
(1990) 10 KL CK 0070
In the High Court Of Kerala
Case No : O.P. No. 6382 and 7825 of 1989

V.T. Sebastian

APPELLANT

Vs

Joint Registrar and Others

RESPONDENT

Date of Decision : 25-10-1990

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 21, 33(2)

Citation : (1990) 2 KLJ 792

Hon'ble Judges : K.T. Thomas, J

Bench : Single Bench

Advocate : Cyriac Joseph, for the Appellant; M.K. Damodaran and A.N. Rajan Babu, Govt. Pleader, for the Respondent

Judgement

K.T. Thomas, J.—These two Original Petitions relate to election to the Board of Directors of Idukki District Co-operative Bank Ltd., (for short "the Bank"). The Bank is a central society having its members enlisted only from other co-operative societies functioning within the territorial limits of revenue district of Idukki. Each of the member societies elects a delegate to the central society. Such delegates constitute the general body of the Bank. The erstwhile Board of Directors of the Bank was removed and an administrator was appointed on 21-6-89, as per Sec. 33 of the Kerala Co-operative Societies Act, 1969 (for short "the Act"). When the administrator has initiated steps to hold election for a new Board of Directors, petitioners apprehended that such elections would be so manipulated by the Joint Registrar of Co-operative Societies, Idukki at the behest of the Communist Party of India (Marxist) as to send only persons who are partisans to that political party as delegates to the central society. It is alleged that 37 co-operative societies which are member societies of the Bank were brought under the control of administrators appointed by the Joint Registrar after removing or superseding committees of those, societies. During the pendency of these Original Petitions election was held to the Board of Directors of the Bank on 19-9-89 pursuant to the order passed on a Civil Miscellaneous Petition. From a few member societies administrators themselves went and cast votes and from

others the delegates deputed by the administrators came and voted. This Court directed the returning officers to collect the votes cast by the administrators in one ballot box and the votes cast by the delegates deputed by the administrators in a separate ballot box, and to file a report before this Court on 12-9-90 after counting out without declaring the results. In accordance therewith, votes collected in separate ballot boxes were counted separately and a report has been filed by the returning officer. One ballot box contained votes polled by the administrators directly. Another ballot box contained votes polled by the delegates sent by the administrators. Yet another ballot box contained votes polled by the delegates sent by newly enrolled societies. A fourth ballot box contained votes polled by the delegates sent by the remaining societies. (Though a fifth ballot box was set apart for collecting votes polled by the societies under liquidation, no vote fell in that box). The votes found in different ballot boxes were separately counted and tabulated by the returning officer and he incorporated details in his report.

2. As the Original Petitions were filed before the election was held, some of the reliefs claimed related to the manner in which the election was to be held. Now that the election was held, the reliefs which survive for consideration are these; (1) A declaration that administrators of member societies are not entitled to vote in the election. (2) A declaration that an ordinary member of the society is not eligible to be sent as its delegate to the central society and hence tie is not qualified to exercise vote. (3) Votes cast by delegates from the newly enrolled societies cannot be counted in this election. (4) A declaration that Rule 44A of the Kerala Cooperative Societies Rules, 1969 (for short "the Rules") is ultravires to the Act. (5) To issue a writ of prohibition restraining the 1st respondent against further extending the term of administrators appointed for the member societies.

3. A counter affidavit has been filed on behalf of the Joint Registrar of Co-operative Societies in which most of the allegations made in the Original Petitions were denied. It is unnecessary to refer those contentions since polling took place pursuant to the direction issued by this Court. A decision on the five main reliefs now claimed will be sufficient to dispose of the Original Petitions, as matters stand now. I, therefore, proceed to consider whether the petitioners are entitled to those reliefs.

4. At least five administrators of the member societies have cast votes in the election. The first question is whether an administrator is entitled to vote on behalf of a member society. To answer this question a reference to Sec. 21 will be of help. It reads thus:

Manner of exercising vote:-

(1) Every member of a society shall exercise his vote in person.

