

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WP(C).No. 26262 of 2014 (G)

PETITIONER: -

N.SAIKUMAR, AGED 51 YEARS,
S/O.D.NARAYANANTHAMPI, KALLUVILA HOUSE,
MUTTAPPALAM, PERUMKUZHI P O, THIRUVANTHAPURAM-695305.

BY ADV.SRI.R.T.PRADEEP

RESPONDENTS:-

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1. REGISTRAR OF COIR CO-OPERATIVE SOCIETIES/DIRECTOR OF COIR DEVELOPMENT DEPARTMENT, COIR BHAVAN,SASTHAMANGALAM, THIRUVANANTHAPURAM-695010.
 2. THE KERALA STATE CO-OPERATIVE COIR MARKETING FEDERATION LTD NO 679, P B NO 4616, ALAPPUZHA 688001, REP BY ITS MANAGING DIRECTOR.
 3. THE ADMINISTRATIVE COMMITTEE, REP BY MANAGING DIRECTOR THE KERALA STATE CO-OPERATIVE COIR MARKETING FEDERATION LTD NO 679, P B NO 4616, ALAPPUZHA-688001.
 4. THE STATE CO-OPERATIVE ELECTION COMMISSION, REP BY ITS SECRETARY, OFFICE OF STATE CO-OPERATIVE ELECTION COMMISSION, THIRUVANANTHAPURAM-695001.
 5. INDIRAJI SMARAKA ICVCS T 1217, REP BY ITS PRESIDENT, \ AZHOOR P O., THIRUVANANTHAPURAM-695305
 6. KAILATHUKONAM ICVCS T 1273, REP BY ITS PRESIDENT, PURAKKADA P O, KIZHUVILAM, THIRUVANANTHAPURAM-695104.

R2,R3 BY ADV.SRI.JOBY CYRIAC, SC, COIRFED
BY SPL. GOVERNMENT PLEADERSRI. D. SOMASUNDARAM
BY GOVERNMENT PLEADER SRI. G. GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01-10-2015, ALONG WITH WPC. 5179/2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1: TRUE COPY OF ELECTORAL ROLL BASED UPON WHICH THE
ELECTION HELD ON 15/2/2013.

EXHIBIT P2 : TRUE COPY OF JUDGMENT DATED 28/8/2014 IN WPC NO 2990/2013.

EXHIBIT P3 : TRUE COPY OF NOTICE DATED 25/9/2014 ISSUED BY THE 3RD
RESPONDENT.

EXHIBIT P4 : TRUE COPY OF PROPOSED BYLAW AMENDMENT TO CLAUSE 23 (1)

EXHIBIT P5 : TRUE COPY OF LIST OF 113 ICVCS TO WHICH NOTICES WERE
ISSUED BY THE ADMINISITRATIVE COMMITTEE.

RESPONDENTS' EXHIBITS : -

EXHIBIT R2(a) : COPY OF THE MINUTES OF THE GENERAL BODY CONVENED
ON 15.10.2014.

EXHIBIT R2(b) : COPY OF THE APPLICATION DATED 11.11.2014 OF THE
MANAGING DIRECTOR OF FEDERATION FOR THE
REGISTRATION OF THE AMENDMENTS (THROUGH PROPER
CHANNEL).

// TRUE COPY //

P.A. TO JUDGE

DMR/-

C.R.

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 26262 of 2014

&

W.P.(c) No. 5179 of 2015

Dated this the 01st day of October, 2015

COMMON JUDGMENT

The petitioner, the President of Muttappalam Coir Vyavasaya Co-Operative Society, which is a member of the second respondent Apex Society, has a grievance that the Administrative Committee, at the helm of affairs as an interim arrangement, took a drastic measure of amending the bye-laws of the society. According to him, the decision to amend the bye-law is without any justification, much less any compulsive need, before subjecting the said Federation to elections as has been directed by this Court in Ext.P2 judgment.

