

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 4TH DAY OF DECEMBER 2015/13TH AGRAHAYANA, 1937

WP(C).No. 35633 of 2015 (D)

PETITIONERS:

1. ABDUL KARIM,
KARIMS, MARATHUMMOODU, CHETTACHAL P.O.,
VITHURA, THIRUVANANTHAPURAM, PIN:695 001.
2. V.AMBIKA KUMARI,
ASWATHY, MARUTHUMMOODU, CHETACHAL P.O.,
PIN:695 001.
3. S.THANKAPPAN ASSARY,
KULAMANKODU, KARIKKATHIL VEEDU,
PARAPPARA P.O., THIRUVANANTHAPURAM, PIN:695 001.

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF CO-OPERATION, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
2. THE JOINT REGISTRAR OF CO-OPERTIVE SOCIETIES-GENERAL,
THIRUVANANTHAPURAM-695 001.
3. THE CHAYAM SERVICE CO-OPERATIVE BANK LTD.NO.1514,
CHETTACHAL P.O., VITHURA, THIRUVANANTHAPURAM,
REPRESENTED BY ITS SECRETARY, PIN:695 001.
4. ELECTORAL OFFICER (AR-NEDUMANGAD),
THE CHAYAM SERVICE CO-OPERATIVE BANK LTD.NO.1514,
CHETTACHAL P.O., VITHURA, THIRUVANANTHAPURAM,
PIN:695 001.
5. THE STATE CO-OPERATIVE ELECTION COMMISSION,
REPRESENTED BY ITS ASST. ELECTION COMMISSIONER,
CO-BANK TOWERS, THIRUVANANTHAPURAM, PIN:695 001.
6. RETURNING OFFICER (UNIT INSPECTOR-VITHURA),
THE CHAYAM SERVICE CO-OPERATIVE BANK LTD.NO.1514
CHETTACHAL P.O., VITHURA, THIRUVANANTHAPURAM
PIN:695 001.

ADDL.R7 TO R21 IMPLEADED:

7. SREEKUMARAN NAIR, JAYAVILASOM, POTTANCHIRA
CHETTACHAL P.O - 695 551.

: 2 :

8. JAYENDRAKUMAR.S., ROHINI, KOPPAM, VITHURA P.O -695 551.
 9. PUSPANGATHAN NAIR, KIZHAKOOMKARA PUTHEN VEEDU,
MANGAAD, PARAPARRA P.O.- 695 551.
 10. SATHEESHAN NAIR, SARADHA MANDIROM,
PARAPARRA P.O - 695 551.
 11. AJIKUMAR S., BAIJU VILASOM, VADAKKEKKARA, CHAYAM,
VITHURA P.O - 695 551.
 12. S. VIJAYAKUMARAN NAIR, VISHAARA, CHAAYAM,
VITHURA P.O - 695 551.
 13. AJITHAKUMARI S., VAISHAKHOM, PUTHICHAMALA,
PARAPPARA P.O - 695 551.
 14. KUMARI ANITHA T., KIZHAKOOMKARA, PRASSANNA NIVAS,
BHADROM VECHAPARA PUTHICHAMALA,
PARAPPARA P.O - 695 551.
 15. PRABHAKARAN C., THANKANILAYOM, THOTTUMUKKU,
VITHURA P.O - 695 551.
 16. A.M. SALIM, SHEERA HOUSE, THOTTUMUKKU,
VITHURA P.O - 695 551.
 17. NASEEJA.J. O.M.S. VILLA, KATTAYAILL,
THOLLIKODU - 695 551.
 18. RAJEELA BEEVI, THANZI MANZIL, PONGUMOODU,
THOLLIYKODU - 695 551.
 19. SREEDHARAN KAANI S., NADATHARITHIKAKATHU VEEDU,
KARIMBINKAALA, PAALUVALLI - 695 557.
 20. JAYANTHI S., SRRNILAYOM,
GANAPATHIYAAMNKODU,
VITHURA - 695 551.
 21. RAJEEV R.V. AMRITA BHAVAN, KOPPAM,
VITHURA - 695 551.
- ADDL.R7 R21 IMPEADED AS PER ORDER DATED 04.12.2015 IN
I.A.NO.17461/2015)

R3 BY ADV. SRI.LATHEESH SEBASTIAN
R BY SRI. G. GOPAKUMAR, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

: 3 :

APPENDIX

PETITIONERS' EXHIBITS :

EXHIBIT P1: TRUE COPY OF THE ELECTION NOTIFICATION DATED 1.10.2015
WITH ENGLISH TRANSLATION OF RELEVANT PORTION.

