions of the Committee since 19.1.2000. That order was challenged by filing O.P. No. 10123 of 2000. Ext. P3 is the judgment in that Original Petition. The order passed by the Joint Registrar was quashed on the ground of violation of principles of natural justice. The Registrar was directed to hear the matter afresh after affording an opportunity to all persons affected by that order.

5. Subsequently, the Registrar heard the petitioner in O.P No. 16127 of 2000 and thereafter passed Ext. P5 order. The Registrar took the view that since the resignation was not in writing, that is not a valid resignation and hence quashed the resolution dated 19.1.2000 and also quashed the subsequent resolutions under R. 176 of the Kerala Co-operative Societies Rules, Petitioners in O.P. No. 15987 of 2000 contended that they were not heard, even though under Ext. P3 judgment, they were parties.

6. A counter affidavit has been filed in both these cases by the second respondent, Johnson P. John. In paragraph 3 of the counter affidavit, it is stated that it is true that certain members raised a question regarding the details of expenditure concerning the priming of diaries for the Society. An amount of Rs. 12,000/- paid to the Printer of diaries was alleged to be in excess of the price of diaries. But the meeting was inconclusive and it was convened on 19.1.2000. According to the second respondent, at that meeting, the second respondent assured that a report will be called for from a sub committee which will be

constituted for the purpose of looking into the alleged irregularity. However, certain members persisted obstructing the meeting and business could not be transacted. In the above circumstances, the second respondent was constrained to call for a meeting. It was later revealed that some sort of a document was created to the effect that K. Thankappan was elected as President and Biju Kuriakose as Vice President of the Society. Since the entire exercise was illegal and was manipulated behind his back, the second respondent was constrained to approach the Joint Registrar. According to the second respondent, he has not resigned and unless and until the resignation of President has taken place in accordance with the provisions of law, there is no vacancy for the post of President and therefore, the conduct of election itself was legally unsustainable. Further, it was stated that even the elections to the post of President and Vice President were not done in accordance with the Rules. A counter affidavit has been filed by the third respondent, Legy Abraham, in O.P No. 15987 of 2000.

7. We heard learned counsel for the petitioners. Shri. T.R. Ramachandran Nair, Shri. D. Somasundaram and learned counsel for the respondents Shri. Johnson Manayani, Shri. P. Ravindran and the learned Government Pleader.

8. The question raised in these Original Petitions is with regard to Ext. P5. By the order in Ext. P5, the Registrar has quashed the resolutions dated 19.1.2000 and all subsequent resolutions, under R. 176 of Kerala Co-operative Societies Rules. According to the petitioners, in the meeting which was held on 19.1.2000, the then President Johnson P. John expressed his desire to resign the post of President and this was accepted by the members. Thus, the then President resigned. Thereafter, a new President was elected unitaterally, viz., K. Thankappan. Subsequently, the Vice President also resigned and in his place, Biju Kuriakose was elected. Item No. 2 in the minutes is as follows :

It appears that on getting complaint from the erstwhile President, the Assistant Registrar of Co-operative Societies, Kanayannur made an enquiry. The gist of the enquiry is stated in paragraph 4 of the order. After stating about the enquiry, the Registrar has examined all the aspects of the case. According to him, under R. 38(6) of the Kerala Co-operative Societies Rules, if the President desires to tender resignation, the letter of resignation shall be placed before the committee for consideration. Hence, there cannot be any oral resignation. Further, with regard to the election of the President and Vice President, R. 43 of the above Rules governs. It is then submitted by the Registrar that considering all the above aspects, it can be seen that no resignation letter was placed in the Committee on 19.1.2000. Moreover, R. 43 was not followed in the meeting held on 19.1.2000. R. 176 of the above Rules states that it shall be competent for the Registrar to rescind any resolution of any meeting of any Society of the committee of any society, if it appears to him that such resolution is ultravires of the objects of the Society. Then the Registrar held as follows: "The decision taken on 19.1.2000 is against the provision of the R. 38(6) of KCS Rules 1969 because there was no letter of resignation from Sri. Johnson P. John. R. 43 is

also not followed. Therefore, the resolutions were cancelled.

