
(1990) 03 KL CK 0002
In the High Court Of Kerala
Case No : O.P. No. 1276 of 1989

V.R. Krishnan Ezhuthachan

APPELLANT

Vs

The Assistant Registrar of Co-operative Societies and Others

RESPONDENT

Date of Decision : 13-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1990) KLJ 644

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : Cyriac Joseph, for the Appellant; K.K. Ravindranath, Government Pleader for 1st Respondent, M.K. Damodaran, for 2nd Respondent and V.N. Achuthakurup, for 4th Respondent, for the Respondent

Judgement

Viswanatha Iyer, J.—Petitioner is a member of the third Respondent the Trichur Fruit and Vegetable Marketing Co-operative Society Limited, a society governed by the Kerala Co-operative Societies Act. 1969, (the Act). He was one of the founder members of the society with membership No. 2. He was also the President of the Managing Committee of the society which was elected to office at the election held on August 24, 1986.

2. The term of the committee so elected was five years, but long before the expiry of that term, on October 4, 1988, the Joint Registrar appointed an Administrator for the society on the ground that there was no quorum for the managing committee. The Administrator assumed office on the next day, namely October 5, 1988. The appointment of the Administrator was challenged by the Petitioner by filing writ petition. OP. No. 10062 of 1988 in this Court. It was however, dismissed on the ground that the order impugned was appeal able u/s 83(1)(i) of the Act. This Court did not find any reason to interfere with the order, under Article 226 of the Constitution. But. a direction was issued to the Respondents to take immediate steps for holding the election to the managing committee before the end of February, 1989. The Original Petition was disposed

of accordingly.

3. The Administrator passed resolution on December 28, 1988 to hold the election on February 26, 1989. In the meanwhile, the Administrator enrolled a large number of new members. At the time he assumed office the society had 132 members on its roll. The dispute in this Original Petition relates to the eligibility or otherwise of 152 members newly enrolled by the Administrator to vote at the election. According to the Petitioner, these persons were admitted to membership only after November 30, 1988 within a period of 90 days preceding the date of election, namely February 26, 1989 and therefore, they were not entitled to participate or vote in that election. According to the Respondents, they were admitted to membership on 14th and 16th November, 1988. Petitioner's definite case is that these persons submitted their application for membership, as also paid the application fee and share money, only on or after December 13, 1988 and therefore they were ineligible to vote at the election.

4. The returning officer for the election, namely the first Respondent, published a preliminary voters list which contained the names of these 152 persons as well, as eligible to vote at the election. Petitioner objected to their inclusion on the ground that they were ineligible to be members or vote at the election, that many of them had not even executed the declaration and the agreement contemplated by bye-law 6 of the bye-laws of the society, (agreement to sell their produce to the society), that they had paid the admission fee and share money for membership only within 90 days of the election, that they became members only in December, 1983 and that too without any enquiry being held as to whether they were eligible to membership of the society as per its bye-laws. For all these reasons, it was stated that their names were liable to be excluded from the voters list, and that only the 132 members who were on the rolls of the society before the period of 90 days from February 26, 1989 were entitled to vote.

5. The Returning Officer, however, overruled these pleas of the Petitioner by his proceedings Ext. P-3 holding that all these persons had been admitted beyond 90 days of February 26, 1989. It was stated that "admission of members" and "payment of share amount" were "independent", and that they need not necessarily be simultaneous. The question of payment of share amount arises only if, and after the member is admitted. Eligibility for admission is not dependent on payment of "share amount" or capacity for paying it. Payment of share amount was only the consequence of admission to membership. There was bar to admission of members only within thirty days prior to the date of issue of notice for the annual general body meeting. In all the impugned cases, payment of share money had been made "before the statutory prohibition of 30 days envisaged by Rule 26 of the rules". Therefore there was no force in the contentions of the Petitioner on this score. It was also held that the declaration or agreement required by bye-law 6 was not one contemplated by the Act or the Rules. According to the returning officer, no member was seen to have filed such

a declaration hitherto. But, out of the 152 members in question, 147 had filed the necessary declaration with the Administrator and only 5 members were wanting.

