(2014) 02 KL CK 0144

In the High Court Of Kerala

Case No : Writ Petition (C) . No. 3257 of 2014 (F)

V.G. Padmanabhan APPELLANT

Vs

State Co-Operative Election Commission and Others RESPONDENT

Date of Decision : 20-02-2014

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 12 14 2(oc) 2(qc) 28

Citation : (2014) 1 KHC 736 : (2014) 1 KLJ 823 : (2014) 1 KLT 911

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : M. Sasindran and Sri. V. Venugopal, for the Appellant; D. Somasundaram, Special Government Pleader for R1 to R4 and Sri. V.G. Arun, Addl. Advocate for R5, for the Respondent

Final Decision : Dismissed

Judgement

K. Vinod Chandran, J.—The petitioner, the President of the Managing Committee of the Thalassery Taluk Primary Co-operative Agricultural and Rural Development Bank (hereinafter referred to as "the Society"), is aggrieved by the cancellation of the election notified as per Exhibit P1, by the 1st respondent. Exhibit P1 election notification was issued by the 1st respondent on a valid resolution passed by the Managing Committee of the Society. In fact the final voters list was also published by the Electoral Officer. It was subsequent to that, it was intimated that the election notified has been cancelled, by Exhibit 7 communication. Exhibit P7 notices the formation of a new Taluk, as is evidenced by Exhibit P4, being Iritty Taluk and the registration proceedings initiated for a new Primary Co-operative Agricultural and Rural Development Bank (for brevity "PCARD Bank") for the newly formed Taluk of Iritty. A Special Officer was also appointed, who had sought for six months time to carry out the bifurcation of assets and liabilities, since the Iritty Taluk, newly formed by Exhibit P4, takes in portions of the area of operation of Thalassery Taluk, falling within the area of operation of the petitioner''s PCARD Bank.

2. The learned counsel for the petitioner Sri. M. Sasindran would contend that the appointment of a Special Officer is only for the formation of the new PCARD Bank and the same cannot, in any manner, affect the election scheduled to the petitioner Society. The contention is that the Bye-laws of the Society reveal that it is the Thalassery Taluk within which the Society has area of operation and the removal of certain areas from Thalassery Taluk and inclusion in a new Taluk does not require any amendment to the Bye-laws. Thalassery Taluk, after removal of the said area, remains as such and, hence, the formation of the new Taluk does not at all affect the election conducted to the Society. In fact, the duly elected Managing Committee would be required to proceed with the bifurcation of the assets and liabilities and the Special Officer appointed, according to the petitioner, for the proposed new Bank, can only request the Managing Committee of the existing Bank to make such bifurcation of the assets and liabilities. It is also contended that the Special Officer, if at all, only takes charge of such assets and liabilities of the Society which has to be bifurcated. The contention is that the Special Officer can only take possession of the assets and liabilities of the petitioner Society to the extent such assets and liabilities remain within the areas formerly within the Thalassery Taluk and now conceded to the Iritty Taluk. The petitioner, hence, prays for the resumption of the election procedure from the stage at which it was stopped.

3. The learned Special Government Pleader (Co-operation) Sri. D. Somasundaram, however, contends that the appointment of a Special Officer is not to the newly proposed Bank alone. In fact, on the formation of the new Taluk, it was incumbent upon the Managing Committee, in office of the petitioner''s Society, to have proceeded with the bifurcation of the assets and liabilities, on failure of which the present proceedings were taken by the Registrar, resulting in appointment of a Special Officer. The Special Officer, in fact, as per Section 28, takes charge of both the Societies and after effecting the bifurcation of assets and liabilities, proceeds with the matter as provided u/s 14 of the Kerala Co-operative Societies Act, 1969 (for brevity "the Act") and Rule 13 of the Kerala Co-operative Societies Rules, 1969 (for short "the Rules"). The learned Special Government Pleader also points out that four of the Wards, viz., Peravoor, Kottiyoor, Mattannur and Achamkunnu, out of the seven Wards of the presently constituted petitioner Society stands conceded to the newly formed Iritty Taluk.

