

(2001) 08 KL CK 0054
In the High Court Of Kerala
Case No : O.P. No. 14840 of 1997

Viswanathan

APPELLANT

Vs

The Assistant Registrar

RESPONDENT

Date of Decision : 14-08-2001

Acts Referred:

Citation : (2001) 08 KL CK 0054

Hon'ble Judges : P.K. Balasubramanyan, Acting C.J.; T.M. Hassan Pillai, J

Bench : Division Bench

Advocate : George Poonthottam and Litty Francis, for the Appellant; M.R. Sabu, Government Pleader, K.P. Dandapani and M. Sasindran, for the Respondent

Judgement

P.K. Balasubramanyan, Ag. C.J.

1. The Wayanad District Co-operative Bank Ltd., respondent No.2 herein, is an apex society in terms of the Kerala Co-operative Societies Act. The petitioner in the Original Petition is a delegate of the Poothady Service Co-operative Bank Ltd., a member of the apex society. The Original Petition was filed by the petitioner seeking the issue of a writ of mandamus directing the Returning Officer appointed for the conduct of the election to the Managing Committee of the Apex Society, to delete the names of respondents 3 to 6 in the Original Petition from the final voters' list published for election to the Managing Committee of the apex society. According to the petitioner, these respondents were ineligible to vote at the election to be held to the Managing Committee of the apex society. Respondent No.6, who was number 31 in the voters' lists, was not entitled to vote because it was given affiliation to the apex society by an Administrator and since the Administrator had no power to induct, enrol or affiliate a member, respondent No.6 was disentitled to participate in the election process. The objection against respondents 3 to 5 was that those respondents were non-functional, being under Administrators for considerable time and were defunct in effect and hence they were also not entitled to vote at the election. The further plea was that a delegate sent up by an Administrator of a member society, had

no right to vote at the election of the Managing Committee to the apex society. According to the petitioner, though he had filed a detailed objection, Ext. P2, to the draft voters' list, the objection has been ignored by the Returning Officer, who had simply finalised the voters' list by approving the draft voters' list earlier published. It was in that situation, that the petitioner was constrained to approach this Court with the Original Petition. There was also a prayer subsequently added for a declaration that the inclusion of the name of respondents 3 to 6 in the voters' list was illegal and contrary to the provisions of the Kerala Co-operative Societies Act and the Kerala Co-operative Societies (Amendment Ordinance 12 of 1997).

2. The Returning Officer filed a counter affidavit. Therein he stated that respondent No.3 had been admitted as a member of the Kozhikode District Co-operative Bank and on the formation of the Wayanad District Co-operative Bank, this member was transferred to the second respondent-bank with effect from 1.10.1982 and respondent No.3 society was still continuing as a "A" class member of the Bank with a share qualification of Rs. 200/- as on the date of the counter affidavit. The allegation that respondent No.3 was under the control of the Administrator for several years was not correct. The Administrator was appointed only on 14.1.1996 for a period of one year and the same was extended for another one year on 14.1.1997. As regards respondent No.4, it was contended that the Administrator was appointed on 21.2.1997 and the Administrator took charge only in March 1997. The Administrator was appointed as per the report submitted by the Unit Inspector, who conducted an enquiry under S. 65 of the Kerala Co-operative Societies Act. Respondent No.5 was also admitted as a member of the Kozhikode District Co-operative Bank and transferred to the second respondent-Bank with effect from 1.10.1982. Election was conducted in respondent No.5 Bank on 30.9.1992. But as per award of the Arbitrator under the Act, the election was declared invalid. An Administrator was thereupon appointed with effect from 8.1.1997. It is not necessary to discuss in detail the case regarding respondent No.6 since the question involved as regards the eligibility of the respondent is now covered by a decision of the Supreme Court.

3. Respondent No.2 the apex society, filed counter affidavit through its General Manager. The stand adopted in the counter affidavit filed by respondent No.5 was reiterated in the counter affidavit filed by respondent No.2. It was further stated that Ext.P2 objection filed by the petitioner to the draft voters' list appears to have been disposed of by the Returning Officer and the petitioner has efficacious alternative remedy.

