
(2004) 05 KL CK 0020
In the High Court Of Kerala
Case No : M.F.A. No. 1479 of 2003

Udayakaran

APPELLANT

Vs

Ahammedkannu

RESPONDENT

Date of Decision : 25-05-2004

Acts Referred:

Citation : (2004) 3 ILR (Ker) 96 : (2004) 2 KLT 969

Hon'ble Judges : K.K. Denesan, J; Cyriac Joseph, J

Bench : Division Bench

Advocate : K. Ramakumar, for the Appellant; T.R. Ramachandran Nair and P.V. Lonachan, Govt. Pleader, M.K. Chandramohandas and B.S. Swathi Kumar, Spl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Cyriac Joseph, J.—This Writ Appeal arises from the judgment in W.P.(C) No. 24568/2003. The appellant was the 5th respondent in the Writ Petition and respondents 1 to 3 were the petitioners in the Writ Petition. Respondents 4 to 7 herein were respondents 1 to 4 in the Writ Petition.

2. The dispute relates to the election to the Committee of the 6th respondent Kerala State Handicrafts Apex-Co-operative Society Limited, Ernakulam (hereinafter referred to as "the Society") which is governed by the provisions of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act") and the Kerala Co-operative Societies Rules (hereinafter referred to as "the Rules").

3. When the term of office of the existing committee of the Society was due to expire on 30.6.2003, the Committee passed resolution No.4 dated 10.4.2003 resolving to conduct election to the Committee of the Society 19.6.2003. On 10.4.2003 itself the Committee passed resolution No.4(a) resolving that the terms of bye-law 12(2B) of the Society the Woman member of the Committee shall be elected from Idukki District and the SC/ST member of the Committee

from Alappuzha District. On the basis of the above mentioned resolutions of the Committee of the Society, the 4th respondent -Kerala State Co-operative Election Commission (hereinafter referred to as "the Election Commission"), issued Ext.P1 election notification dated 14.5.2003. As per Ext.P1 notification the total number of members to be elected to the Committee was eleven and the constituencies were based on Revenue Districts. Idukki District was reserved for the Woman member and the Alappuzha District was reserved for Scheduled Castes/ Scheduled Tribes member.

4. The appellant T.V. Udayakaran, President, Muhamma Panchayat Handicrafts Industrial Co-operative Society Limited, filed a petition dated 16.5.2003 before the Registrar of the Industrial Co-operative Societies (Director of Industries and Commerce) stating that the resolution passed by the Committee of the Society reserving Alappuzha District for the SC/ST member and Idukki District for Woman member, was beyond the powers and jurisdiction of the Committee and that the said resolution should be rescinded. He also filed O.P. No. 15944/2003 praying for a direction to the Registrar to consider his petition. The said Original Petition was disposed of by the High Court on 26.5.2003 directing the Registrar to take notice of the said petition filed by T.V. Udayakaran and to pass orders after hearing him and any other affected persons. Pursuant to the said judgment, the Registrar served notices on the appellant as well as the Secretary and the President of the society and they were heard on 10.6.2003. After considering the contentions of the parties, the Registrar issued Ext.P2 order dated 11.6.2003 rescinding resolution No.4(a) dated 10.4.2003 of the Committee under Rule 176 of the Rules.

5. In Ext.P2 order the Registrar found that as per the provisions contained in the Act and in the bye-laws of the Society election to the committee of the Society, is a subject matter allotted to the General Body of the Society and that the decision contained in resolution No. 4(a) was taken by the Committee even without obtaining the previous sanction of the Registrar and also that the Registrar was kept in the dark about the said decision, as resolution No. 4(a) was not communicated to the Registrar along with resolution No. 4 by which it was resolved to conduct the election on 19.6.2003. According to the Registrar, no objective criteria were seen adopted by the committee for reserving the seats for women and SC/ST. The Registrar held that the decision to reserve Alappuzha district for SC/ST and Idukki district for women was taken without , any objective reasoning and in an arbitrary manner. The Registrar even pointed out that the seat for woman was reserved in the Idukki District where there were only two women societies as members of the Society.

6. A copy Ext.P2 order dated 11.6.2003 was sent by the Registrar to the Election Commission also. On receipt of copy of Ext.P2 order the Election Commission issued Ext.P3 order dated 17.6.2003 cancelling Ext.P1 election notification and directing the members of the Committee of the Society to reschedule the election through a fresh resolution. According to Ext.P3, Ext.P1 election notification was

cancelled in view of Ext.P2 order passed by the Registrar holding that the resolution taken by the Committee of the Society was invalid.

