
(2014) 11 KL CK 0200

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 23905 of 2013 (K)

V. Remesan

APPELLANT

Vs

Joint Registrar of Co-Operative Societies (General)

RESPONDENT

Date of Decision : 14-11-2014

Acts Referred:

Citation : (2015) 1 KLJ 141 : (2014) 4 KLT 911

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : P.N. Mohanan and I. Vinayakumari, Advocate for the Appellant; D. Somasundaram, Spl. Govt. Pleader, Joice George and George Sebastian, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner is the member of the Managing Committee of a Primary Scheduled Caste/Scheduled Tribe Co-operative Society [for brevity "primary society"], who, after his election to the Managing Committee, was sent as a delegate to the Kerala State Scheduled Caste/Scheduled Tribe Development Federation [short "the Federation"], the apex Society. The petitioner thereafter was elected as President of that apex Society. The petitioner's grievance is with respect to Exhibit P5, which disqualified him from the membership of the Committee in the primary society, which, according to the petitioner, is of no consequence, since he has obtained Exhibit P1 exemption.

2. The learned counsel for the petitioner specifically took me to the provision under which the petitioner was disqualified, i.e., Rule 44(1)(f) of the Kerala Co-operative Societies Rules, 1969 [for short "the Rules"]. The petitioner's contention is that what is indicated in Rule 44 is, a disqualification at the time when the order is passed. Specific emphasis is given to the word "is" employed in the various sub-rules of Rule 44, to contend that the disqualification should be there as at the time when the order is passed. The petitioner relies on Exhibit P1, to contend that he has been issued an exemption and that, by virtue of clause (f) of sub-rule (1) of Rule 44, the disqualification would not be operative, since

Exhibit P1 exemption exempts the petitioner from the operation of the clause itself.

3. It is to be specifically noticed that the petitioner was elected to the Managing Committee of the primary society on 10.11.2011. It is this election which entitled him, to be sent as a delegate to the Federation and which entitled the further participation in the election in which he was appointed as the President of the Federation. Exhibit P1 is an exemption which he sought for when participating in the election to the Managing Committee of the Federation. This exemption definitely entitled him to be elected as the President of the Federation. But, however, that does not absolve him from the liability to have got an identical exemption when he was elected to the primary society, which was the basis on which, his delegation to the Federation and further election as President of the Federation, was occasioned.

4. On a reading of Exhibit P5, it is evident that the petitioner admitted that there is no exemption at the time of election to the primary society on 10.11.2011. Rule 44(1)(f) specifies that no member of the society shall be eligible for being elected, or appointed as a member of the committee of the society, if he is a paid employee of the society or of any other society. Such disqualification relates to the time of election and not to the date on which the order is passed. The petitioner is a paid employee of another society. If an exemption was obtained at that point of time, definitely such exempted person/employee would be entitled to participate in the election and hold office in the Committee; if so elected. However, the petitioner having not obtained such an exemption, which is admitted in Exhibit P5, his election to the primary society itself is invalid and the disqualification is in continuing in the Managing Committee of the primary society.

5. The learned counsel for the petitioner relied *Thommen v. State of Kerala* (1978 KLT 887) and *K. Abdul Rasheed Vs. State of Kerala and Others*, to contend that there should be a disqualification as on the date of order. Both the said decisions were with respect to disqualification as per Rule 44(1)(c); being a default to the Society and any other society in respect of any loan transaction. It was consistently held that the default should be one present at the time of the issuance of the order, since the words employed in sub-clause (c) is "is in default". *Abdul Rasheed* (supra) went to the extent of holding that even if such default was in existence at the time of the election; if there is no election dispute pending, then a member could be disqualified only if he incurs such disqualification on the date of issuance of notice under Rule 44(1). Hence, a person who cleared the default before the order was issued would be absolved.

6. Even going by the above precedents it cannot be said that the petitioner is not disqualified. As on the date of the issuance of notice under Rule 44 and when Exhibit P5 order was passed; the petitioner continues as a paid employee. He has also not, under the proviso obtained an exemption from Rule 44, insofar as his participation in the election. The disqualification, hence, is found to be "in praesenti".

7. There is no question of the continuance of the petitioner in the Managing Committee of the primary society, on a subsequent exemption, which he obtained for the specific purpose of participating in the election to the post of President of the Federation. The reliance placed on K. N. Gangadharan Nair and others Vs. George O. Thettayil and others, and John, P.J. Vs. Joint Registrar of Co-Operative Societies and Others is apposite. Though disqualification was not the issue, a delegation made to a Central Society; from the Managing Committee of a Primary Society was found to cease, on cessation of the membership in the Managing Committee of the Primary Society. If the petitioner is disqualified from the Managing Committee of the Primary Society, his delegation by virtue of his office in the Primary Society and the subsequent election in the Federation, by virtue of such delegation, would be of no consequence. The proviso to clause (f) of Rule 44(1) specifically speaks of general or special orders. The reference to exemption to this clause would apply only if there is a general order to that end and not where there is a specific order as indicated in Exhibit P5. Exhibit P5 granted the exemption from the operation of Rule 44(1)(f), specifically to participate in the election to the Managing Committee of the Federation. The same is not a general exemption and is dated 08.02.2013, far later to his election to the Primary Society on 10.11.2011. Exhibit P1 can only be a special order, entitling the petitioner to be elected as President of the Managing Committee of the Federation and not to the Managing Committee of the primary society. In such circumstance, there is no infirmity in Exhibit P5.

In the result, the writ petition is found to be devoid of merit and the same is dismissed. No costs.