4. In the counter affidavit filed on behalf of respondents 3 to 6, it was contended that respondents 3 to 6 were competent to be included in the voters list and the fact that Administrator was appointed is not a ground to deprive the member societies of their right to participate in the election of Managing Committee of the apex society.

5. This Court, by an interim order dated 12.9.1997 in C.M.P. No. 26712 of 1997, directed that the votes to be cast by respondents 3 to 6 in the ensuing election of the second respondent-Bank will be kept separately in the sealed cover and the result of election shall be published subject to further orders from this Court. The position therefore, is that the results have not been declared. The election was held in the year 1997 and the normal term of the office bearers in five years from the date of taking charge.

6. In the decision in Hassan v. Joint Registrar of Co-operative Societies (1998 (2) KLT 746) a Full Bench of this Court has held that an Administrator appointed under S. 33 of the Kerala Co-operative Societies Act had no right to enrol members. The conclusion in that decision was affirmed by the Supreme Court in Jt. Registrar of Co-operative Societies v. T.A. Kuttappan (2000 (2) KLT 480 (SC)) though for not exactly the reasons given by the Full Bench. but, in any view, it is clear that respondent No.6 in this Original Petition who is number 31 in the voters' list, is, ineligible to be included in the list of voters for the election to the Managing Committee of the second respondent apex society in view of the fact that that member was enrolled as a member or given affiliation as a member of the apex society only by the Administrator. Both sides agreed before us that respondent No.6 herein, number 31 in the voters' list, is ineligible to vote. It is, therefore, clear that the vote of the delegate of respondent No.6 kept in a separate envelope, cannot be counted or taken into account while declaring the results of the election.

7. The Kerala Co-operative Societies Act was amended by the Kerala Co-operative Societies (Amendment) Ordinance 8 of 1997 issued on 3.6.1997. As per the amendment, agriculture Credit Societies and Urban Co-operative Societies alone were to have the right to become members of a District Co-operative Bank. We may notice here that the Original Petitions challenging the validity of Ordinance 8 of 1997 have been dismissed on the ground that they have become infructuous.

8. What is urged on behalf of the petitioner is that respondents 3 to 5 in the Original Petition who are members 8, 16 and 23 in the voter's list are ineligible to vote at the election of the Managing Committee of the second respondent-Bank. According to counsel for the petitioner, these societies are under the Management of Administrators appointed under S. 33 of the Kerala Co-operative Societies Act and a delegate sent up by an Administrator has no right to vote even though he may have a right to contest the election to the Managing Committee. It is contended that it is not unknown to Indian law, that a person eligible to contest, being not a member eligible to vote. Examples of election to the office of the President and Vice President of Indian and the election to the Rajya Sabha are referred to. Counsel, therefore, submitted that in the face of R. 44A of the Kerala Co-operative Societies Rules, it has to be held that the delegates sent up by Administrators of member societies cannot vote at the election, for electing the Managing Committee of the apex society. Counsel for

respondents 3 to 6, on the other hand, contended that even though the member societies may be under the management of Administrators, the Administrator has the right to send up delegates to the apex society and once that right is recognised, that delegate cannot be deprived of his right to participate in the election process especially when it is not disputed that he can contest the election for being an office bearer of the apex society. Counsel pointed out that the amendment brought about by Act 1 of 2000 which does not have retrospective operation, alone has provided that a society must be functional before it could participate in the election process by providing that only an active member of the society shall have one vote in the affairs of the society. It was, therefore, submitted that the fact a delegate, was sent up by the Administrator, would not make any difference and that delegate would be eligible to vote.

9. It is now necessary to refer to R. 44-A of the Kerala Co-operative Societies Rules. The said rule provides that the person appointed to represent a society in any other society and vote shall be a member of the committee of the society which he represents. The proviso thereto deals with a situation where the affairs of the society are managed by administrators. The proviso states that where an Administrator is managing the society under S. 28 or S. 32 or S. 33 of the Kerala Co-operative Societies Act, the Administrators have power to nominate any member of the society to be its delegate in the other society and such delegate shall be eligible to be elected as a member of the committee of the other society in which he sits as a delegate, if he is otherwise qualified to be a delegate under the relevant rules. What is to be mentioned is that the delegates sent up by the Administrators shall be eligible to be elected as members of the Committee of the apex society and there is no reference to his right to vote a distinguished from the main provision which refers to a member appointed to represent a society in any other society and to vote and prescribes his qualification that he is to be member of the committee of the society which he represents. We may note here that the validity of R. 44-A was upheld by this Court in *Devasya Chacko v. Joint Registrar* (1990 (2) KLT 917) That decision also indicated that the delegate to the central society need not be a member of the committee of the society which he represent. That view was reiterated also in the decision in *V.T. Sebastian Vs. Joint Registrar and Others*,