7. Against Ext.P2 order dated 11.6.2003 of the Registrar, an appeal petition was filed before the Government by Shri P.M. Ahammed Kannu, Delegate Member of the Society. By Ext.P4 letter dated 8.7.2003 of the Government the Registrar was informed that his order dated 11.6.2003 was stayed till the disposal of the appeal petition filed by Shri P.M. Ahammed Kannu. But in the meanwhile Ext.P1 election notification had already been cancelled by the Election Commission and the term of office of the existing Committee had expired on 30.6.2003 and an administrative Committee had been appointed to manage the affairs of the Society. The Administrative Committee passed Ext. P5 resolution dated 14.7.2003 requesting the Election Commission to conduct the election on 14.8.2003.

8. Alleging that though Ext.P5 resolution was sent to the Election Commission, the Election Commission was not taking any action in the matter, the convener and members of the Administrative Committee (respondents 1 to 3 herein) filed W.P.(C) No. 24568/2003 praying for quashing Ext.P3 order of the Election Commission and for a direction to the Election Commission to issue appropriate notification under Rule 35 of the Rules for holding the election as requested in Ext.P5 resolution. Though Ext. P3 order was passed on a petition filed by the appellant Shri T.V. Udayakaran, he was not made a party to the above Writ Petition. However, the appellant filed LA. No. 10121/2003 and got himself impleaded as the additional 5th respondent in the Writ Petition and he opposed the prayers in the Writ Petition. The learned Single Judge allowed the Writ Petition and quashed Ext.P2 order of the Registrar of Industrial Co-operative Societies and Ext.P3 order of the Election Commission. The learned single Judge also directed the committee of the Society to make a formal application to the Election Commission" suggesting a date and the Election Commission was directed to accept and endorse it without delay so that the election process is finalised expeditiously. Aggrieved by the decision of the learned Single judge the 5th respondent in the Writ Petition has filed this writ appeal.

9. The question that arises, for consideration is whether resolution No. 4(a) dated 10.4.2003 passed by the Committee of the Society resolving to reserve the Idukki District constituency for women and the Alappuzha District constituency for SC/ST is legal and valid. In order to answer the said question it is necessary to refer to the relevant statutory provisions.

10. The provision for reservation of one seat for a woman member and one seat for a member belonging to Schedule Castes or Scheduled Tribes in the Committee of every Co-operative society is contained in Section 28A of the Act. For the sake of convenience, Section 28A is extracted hereunder.

"28A. Reservation of women members and members belonging to Scheduled Castes or Scheduled Tribes in the committee:-

(1) Notwithstanding anything contained in this Act, the rules or the bye-laws, there shall be reserved in the Committee of every society, one seat for a woman member and one seat for a member belonging to the Scheduled Castes or the Scheduled Tribes.

(2) Nothing contained in Sub-section (1) shall prevent the women members and members belonging to the Scheduled Castes or Scheduled Tribes from being non-reserved seats in the committee.

(3) Where there is no representation of woman or of a member belonging to the Scheduled Castes or Scheduled Tribes in the committee of any apex or central society at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999, the Government or the Registrar, respectively, may nominate a woman member or a member belonging to the Schedule Castes or Scheduled Tribes to the Committee.

(4) A person nominated to the committee of a society or Bank shall have all the powers of a members elected to such committee and shall hold office during the pleasure of the Government or the Registrar, as the case may be"

It can be seen from the provisions contained in Section 28A that there is stipulation for reservation of one seat for a woman member and one seat for a member belonging to Schedule Castes or Scheduled Tribes in the Committee of every co-operative society. But no criteria or guidelines are provided in the Section for making such reservation. In other words, as per the bye-laws of a society if the members of the committee are to be elected from different wards or constituencies, the criteria or guidelines for determining which ward or constituency should be reserved, are not given in Section 28A. Section 28A also does not specify the authority or body which is competent to determine the ward or constituency for such reservation. No other provision in the Act deals with the above aspects.

11. According to Section 28 of the Act, the General Body of a Society shall constitute a committee for a period not exceeding five years in accordance with the bye-laws and entrust the, management of the affairs of the Society to such Committee. Thus, the Committee of a Society is to be constituted by the General body of that Society and such constitution of the Committee shall be in accordance with the bye-laws of the Society. Therefore, if the provisions in the Act do not specify the authority competent to determine or the criteria to determine the ward/constituency for reservation u/s 28A of the Act, it shall be normally provided in the bye-laws of the Society.