(2) Notwithstanding anything Contained in sub-section (1), a society or corporation or a statutory or non-statutory Board, Committee or other body of

persons which" is a member of another society may, subject to any rules made under this Act, appoint one of its members to vote on its behalf in the affairs of that other society.

An administrator is appointed either under Sec. 32 or Sec. 33 of the Act. In this case administrators were appointed for the member societies by virtue of Sec. 33 of the Act. The purpose of appointing administrator under that section is only "to manage the affairs of the society till a new committee enters upon office". When a contingency which is envisaged in Sec. 33 arises, the Registrar has the power to appoint either a new committee or he can appoint one or more administrator or administrators. Sec. 33 (2) reads thus:

The committee or administrator or administrators appointed under sub-section (1) shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the committee or of any officer of the society and take all such action as may be required in the interests of the society.

It is clear that the administrator is not the society but is only appointed to exercise the functions of the committee of the society or an officer of the society. Sec. 20 of the Act says that every member of a society shall have one vote in the affairs of the society and if the Government is a member of the society, each person nominated by the Government on the committee of the society shall have one vote except when the right to vote is to be exercised for election of office bearers of the society. In this context, a reference to Rule 44A is also necessary. That rule says 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 to the said rule is not relevant to decide the present question and hence no reference need be made to the proviso at present. A survey made through the relevant provisions of the Act and the Rules would show that a delegate who is a member of the society alone can vote in the election to the Committee of the central society. The administrator is not a delegate of the member society. The only role which the administrator can play is to manage the affairs of the society which a committee could have performed. The administrator can function in the place of the committee. The Act or the Rules do not envisage an administrator to go as delegate of the member society. For these reasons, I hold that the administrator of a member society has no voting right in the election of the central society.

5. The next point is whether the delegate should necessarily be a member of the committee of the society which he represents.

6. Rule 44A of the rules was added to the rules by SRO No. 1485/89 in Kerala Gazette Extraordinary No. 801 dated 28-8-89. The said rule reads thus:

Delegate of Societies in the committee to another society to be members of the committee,... 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:

Provided that if the affairs of the society are managed by Administrator/ Administrators Administrative Committee appointed under S. 33 of the Act, the person or persons so appointed shall 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:

Provided further that this rule will not apply in the case of the existing delegate till the expiry of his present term or till his delegation is withdrawn.

If the said rule prevails, there can be no doubt that an ordinary member of the society can present the member society in the election to the Board of Directors of the central society when the affairs of the member society is under the management of an administrator appointed under Sec. 33 of the Act. When a society is brought under the control of administrator it is not possible for the society to send any one other than its member as a delegate to the central society. The reason is that the administrator is appointed after superseding or suspending the committee. When the affairs or functions of the society are vested in an administrator, there is no existence of committee in the society. In such situation there is no question of electing a member of the committee of that society to represent it in the central society.

7. Learned counsel for the petitioners contended that since the representation in the central society is governed by the clauses in the Bye-laws of that society, the Board can be constituted only in accordance with it. Clause 20 of the By-laws of the Bank contains a provision that the delegate from a member society should be a member of the committee of the society. Such a clause in the Bye-laws would be effective only so long as the committee functions. No clause in the bye-laws of a society can run contrary to or be inconsistent with any Rule. Rule 5 contains the embargo that bye-laws of a society shall not be contrary to the provisions of the Act or the Rules. The corollary is that if any clause in the bye-laws is contrary to or inconsistent with the provisions of the Act or Rules, that clause to the extent it is consistent becomes automatically invalid. Hence the argument based on clause 20 of the by-laws of the Bank has to be rejected. The conclusion is that the delegates of the member societies are entitled to vote and such votes are not liable to be excluded merely because the delegate was not a member of the committee of the society.