10. S. 20 of the Kerala Co-operative Societies Act, being it was amended by Amendment Act 1 of 2000 provided that every member of a society shall have one vote in the affairs of the society and the member excluded was only a nominal or associate member. It was in that context that His Lordship Mr. Justice T.L. Viswanatha Iyer in the judgment in O.P. No. 7060 of 1989 held that until the registration of a society was cancelled and the society was removed from the membership roll, even a society that has been liquidated cannot be deprived of its right to vote. It is possibly to clarify the position, that S. 20 was amended by Act 1 of 2000 providing that every active member of a society shall have one vote in the affairs of the society by placing emphasis on a member being an active member. In the case of an apex society obviously, the society that is a

member, must be an active society after the amendment by Act 1 of 2000.

11. In *John v. Joint Registrar of Co-operative Societies* (1996 (1) KLT 479) a Division Bench of this Court dealt with the position of persons sent up as delegates by the Administrators, who took charge of affairs of the primary societies in the context of R. 44-A of the Kerala Co-operative Societies Rules. After referring to the rule and the proviso, this Court stated as follows:

"11. As the rules now stand, only a member of a managing committee of a primary society can be a delegate to the central society. The delegate so sent by the primary society if gets elected to the managing committee of that society before its terms expires, that man can continue as a member of the committee of the central society if the primary society does not withdraw him or elects another delegate in his place. This right available to an elected member of the managing committee of a primary society cannot be extended to a nominee sent up as delegate by the Administrator. This we emphasise because the Administrator can nominate any member of the society. It means, the nominee of the Administrator need not be the erstwhile member of the managing committee of that society. Only if an erstwhile member of the managing committee of the primary society is nominated by the Administrator can there be the question of continuance in office arise. If the Administrator is nominating an ordinary member of the society, such a problem will not arise. In other words, if the argument advanced by the appellant and respondents 2 to 4 in the O.P. are accepted, the right of the nominee sent up as delegate by the Administrator will depend on the personnel of the nominee. Such an incongruous situation cannot arise. Such a situation cannot be deemed to be in the contemplation of the rule making authority as well. So, a nominee of an Administrator under the proviso to R. 44A of the Rules, can get eligibility to be elected as a member of the central society and nothing more. Appellant and respondents 2 to 4 in the Original Petition, who were holding offices of President and member of the managing committee of the bank, ceased to hold those offices when the Administrator took charge of the affairs of the primary societies".

12. Learned counsel for the petitioner emphasised that according to the Division Bench in the above decision, the delegates in terms of the proviso can get eligibility to be elected as a member of the Managing Committee of the central society and nothing more. That would mean that they cannot vote at the election of the Managing Committee. It is in this content that the learned counsel drew a parallel to the election to the post of President and Vice President of India and to the Rajya Sabha and submitted that a right to contest need not necessarily include within it, a right to vote. Counsel for the contesting respondents submitted that the question involved in the above decision was whether a delegate sent to the central co-operative society by the Administrator who is in charge of a primary society can continue to hold any office in the central society if he happens to hold that office prior to the appointment of Administrator in the primary society. Counsel refers to paragraph 5 of that decision to emphasise this

aspect and submitted that the Division Bench did not have occasion to consider whether such delegate can vote at the election or not.

