

(1993) 03 KL CK 0076
In the High Court Of Kerala
Case No : O.P. No. 10128 of 1992

T.P. Paulose and Another

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 30-03-1993

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 176, 7, 8

Citation : (1993) 2 KLJ 36

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : A.N. Rajan Babu A.A.G. Cyreac Joseph and Govt. Pleader, for the Appellant; D. Somasundaram, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J

1. In this petition, Paulose and Vasu, who are respectively the President and Member of the Managing Committee of the Chenkara Service Co-operative Bank Limited, which is an affiliate of the Idukki District Co-operative Bank Limited, impugn the validity of the order of the Registrar of Co-operative Societies, the respondent herein, dated 14.7.1992 (Ext. P6 to this petition). By this order the respondent rescinded the resolution No. 2 dated 15.6.1989 by the Chenkara Co-operative Society by which the petitioner No. 2 was admitted to membership. This order was made under Rule 176 of the Kerala Co-operative Societies Rules. An inquiry under Rules 16 and 27 was made before making the impugned order and a finding that Vasu was ineligible for admission as a member, entered into. Accordingly by the impugned order dated 14.7.1992 the respondent rescinded the resolution. Vasu, the petitioner No. 2 had ceased to be a member of the society by reason of subrule (3) of Rule 16. The consequence was that by reason of clause (b) of subrule (2) of Rule 44. Vasu ceased to be a member of the committee. Therefore the Registrar made a further order dated 14.7.1992 (Ext. P9). The order was under Rule 44(2) (b) of the Kerala Co-operative Societies

Rules. Thus Vasu lost the membership of the Managing Committee of the Chenkara Service Co-operative Bank, the affiliate of the Central Bank, Idukki District Co-operative Bank Ltd. These two orders are impugned in this original petition.

6. In O.P.No. 9529 of 1992 filed by M.S. Vasu the petitioner No. 2 herein and another member Sasidharan, elaborate arguments about the validity of the notice calling upon Vasu and Sasidharan to show cause against the proposed action under Rule 16, the validity of the order rescinding the resolutions under Rule 176 and the disqualification of Vasu and Sasidharan have been gone into a separate Judgment delivered. It is sufficient to state here that Vasu the petitioner No.2 and Sasidharan, have been held to have been disqualified from admission as members of the society.

2. Although the same orders are impugned in this original petition, two points have been urged by the petitioner. They are:

(i) Rule 176 empowers the Registrar to rescind resolutions of any meeting of "any society" or of "the committee of any society" if such resolution violates the provisions of the Act, Rules, Byelaws or lawful directions of the Registrar. But this power extends to the rescission of resolutions of any meeting of "the society" or of "the committee" of a society. The petitioner No. 2 a promoter of the society, became a member by reason of his joining the application for registration of the society. This body of promoters is neither the "society" nor "a committee" of the society. Therefore Rule 176 has no application to this case.

(ii) The petitioner No. 2 was held disqualified to be a member of the society. A declaration under clause (b) or subrule (2) of Rule 44 that he ceased to be a member of the committee was made by Ext. P9. Although the petitioner No. 2 was heard in pursuance of the notice under Rule 16, he was not given the "opportunity to state his objections" to the proposed declaration under clause (c) of subrule (2) of Rule 44 envisaged by subrule (3) of Rule 44.

3. I will first deal with the question whether the body of the promoters who joined the application for registration of society constitutes the "society" within the meaning of Rule 176. Society means the whole body of members of the society. "General body meeting" has been defined in Section 2(k) of the Act to mean "a meeting of the members who are entitled to vote in the affairs of the society." The status of the promoters who subscribe to the application for registration of the society and who succeed in having the society registered is not different from the general body of the society. For the purpose of taking all decisions, this body of the promoters, functions as the general body of the society. Upon its registration these promoters become the general body. This would be clear from Rules 7 and 8 of the Kerala Co-operative Societies Rules. Rule 7 enjoins every society to commence its work within a period of six months of its registration. Upon registration of the society it is open to the promoter members, who constitute the whole body of members at that stage, to

commence working. That is what Rule 7 expects them to do. Implied in this rule is the legislative intention that upon registration of the society the promoter members constitute the general body of the society. That is why it is called upon to commence its work within six months of the registration. The society which comprises of the promoter members only can function in a variety of ways. It can hold the first general body meeting, it can admit new members, and it can acquire property. There is no restriction in the rules, upon its authority to commence work as a society. Rule 8 enjoins the chief promoter to convene the first general body meeting of all persons who had signed the application for registration of the society. This necessarily means that the chief promoter and all other persons who had signed the application for registration of the society constitute the general body. Significantly Rule 8 describes the Chief promoter and all persons who had signed the application for registration of the society as the "first general body." Upon a true interpretation of the Rules it is clear that the Chief promoter and others who signed the application for registration have been constituted the general body of the society. I have, therefore, no doubt that the promoters who have subscribed to the application for registration of society are, by the rules, constituted the general body of the society. Any resolution passed by them is a resolution "of the society."

