

(2010) 12 KL CK 0117
In the High Court Of Kerala
Case No : W.A. No. 1810 of 2010

Wayanad District Wholesale Consumers Co-operative Store
Ltd.

APPELLANT

Vs

Thomas K.D. and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Citation : (2011) 1 KLJ 585

Hon'ble Judges : C.N. Ramachandran Nair, J;B.P. Ray, J

Bench : Division Bench

Advocate : P.K. Ramkumar, for the Appellant; P.N. Mohanan, Anu Sivaraman (Govt. Pleader) and P.P. Jacob, for the Respondent

Final Decision : Allowed

Judgement

C.N. Ramachandran Nair, J.—Connected Writ Appeals are filed against common judgment of the learned single Judge vacating the order of the Electoral Officer who declared 25 member-societies of the appellant ineligible to vote in the election to the Managing Committee of the appellant-society. Appellant, which is a District Wholesale Consumer Society is running a major consumer store at Kalpetta, the District headquarters of Wayanad District. It has 57 member-societies which are running consumer stores at different centres in Wayanad District. Besides these primary societies running consumer stores, appellant has 25 other member societies, 16 of which are milk producing societies, three are labour contract societies, two are rubber and agriculture marketing societies, one is a housing society, another one is engaged in printing and other activities, and the last one is a women society, which, among other things, is running a consumer store. The management of the appellant-society is now in the hands of an Administrator because the tenure of the Managing Committee was over. The Electoral Officer appointed for conduct of election while preparing voters' list under Rule 35A(4) of the Kerala Co-op. Societies Rules, hereinafter called the "Rules", noticed that 25 member-societies referred above are ineligible to vote

because those are neither running primary consumer stores, nor have even a "consumer wing" to entitle them to participate in the election. Besides claiming right to vote, one managing committee member each of four of the above 25 societies also submitted nominations for election to the managing committee of the appellant-society. When the Electoral Officer excluded the above 25 societies from the voters' list of the appellant-society, two Writ Petitions were filed by two each managing committee members of four societies, who submitted nominations for election, challenging removal of these 25 societies from the voters' list. Under interim orders, learned single Judge permitted holding of election, but directed to keep the votes cast by these 25 societies in a separate box. However, those managing committee members of four out of 25 societies who submitted nominations were allowed to contest the election. Votes are counted and results are kept in sealed cover under interim orders of the learned single Judge modified by the Division Bench in appeal. Later, both the Writ Petitions were allowed by the learned single Judge declaring the removal of the above 25 societies from the voters' list of the appellant-society invalid with direction to publish the result. It is against this judgment that these connected Writ Appeals are filed by the appellant- society. We have heard Special Government Pleader appearing for the appellant-society, and both counsel appearing for the primary societies, which are respondents in the appeals. The learned single Judge took the view that those primary societies which are members of the appellant-society are entitled to be in the voters' list and so long as they remain as members of the appellant-society, Electoral Officer has no authority to declare them ineligible to vote. Even though eligibility for membership of these 25 societies was an issue collaterally decided by the Electoral Officer while preparing the voters' list under Rule 35A(4) of the Rules, the learned single Judge did not go into this question on merits, but held that in order to keep member-societies from out of the voters' list, those societies which he found eligible have to be removed from membership as a first step in accordance with the procedure prescribed under Rule 16(3) of the Rules. During hearing, we have gone through the byelaws of the appellant-society produced as Ext. R4(a) in WPC No. 18192 of 2010 wherein for eligibility for selection to the Board of Directors of the appellant-society in the quota reserved for primary societies, the society must be running a "primary consumer store" or should have a "consumer wing". So much so, apart from the right claimed by 25 societies to vote in the election to the Board of Directors of the appellant-society, the more important question to be considered is the validity of the nomination of one managing committee member each of the four societies who have submitted nominations to participate in the election to the Board of Directors of the appellant-society. In other words, irrespective of whether these societies are eligible to vote or not, the main question to be considered is whether these four persons who are managing committee members of four out of 25 societies are entitled to participate in the election for the reason that societies which they represent are neither running a "primary consumer store" nor has a "consumer wing". So much so, we have to necessarily consider not only the eligibility of the

25 societies to vote but also the eligibility of four candidates, one each from four out of the 25 societies who were allowed to participate in the election to the Board of Directors of the appellant-society under interim orders of this Court. We therefore proceed to consider eligibility of 25 societies for membership in the appellant-society and in turn their right to vote and the right of the managing committee members of these societies to contest the election to the Board of directors of the appellant-society.

2. Admittedly the appellant-society has 57 eligible member cooperative societies, which have consumer stores and out of the eleven members constituting appellant's Board of Directors, six are elected from members of managing committee of member societies, i.e., two each from each of the three taluks in the Wayanad District named in the byelaws. The provision in the bye-laws regarding qualification of members so far as respondent-societies is concerned is extracted hereunder for easy reference:

5 Membership:

1. There shall be three classes of members, viz, A, B, and C.

(a) Co-operative societies dealing or intending to deal in consumer articles within the area of operation of the stores referred to in bye-law 1 shall be eligible for admission as members and shall be allotted "A" Class shares.

(emphasis supplied)

The constitution of Board of Directors of appellant-society contained in clause 21 of the byelaws is as follows:

.... The Board of Directors shall consist of eleven members, six of whom shall be representatives of affiliated primary stores or societies having consumer wings two from each taluk, viz., Vythiri, Manantoddy and S. Battery, three representatives of individual "B" class members one from each Taluk, and two nominees of the Registrar of whom one shall be a representative of a nominee of District Cooperative Bank and the other a Harijan member.....