EXHIBIT P2: TRUE COPY OF THE OBJECTION DATED 16.11.2015.

RESPONDENTS' EXHIBITS:

- EXT.R3(a) : TRUE COPY OF THE RELEVANT PAGES OF THE ORIGINAL
BYE-LAWS.
- EXT.R3(b) : TRUE COPY OF THE LETTER DATED 24.09.2014 OF THE 2ND
RESPONDENT.
- EXT.R3(c) : TRUE COPY OF THE ADVERTISEMENT IN MATHRUBHUMI
NEWS DAILY DATED 24.10.2014.
- EXT.R3(d) : TRUE COPY OF THE ADVERTISEMENT IN MALAYALA
MANORAMA NEWS DAILY DATED 26.10.2014.
- EXT.R3(e) : TRUE COPY OF THE NOTICE DATED 24.10.2014.
- EXT.R3(f) : TRUE COPY OF THE FRONT AND BACK PAGE OF THE
BROCHURE.
- EXT.R3(g) : TRUE COPY OF THE INTIMATION OF THE 2ND RESPONDENT
DATED 27.07.2015.
- EXT.R3(h) : TRUE COPY OF THE ADVERTISEMENT PUBLISHED IN
MATHRUB;HUMI DAILY DATED 27.08.2015.
- EXT.R3(i) : TRUE COPY OF THE ADVERTISEMENT PUBLISHED IN
MALAYALA MANORAMA DAILY DATED 27.08.2015.
- EXT.R3(j) : TRUE COPY OF THE ADVERTISEMENT PUBLISHED IN
VEESHANAM DAILY DATED 08.09.2015.
- EXT.R3(k) : TRUE COPY OF THE ELECTION NOTIFICATION.
- EXT.R3(l) : TRUE COPY OF THE DETAILS OF ELECTION SCHEDULE.
- EXT.R3(m) : TRUE COPY OF THE PROCEEDINGS OF 6TH RESPONDENT.
- EXT.R3(n) : TRUE COPY OF THE DEATH CERTIFICATE.

//TRUE COPY//

P.A. TO JUDGE

'CR'

DAMA SESHADRI NAIDU, J.

W.P. (C) No. 35633 of 2015 (D)

Dated this the 4th day of December, 2015.

JUDGMENT

On the request of the third respondent Bank, the Election Commission, on 01.10.2015 issued Ext.P1 notification [Ext.R3(l)] proposing to hold elections on 06.12.2015 to the managing committee of the respondent Bank. In the notification, 02.11.2015 was fixed to be the date for publishing the draft voters list and venue; 09.11.2015, for submitting objections; 11.11.2015, for examining the objections; 12.11.2015, for publishing the final voters list; 19.11.2015, for submitting nominations; 20.11.2015, for examining nominations; and 21.11.2015, for withdrawing the nominations, if any candidate desires.

2. On 19.11.2015, the petitioners along with other members submitted Ext.P2 objections to the Electoral Officer, the 4th respondent. Later on 24.11.2015, the petitioners filed the present writ petition.

3. The singular grievance of the petitioners seems to be that since the bye-laws of the third respondent Bank suffered an amendment, which was approved by the Joint Registrar only on 27.07.2015, the process of publishing the amendment and calling for the deficient share money was not done in accordance the amended bye-law. As a result, the process initiated for conducting the election is vitiated.

4. The learned counsel for the petitioners, in that context, has drawn my attention to Ext.R3(g) to contend that the third respondent Bank amended clause 17(1) of the bye-laws dividing the membership into three categories: those who hold 'A' class shares worth ₹100 each; those who hold 'B' class shares worth ₹500 each; those who hold 'C' class shares worth ₹10 each. Insofar as 'A' class shares are concerned, prior to the amendment, the share values was ₹10. Since it was raised to ₹100, the existing members were required to make good the deficit within a particular period of time.

