
(1997) 09 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 888 of 1995-E

V.V. Samuel and Others

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 11-09-1997

Acts Referred:

Citation : AIR 1998 Ker 83 : (1998) 94 CompCas 283

Hon'ble Judges : K.G. Balakrishnan, J;B.N. Patnaik, J

Bench : Division Bench

Advocate : V.N. Achutha Kurup and Radhakrishnan Nair, for the Appellant;
K.K.M. Sherif, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. Petitioners 1 and 2 are the elected members of the Managing Committee of Vechoochira Ex-servicemen Multipurpose Cooperative Colony Ltd. No. 3171 (for short, "the Society") and petitioner No. 3 is a member of the Society. They have challenged Exts. P-8 and P-9, by which the Joint Registrar of Co-operative Societies, Pathanamthitta (2nd respondent herein) has, in exercise of the powers under Sub-section (5) of Section 12 of the Kerala Co-operative Societies Act, 1969 (for short, "the Act"), certified and registered Clause 15(1) of the bye-laws of the Society to the effect that there shall be 9 members in the Committee and 6 of them shall be elected from among the members for a period of three years and 3 of them shall be the District Collector, Pathanamthitta, Joint Registrar of Co-operative Societies, Pathanamthitta and the Secretary, Amalgamated Fund, Thiruvananthapuram and they shall be the ex-officio members. The District Collector shall be the President of the Society. This amendment was directed to be carried out in spite of the fact that the general body of the Society, in its meeting held on 12-10-1994, rejected the proposed amendment. The Society was formed by the allottees of 1500 acres of forest land, who served the Travancore-Cochin Armed Forces and the Indian Army. The allotment was made on condition that the allottees shall cultivate the land and settle down in the land

allotted to them. Membership to the Society is open only to Ex-servicemen, who have settled down there. Originally, the Managing Committee of the Society consisted of five elected members from the general body and six official members.

2. By Kerala Co-operative Societies Amendment Act, 1987 (Act 19/1987), Section 31 was amended whereby nomination of official members to the managing committee of an ordinary Co-operative Society was not made compulsory. Thereafter, the Managing Committee was superseded as per the order dated 21-4-1988 of the Registrar and ultimately an administrative committee was appointed. The Society submitted an application for registration of the amendment of the bye-laws in the light of the amended provisions of Section 31 of the Act. By the proposed amendment to Clause 15(1) of the bye-laws, nomination of official members was dispensed with. But, the Registrar of Co-operative Societies did not approve this amendment. The action of the Registrar in refusing to approve the amendment was challenged by the Society in O.P. No. 124 of 1990. After considering the various aspects of Sections 12(5), 28 and 31 of the Act, the learned single Judge observed as follows, in paragraph 16 of the Judgment (Ext. P-3) :

"Now since Ext. P-5 has been quashed, the next question to be considered is about the proper reliefs to be granted to the petitioner in the facts and circumstances of the case. In this case, the general body has as early as on 24-2-1989 passed a resolution approving the amendment proposed by the sub-committee appointed for the purpose of suggesting amendment to Clause 15 of the bye-laws. The Society has forwarded the same to the Registrar for registration. That has been rejected as per Ext. P-2 by the 3rd respondent. The representation submitted against Ext. P-2 has also been rejected as per Ext. P-3 order. Though I have already found that Ext. P-2 cannot be set aside as wholly illegal, I find that it is an order passed for a very technical reason which was, curable and as such should not stand in the way of the 3rd respondent being directed to reconsider his decision afresh if necessary after giving appropriate directions to the society to modify the resolution so as to enable three of the Government officials to be on the committee of the society as ex-officio members and thus avoiding the only objection for refusing the registration. In the circumstances, I would direct the third respondent to reconsider the application for registration of the amendment submitted by the general body of the Society on 20-3-1989 which was disposed of by Ext. P-2 notwithstanding Ext. P-2 order, if necessary, after directing the general body to amend the wording of the resolution passed by it suitably and to take a fresh decision in accordance with law uninfluenced by his own earlier decision, the decision of the Government in Ext. P-3 and the instructions stated to have been issued by the Registrar in the matter. If a modification of the resolution already passed by the General Body is directed to be made so as to permit the nominees to be on the Board as Ex-officio members, all steps to convene a general body for that purpose is to be taken urgently so as to avoid all avoidable delays for the purpose of keeping the

time schedule indicated below."

As per this direction, the Joint Registrar reconsidered the resolution of the general body regarding the amendment of the bye-laws and again rejected it. After giving necessary notice to the parties, the Joint Registrar issued Exts. P-8 and P-9 orders in exercise of the powers under sub-section (5) of Section 12 of the Act, contrary to the resolution of the general body of the Society.