12. It is not disputed that the authority competent to make and amend the bye-law is the General Body of the Society. Section 27 of the Act also says that subject to the provisions of the Act, the Rules and the bye-laws, the final authority of a society shall vest in the General Body of the members. Therefore, in the absence of necessary provisions in the Act specifying the authority and the criteria to determine the ward/constituency for reservation u/s 28A, it is for the

General body of a Society to make necessary provisions in the bye-laws of the society for the reservation contemplated u/s 28A. In other words, the General Body should suitably amend the bye-laws either determining the ward/constituencies to be reserved u/s 28A or specifying the authority competent to determine and laying down the criteria for such determination. Since the Committee of a Society is not competent to amend the bye-laws of the Society, unless specified in the bye-laws the Committee is not competent to determine the ward or constituency for reservation u/s 28A or to (sic) down the criteria for such determination.

13. Moreover, there is an inherent danger in conceding such arbitrary power to an existing committee of the Society to determine the constituency to be reserved u/s 28 A. If such a power is conceded to the Committee, the existing members of the Committee may arbitrarily exercise that power to reserve the constituency/ward to their advantage of their opponents. Such a situation will not be in the best interest of the Society or in accordance with the spirit of the provisions of the Act.

14. The Kerala Co-operative Societies Rules also do not contain any provision specifying the authority competent to determine or laying down criteria to determine the ward or constituency for reservation u/s 28A. At the same time, Rule 35 lays down the procedure regarding the conduct of election to the Committee of Societies and Rule 35A lays down the procedure regarding the conduct of election to the Committee of the Societies by the Election Commission. In the procedure laid down by Rule 35, the Committee of a Society has only two functions. Under Rule 35(I), the Committee shall meet at least 60 days in advance of the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of election of the new Committee and a copy of the resolution shall be sent to the Registrar by registered post within a week. Here the only function of the Committee is to fix the date, time and place for the conduct of the election of the new Committee and nothing more Under Rule 35(3)(b), the Committee in office shall prepare a list of members qualified to vote at the election in accordance with the provisions of the Act, the Rules and the bye-laws as stood on a date 30 days prior to the date fixed for the polls and supply the same, to the Returning Officer. Thus under Rule 35 the committee has no power to determine the ward/constituency to be reserved or to lay down the criteria to determine the constituency or ward for reservation under Rule 28A. Similarly, according to Rule 35A(1), the committee shall meet at least 60 days prior to the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of the election to the new Committee and a copy of the such resolution shall be sent to the State Cooperative Election Commission by registered post within a week. Under Rule 35A(4), the Administrative Department shall be responsible, for the publication of the list of members qualified to vote at the election in accordance with the provisions of the Act, Rules and bye-laws as stood on a date 60 days prior to the date fixed for the poll and it shall be the duty of the Chief Executive of the concerned Society to

prepare/update the list as per the Rules and submit the voters" list duly approved by the Committee to the Electoral Officer and render all assistance required by the Electoral Officer. Thus, under Rule 35A also the only powers conferred on the Committee are to fix the date, time and place for the conduct of the election and to approve the voters" list to be submitted to the Electoral Officer by the Chief Executive of the society. No power is given to the Committee either to determine the ward or constituency for reservation u/s 28 A or to lay down the criteria for such determination.

15. It is also to be noted that Rule 35(3)(a) and 35A(3) mention the particulars to be contained in the election notification. As per the said provisions, the particulars to be contained in the election notification include "any area or constituency that is specified in the bye-laws from which members are to be elected". Thus Rules 35(3)(a)(ii) and 35A(3)(ii) give sufficient indication that the area or constituency from which members are to be elected is to be specified in the bye-laws of the Society. It necessarily follows that the area or constituency for reservation u/s 28 A of the Act has to be specified in the bye-laws of the Society and that can be done only by the general body of the Society.

16. Rule 5(l) of the Kerala Co-operative Societies Rules stipulates that the bye-laws of a Society shall not be contrary to the provisions of the Act and the Rules and that the bye-laws may deal with all or any of the matters specified thereunder and with such other matters incidental to the organization of the Society and the management of its business as may be deemed necessary. One of the matters specified under Rule 5(1) is "the constitution and reconstitution of the Committee [vide Rule 5(1)(m)]. Another matter is the conduct of election to the Committee and other bodies of the Society as provided in the bye-laws, including the right of members to be elected by different constituencies and appointment of Returning Officer [vide Rule 5(1)(s)]. Thus, Rule 5(l)(m) and Rule 5(1)(s) also indicate that the election of members to the Committee by different constituencies should be as provided in the bye-laws of the Society.