5. The learned counsel for the petitioner has further drawn my attention to the second limb of the amendment— clause 25(A) of the bye-laws. According to him, clause 25(A), incorporated for the first

time and registered by the Joint Registrar on 27.07.2015, stipulated a strict time frame for notifying the amendment, providing sufficient time for members to pay the deficit share value, and for all other consequential measures. The learned counsel has laid frontal thrust on the fact that since the third respondent Bank has not followed the time schedule fixed in the amended clause 25(A), Ext.P1 election notification cannot be sustained.

6. The learned counsel has also submitted that out of 14,000 members of the Bank, only about 4000 members—about 1/3rd—alone could pay the deficit share value. In sum and substance, the learned counsel has contended that it is entirely not in the interest of the respondent Bank to exclude large number of members and proceed with the elections.

7. Per contra, the learned counsel for the third respondent has submitted that clause 17(1), in fact, was amended through Ext.R3(b) by the Bank in 2014 itself. According to him, the Joint Registrar registered the amended bye-law on 24.09.2014. In further elaboration of his submissions, the learned counsel has submitted that after the registration of amended clause 17(1), the respondent

Bank gave wide publicity to the amendment in the regional newspapers by specifying a particular date, i.e., 31.03.2015, for the members to pay the deficit share value. He has also further submitted that through Ext.R3(h)(i) and (j), the time was further extended up to 15.09.2015.

8. The learned counsel has stressed the fact that now the entire process concerning the election was over, save the voting, which is to take place on 06.12.2015, day after tomorrow. In support of his submissions the learned counsel has placed reliance on *Jose v. Registrar of Co-operative Societies*¹ and *Rajan v. Electoral Officer*²

9. The learned Special Government Pleader, first, contended that no irregularities could be discerned from the procedure adopted by the respondent Bank. He has, in the alternative, submitted that even assuming that there were to be any irregularities, any aggrieved person, including the petitioners, ought to have filed his objections in terms of Ext.P1 notification by 09.11.2015. On the contrary, the petitioners, according to the learned Special Government Pleader, filed their objections on 19.11.2015—very belatedly.

¹ 1992 (2) KLT 673

² 2009 (3) KLT 1046

10. In support of his submissions that in the face of any assumed irregularities committed by the Bank, the only course of action available for the petitioners is to file an Election Petition in terms of Section 69 of the Act, the learned Special Government Pleader has placed reliance on Sri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others³.

11. Heard the learned counsel for the petitioners and the learned Special Government Pleader, as well as the learned counsel for the respondent Bank, apart from perusing the record.

12. Issues:

- I. Whether the petitioners can be permitted to object to Ext.P1 notification beyond the date specified in the notification?
- II. Whether the Respondent-Bank has committed any procedural irregularities in the face of the amended bye-laws?

Issue No.I:

13. Indeed, Ext.P1 notification has amply specified that all objections concerning the election should be filed on or before 09.11.2015. It is further not in dispute that the petitioners did file them on 19.11.2015. I am afraid, not much cogent explanation is

³ (2001) 8 SCC 509

forthcoming from the petitioners why they could not file their objections, even if one were to assume that there were irregularities, on or before the dates specified in Ext.P1 notification. It is, certainly, not the case of the petitioners that they had no knowledge about Ext.P1 notification. On that count, I cannot but sustain the objection on the part of the learned Special Government Pleader as well as the learned counsel for the respondent Bank.

Issue No.II:

14. Adverting to the merits of the matter, I may observe that the respondent Bank initially amended clause 17(1) and got it registered through Ext.R3(b) dated 24.09.2014. Thereafter, on 24.10.2014, it provided wide publicity to the fact of amendment through regional newspapers: Ext.R3 (c) is the publication in Mathrubhumi daily; Ext.R3 (e) is the copy of notice displayed in the Bank's notice board; and Ext.R3 (d) is the publication in Malayala Manorama, another vernacular daily. On 21.12.2014, the Bank had its general body meeting, where, according to the learned counsel, the Bank circulated Ext.R3(f) brochure for disseminating the information of amendment to all the members concerned.

15. As can be seen, Rule 28 of the Co-operative Societies Rules mandates that no member of a Bank shall be eligible to vote at the meeting fixed for any election to the committee of a Bank, unless 60 days prior to the date of such meeting he acquired the number of shares for membership as may be prescribed in the bye-laws of the Bank. Indeed, while interpreting the said provision, this Court in Jose (supra) and Rajan (supra) has, in fact, affirmed the legal position that the provision is mandatory and it does not admit of any exception.