13. The co-operative movement is a democratic movement. The interpretation of a provision in the Act or a Rule, has necessarily to be coloured by the basic concept underlining the movement. When an Administrator takes over the management of a co-operative society, the democratic process is suspended or is under eclipse. The democratic process is revived or comes out of eclipse only when the Administrator ceases to function and an election process is undertaken. In that situation, the decision of the Supreme Court to the effect that the Administrator in charge cannot even enrol a member to a co-operative society at the relevant time, assumes importance. This again emphasises that the democratic process in the society remains suspended and the enrolment of new members is also part of that democratic process. It is in this context that one has to look at R. 44-4 of the Kerala Co-operative Societies Rules. The main part of R. 44-A speaks of appointment of a person to represent a society and to vote in any other society, having to be a member of the committee of the society which he represents. In other words, in addition to having the qualification of being a member of the primary society, he has also to have the qualification of being a member of the Managing Committee of that primary society. The rule making authority then took note of the situation arising out of the appointment of Administrators to the primary societies in terms of Ss. 28, 32 or 33 of the Kerala Co-operative Societies Act. The question whether such primary societies could send up delegate and what are their rights, are also dealt with by the proviso to R. 44-A of the Kerala Co-operative Societies Rules. While dealing with the person nominated by the Administrator of a Primary Society to be the delegate of the apex society, the rule making authority has stated that such delegates sent up by the Administrator shall be eligible to be elected as members of the Committee of the apex society in which he sits as a delegate if he is otherwise qualified to be a delegate under the relevant rule. Though it speaks of the eligibility of such a member to be elected as a member of the committee of the apex society, it does not refer to his right to vote, as we find in the main part of the rule which speaks of the capacity of such a nominee of a member society to represent the society in the apex society and to vote at the election in the apex society. Though in the decision in John's case this question did not directly arise, the observations therefrom quoted above, clearly indicate that the right of the nominee of the Administrator is only to be elected as a member of the committee of the apex society and "nothing more" as Their Lordship put it. The only possible argument in this context is that a right to contest includes a right to vote. We have already adverted to the fact that this is not a universal rule. In the Indian context this is so, especially when we look at the eligibility to be elected to the post of President and Vice President of India or as a Member of the Rajya Sabha and the absence of a need to be a voter in any of those elections. Therefore, it may not be possible to proceed on the basis that a right to contest an election includes the right to vote, though normally under the Representation of the Peoples Act, a

right to vote or inclusion of the name in the voters' lists is a condition precedent for eligibility to contest in an election.

14. From the practical point of view one aspect can be taken note of. In our State, the appointment of an Administrator under the relevant provision of the Kerala Co-operative Societies act is a frequent occurrence for one ostensible reason or another. The whole democratic process of electing the Managing Committee of an apex society can be derailed or interfere with by putting the primary societies under the management of Administrator and sending up delegates of the Administrators to vote at the election to the Managing Committee of the apex society. It is not as if this was not prevalent in our State as disclosed from various Writ Petitions that come to this court relating to elections to co-operative societies, whether primary or apex. Therefore a strict interpretation of the proviso to R. 44-A of the Kerala Co-operative Societies Rules will only discourage the taking over the management of the primary societies by Administrators which itself should be discouraged as far as possible, considering the democratic foundation on which the co-operative movement is built up. Thus, we feel that an interpretation of R. 44-A to the effect that a delegate sent up by an Administrator in charge of the affairs of a primary society shall not be eligible to vote at the election of the Managing Committee of the apex society, but in terms of the proviso thereto, he will only be eligible to be elected as a member of the Committee of the apex society if he is otherwise qualified as indicated, is justified and is warranted. We, therefore, hold that the delegates sent up by administrators of primary societies are not eligible to vote at the election to the Managing Committee of the apex society.

15. The result of our conclusion as above is that respondents 3 to 5, being delegates sent up by the Administrators of primary societies, are not eligible to vote at the election to the Managing Committee of the apex society. Respondent No.6 has already been found to be disqualified in view of the fact that it was given affiliation in the apex society by an Administrator. It is therefore, clear that the vote cast by respondents 3 to 6 at the election to the second respondent-bank held on 21.9.1997 should not be counted as valid votes. In other words, the votes kept in a separate envelope in respect of those four members included in the voters' list, namely, serial numbers 8, 16, 23 and 31 need not be and cannot be counted while announcing the results of the election. There will, therefore, be a direction to the first respondent, Returning Officer, to declare the results of the election to the second respondent. Bank by counting only the votes of eligible members other than serial numbers 8, 16, 23 and 31 now kept in a separate envelope. The Returning Officer will declare the results forthwith as per the direction above and the concerned authorities will permit the newly elected Managing Committee to take charge of the affairs of the second respondent-bank immediately.