2. Similarly, the petitioner in W.P.(C) No. 5179 of 2015, a member society of the second respondent Federation, has filed the writ petition questioning the inordinate delay in the Administrative Committee's holding the elections to the said Federation. According to him, despite the lapse of considerable time after the supersession of the Managing Committee, the Administrative Committee has been dragging its feet on the

issue.

3. In my view, the relief in W.P.(C) No. 5179 of 2015 is only contingent upon the decision to be rendered in W.P.(C) No. 26262 of 2014. Accordingly, given the parity in the subject matter and the commonality of the parties in both the writ petitions, it is appropriate to consider both of them together for disposal through a common judgment.

4. In both the writ petitions, the facts lie in a narrow compass. If we take the facts as have been set out in W.P.(C) No. 5179 of 2015, it is evident that initially the Election Commission issued Ext.P1 notification proposing to hold elections on 31.10.2013 for the Managing Committee of the second respondent Federation. However, soon, one of the members of the Managing Committee nominated by the Government challenged Ext.P1 before this Court in W.P.(C) No. 2990 of 2013 by.

5. The challenge was on the ground that no reservation had been provided for women members. As a result, this Court through Ext.P2 judgment set aside Ext.P1 notification, apart from directing the second respondent to take immediate steps

to effect the necessary amendments to its bye-laws so as to make a provision for the reservation of two more seats for women. It was with a view to making the bye-laws conform to the statutory mandate of Section 28A of the Act.

6. In the meanwhile, as the term of the incumbent Managing Committee came to an end, the Government, in terms of Section 33 of the Act, appointed initially an Administrator and later an Administrative Committee, which is presently at the helm of the affairs.

7. In compliance with Ext.P2 judgment, the Administrative Committee proposed to have the amendment to the bye-laws and accordingly convened a general body meeting. In the meeting thus convened for the purpose of amending the bye-laws, the general body, as can be seen from Ext.R2(a), approved Ext.P5 proposed amendments. As a result, the Administrative Committee placed Ext.P5 through Ext.R2(b) before the third respondent for his approval and necessary consequential action.

8. At that juncture, the petitioner in W.P.(C) No. 26262 of 2014 approached this Court questioning the amendments

and obtained Ext.P6 interim order. This Court by order dated 14.10.2014 in W.P.(C) No. 26262 of 2014 issued an interim direction that the amendments approved by the general body shall not be registered until further orders from the Court. Soon thereafter, the petitioner Society being an affiliated member of the Apex Federation filed W.P.(C) No. 5179 of 2015 seeking a direction to the Administrative Committee to have the elections conducted expeditiously.

Summary of Submissions:

Petitioner's [W.P. (C) No. 26262 of 2014]:

9. In the above factual backdrop, the learned counsel for the petitioner has strenuously contended that this Court in Ext.P2 judgment directed the second respondent to have its bye-laws amended only to the limited extent of reservation for women. According to him, the Administrative Committee of the second respondent Federation has gone beyond the scope of the judicial directive in Ext.P2; it proposed far-reaching amendments. Adverting to Ext.P5, the learned counsel has contended that the petitioner has serious objections concerning the proposed amendment item Nos. IV, V, VI, VII

and IX.

10. Especially laying specific emphasis on the proposed amendment No. VII, the learned counsel would contend that in terms of Section 31 of the Act, there shall not be more than two persons nominated by the Government to be on the Board of the Federation. The amendment, however, proposes to have five Directors to be nominated by the Government.

11. The learned counsel has also objected to the proposed amendment No.VI on the ground that the Administrative Committee has no power to induct new members. In other words, new members could be inducted only by a duly elected Managing Committee, but not an Administrative Committee, which only functions on an *ad hoc* basis to ensure that the Federation is not left, before the election could take place, without any proper administration.

12. In support of his submissions, the learned counsel has placed reliance on ***Cochin Co-Operative Hospitals Society Ltd., v. State of Kerala***¹ and ***Cherthala Agri. R.D. Bank v. Joint Registrar***².

1 2000(2) KLT 422

2 2000(1) KLJ 291 (FB)

13. In elaboration of his submissions, the learned counsel has submitted that Section 8A of the Act provides for a deeming provision. Affiliation of any society to be a member of the Federation in the event that its application has not been considered within 60 days, does not, according to him, amount to providing membership automatically.