3. It is submitted by the learned Government Pleader, on behalf of the respondents, that the Joint Registrar insisted that three Government officers should be nominated as ex-officio members of the Managing Committee only because of the direction in paragraph 16 of the judgment of the learned single Judge in O.P. 124/90. In the counter-affidavit, it is also stated that Government control over the Society is necessary for the purpose of improving the services rendered by it.

4. When the matter came up before a learned single Judge, he held that he was not able to see any provision in the Act for insisting on the Society to have ex-officio members or Government nominees in the Society. When bye-laws were originally framed, unamended provisions were applicable. Since the interpretation of the judgment of a learned single Judge and effect of amendment of Sections 28 and 31 of the Act are involved in the matter, the learned single Judge was of the opinion that there should be an authoritative decision by a Division Bench. That is how the matter came up before us.

5. There is no dispute, at this stage, that after the amendment of Sections 28 and 31 of the Act in 1988, there arose the necessity of amending the bye-laws of the Society. There is also no dispute that prior to the amendment the Managing Committee of a Society consisted of both the nominated ex-officio members and the elected members. The amended Section 31 of the Act reads as follows :

"Nominees of Government on committee of an apex or a central society--(1)
Where the Government-

(a) have subscribed to the share capital of an apex or a central society; or

(b) have assisted indirectly in the formation or augmentation of the share capital of an apex or a central society; or

(c) have guaranteed the repayment of principal and payment of interest on debentures issued by an apex or a central society; or

(d) have guaranteed the repayment of principal and payment of interest on loans and advances to an apex or a central society; the Government or any authority specified by them in this behalf shall have the right to nominate not more than three persons or one-third of the total number of members of the committee of such apex or central society, whichever is less, to be members of the committee.

(2) A person nominated to the committee of an apex or a central society under Sub-section (1) shall hold office during the pleasure of the Government or the

specified authority, as the case may be.

(3) A person nominated to the committee of an apex or a central society under Sub-section (1) shall not take part in the discussion of any no confidence motion or vote on any such motion.

(4) Any person who holds office as a nominated member of the committee of a society, other than an apex or a central society, at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1987, shall cease to hold such office at such commencement."

6. u/s 28 of the Act, the general body of a society shall constitute a committee, for a period not exceeding three years, in accordance with the bye-laws and entrust the management of the affairs of the society to such committee. u/s 12 of the Act, no amendment to any bye-law of a society shall be valid unless such amendment has been registered under the Act. Sub-section (5) of Section 12 of the Act reads as follows :

"(5). Notwithstanding anything contained in this Act or the rules or bye-laws, if the Registrar is satisfied that for the purpose of altering the area of operation of a registered society or for the purpose of improving the services rendered by it, an amendment of the bye-laws of a society is necessary or desirable, he may, after consulting the financing bank, if any, to which the society is affiliated and the circle co-operative union by order in writing, require the society to make the amendment within such time as may be specified in such order or within such further time as he may grant for the purpose."

There is no dispute that the Society is neither an apex society nor a central society. On a plain reading of Section 31, as it stands now, it becomes crystal clear that only where the Government has subscribed to the share capital of an apex or a central society, the Government shall have the right to nominate not more than three persons or one-third of the total number of members of the committee of such apex or central society, whichever is less, to be members of the committee. This is necessary to exercise proper control over the affairs of the Society and to safeguard the interest of the Government as well as its members. It is no longer necessary to have the representation of Government nominees in the committee of other Co-operative Societies where the interest of the Government is not involved in any manner. In this case, land was not given to the Society. Land was allotted to the individual members of the Society. There is nothing on record to show that the Government should exercise its control over the affairs of the Society with a view to safeguard its interest. Thus, in this view of the matter, it was not open to the Registrar of Cooperative Societies to exercise his power u/s 12(5) of the Act and reject the resolution of the general body of the Society.

7. We hold that the observation made in paragraph 16 of the judgment (Ext. P-3) in O.P. No. 124/90 by a learned single Judge of this Court with regard to the inclusion of three officials of the Government in the Committee as nominated

members is only an obiter. It is not intended to compel the Society which is not an apex or central society, to have three nominated members in its Managing Committee.

8. For the reasons stated above, we find that the action of the second respondent in passing the impugned orders (Exts. P-8 and P-9) cannot be sustained.

9. The second respondent is directed to rescind Exts. P-8 and P-9 and register the proposed amendment to Clause 15 of the bye-laws of the Society within a period of two months from the date of receipt of a copy of this judgment as resolved by the general body of the Society.

The writ petition is allowed. No costs.