4. The learned counsel appearing for the additional 5th respondent, Sri. V.G. Arun, supports the stand of the Government and contends that out of a total of 26000 members in the petitioner Society, 14000 members are residing within the limits of the areas conceded to the Iritty Taluk. Out of the 4 Branches of the existing Society, 2 Branches are also said to be falling within the area of operation of the new Taluk. The major portion of the liabilities too are said to be within the Wards now conceded to the Iritty Taluk.

5. The Society admittedly is a PCARD Bank and by definition u/s 2(oc), the area

of operation is confined to a Taluk. The proviso to the definition also specifically restricts such operation and provides for bifurcation of assets and liabilities of existing societies having area of operation in more than one Taluk. The area of operation of the Society extended to certain areas now conceded to the newly formed Iritty Taluk. Exhibit P4 is the Government Order, which inter alia directed the formation of the new Iritty Taluk, to which certain areas in the Thalassery Taluk also were included. Hence, the constitution of the Society, as it stands now, includes areas beyond one Taluk. On the formation of the new Taluk including areas of an existing Society, necessarily there should be bifurcation of assets and liabilities. The definition clause mandates the same and an existing society cannot carry on without such bifurcation being effected, since otherwise the area would extend beyond one Taluk, which is prohibited as per the definition clause itself. On the formation of the new Taluk, the definition clause, hence, operates with all rigour and force.

6. "Special Officer" has been defined u/s 2(qc), who has to take into custody the assets and liabilities of the society which secured registration, without bifurcating the area of operation of the existing society and to register new societies and to constitute Committees as provided in Section 28 of the Act. Sub-section (1D) was inserted in Section 28 of the Act to facilitate such bifurcation of a PCARD Bank. Sub-section (1D) is a non obstante clause, which deems the registration of any PCARD Bank, without bifurcation of area, assets and liabilities of the Society and the constitution of a Committee thereon, without such bifurcation, to be void. Sub-section (1D), hence, has to be read along with the definition of "PCARD Bank". When read together, the only interpretation possible is that, on the formation of a new Taluk including some area of operation of an existing society, the registration of such existing society without bifurcation of assets and liabilities as also the Committee constituted without such bifurcation would be deemed to be void. The said finding has special reference to the facts of the present case. This would be by statutory operation, which restricts the area of operation of a PCARD Bank and confines it to the area within one Taluk.

7. The necessity to bring in bifurcation of assets and liabilities, on there being any overlap of area of operation, extending to one other Taluk is a statutory mandate. The argument of the learned counsel for the petitioner that the Special Officer is appointed for the newly formed society, hence, cannot be countenanced. There is no PCARD Bank at present in the Iritty Taluk and the bifurcation would depend upon inter alia the bifurcation of the assets and liabilities of the Thalassery PCARD Bank, certain areas of operation of which have been included now in the Iritty Taluk. There can be no Special Officer appointed to the assets and liabilities of the Society in the areas which have been deleted from the Thalassery Taluk, because as such no bifurcation has been made and the assets and liabilities of the Thalassery Taluk coming within the area of operation of the Iritty Taluk is yet to be ascertained and bifurcated.

8. Considerable support for the above interpretation can also be found in sub-

section (1E) of Section 28. The Special Officer appointed has to take into custody or bring under his control the property, effects and actionable claims to which the erstwhile society is, or appears to be entitled, by sub-section (i). The reference to "erstwhile society" is the existing society which has, as on the date of formation of the new Taluk, areas extending outside the Taluk for which it is formed. Sub-section (i) also makes it incumbent upon the Special Officer to take steps as may be necessary or expedient to prevent loss or deterioration of or damage to, such property, effects and claims, being that of the erstwhile society. It is then the steps for bifurcation of the areas, assets and liabilities of the society has to be proceeded with. The registration of the new societies would depend upon such bifurcation and the question whether the existing society should have a fresh registration or not is not germane for consideration in the present case.

9. Though, as contended by the learned counsel for the petitioner, it may not be necessary in the present case for the Thalassery PCARD Bank to effect any amendments to its Bye-laws, it cannot be contended that the bifurcation of assets and liabilities as per the Act need not also be carried on. In fact, it is the submission of the learned counsel for the petitioner that it is for the Special Officer to request the Managing Committee to surrender the assets and liabilities of the area which has now fallen within the newly formed Taluk. In this context, as was noticed above, it is pertinent that, the formation of the new Taluk being made effective, the Society itself could have proceeded with the bifurcation u/s 14 of the Act. It cannot be said that it was not the duty of the Managing Committee so to do. To maintain the status of the Society as a PCARD Bank, as defined under the Act, it was incumbent upon the Managing Committee to have proceeded with such bifurcation of assets and liabilities, at least of those coming within the areas conceded to the new Taluk.