14. Expressed differently, the learned counsel contends that affiliation is different from assigning membership and that Section 8A contemplates granting affiliation but not according membership, which is subsequent and which is to be done only by an elected body.

Petitioner's [W.P (C) No.5179 of 2015]:

15. The learned counsel for the petitioner in W.P.(C) No. 5179 of 2015 has submitted that the Administrative Committee, which is supposed to function as a stop-gap arrangement, has been holding on to the position for the past more than 2 ½ years. He has further submitted that as per Section 28 (a) of the Act, the bye-laws need not be amended, for Section 28 (a), beginning with a non-obstante clause, takes precedence over the bye-laws, in the event of any conflict.

16. *Ipso facto*, to enforce the statutory mandate, even in the face of any conflict with the bye-laws, there is no need for the amendment of the bye-laws in the first place, contends the learned counsel. In support of his submissions, he has placed reliance on **Gopinathan Nair v. Sr. Inspector of Co-Operative Societies**³.

17. Summing up his submissions, the learned counsel has submitted that it is in the public interest to ensure earlier elections to the Managing Committee. Obviating the need for the third respondent's deciding the validity of amendments, this Court, pleads the learned counsel, may issue a mandamus to have elections forthwith.

Second Respondent's:

18. *Per contra*, the learned counsel for the second respondent has submitted that the second respondent, the Administrative Committee, does not have any intention of arrogating to itself any powers it does not possess. He has submitted that only in the interest of the Federation has the 4th respondent proposed the amendments, which, in fact, have been approved by the general body.

3 1986 KLT 1269

19. First, the learned counsel has contended that item six of Exhibit P5 has only recognised the deeming provision of Section 8A since the application of a society has not been decided within sixty days. In other words, the Administrative Committee has never inducted any member society on its own but has only acknowledged the right of the society to be affiliated with the Federation by way of legal fiction and by operation of law.

20. As regards the power of the Administrative Committee to administer the federation and to do all that is necessary during the course of the said administration, the learned counsel has drawn my attention to Sections 33, 34 (4) and Section 33(2) of the Act.

21. At any rate, the learned counsel has submitted that the Administrative Committee has every intention to ensure earlier elections. In this regard, the learned counsel further submits that it will serve the interest of justice if a direction is given to the third respondent to consider Ext.P5 proposed amendments expeditiously and pass appropriate orders thereon in terms of Section 12 of the Act.

Government Pleader's:

22. The learned Government Pleader, on his part, has submitted that there is no discernible distinction between the affiliation and assigning membership for juristic persons like the member societies. In this regard, he has contended that Section 8A alone applies, for Rule 16 of the Kerala Co-Operative Societies Rules ('the Rules' for brevity) applies to individuals rather than the juristic persons. In this regard, the learned Government Pleader has placed reliance on a judgment rendered by a learned Division Bench of this Court dated 16.09.2014 in W.A. No. 1281 of 2013, apart from placing reliance on K. ***Sivadasan Nair v. The Registrar of Co-Operative Societies & others***⁴ .

23. It is the specific contention of the learned Government Pleader that the amendments, though proposed by the Administrative Committee, have in fact been approved by the general body. According to him, the general body has got plenary powers concerning all matters, which include the amendment of the bye-laws. In support of his submissions, he has placed reliance on ***Udayakaran v. Ahammed Kannu***⁵.

4 2009(1) KLJ 810

5 2004(2) KLT 969

24. Eventually, the learned Government Pleader has tried to repel the contention of the learned counsel for the petitioner that the Administrative Committee has proposed the amendments beyond the scope of Ext.P2 judgment. In this regard, he would contend that there is no interdiction in Ext.P2 judgment that the Administrative Committee should not take up any other issue than what has been mentioned therein, i.e., the issue of amendment providing reservation for women.