6. Petitioner's objections were therefore overruled and the voters list was finalised, in which the names of these 152 members appeared as numbers 133 to 284 with membership Nos. 439 to 590. The sum and substance of the returning officer's decision was therefore that an applicant became a member the moment the managing committee or the Administrator considered and passed resolution on the application accepting it, irrespective of whether he paid the share money or application fee and irrespective of whether he complied with the other formalities required by the bye-laws. It is this decision Ext. P-3 that is challenged in the Original Petition as also the final voters list Ext. P-4 and the election notification issued consequently, namely Ext. P-5. The Petitioner has impleaded the 4th Respondent herein as representative of the 152 members newly enrolled, and effected publication in one issue of the Mathrubhoomi Daily, as notice to those members.

7. The Original Petition is elaborate in its challenge to the inclusion of the 152 persons in the voters list as members eligible to vote. I am not extracting the detailed grounds set-forth therein. The challenge is mainly that the applications of these members had been received only on or after December 13, 1988 and therefore they were ineligible to vote. It is also pointed out in the alternative that even if these persons had submitted their applications earlier, admittedly the share money of Rs. 50 and the application fee of Rs. 5 were received only between 13th and 20th December, 1988. The applicants became members only when they made payment of these amounts, prescribed by bye-law 3(2), and executed the declaration and agreement envisaged by bye-law 6, to sell their produce to the society in the prescribed form. All these took place only within the period of 90 days and therefore irrespective of anything else, they were not entitled to vote.

8. In support of the first of these submissions, counsel for the Petitioner relies on various circumstances to which I will make only a passing reference, as I do not feel this is the proper forum to adjudicate on these questions. He points out that the applications of these new members are all seen initialled on December 16, 1988 or other dates in December. The practice is for the Secretary of the society to receive the applications, and to initial them on receipt. The inference suggested is that all these applications were therefore received only in December, 1988. He also points out that the columns on the reverse of the form of application, relating to the date of receipt of the application, and the date of resolution (both to be filled up by the society's office), have been conveniently left unfilled in practically all these applications. Another circumstance urged to show that the receipt of the applications was only on or after 13th December 1988 is that the share money and the application fee, which were admittedly received between 13th and 20th December, 1988 were kept only in the suspense

account, which would not have been the case if these persons had become full fledged members in November, 1988 itself. This is pointed out as a telling circumstance striking at the root of the case of the Respondents that these persons had been admitted even in November, 1988. Corrections and overwriting in dates in many applications are also pointed out. It is also stated that the books of the society had been kept in the personal custody of the Administrator, which enabled him to make pre-dated entries in the minutes book, as if resolutions had been passed in November, 1988 to admit these applicants to membership. Various other circumstances are also pointed out, to which I am not referring in detail.

9. To support these contentions, the Petitioner had called upon the Administrator to produce various documents. The following documents were accordingly produced before me at the time of hearing:

- (a) One file containing old applications for "B" class share and related documents
- (b) Applications for membership dealt with by the Administrator, kept inside file (a) (but not filed)
- (c) Minutes book of the managing committee/Administrator
- (d) "Entrance" book for members upto 438, (entry at page 239) with pages 240 to 250 blank
- (e) "Admission" book for the newly admitted members from 438 onwards
- (f) Three counterfoil receipt books Nos. 44, 45 and 46
- (g) Day book.

A perusal of these documents discloses that there is much to be said in favour of the allegations made by the Petitioner and that the documents merit close scrutiny to ascertain whether all that the Respondents contended is true or not. There is strong room for suspicion that these 142 persons were really admitted only in December 1988. But I refrain from going into this question as it is a question of fact requiring evidence and investigation. It is also unnecessary as, in my opinion, the Original Petition has to be allowed on Anr. ground.

10. There is no dispute that the share money and the application fee in respect of the 152 members were received only between 13th and 20th December, 1988. Even the returning officer, while rejecting the objections to the voters list, attempted only to make a distinction between admission of members and payment of the prescribed amounts, stating that they were independent. The view taken is that admission becomes a *fait accompli*, and the applicant becomes a member, on the passing of the resolution by the managing committee (in this case, the Administrator), and that the payment of the share money and application fee, is only the consequence of, and not a condition precedent for, the membership. Whether this is correct is the basic question to be tackled in this case. I am afraid, I am not in a position to accept the contention of the

Respondents, on this point.