16. In the present instance, the bone of contention is that notwithstanding the earlier amendment of clause 17(1), subsequently the Bank amended clause 25(A) and got it registered through Ext.R3 (g) on 27.07.2015. But the procedure mandated in amended clause 25 (A) has not been followed. Since the learned counsel for the petitioner has made the amended clause 25(A) his sheet anchor, it is instructive to extract the same:

“25(A) The administrative committee shall maintain the list of voters in the general body and kept in the bank. The list shall be prepared on the basis of members who were taken shares worth Rs.100/- as per bye-law. Those members, who had not remitted the deficit amount of the share value even after publishing in two vernacular dailies after 3 months of the permitted period, are not entitled for vote. The list of those members shall be published before 60 days of general body meeting. Those A class members included in the list alone are entitled to cast vote in the election and in the general body. The voters list can be given to members on payment of cost fixed by the general body.”

17. There is no cavil concerning the contention of the learned counsel for the petitioner that there ought to have been publication of the amendment in two vernacular dailies, by providing three months' time to the members to pay the balance share value. And the publication must be 60 days' prior to the general body meeting.

18. According to the learned counsel for the petitioner, no publication was made after 27.07.2015. He has further contended that any publications before 27.07.2015 is of no consequence. Plausible is the proposition; nevertheless, I am afraid, on a closer scrutiny, it fails to pass the judicial muster.

19. To a specific query, both the learned counsel for the respondent Bank and the learned Special Government Pleader have submitted that prior to the amendment of clause 25(A), no specific procedure had been mandated concerning the manner and method of publication of any amendment and also calling for making good the differential amount of the share value.

20. That accepted, I am of the considered opinion that in the absence of any definitive procedure either statutorily sanctioned or provided in the bye-laws, the Bank, as is the case in the present

instance, ought to follow and in fact has followed a procedure which can be called neither arbitrary nor whimsical.

21. At this juncture, the learned Special Government Pleader has also brought to my notice Section 12(3) of the Kerala Co-operative Societies Act ('the Act' for brevity), which is to the effect that once the Registrar forwards a copy of the registration of the bye-laws and the certificate to the Bank, it is a conclusive proof that the amendment has been duly registered.

22. Notwithstanding Section 12(3) of the Act, the third respondent Bank, to its credit, has undertaken an elaborate exercise of disseminating the information of amendment as well as calling upon the members to make good the deficit in the share money. The procedure adopted by the respondent Bank, in my considered opinion, is unexceptionable. Rarely can we see a Bank so scrupulously adhering to any procedural parameters as has been done by the third respondent.

23. Addressing the specific contention of the learned counsel for the petitioner that clause 25(F) mandates that the entire procedure undertaken by the third respondent ought to have been taken only

after 27.07.2015, I have to hold that the amended clause 25(A) cannot retroactively nullify the procedure adopted by the third respondent.

24. In other words, whatever the procedure that has been mandated in clause 25(A), at best, can have prospective in effect. Indeed, to be fair to the petitioners, I must also say that clause 25(A), apart from prescribing the procedure for publishing the factum of amendment and other incidental issues, has also referred to the issue of raising the share value. Read compendiously, the said clause may be suggestive that the procedure ought to have been adopted subsequent to the amendment of clause 25(A). I am afraid, any such interpretation as is sought to be advanced by the learned counsel for the petitioner would lead to incongruity.

25. I discern that the respondent Bank has amended clause 25 (A) for future purposes. It has referred to the share money, perhaps, as a matter of abundant caution. At any rate, an incidental mentioning about the share money in clause 25(A) of the bye-laws cannot be to the prejudice of the respondent Bank.

26. Since the third respondent Bank has impeccably followed the procedure notwithstanding the statutory mandate under Section

12(3) of the Act, the respondent Bank cannot be found fault with. In fact, the Bank has gone an extra mile in extending the period initially fixed for the members to pay the deficit share value. As can be seen from Ext.R3(h)(i) and(j), the period stood extended up to 15.09.2015, but the petitioners have not availed themselves of the opportunity.

27. In conclusion, I hold that the petitioners have failed on both counts: they have not raised objections on time; nor have they successfully demonstrated before this Court that the procedure adopted by the respondent Bank has been vitiated on any count, statutorily or otherwise.

Accordingly, the writ petition stands dismissed. No order as to costs.

sd/- DAMA SESHADRI NAIDU, JUDGE.