17. Rule 9, of the Kerala Co-operative Rules provides that every proposal for amendment to the bye-laws of a Society shall be made only by a resolution passed by a 2/3 majority of the members present and voting in the meeting of the General Body of the Society. It is not disputed that under the bye-laws of the Society the power to elect and remove the members of the Committee is conferred on the General Body. It is also not disputed that the Committee of the Society is not competent to amend the bye-laws.

18. Admittedly Clause 12(2B) of the bye-laws of the Society was amended at the meeting of the General Body of the Society held on 6.11.2000 to provide that "the elected Directors of the Board of Directors shall consist of one woman member and one SC/ST member on reservation". A copy of the minutes of the General Body meeting held on 6.11.2000 has been produced as Annexure R6(a) alongwith the counter affidavit of the 6th respondent in the Writ Appeal. The said amendment was registered by the Registrar of Industrial Co-operative Societies

u/s 12 of the Act on 20.4.2001. A copy of the registration certificate dated 20.4.2001 has been produced as Annexure R6(c) alongwith the counter-affidavit of the 6th respondent in the Writ Appeal. However, even the amended Clause 12(2B) of the bye-laws does not stipulate which area or constituency is to be reserved for woman or SC/ST. It also does not contain any criteria for determining the area or constituency for such reservation. It also does not authorise the existing Committee of the Society to determine the area or constituency to be reserved for woman or SC/ST.

19. Thus, the position that emerges from the above discussion is that even though Section 28A of the Act and Clause 12(2B) of the bye-laws of the Society provide for reservation of one seat for a woman member and one seat for a member belonging to SC/ST, the provisions of the Act, or the Rules or the bye-laws do not specify which constituency is to be so reserved or provide the criteria to determine the area/constituency to be reserved. The provisions in the Act or the Rules or the bye-laws do not authorise the Managing Committee of the Society to determine the area/constituency to be reserved or to lay down the criteria for determining the area/constituency to be reserved. Hence, the resolution No. 4(a) of the Managing Committee of the Society resolving to reserve Idukki district for woman and Alappuzha district for SC/ST was illegal and unauthorised. Therefore, the learned Single Judge was not right or justified in quashing Ext.P2 order of the Registrar. Since we are upholding Ext. P2 order of the Registrar. the appeal filed against the said order before the Government has become infructuous.

20. Ext. P3 order was passed by the State Co-operative Election Commission in view of Ext.P2 order of the Registrar. In the light of Ext. P2 order of the Registrar, the State Co-operative Election Commission had no other option but to cancel Ext.P1 election notification. Therefore, the learned Single Judge was not right or justified in quashing Ext.P3 order.

21. At the time of admitting the Writ Appeal it was noticed that a notification dated 3.9.2003 had been issued proposing to hold election to the Board of Directors of the Society and since the election process had already commenced this Court declined to grant stay of operation of the Judgment or of the election proceedings. However, in the interim order dated 4.9.2003 it was directed that the Returning Officer should not declare the results until further order from the Court. It was also directed that the results of the counting of the votes should be reported to this Court by the Returning Officer on 16,9.2003. Accordingly, the election was held and the Returning Officer reported the results of the counting of votes in a sealed envelope which was directed to be kept by the Registrar of this Court. Since we uphold Ext. P2 and P3 the election held pursuant to the impugned judgment cannot be held to be valid. Hence, the election held pursuant to the impugned judgment is a nullity.

22. In the light of the discussion above, we hold that the impugned judgment of the leaned Single Judge is liable to be set aside. Accordingly the judgment dated

21.8.2003 in W.P.(C) No. 24568/2003 is set aside. The said Writ Petition will stand dismissed. The election proceedings pursuant to the impugned judgment are declared invalid. It is for the General Body of the Kerala State Handicrafts Apex Co-operative Society Limited to take necessary and appropriate action to provide for the reservation contemplated under Sub-section(1) of Section 28A of the Kerala Co-operative Societies Act at the earliest. Thereupon the Administrative Committee/Administrator of the Society shall take immediate steps to constitute a new Managing Committee of the Society in accordance with the provisions contained in the Act, the Rules and the bye-laws of the Society. Since the Society has been under the management of an Administrative Committee for more than a year the Registrar of the Industrial Co-operative Society (Director of Industries and Commerce) is directed to ensure that the General Body of the Society and the Administrative Committee/Administrator take necessary action in terms of this judgment without any delay.

23. The Writ Appeal is allowed in the above terms. There will be no order as to costs.