25. Echoing the submission of the learned counsel for the 4th respondent, the learned Government Pleader has also submitted that the Administrative Committee has got plenary powers, and those powers cannot be interdicted unless there is an infraction, which the petitioners have failed to establish.

26. Referring to the ratio of **Joint Registrar of Co-Operative Societies v. T.A. Kuttappan**⁶, the learned Government Pleader has strenuously contended that the issue in the said case was with regard to inducting new members, and that the Hon'ble Supreme Court has confined its adjudication only to that aspect. In other words, an Administrative Committee, in the light of the dictum laid down

by the Hon'ble Supreme Court, is not empowered to admit new members. But as regards the other aspects, essentially the amendment to the bye-laws, the said decision cannot be a precedent.

27. Heard the learned counsel for the petitioners and the learned Government Pleader, as well as the learned counsel for the fourth respondent, apart from perusing the record.

Issues:

28. The issues to be determined in the writ petition are as follows:

- (I) Whether the Bye-laws are to be amended to provide for reservation for women despite the statutory mandate in that regard under Section 28A of the Act?
- (II) Whether the Administrative Committee can effect the amendments to the bye-laws without any restriction on the nature and the scope of bye-laws sought to be amended?
- (III) Whether the Administrative Committee can travel beyond the directions in Exhibit P2 judgment and seek the approval for Exhibit P5 proposed amendments from the General Body?
- (IV) Whether an Administrative Committee can admit any primary society to be a member on the strength of deeming provision under Section 8A of the Act?

Issue No.I:

29. As has already been adverted to, the genesis of the *lis* lies in an objection taken by certain members of the Society on the issue of conducting elections without providing any reservation for women. This objection has, in fact, led to the filing of W. P. (C) Nos. 2990, 2696 and 4434/2013. In the course of time, this Court disposed of all the three writ petitions through a common Exhibit P2 judgment. As can be seen, this Court, first, set aside the election notification; second, it directed the Society to take immediate steps to amend Exhibit P1 bye-laws in conformity with the Section 28A of the Act. And, of course, the further direction is to conduct elections to the Board of Directors of the first respondent within two weeks from the date of registration of the amendments. The entire process was mandated to be completed within three months.

30. Subsequently, the Administrative Committee, apart from proposing to effect amendments to the bye-laws providing for reservation for women, has also proposed to have further amendments as have been set out in Exhibit P5.

After getting the said proposal approved by the General Body convened at its initiative, the Administrative Committee has placed Exhibit P5 along with a resolution of the General Body before the first respondent for his approval. At that juncture, the petitioner filed the present writ petition questioning, *inter alia*, Exhibit P5 proposed amendments.

31. As regards the need of amendment to bye-laws in terms of Section 28-A of the Act, this Court in **Gopinathan Nair** (*supra*) has considered the contention that without an amendment of the bye-law, the number of seats on the Managing Committee could not be increased even in conformity with Section 28A of the Act. A learned Single Judge has observed that when the statutory provision operates with its full force and effect, no bye-law can overpower the provisions of a statute. His Lordship has further observed that no formal change of the bye-laws is visualized for achieving the above objective. The section does not say so. When the section does not say so, it is not necessary to read into the section, any cumbersome or additional provision, which will have only the effect of defeating and delaying the

implementation of the salutary provision of Section 28A of the Act.

32. At the outset, it may have to be mentioned that it is the contention of the learned counsel for the respondents that in the light of Section 28A, even in the absence of any specific amendment to the bye-laws, reservation could be provided for women, for the statutory mandate prevails over the bye-laws. The said contention, as can be seen has received the judicial imprimatur in **Gopinathan Nair** (supra). Be that as it may, since this Court has already directed the Administrative Committee to have the bye-laws amended in tune with Section 28A, that issue, in my view, renders itself academic.

Issue Nos.II & III:

33. The next issue is whether the Administrative Committee can travel beyond Exhibit P2 and propose far-reaching amendments as have been set out in Exhibit P5. Indeed, at the instance of the Administrative Committee, even the General Body approved those amendments and eventually placed them before the first respondent.