(emphasis supplied)

3. What is clear from the above is that in order to qualify for membership in the appellant-society, a member society should deal or intend to deal in consumer articles within the area of operation of the appellant which is referred to in the byelaw as "stores". So far as eligibility for Directors representing the society-members to participate in the election to the Board of Directors of the appellant-society is concerned, such society should be running "primary stores" or should have a "consumer wing". The first question to be considered is whether the respondent-societies, which are declared ineligible to vote by the Electoral Officer consequently rendering their Directors ineligible to contest the election to the Board of Directors of the appellant-society, are the class of societies covered by the above two clauses of the byelaws of the appellant-society. What is clear from

the above provisions of the byelaws is that the class of societies recognised as eligible for membership in the appellant-society, the Directors of which will be eligible to participate in the election to the Board of Directors of the appellant-society are "consumer store societies" dealing in concerned, the contention raised on their behalf is that those societies though are mainly engaged in collection of milk from the members who are dairy farmers, and sale to apex milk society for processing, and marketing, small quantities of milk are sold by them and as an incidental activity they are engaged in purchase and sale of cattle feed and other items to dairy farmers. They have a further contention that they intend to start consumer stores. During the pendency of these Writ Appeals, we got an enquiry conducted by the Joint Registrar of Co-operative Societies of Wayanad District, who has given a detailed report Stating the activities of 25 societies. According to him, except for one society, that is run by women, which is running a consumer store, no other society has a consumer store or a consumer wing dealing in consumer articles. As already stated, 16 out of 25 societies are engaged in procuring of milk from dairy fanners and bulk of the same is sold to milk marketing society, which processes the milk and sells the same. The other societies, except the one run by women, are labour contract societies undertaking contract works, agriculture and rubber marketing societies engaged mainly in procurement and sale of rubber, and a housing society, etc. For considering whether the activities of respondent-societies amount to dealing in consumer articles or running a consumer store or a consumer wing, we have to necessarily refer to Rule 15 of the Rules which provides for classification of societies. We notice that societies are classified into various categories like Credit Societies, Housing Societies, Marketing Societies, Processing Societies, Agro-Industrial Societies, Consumer Societies, Fanning Societies, Producers Societies, Hospital Societies, Vanitha Co-operative Societies, etc. We find a specific category of societies under clause 3 of Rule 15 of the Rules, which covers "Consumer Societies" wherein primary consumer society is engaged in running of consumer co-operative store, which exactly is the business carried on by the appellant-society. The Milk Societies squarely fall under Producer Societies covered by clause 5 wherein Kerala Co-op. Milk Marketing Federation (MILMA) is specifically covered. If the above byelaws of the appellant-society are read with reference to classification of societies, we have no hesitation to hold that respondent-societies are not consumer societies nor do they have a consumer wing as claimed by them. What is clear from the above byelaws of the appellant-society is that in order to qualify for membership of the appellant-society, member-society should also be running a consumer store or at least should have a consumer wing. Respondent-societies are essentially engaged in marketing of the products of their members, who are dairy farmers or farmers of agriculture produce which are marketed by them in bulk. These activities cannot be understood as dealing in consumer articles, which is a necessary condition for eligibility for membership in appellant-society. In order to be eligible for membership in the appellant-society under it's byelaws, the society claiming membership should be dealing in consumer articles. There is no distinction

between eligibility for membership and eligibility for representation of the society in the Board of Directors of the appellant-society. In either case, the society claiming membership and representation in the Board of Directors of the appellant-society should be running either primary store, or should have at least a consumer wing. Consumer store is a place where consumer articles are sold to the customers. Similarly consumer wing is nothing but a store, which should also be run by the society, no matter it may have other activities including production. In other words, in order to qualify for membership both in the appellant-society and for representation in the Board of Directors of the appellant society, the society concerned must be dealing in consumer articles, whether as a main business or as a subsidiary business by retaining a consumer wing, which is nothing but a sales outlet for the consumers to purchase articles. Respondent-societies do not have sale of any consumer articles and they do not run any consumer store. We are therefore of the view that the learned single Judge has committed a mistake in permitting the four Directors of the four of the respondent- Societies to participate in the election to the Board of Directors of the appellant-society. Since 24 out of 25 societies are not eligible to be members of the appellant-society, it is for the Registrar of Co-operative Societies or the Board of Directors of the appellant-society to take steps for removal of them from the membership in accordance with the procedure prescribed under Rule 16 of the Rules. Since we have already found that these societies are not entitled to membership and the membership granted to them were liable to be cancelled in accordance with the procedure to be initiated under Rule 16 of the Rules, the managing committee members of four of these societies were ineligible to participate in the election to the Board of Directors of the appellant-society. It is submitted that the 25th society, namely, Women Society which is entitled to continue their membership, by virtue of consumer wing run by them, has not sent their nominee for participation in the election to the Board of Directors of the appellant-society. Therefore all the four Directors of the other four respondent-societies who contested the election were ineligible to participate in the election.

We therefore allow the Writ Appeals by reversing the judgment of the learned single Judge and direct the Returning Officer to declare the votes cast by 24 of these societies as invalid, and since the vote cast by one single society cannot be separated to declare that also as invalid and proceed to declare the result. The nominations of four persons from four of the 24 societies for election to the Board of Directors of the appellant-society will be invalidated and results of election will be declared thereafter. It is for the appellant-society or the Registrar of Co-operative societies, as the case may be, to take steps to formally remove all the 24 respondent-societies from the membership of the appellant-society after complying with the procedure prescribed under the Rules. Issue photocopy of this judgment to counsel on both sides.