9. The argument of the learned counsel for the petitioner in O.P. No. 16127 of 2000 is that no prescribed form is there regarding the resignation of the President. Neither the Co-operative Societies Act nor the Rules state that the President should tender letter for his resignation. On the other hand, according to the counsel, there is no provision in making oral resignation. It is further contended that as per the decision in Kurian v. Joint Registrar 1987 (2) KLT 357, election to the new office bearers cannot be attacked by petition filed before the Registrar. It has to be set aside in accordance with S. 69 of the Kerala Co-operative Societies Act. Learned counsel for the respondents, on the other hand, submitted that it was not correct to say that the then President resigned orally. As a matter of fact, he did not resign. Further, it was stated that the election to the Managing Committee can be conducted only in accordance with R. 43 of the Kerala Co-operative Societies Rules. Since this has not been followed, it can be challenged under R.176 of the Rules. Petitioners in O.P. No. 15987 of 2000 further contended that even though they were parties to Ext. P3 judgment, they were not heard before Ext. P5 order was passed.

10. From Ext. P5 order, it is clear that the resolution was quashed on the ground that there was no written resignation by the then President. The first question to be considered is whether the resignation in writing is necessary for the purpose of resignation from the post of President. Here, it is pertinent to note that the then President has not resigned from the membership of the Managing Committee. According to the petitioner in O.P. No. 16127 of 2000, he had resigned only from the office of the President. Learned counsel for the respondents submitted that R. 43 of the Kerala Co-operative Societies Rules deals with election of President, Vice President, etc. by members of the Committee. R. 38 of the above Rules deals with Constitution of Committee, resignation and removal from membership. R.38(3) of the Rules states that any member of a Committee whether elected or nominated may tender his resignation to the President of the Committee. R.38(4) deals with the procedure to be adopted by the President on receipt of such resignation. R.38(6) of the Rules states that where the President desires to tender resignation the letter of resignation shall be placed before the Committee for consideration.

11. Learned counsel for the respondents relied on sub-r. (6) of R. 38 of the Rules to show that the resignation should be in writing. According to us, this contention cannot be accepted. The heading of the Rule itself says, constitution of Committee, resignation and removal from membership. Thus, the Rule deals with resignation and removal of membership of the Committee. The procedure is laid down only when a person elected or nominated as a member wants to resign from the membership. In case of President, when he wants to resign from the membership, a different procedure is adopted. According to us, R. 38(6) of the Kerala Co-operative Societies Rules will not apply when the resignation is merely from the office of the President. The next question to be considered is whether in

the absence of any Rule regarding the procedure for resignation, can the oral resignation be accepted.

12. Learned counsel on both sides brought to our notice certain Dictionary meaning of the word "resign". "The World Book Dictionary" gives the meaning of the word "resignation" as follows: "the act of resigning" "a written statement giving notice that one resigns". In the Dictionary of Law" by L.B. Curzon, resignation is defined as "The deliberate relinquishment of some position or office". In "Black's Law Dictionary" - Centennial Edition, the word "resignation" is stated as "Formal renouncement or relinquishment of an office. It must be made with intention of relinquishing the office accompanied by act of relinquishment". In Halsbury's Laws of England, Fourth Edition, Volume 9 at Page 643, the meaning of the word "resignation" is as follows: "A counter coroner may resign office by giving notice in writing to the council having power to appoint his successor, but the resignation does not take effect unless and until it is accepted by the council. This does not affect the powers of the Lord Chancellor or of any competent court with respect to the removal of coroners". In Halsbury's Laws of England, Fourth Edition, Volume 7 at paragraph 536, the meaning of the word "resignation" is as follows: "Where by the articles a director has power to resign at any time, his resignation takes effect independently of acceptance by the other directors or the company. Where the articles of association of a company provide that the office of a director is to be vacated ipso facto if by notice in writing to the company a director resigns office, an oral resignation if accepted by the company is valid".

13. Learned counsel for the petitioners brought to our notice the decision in Latchford Premier Cinema, Limited v. Ennion - (1931) 2 Ch. 409. Bennett, J. in that decision held as follows:

"The answer given on behalf of the defendants to the motion is that the resignation by word of mouth, and the acceptance by resolution is inoperative, because Art. 34 requires, before a director shall cease to be a director, that he shall give a notice in writing to the company that he resigns. In my judgment the answer based on Art. 34 is not a good one. I see no reason in law why the contract of service between the company and its directors should not be terminated by the same means as that by which the contract of service between two individuals may be terminated, and I see no ground in law for saying that where a written contract has been made for service which requires a written notice on either side before it can be terminated, it cannot be terminated by word of mouth by mutual agreement between the parties".