4. In view of my finding that the promoters constitute the general body of the society, it is not necessary to consider whether the promoter members are a committee of the society.

5. In my opinion the promoters or persons who subscribe to the application for registration and succeed in having the society registered, constitute the general body of the society. Therefore the Registrar was within his authority in resorting to Rule 176.

6. Does Rule 44 (3) contemplate that a member who has ceased to be a member of a society, needs to be given an opportunity to state his objections to the proposed declaration that upon ceasing to be a member of the society he also ceased to be a member of the committee?

Rule 44 is captioned "Disqualification of membership of committee". Committee means the governing body a co-operative society to which the management of the affairs of the society is entrusted. Sub-rule (2) of Rule 44 enumerates three classes of members of committee who "shall cease to hold his office as such." Clause (a) of subrule (2) of Rule 44 applies where a member of the committee incurs the disqualification under subrule (1) of Rule 44. Such disqualification must exist at the time of his election to the committee. That is why subrule (1) of Rule 44 employs the words "no member of the committee shall be eligible for being elected." If he is so disqualified he ceases to hold office as member of the committee. The disqualification attaches to his election or appointment as a member of a committee and not to his admission as a member of the society. Clause (c) of subrule (2) of Rule 44 comes into play where a member of the committee is "subsequently seen to be disqualified" on the date of his election to

the committee. Clauses (a) and (c) of subrule (2) of Rule 44 apply in circumstances which show that the election or appointment as a member of the committee is tainted with initial disqualification. Whether the disqualifying factors enumerated in clauses (a) to (k) of subrule (1) of Rule 44, such as, being related to a paid employee of the society, default in payments to the society, being of unsound mind, apply, may be inquired into by the Registrar. After concluding that a member was so disqualified natural justice requires that he is given an opportunity to object to the proposed action. That is why subrule (3) provides "an opportunity to state his objections." The opportunity envisaged by subrule (3) of Rule 44 is against the "proposed action" which means the action of declaring that such member "is or becomes disqualified" and that therefore "he shall cease to be a member of the committee of the society concerned from the date of such disqualification". Subrule (3) of Rule 44 has deliberately used the words "is or becomes disqualified," These words mean that the proposed declaration must involve a finding or determination of disqualification. Only then the "opportunity to state his objections" is attracted.

Contrast the aforesaid implication of clauses (a) and (c) of subrule (2) of Rule 44 which lays down that a member of the committee shall cease to hold his office as such member, if he "ceases to be a member of the society." There is no reference to the disqualifications set out in subrule (1). A member of a committee ceases to be such member, upon occurrence of an event unconnected with the disqualification for being elected or appointed to the committee. When he ceases to be a member of the society, of whose committee he is a member, he automatically ceases to be a member of such committee. In such a case he ceases to be a member of the committee not because his election to the committee is tainted with the disqualifications set out in subrule (1) of Rule 44, but because his primary membership of the society is terminated. Clauses (a) and (c) of subrule (2) of Rule 44, apply where a disqualified person occupies a seat on the committee. Clause (b) of subrule (2) of Rule 44 applies where a nonmember sits as a member of the committee of a society. Therefore, in the case of a member falling under clause (b) of subrule (2) of Rule 44, there is no question of considering whether he has incurred any disqualifications for being elected, set out in subrule (1) of Rule 44. Therefore there is no question of giving "an opportunity to state his objections." The reason is that such a member has nothing to object to. What he can object to has already been considered and adjudicated upon and a finding that he is not a member of the society delivered. Where a person was ineligible to be a primary member of the society by reason of Rules 16 and 27, as in this case, the opportunity envisaged by subrules (3) and (4) of Rule 16 has already been given. Such member of the committee is not entitled to the "opportunity to state his objections" envisaged by subrule (3) of Rule 44. For all these reasons this Original Petition is dismissed.