
(1960) 06 KL CK 0002
In the High Court Of Kerala
Case No : A. S. No. 317 of 1959

Varghese

APPELLANT

Vs

Chacko and Others

RESPONDENT

Date of Decision : 28-06-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) KLJ 1322

Hon'ble Judges : M. A. Ansari, C.J;M. Madhavan Nair, J

Bench : Division Bench

Advocate : K. Velayudhan Nair and V. Subramonian Moothath, for the Appellant;
M. Kumara Menon on behalf of Smt. Mariakutty John For 4th Respondent, for the Respondent

Final Decision : Allowed

Judgement

Ansari, C.J.—The appellant who is a member of the Cheruvally Co-operative Society, seeks to set aside the election under the Co-operative Societies Act, of seven persons to the managing committee of the aforesaid society. These seven persons, on June 22, 1958, had been elected in the general body meeting, and two objections are taken to the aforesaid election being valid. The first of these had been raised before the Deputy Registrar of Co-operative Societies but it failed. The appellant then appealed to the Registrar, but was equally unsuccessful. Thereafter, he had invoked the jurisdiction of this court under Article 226, but the learned Judge has rejected both. The first objection is that the authorisation to the Inspector of Co-operative Societies by the Deputy Registrar to convene the general body meeting was bad, because the latter officer on the day he gave the authorisation, was without power to do what the Registrar had under the Act, and the subsequent notification by the Government, authorising the Deputy Registrar to discharge some of the functions of the Registrar, including the power to do what the Deputy Registrar had done earlier, would not save the prior authorisation. The second objection is that four

members of the newly elected managing committee were disqualified and could not stand for the election. Should we accept the second objection, it is clear that the election of the four members would alone be invalid, resulting in fresh election for their places. We feel the second objection has force; for we think the earlier conduct of the person seeking writ, is always relevant, and the appellant, by not taking the objection to the Inspector's authority at the appropriate time, has precluded himself from making the objection a ground for the writ petition being allowed. To facilitate adjudication of the second objection regarding the disqualifications of the four members of the new committee, we would give the relevant provisions, on which it, rests.

2. Section 63 of the Travancore-Cochin Co-operative Societies Act, hereinafter referred to as the Act, reads:

Every order passed by a liquidator u/s 55, or by the Registrar under sub-section (1) of Section 58, or by the Registrar or his nominee or arbitrators on disputes referred to him or them under clause (f) of Section 55, or u/s 60, every order passed in appeal u/s 50 and every order passed u/s 69 shall, if not carried out;

(a) on a certificate signed by the Registrar or a liquidator, be deemed to be a decree of a civil Court and shall be executed in the same manner as a decree of such a court;

(b) be executed according to the law and under the rules for the time being in force for the recovery of arrears of land revenue, provided that any application for the recovery in such manner of such sum shall be made to the Collector and shall be accompanied by a certificate signed by the Registrar or by any of his assistants to whom the said power has been delegated by the Registrar.

The relevant rules framed under the Act, read as follows:

Rule 2. (c) "Decree" means any order referred to in Section 63 of the Act.

* * * *

(e) "Defaulter" means any person against whom a decree as defined in clause (c) has been obtained.

Rule 28. (1) No person shall be eligible for appointment as a member of the committee of any society, if he --

* * * *

(e) 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 3 months, or is a defaulter to the society or to any other society.....

The appellant's case concerning the four members being disqualified is that they are defaulters to the society, because they had not paid the amounts, which been

obtained against them, by orders u/s 60 of the Act, there thus being orders against them, which are referred to in Section 63 of the Act. Relying on the same provisions the learned Judge has held that, to be a defaulter under Rule 28(e), the person must be covered by the definition of the word under Rule 2(e) and for this purpose, there must be a decree as defined by rule 2(c), which refers to Section 63. The learned Judge has further held that there can be no decree u/s 63, unless there be the certificate by the Registrar under the Section, and the mere fact of the order against the person being one of those mentioned in the Section, would not make him a defaulter. We have come to the conclusion that a certificate by the Registrar, is not essential for converting the order into a decree for the purpose of Rule 2(e), It is clear that Rule 28(e) envisages only a person being under a liability and failing to discharge the obligation; so that anything further about the enforcement of the liability would not be contemplated by the Rule. The earlier part of the Rule clearly shows mere failure to discharge contractual obligation to be sufficient, and there is no suggestion of discrimination in favour of persons, who are placed by orders under obligation, about such orders becoming executable. Therefore, other Rules also would not be expected to define differently persons, whose liability has become affixed by passing of orders and where such orders are followed by the failure to discharge the liability. The insistence on certificates, followed by failures to pay, would, therefore, be not necessary; and we do not find any reasons to drive us to the conclusion which is different. Sub-rule (e) of Rule 2 defines "defaulter" to mean any person against whom a decree been obtained, and the word "decree" according to sub-rule (c) of Rule 2, means "order" referred to in Section 63. Had the framers of the Rule wanted the word "decree" to mean an order under

Section 63, which has been made executable because of the "certificate of the Registrar," that would very easily have been stated. We, therefore, feel that a person becomes a "defaulter" by merely having an order against himself, which is referred to in Section 63, and whose liability he has not discharged. It follows that respondents 1 to 4, because of their failure to discharge their liability under the orders against them on the date of their election, were defaulters, were disqualified, and their elections would be illegal.

3. The next ground is that the aforesaid members were not defaulters, as the award against them was the subject-matter of appeal. The argument is that because the appeal stages of the litigation were not over, there would be no finality and hence no default. The general rule regarding original orders in this country has been stated by the Supreme Court in *U. P. State v Mohammed Nooh* (A. I. R. 1958 S. C. 86 at p. 95) in these words: --

Whatever be the theory under other systems of law, under the Indian law and procedure, an original decree is not suspended by the presentation of an appeal, nor is its operation interrupted where the decree on appeal is merely one of dismissal. There is nothing in the Indian Law to warrant the suggestion, that the decree or order of the court or tribunal of the first instance, becomes final only

on the termination of all proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy, but until it is reversed or modified, it remains effective.

That being the true position, we think the appeals against the orders not having been disposed of when the elections were held, would not make the respondents eligible for election, because there would be subsisting obligation to pay, which had not been discharged. We are therefore, not convinced of the soundness of the reason, which had been taken by the lower authorities to overrule the petitioner's objection.

The result is that this appeal is allowed with costs, and the elections of respondents 1 to 4 to the committee are declared void. There would be fresh elections for the four seats.