8. Now I shall deal with the contention whether 53 societies newly enrolled are members of the Bank and whether the delegates sent by them are entitled to vote. The contention that the newly enrolled societies have no valid membership, at least for the purpose of exercising votes in the election, is mainly based on the judgment of a learned single Judge of this Court in O.P. 5337/89. The said Original Petition was filed by a former President of the Bank challenging the appointment of the administrator to manage the affairs of the Bank. The said Original Petition was disposed of by directing the Registrar and Joint Registrar of

Co-operative Societies concerned to take steps for holding election to the Board of Directors of the Bank within a time frame fixed in the judgment dated 18-7-89. His Lordship considered the contention that the newly enrolled members gained eligibility to exercise franchise by passage of time in terms of Rule 26. The argument of the counsel who represented the Bank in the said Original Petition that the date of elections should be so scheduled as to enable the 53 new members to acquire voting rights was frowned at by the learned Judge by observing that Rule 26 cannot be modulated so as to confer unmerited advantages. Learned counsel for the petitioners contended that counting of 53 votes of the delegates from the newly enrolled societies would run contrary to the tenor and spirit of the judgment of the learned single Judge in O.P. 5337/89.

9. The aforesaid argument could have been accepted if Rule 26 remained as before without alteration. The judgment of the learned single Judge was rendered on 18-7-89. Rule 26 was amended by SRO No. 1485/89 published in the Kerala Gazette Extraordinary No. 801 dated 28-8-89, The Rule, as it stands now, reads thus:

Prohibition on admission of members and transfers of shares on the eve of general meeting. - (1) No society shall admit members or approve the transfer of shares within sixty days prior to the date of election or the date of the general body meeting;

(2) Any person admitted as member and any person in whose favour the transfer of shares have been approved in contravention of this rule shall not have the right to membership or the right to-vote at the said election or at the general body meeting.

Sub-rule (1), before alteration, contained the prohibition that no registered society shall admit members within thirty days prior to the issue of notice to the general body meeting". With the change in Rule 26 it cannot now be contended that newly enrolled member societies are not entitled to send delegates to participate in the election. Here the election was held on 19-9-89. It is admitted that 53 societies were registered and enrolled long prior to the period of sixty days" mentioned in Rule 26. Therefore, their right to participate in the election through the delegates cannot be forestalled. Valid votes cast by such delegates are entitled to be counted.

10. Learned counsel next contended that Rule 44A, which was inserted in the Rules by the Government through SRO No. 1485/89, is ultravires to the Act. The Rule has already been extracted above. Sec. 109 of the Act empowers the Government to make rules either prospectively or retrospectively to carry out the purposes of the Act. Thus the Government has the power to make rules. Petitioners failed to substantiate the contention that Rule 44A is in any manner inconsistent with any of the provisions of the Act. Hence I reject the contention.

11. The last point is whether the Joint Registrar can extend the period of management of the administrator without any time limit. The appointment of

administrator can be made either under Sec. 32 or under Sec. 33 of the Act. Under Sec. 32 of the Act, the Registrar (or the Joint Registrar as the case may be) has to be satisfied that the committee of any society persistently makes default or negligent in the performance of the duties imposed on it by the Act or Rules or the bye-laws or commits any act which is prejudicial to the interest of the society or wilfully disobeys or wilfully fails or comply with any lawful order or direction issued to the committee. Such appointment is to manage the affairs of the society for a period not exceeding one year as may be specified in the order. But the section confers a discretion on the Registrar to extend the period from time to time "so however that the aggregate period does not exceed two years". But the appointment of the administrator made under Sec. 33 is for a different purpose. Where the term of office of a committee has expired and a new committee has not been constituted, or where a no confidence motion is passed by the general body against the existing committee or where the existing committee resigns en masse or where vacancies occur in the committee either by resignation or otherwise and the remaining Members cannot constitute the quorum or where the committee fails to hold its regular meeting consecutively for six months, the Registrar is empowered to appoint one or more administrator or administrators to manage the affairs of the society.

