

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE V. CHITAMBARESH

MONDAY, THE 12TH DAY OF JANUARY 2015/22ND POUSHA, 1936

WP(C).No. 891 of 2015 (J)

PETITIONER:

KALLADIKODE SERVICE CO-OPERATIVE BANK LTD.NO.7489
KALLADIKKODE PO, PALAKKAD DISTRICT, PIN 678 596
REPRESENTED BY ITS PRESIDENT

BY ADVS. SRI. V.M. KURIAN
SRI. MATHEW B. KURIAN
SRI. K.T. THOMAS

RESPONDENTS:

1. STATE OF KERALA REPRESENTED BY
SECRETARY TO GOVERNMENT
CO-OPERATIVE DEPARTMENT,
SECRETARIAT, M.G. ROAD,
THIRUVANANTHAPURAM, PIN 695 001.
2. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, PALAKKAD 678 001.
3. THE ASSISTANT REGISTRAR OF
CO-OPERATIVE SOCIETIES (GENERAL)
MANNARKAD, PALAKKAD 678 582.
4. THE STATE CO-OPERATIVE ELECTION COMMISSION
CO-BANK TOWERS, VIKAS BHAVAN PO,
THIRUVANANTHAPURAM PIN 695 033.

BY SPECIAL GOVERNMENT PLEADER SRI. D. SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 12-01-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

- EXHIBIT P1 COPY OF THE AMENDED BYE-LAW OF THE SOCIETY
- EXHIBIT P2 COPY OF THE RESOLUTION DATED 29/12/2014 PASSED BY THE SOCIETY
REQUIRING 4TH RESPONDENT TO CONDUCT THE ELECTION IN TERMS
OF EXHIBIT P1
- EXHIBIT P3 COPY OF THE REQUEST DATED 22/12/2014 SENT BY THE PETITIONER TO
THE 4TH REQUESTING THEM TO CONDUCT THE ELECTION ON WARD
BASIS

RESPONDENT(S)' EXHIBITS : NIL

/TRUE COPY/

P.A. TO JUDGE.

“C.R.”

V. CHITAMBARESH, J

WP(C) NO. 891 OF 2015

Dated this the 12th day of January, 2015

JUDGMENT

The five year term of the Managing Committee in office of the petitioner bank would expire on 06.03.2015 and steps were therefore initiated to conduct an election well ahead in time. The petitioner bank is a Society registered under the Kerala Co-operative Societies Act, 1969 ('the Act' for short) engaged in the business of banking apart from a fertiliser depot and a provision store. The Managing Committee passed a resolution on 29.12.2014 to conduct the election on 01.03.2015 as required under Rule 35A of the Kerala Co-operative Societies Rules, 1969 ('the Rules' for short). It is conceded that the fourth respondent Election Commission has neither appointed a Returning Officer nor issued a notification finalising the election calendar. The petitioner bank now finds it difficult to have the election conducted adhering to the provisions of the amended Act and the Rules in the preparation of the voters list. The petitioner bank

WP(C) No. 891/2015

contends that there is paucity of time to identify the active voters giving effect to Sections 16A and 19A of the Act as well as Rule 18A of the Rules. The plea therefore is that Rule 18A of the Rules should not be applied to the petitioner bank and that the fourth respondent Election Commission must conduct the election as proposed. Respondents 1 to 3 who are the State of Kerala, the Joint Registrar and the Assistant Registrar of Co-operative Societies however maintain that the election could only be consistent with the amended Act and the Rules.

2. I heard Mr. V.M. Kurian, Advocate on behalf of the petitioner and Mr. D. Somasundaram, Special Government Pleader on behalf of the respondents.

3. The amended provisions of the Act which are germane to the case on hand are as follows:

“16A. Ensuring participation of members in the management of societies:

(1) No member shall be eligible to continue to be a member of a co-operative society if he, -

(a) is not using the services of the society for two consecutive years or using the services below the minimum level as may be prescribed in the rules or the bye-laws;

(b) has not attended three consecutive general meetings of the society and such

WP(C) No. 891/2015

absence has not been condoned by the members in the general meeting.

(2) Where any person becomes ineligible for continuing as a member as per sub-section (1), the committee of the society may remove the person from membership after giving him an opportunity for making his representation, if any, and the person concerned shall thereupon cease to be member of the society.

Provided that no member of the society removed as above shall be eligible for re-admission as a member of that society for a period of one year from the date of such removal."

"19A. Member participation. No member of a society shall exercise the right of a member unless he has attended the minimum required general body meeting and minimum level of services as may be prescribed."

The amended provisions of the Rules which are germane to the case on hand are as follows:

"18A. Ensuring participation of members - (1) No member shall be eligible to continue to be a member of a co-operative society if he is not using the services of the society for two consecutive years in the following manner:

(a) In case of a credit society, a member who has made a deposit or has become a borrower or surety or availed or purchased products or any other services made available by such society as specified in the bye-laws;

(b) In the case of any other society, a

WP(C) No. 891/2015

member who has involved in anyone of the objects specified in the bye-laws or has availed the products or suing the service made available by such co-operative society as specified in the bye-laws.