34. It is the specific contention of the learned Government Pleader that the statute does not limit the powers of the Administrative Committee, especially, while its acting in the place of a duly elected Managing Committee. Nor has the very Exhibit P2 judgment, contends the learned Government Pleader, circumscribed the powers of the Administrative Committee concerning the administrative measures it can take, including the proposed amendments.

35. On the other hand, it is the contention of the learned counsel for the respondents that the Administrative Committee comes into place only as an interim measure or as a stopgap arrangement. According to him, it is prudent, nay necessary, that substantial administrative measures, especially such as amendments having far-reaching consequences, should be left for the consideration of the duly elected Managing Committee.

36. As has been rightly contended by the learned Government Pleader, apparently the statute itself has not limited the power of the Administrative Committee, in terms of its functioning, to take any appropriate administrative steps for the welfare of the Society. *Ipsa facto*, a proposal to amend

bye-laws cannot be ruled out from the purview of those administrative measures.

37. It is axiomatic to observe that any statutory provision gets its color of meaning from the context it has been set in. This is where the judicial interpretation throws ample light on the statutory interstices that may come into open on a scrutiny of the legislation.

38. Though, indisputably, the statute does not expressly limit the powers of the Administrative Committee, it is well to remember that the Administrative Committee comes into being only as a stopgap arrangement before a duly elected Managing Committee assumes charge. The fulcrum of the functioning of any Co-operative Society is the democratic participation of its members in its affairs, say, through its nominees, i.e. the elected members of the Managing Committee.

39. In **Cochin Co-operative Hospitals Society Ltd.**, (supra), this Court has considered Section 25 of the Act. A learned Single Judge has held that when the question of transfer of shares arises, the nominee or the legal heir can also file an application for membership. If there is any

disqualification for the nominee or the legal heir to become a member of the Society, then the share will not be transferred to such person. Instead, only the value of the share will be given to such person. I do not find any relevance to this principle of law in the present factual setting.

40. In **Cherthala Agri. R.D. Bank** (supra), a learned Full Bench of this Court has held that an Administrative Committee has no power to admit new members; however, it applied the ratio prospectively, for, by then, the Committee had admitted many members.

41. In **Gopinathan Nair** (supra), this Court has held that the Co-operative societies are the units of democracy at the grass-root level. It is only in the fitness of things that members who belong to the hitherto oppressed sections of the Society are given adequate experience and opportunity in dealing with the governance of the affairs of the society, though on a minuscule scale, as they are dealt with at the level of the Co-operative Societies.

42. In **Udayakaran** (supra), this Court has examined the powers of the General Body to effect the necessary changes to the bye-laws to make them conform to Section 28A of the Act.

In that context, a learned Single Judge has held that the authority competent to make and amend the bye-law is the General Body of the Society. It is for the General Body of a Society to make the necessary provisions in the bye-laws of the society for the reservation contemplated under Section 28A. But the question still remains: at whose instance the General Body is convened and galvanized into action?

43. In fact, the Hon'ble Supreme Court had the occasion to consider the powers of the Administrative Committee under Karnataka Co-operative Societies Act, which has, as can be seen, analogous provisions to those of the present Act. In **T.A. Kuttappan** (supra) their Lordships have held thus:

"6. Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. . . the administrator or a special officer can exercise powers and functions only as may be required in the interests of the Co-operative Society. . . "exercise all or any of the functions of the Committee" . . . What is of significance is that when the Committee of Management of the Co-operative Society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the bye-laws, which is prejudicial to the interest of the society, the same is

superseded and an administrator or a committee is imposed thereon. The duty of such a committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a committee appointed by the Registrar while the Committee of management is under supersession, is as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult."

44. The above judicial dictum of the Apex Court emphatically lays down that the Administrator or the Administrative Committee which has come to fill the void in the absence of the Managing Committee could only take such steps as are required to set right such mistakes as had been committed by the previous Managing Committee. Their Lordships have also particularly observed that the role of an Administrator or a Committee appointed by the Registrar while the Managing Committee is under supersession is only to bring on an even keel a ship which is in doldrums. If that is the objective to be borne in mind, the interpretation of the provisions in question will not cause any difficulty, opines the Apex Court.