12. Learned Government Pleader contended that since there is no limitation regarding the period in sec. 33 unlike in Sec. 32, it is open to the Registrar to extend the period to any length of time. The fact that there is a limit in Sec. 32 and there is no such limit in Sec. 33 may appear, at the first blush, that the argument of the learned Government pleader has some force. But a closer scrutiny of the section would indicate that even a further extension of the initial period (for which the administrator was appointed) is not contemplated in Sec. 33. The appointment of administrator under Sec. 33 is only to guard against non-functioning of the existing committee or for want of a legally constituted committee. It is the emergency during which Registrar can appoint an administrator "to manage the affairs of the society till a new committee enters upon office". The first task of the administrator appointed under Sec. 33 is to take immediate steps for election of a new committee. The scheme of the Act and Rules pronounces that the legislature intended a co-operative society to be administered by a committee elected by the general body. The affairs of the committee vests in an administrator only during the interregnum till a new committee is elected.

13. If an administrator fails to take early steps for the conduct of election of the new committee, such administrator must be deemed to have failed to perform the duties imposed on him by the Act or the Rules. In such cases the Registrar (or the Joint Registrar as the case may be) would do well either to direct him to take steps without delay or to remove him and appoint another with necessary directions in the matter. Rule 35 enjoins on the committee to meet at least 60 days in advance of the date of expiration of its term and pass a resolution fixing the date, time and place for the conduct of the election of the new committee.

When an administrator is appointed to manage the affairs of the society, the administrator has to discharge the functions of the committee. So, it is for the administrator to take a decision fixing the date, time and place for the conduct of the election of the new committee.

14. In this case, the administrators appointed in the member societies have failed to discharge their duties envisaged in Rule 35(1) if they failed to pass the aforesaid decision. It was not proper on the part of the Joint Registrar (1st respondent in O. P. 6382/89) to have extended the period again and again despite the fact that the appointment of the administrator was made under Sec. 33 of the Act.

15. Learned Government Pleader then argued that the petitioners have no locus standi in raising the contention that the administrators appointed in some other societies have failed to discharge their functions. As the central society (in this case the Bank) is formed by the member societies any person who is vitally interested in the affairs of the central society has a right to question the extension of the period of administrators appointed in member societies, since such unending extension of the period adversely affects the interest of the central society. Learned Government Pleader made a reference to the judgment of T.L. Viswanatha Iyer, J. in O.P. 6899/89 and connected O.Ps. dated 11-4-1990 wherein His Lordship declined to accept the same contention raised at the instance of the petitioner who is described as "a rank outsider". The cases on hand are different. Petitioners herein cannot be described as rank outsiders. They have ostensibly a vital interest in the affairs of the Bank which is a central society and therefore the non-functioning of a member society is a matter of concern for any person connected with the central society. Learned Government Pleader then contended that the petitioners did not make a demand to the Joint Registrar to issue a directive for holding the election. I am not inclined to think that the Joint Registrar did not issue any such directive so far because of absence of any demand from petitioners or any other person. It is the duty of the Joint Registrar to issue the directive to the administrators of the member societies well in time. If he had not done already, it may amount to dereliction of his duties. The Original Petitions are disposed of with the following directions:

(i) The returning officer appointed to conduct elections in the Bank is directed to declare the result of the election held on 19-9-89 within two weeks from the date of receipt of a copy of this judgment, by counting the votes in the light of the observations made in this judgment.

(2) The Joint Registrar of Co-operative Societies, Idukki, is directed to issue directives to the administrators (appointed for the member societies of the Bank under Sec. 33 of the Act) to take immediate steps under Rule 35 for conducting elections to such societies. The Joint Registrar must issue such directive within two weeks from the date of receipt of a copy of this judgment. I, further direct the Joint Registrar to ensure that election to such member societies are held as expeditiously as possible.

Original petitions are disposed of in the above terms.