In the Guide to The Companies Act, Eleventh Edition at page 836, it is stated thus: "In the absence of any provision in the article or the terms of appointment of a director, the ordinary rule of common law as regards resignation by an officer or agent must be followed, namely, intimation by notice given either to the company or the Board and acceptance of the same. See Glossop v. Glossop (1907) 2 Ch 370 ; Latchford Premier Cinema Ltd. v. Ennion (1931) 2 Ch 409. In

the latter case, even resignation orally tendered at a general meeting and accepted by the meeting was held to be effective". Normally, we would have held that resignation should be in writing. In so far as S. 38(6) of the Kerala Co-operative Societies Rules does not apply, the conditions incorporated under the Rules cannot be taken into account. The intention behind the stipulation in writing is more in regard to the evidence of the act of resignation. But that does not mean that when there is no stipulation to the contrary resignation cannot be made orally. Ofcourse, it is easy for a person, who orally resigns to dispute that he did not make such a statement and in that event, it will be difficult to prove that there was resignation. But so far as the present case is concerned, the Registrar has not disbelieved the minutes recorded on 19th January, 2000. Even though there are certain statements in the order of the Registrar that the Inspector has stated that the minutes were written by the Secretary at the dictates of the new President, no evidence has been adduced with regard to that. In the absence of evidence to show that that minutes are not the correct minutes, there will be a presumption that the minutes written are the proper minutes.

14. In Shacklton on the Law and Practice of Meetings, Seventh Edition at page 85, it is stated thus: "When minutes are signed by the Chairman of the meeting, or the next succeeding meeting, they are prima facie evidence of the proceedings, and decisions recorded therein are deemed to be valid until the contrary is proved. In practice, certified copies of minutes are frequently provided to third parties as evidence of the matters decided upon at the meeting". Hence we are of the view that the minutes can be accepted and once the minutes are accepted, it is clear that there has been resignation of the President and the Vice President, though it was done orally. Hence, we reject the reasoning given by the Registrar that the resignation of the President and the Vice President cannot be accepted, because there was no resignation in writing. This is one of the ground on which the resolution dated 19.1.2000 was set aside.

15. Another ground relied on is R.43 of the Kerala Co-operative Societies Rules. R. 43 of the Rules deals with election of President, Vice President, etc. The argument advanced by the counsel for the respondents is that subsequent election of the President and Vice President was not in accordance with R. 43 of the Rules. Learned counsel for the petitioners submitted that the election of the President and Vice President can be challenged only by filing election petition under S. 69 of the Kerala Co-operative Societies Act. Learned counsel brought to our notice the decision of a learned single Judge in Kurian v. Joint Registrar - 1988 (2) KLT 357. The learned Judge, in that decision, held that merely because the election of the President and the Vice President is recorded by resolution, it cannot be said that it was by resolution that the office bearers took charge and on that ground, the learned Judge held that the Registrar had no jurisdiction. It is true that the decision in the above case supports the case of the petitioners. But we are of the view that in proceedings under Art. 226 of the Constitution of India, the power exercised by this Court is discriminatory. According to us, when

the office of the President and the Vice President falls vacant, they have to be filled up in the accordance with the Rules. Nominations have to be called and polling, if necessary, has to be taken. This procedure has not been followed in this case.

16. Hence, we are of the view that the election of the President and the Vice President at the meeting held on 19.1.2000 is not proper even though the Registrar has no jurisdiction as per the decision quoted above. Once it is found that election is not valid, it is not proper for this Court to set aside the order of the Registrar regarding election. In the light of the above circumstances, it is necessary that election of a President and Vice President has to be conducted without delay. Ext. P5. further resolutions passed have also been set aside by the resolution taken consequent on 19.1.2000. According to us, the action is not proper: The resolution has been taken by the Managing Committee. There is no proof to show that the subsequent resolutions are invalid in law and it was not proper on the part of the Registrar to quash the subsequent resolutions.

17. In the result, the Original Petitions are disposed of as follows: (1) Ext. P5 order is set aside in so far as it rescinds the entire resolution dated 19.1.2000 and the subsequent resolutions. (2) The resolution dated 19.1.2000 accepting the resignation of the then President and Vice President is valid. (3) The proceedings of the same meeting electing new President and Vice President is declared to be illegal. (4) The resolution passed on subsequent dates are valid. (5) A new meeting shall be held by the Managing Committee of the Kerala High Court Advocates Co-operative Society Ltd., within three weeks from today to elect a President and Vice President.