11. Section 16 of the Act describes the persons who may become members of a co-operative society. Section 19 states that no member of the society shall exercise the rights of a member unless he has made such payments to the society in respect of membership or has acquired such interest in the society, as may be prescribed by the rules or the bye-laws. Rule 16 prescribes the conditions to be complied with for admission for membership. Sub-clause (i) reads:

No person shall be admitted as a member of a society unless,

(a) he has applied in writing in the form if any laid down by the society;

(b) his application is approved by the committee of the society;

(c) he has fulfilled all other conditions laid down in the Act, Rules and bye-laws;

One of the conditions prescribed is fulfilment of the conditions laid down in the Act, Rules and bye-laws. Rules 26 (as it stood at the relevant time) prohibited a society from admitting members or approving transfer of shares within 30 days prior to the date of issue of notice for the general body meeting. Rule 28 on which considerable reliance was placed by counsel for the Respondents runs thus:

28. Restriction on the right of vote at the election.- No member of a society shall be eligible to vote at the meeting fixed for any election to the committee of that society, unless thirty days prior to the date of such meeting he acquires the number of shares for membership as may be provided in the bye-laws of the society of which he is a member.

12. One of the conditions to be fulfilled for admission to membership is that the applicant should comply with the provisions of the bye-laws before he can become a member. Bye-law 5(1) requires application for admission to membership to be submitted in the prescribed form to the Secretary. Clause (2) of this bye-law requires the managing committee of the Society to deal with the application. Bye-law 3(2) requires the full share amount to be paid on allotment of the share. Bye-law 6 requires a declaration and an agreement to sell the applicant's products to the society to be submitted in the prescribed form. What then is the position in relation to admission to membership? The relevant provision is Rule 16. It is mandatory in its terms, that no person shall be admitted as member unless he complies with the conditions prescribed therein. He has to file an application in writing in the prescribed form. His application should be approved by the committee. He should also fulfill the conditions laid down in the Act, Rules and bye-laws. It is evident therefore, that it is not the mere application in writing, or its approval by the committee, that ipso facto makes the applicant a member. He has also to fulfil the other conditions laid down, inter alia, in the bye-laws. If the bye-laws prescribe that he should execute a declaration or an agreement, or that he should pay the share money and application fee, those conditions have to be fulfilled before he becomes a

member. Rule 16 is imperative in its terms. All the conditions prescribed have to be cumulatively complied with, and if there is non-compliance with one or more, that postpones admission to membership till that condition is complied with. Application fee is the fee paid for consideration of the application by the Board of Directors. The share money is the vinculum which binds the member to the society and it is the payment of that which entitles the applicant to exercise right as a member. The fact that share money becomes payable on allotment does not indicate any vesting of membership on allotment, but only enables the person to acquire membership on fulfilling, the other conditions. The declaration is intended to ensure that he shall perform certain obligations. Payment of share money, whether to a co-operative society or to a company is an important ingredient in relation to membership of the society. The member's rights are determined with reference to the share money, and the class of membership to which it pertains. Payment of share money is thus an essential condition precedent for membership. Unless the share money is paid, the applicant does not become a member.

13. That this should be the position will be evident from the following. Suppose, after the application and its approval by the managing committee, the application defaults for long in payment of the share money and the application fee. If the Respondents be correct, the position will be that he will be a member, but at the same time unable to exercise any rights as member, because of Section 19. In other words, he will be a member in name without any rights of a member. No such contingency has been posited by the Act or the Rules. The payments in respect of membership made mention of in Section 19 relate to those payments which the member in question has to make to the society for loans or advances or other benefits obtained by him from the society by virtue of his membership, or even those extra amounts which have become payable because of any subsequent amendment to the bye-laws increasing the share amount. They do not and cannot refer to the initial payment, which he has to make as a condition for entry into membership itself. That is why the section refers to the payments contemplated by it as payment by a member and as in respect of membership.