10. The validly elected Managing Committee, despite it being aware of Exhibit P4, which was issued as early as on 27.06.2013, took no steps to comply with the statutory mandate. On the other hand, they proceeded with the passing of a resolution for holding an election to the Managing Committee of the Society, which undisputedly has an area of operation falling within another Taluk also. The resumption of proceedings for election sought for by the petitioner cannot, hence, be permitted by this Court. Even as per the election notification, Exhibit P1, four of the Wards out of the seven Wards, which are not reserved, are falling within the Iritty Taluk and the petitioner''s Society cannot extend its area of operation therein, nor can exert any control of the assets and liabilities now falling within such area. The question does not arise whether election can be carried on from the said Wards.

11. The contentions of the petitioner regarding appointment of Special Officer is further belied by Exhibit P6, which is the order appointing the Special Officer. As per Exhibit P6, the Assistant Registrar (General), Kuthuparamba has been appointed as the Special Officer to the Thalassery PCARD Bank. This is in

consonance with the findings entered by this Court on the interpretation of the various provisions of the Act. Only on taking into custody of the assets and liabilities of the Society could there be any bifurcation of the same, in so far as the assets and liabilities of the area now falling within the Iritty Taluk. Exhibit P6, hence, cannot be interfered with.

12. This Court in taking the said view is fortified by the reasoning of another learned Single Judge in I.A. No. 144 of 2013 in W.P. (C). No. 30236 of 2012 dated 12.04.2013. There, an interim order was passed directing the Joint Registrar to constitute an Administrative Committee of three members of the present elected Managing Committee. The Department sought for vacation or recall of the interim order, since the bifurcation process had to be carried on and the appointment of a Special Officer u/s 28(1D) was expedient. The learned Single Judge referred to the definition of PCARD Bank, wherein there was restriction of area of operation to be confined within the area of a Taluk, and the proviso, as it existed then, as also the definition of "Special Officer" and Section 28, more specifically sub-sections (1D) and (1E). The essential defence taken therein, was that the Special Officer is appointed only for the purpose of bifurcating the assets and liabilities and the affairs of the society has to be carried on by the Managing Committee itself.

13. In the said case, the Managing Committee''s term had expired and an election was resolved to be held on a date antecedent to such expiry. Amendments were also made to the Bye-laws of the Society, restricting the area of operation of the Bank to one Taluk. The challenge in the writ petition was against the alleged unjustified action, of the Election Commission, in rejecting the request of the Bank to conduct the election. The question framed was, whether there was an automatic cessation of the Committee on account of not bifurcating the assets and liabilities. In respect of the PCARD Bank, it was held that if such bifurcation was not effected, the registration and constitution of the Committee would be void. In yet another decision reported in Irinjalakuda CARD Bank Ltd. v. KSCARD Bank Ltd. [2009 (1) KHC 925] the issue of confining the area of operation of a PCARD Bank to a Taluk arose. This Court found that the registration of a Co-operative Society, even as a PCARD Bank, could be had only under the provisions of the Act. The categorization of a PCARD Bank was found to be competent and by the definition provided for a PCARD Bank, the legislative intent explicitly expressed was held to be that, it would confine its area of operation to a Taluk. It was held in paragraph 12 thus:

With the definition of "Primary Co-operative Agricultural and Rural Development Bank" as it now stands in Section 2(oc), the natural outcome of that provision is that any PCARD Bank can operate and have its area of operation only within a taluk. If sub-section 5 of Section 12 of the KCS Act, is immediately adverted to, it can be seen that the Registrar can proceed to compulsorily alter the area of operation. If a society does not continue its area of operation to a taluk, it cannot be called a PCARD Bank, going by Section 2(oc).

For all the above reasons, the writ petition is found to be devoid of merit and the same is dismissed, leaving the parties to suffer their costs.