(c) In the case of Central or Apex Societies/Banks/Federation, if the member society has not borrowed the amount from such Central or Apex Societies/Banks/Federation/and in the case of Apex societies/Banks/Federations where the main object is to lend the amount to the member societies or if the member society is not using the services made available by such society/federation as specified in the bye-laws.

(2) (a) A register in Form No. 32, shall be maintained by every society. The Chief Executive of the society shall be responsible for the proper maintenance of the register.

(b) The details with regard to each and every member of a society shall be made up-to-date and placed before the Committee within sixty days on completion of every year.

(c) The Committee shall examine and certify the register as to the details so recorded by the Chief Executive, within thirty days from the date of placing it before the Committee.

(d) The Chief Executive of the Society shall forward a certificate to the Registrar, as to the up-to-date maintenance of the register within three months of the close of the year.

(e) The Chief Executive of the society shall submit this register before the Electoral Officer for verifying the eligibility of members who are qualified to vote at the election.

WP(C) No. 891/2015

4. Section 16A of the Act specifies as to who shall be eligible to continue as member of a Co-operative Society and Section 19A of the Act clarifies as to who shall be forbidden from exercising the right as a member. No member shall be eligible to continue as such if he is not using the services of the Society for two consecutive years or using the services below the minimum level as may be prescribed in the rules or the bye-laws. Similarly no member shall be eligible to continue as such if he has not attended three consecutive general meetings of the society and such absence has not been condoned by the members in the general meeting. Also no one shall exercise the right of a member unless he has attended the minimum required general body meeting and minimum level of services as may be prescribed. Both Sections 16A and 19A of the Act were inserted by Act No. 8/2013 and have come into force with effect from 14.02.2013 and it is too late for any Co-operative Society to realise the rigour of the amended provisions.

5. Only the manner of using the services of the Society to be eligible to continue to be a member of Co-operative Society

WP(C) No. 891/2015

has been prescribed under Rule 18A of the Rules introduced with effect from 25.11.2014. The same period of two consecutive years of using the services of the Society as found in Section 16A of the Act has been prescribed in Rule 18A of the Rules for a member to be eligible to continue. No other minimum level has been prescribed in Rule 18A of the Rules for the petitioner bank to be taken aback for its adherence in the conduct of the election. The manner of using the services in the case of a credit society, any other society, Central or Apex Societies/Banks/Federations has been detailed in Rules (a), (b) and (c) of Rule 18A(1) of the Rules. The form of the register to be maintained by every Society to decipher quickly the manner of using the services of the Society by any member has only been specified in Rule 18A(2) of the Rules. Most of the Cooperative Societies in the State are by now computerised and it hardly takes time to prepare a register in Form No. 32 as enjoined in Rule 18A(2) of the Rules. Such register maintained by the Chief Executive of the Society after certification by the Committee shall be submitted before the Electoral Officer for verifying the

WP(C) No. 891/2015

eligibility of the members qualified to vote.

6. It should be noted that a Returning Officer was neither appointed nor a notification issued specifying the date and time of election by the fourth respondent Election Commission before Rule 18A of the Rules was introduced. What then is the sanctity of an election to be conducted as per the unamended Rules as sought by the petitioner bank citing practical difficulty in pruning the voters list? This Court in **Narayanan Vs. Maloth Service Co-operative Bank [1986 KLT 957]** has held that any election conducted after the introduction of Section 28A of the Act must be in conformity thereof only. A Division Bench of this Court in **Gopalakrishnan Vs. State of Kerala [2011(3) KLT SN 51]** has reiterated the same principle while dealing with an election after the introduction of Section 28 AA of the Act. Therefore any election notified after the amendment of the Act and the Rules has necessarily to be consistent with the same and any departure therefrom might invalidate the election when called in question appropriately. The request of the petitioner bank to have the

WP(C) No. 891/2015

election conducted without adhering to Rule 18A of the Rules on the date specified before the expiry of the term of the Managing Committee cannot be acceded to.

7. The petitioner bank points out that its management would unjustifiably be taken over by a Departmental Officer as Administrator on the expiry of the term of the committee and that the same shall be avoided. Interest of justice would be met by directing respondents 2 and 3 to explore the possibility of appointing an administrative committee comprising of three members of the present managing committee. This is ofcourse subject to the condition that no proceedings under Sections 65 or 66 of the Act have hitherto been initiated against the members of the Managing Committee. Steps to conduct the election to the Managing Committee of the petitioner bank shall also be taken expeditiously scrupulously following Sections 16A and 19A of the Act as well as Rule 18A of the Rules. Nothing said herein above will affect the power of the government to exempt any society or any class of society from the provisions of the amended Act and the Rules if it is so necessary in public

WP(C) No. 891/2015

interest. The power of exemption under Section 101 of the Act should however be exercised with circumspection since the avowed object of the amendment is to ensure participation of members in the management of societies.

The Writ Petition is disposed of. No costs.

**V. CHITAMBARESH
JUDGE**

ncd