14. I am therefore, unable to accept the plea of the Respondents that membership is dependent only on submission of an application and its approval without anything more. Such a proposition, according to me, flies in the face of Rule 16. There is no dispute that the share money and application fee of these 152 applicants were received only between 13th and 20th December 1988. The receipt books also bear this out. It has therefore, to be held that these 152 persons became members of the society only on or after 13th December 1988 when alone admittedly they paid the share amount and the application fee.

15. I am unable to read Rule 28 as expressing any contrary intention. It has to be read in the context of Section 19 and rules 16 and 26. The rule is very badly and inartistically drafted. It speaks of the person as a "member" and yet speaks of his acquiring the number of shares "for membership". Whatever this rule is

intended to convey or lay down, it cannot certainly override rules 16 and 26 or enable a person to vote at the election unless he was a member prior to 90 days thereof as held by this Court on an interpretation of the relevant provisions in *George v. State of Kerala* 1935 KLT 836.

16. The order Ext. P-3, and the voters list Ext. P-4 which contains the names of these 152 persons, have therefore to be declared as illegal.

17. Counsel for the Respondents strenuously contended that this Original Petition is not maintainable at this intermediate stage of the election. A number of decisions of this Court and of the Supreme Court were referred to.

18. At this juncture, I must mention that soon after the Original Petition was filed and notice was served, an interim order was passed by this Court on C.M.P. No. 4227 of 1989 permitting the election to be held on February 26, 1989, but that the votes of the 152 members in question shall be cast in a separate ballot box and kept sealed. By a subsequent interim order dated, August 11, 1989, this Court allowed the votes to be counted, but with an interdict against announcement of the results. There was also a direction to report the matter to this Court with particular reference to the details of voting by the 152 persons. A statement was accordingly filed as to the voting pattern in the two boxes.

19. It is true that this Court will not ordinarily entertain an Original Petition at the intermediate stages of the election process. But this is a rule of discretion and not one of absolute bar in law. As Paripoornan, J. observed in *Govindan v. Deputy Registrar of Co-operative Societies* 1983 KLT 1038 this fact should not lead to a situation whereby the concerned authorities or the persons who participate in the elections acting in violation of the statutory command are smug in the belief or an impression that whatever be the or gravity of the violation or breach of the mandate of the law, once the election is held this Court will be powerless or reluctant to deal with the situation even if there is any patent transgression of the limits imposed by law. The learned Judge went on to observe:

It is idle for the society or any person who has been elected in violation of the mandatory provisions of Rule 26, to contend that notwithstanding the fact that the voters' list included members who were not entitled to vote, nonetheless the election of persons, by voters inclusive of the ineligible voters taking part in the election, should not be interfered with, by this Court in exercise of the powers under Article 226 of the Constitution. A proper electoral roll should be maintained and that is a "fundamental factor". Rule 26 is in the nature of an injunction or command and in spite of the prohibition or injunction specified in Rule 26, if ineligible persons were included in the voters list and they also participated in the election, the consequent election held in breach of the rules, should be held to be totally infirm and illegal.

20. The elections have already been held with direction to have the 152 disputed votes polled separately. It is therefore, possible to decide the results without

reference to the 152 voters wrongly included in the voters list. The parties need not be relegated at this distance of time to an election petition. Ext. P-3 order is on the face of it illegal. On the facts and in the circumstances of the case, and since the elections have been held pursuant to the direction of this Court, in a manner in which the results could be declared after excluding the votes of the 152 members I feel that the Original Petition is liable to be entertained. I overrule the preliminary point raised by the Respondents.

21. The Original Petition is therefore, allowed. Ext. P-3, and Ext. P-4, in so far as it includes the 152 members with voter numbers 133 to 284 and membership Nos. 439 to 590, are quashed. The first Respondent is directed to declare the results of the election held to the managing committee of the third Respondent society on February 26, 1989, without reference to the votes of the 152 persons, cast in a separate box, on or before March 23, 1990. The successful candidates will be entitled to assume charge of office as managing committee forthwith on the results being declared.

22. No costs.