45. In the light of the above authoritative judicial pronouncement of the Apex Court, it leaves no manner of doubt in my mind that the provisions empowering the Administrative Committee to act in the absence of the Managing Committee could only be taken to sustain the *status quo* of the affairs of the Society. And, at best, the Administrative Committee can act to set right the misdeeds, if any, of the previous Managing Committee before the next Managing Committee could be elected through a democratic process.

46. The above discussion makes the position clear to the effect that the Administrative Committee ought not to have traveled beyond the directions in Exhibit P2 judgment. It is further significant to observe that the Administrative Committee initially decided to go for elections without any amendments whatsoever. Only when the elections were called in question and only when this Court issued Exhibit P2 judgment to have a particular amendment of the bye-laws, did the Administrative Committee seize the opportunity to come up with Exhibit P5 proposed amendments, some of which may

have far-reaching consequences. Thus, it is all the more essential to observe that the effort of the Administrative Committee to have the amendments without focusing on conducting elections, in the first place, cannot be countenanced.

47. In the facts and circumstances, this Court sets aside Exhibit P5 amendments save those that have been sanctioned by this Court in Exhibit P2 judgment. As a natural corollary, the first respondent shall consider within one month the Administrative Committee's request for approval of the amendment of the Society's bye-laws concerning the reservation for women—the amendment sanctioned by this Court in Exhibit P2 judgment.

Issue No.IV:

48. Indeed, the Administrative Committee has also admitted certain primary societies as new members. The learned counsel for the respondents again placing reliance on **T.A. Kuttappan** (*supra*) has submitted that admitting the new members is not within the power of the Administrative Committee. Without any manner of doubt, especially in the

light of the ratio of **T.A. Kuttappan** (supra), it is to be held, claims the learned counsel, that it is not within the powers of the Administrative Committee to elect new members.

49. That said, I may have to place on record that a precedent is binding to the extent what it actually decides, especially, in the factual context of the said case. In other words, if the facts of the case are different, the ratio of any judgment could not be applied *in toto* without reference to those distinguishing facts. In the present instance, the Administrative Committee by itself has not admitted any new members. Since the new members being inducted are numerous (113), the petitioner has arrayed fifth and sixth respondents in the representative capacity.

50. As can be seen, earlier, those new entrants filed applications for membership, but their applications were not considered within sixty days as per Section 8A of the Act. As a natural corollary, the deeming provision has been triggered in their favour. Thus, the induction of the new members is by operation of law rather than by any conscious effort of the Administrative Committee.

51. In **K. Sivadasan Nair** (*supra*), this Court has examined the issue of deemed membership under Section 8A of the Act. It has held that the said provision is essentially one that provides for affiliation by default to consider. The question whether affiliation should be given or not has to be determined within a period of 60 days. And, if the determination of that question is not made within that period of 60 days, the application for affiliation is deemed to have been granted. The status of affiliation is automatic on the event of expiry of the period of 60 days fixed under Section 8A (2). It does not depend, held this Court, upon any further act of declaration or any direction that the Registrar may give.

52. It is, therefore, trite to observe that once the deeming provision has been brought into play, it should be allowed to have its full course as if it had been a reality. In the present instance, once those new applicants are deemed to have become members in terms of Section 8A, it goes without saying that those new members will have all the rights and privileges as any other member will have. Accordingly, it is made clear that there shall be no impediment for the new

members to participate in the election process on a par with all other members.

Elections to be Held:

53. Since the petitioner in W. P. (C) No.5179/2015 complained of delay in conducting elections, it is made clear that once the first respondent grants the necessary approval for the amendment of the bye-laws to the extent indicated above, the fourth respondent shall take all necessary steps to conduct elections at the earliest, if necessary by revising the voters list in the light of the induction of new members.

With the above observations, these writ petitions stand disposed of. No order as to costs.

**DAMA SESHADRI NAIDU
JUDGE**

rv/DMR/-