

Kerala High Court

Sudhakara Kurup vs Returning Officer on 13 July, 2004

Equivalent citations: 2004 (3) KLT 62

Author: M Ramachandran

Bench: M Ramachandran

JUDGMENT M. Ramachandran, J.

1. These two Writ Petitions could be disposed of by a common judgment, since the facts are almost identical. In W.P.(C) No. 20001 of 2004, the petitioner is the President of an Industrial Co-operative Society. For election to the Circle Co-operative Union, as envisaged under Sections 88 and 90 of the Kerala Co-operative Societies Act, steps were being taken and a preliminary voters list had been published. But, it was found that the name of the petitioner's Society had not been included and therefore the Committee members as well as the employees of the Society, who are two distinct categories to be included in the electoral college, are disabled from exercising their franchise, or for filing nomination as candidates. The Writ Petition had been filed in the above said circumstance, seeking for such relief.

2. In addition, there was yet another submission made. It is that a separate electoral roll in respect of elections to the posts had been envisaged. In other words, Exts.P3(a) and P3(b) had been prepared overlooking the rules governing the preparation of electoral rolls, and would have been unworkable.

3. The Government is empowered to constitute Circle and State Co-operative Unions under Chapter XIV of the Kerala Co-operative Societies Act. Under Section 90 of the Act, every Co-operative Society is expected to get itself affiliated to the State Cooperative Union. The functions of the Union are to assist development of the Societies, spread Co-operative ideals, for participating in developmental activities of local authorities, impart training and education, and the like. They wield good amount of power, and in certain cases, the Department is mandatorily to consult their views. In the matter of constitution of Circle Co-operative Unions, drastic changes had come in 1997, but the rules were not appropriately amended, and came to be published substantially only in 2004, which had contributed to a good amount of confusion in the election processes. Members were to be elected to each Circle, and details thereof are given in Section 88(1)(a) to (e). Ex-officio persons also are there. Amendments to Rules 128 and 129 had been incorporated in the statute book only by Gazette notification dated 20.10.2003. A returning officer was obliged to send notices to the Committees of the Societies, requiring particulars to be given, and in respect of employees, they had to have minimum 60 days service prior to the date of election. Members of different groups were to form separate constituencies for the purpose of election. By the amendment as above, Rule 128 provided that for election under Section 88(1)(a), members of Committees of all Societies within the circle were to elect seven members from among themselves.

4. As regards the submission regarding the electoral rolls, it appears that confusions continued. The learned Special Government Pleader Sri. B.S. Swathikumar submits that in view of the Circular No. P.T.(1) 44590/2003 dated 7.7.2004 the position had been clarified. Therefore, all committees that have been affiliated to the Circle Co-operative Union can participate in the process for electing seven

members, irrespective of the nature and classification of the Institution. Therefore, this aspect is to be treated as concluded, since the petitioner's case has been accepted and appropriate directions had been issued to all concerned, and Exts.P3(a) to P3(e) are stated as having been withdrawn.

5. But that does not solve the problem of the petitioners. The second aspect is as to the right of the Committee members and the employees of the petitioner-Society to partake in the election proceedings. Their names were not included in the draft list. Objections were raised, but none-the-less they are omitted in the final list as well. The objection pointed out by the respondents is that even though the petitioner-- Society had been affiliated to the State Co-operative Union, as on the date of reckoning they had no right to partake in the elections, since at the appropriate time the affiliation had not been renewed. Although it is conceded that payment of affiliation fee has been made, it is belated.

6. The contentions urged in W.P.(C) No. 20511 of 2004 are similar in all respects to those urged in the connected matter. When it had come up for admission today, since the issues are similar in all respects, the Government Pleader had taken notice. It is a Government Employees Co-operative Bank, and the affiliation fee for the current year has been remitted on 8.6.2004, as seen from Ext.P1.

7. Sri. Swathi Kumar refers to the statutory prescriptions, namely Rule 129(c) of the Kerala Co-operative Societies Rules. He raised preliminary objections regarding the maintainability of the petitions. The election process has started, and the statute stipulates presence of Authorities to examine any disputes. But, as pointed out by the petitioners, as the defects are fundamental in nature, and the elected representatives of Circle Union from electoral college for State wise Union, the remedy suggested would be illusory, and inexpedient. This appears to be factually correct.

8. On the merits, he submits that the two petitioners could not have urged any contentions, since the precondition to be satisfied by them had not been met. Under Section 90, every Society has to get itself affiliated to the State Union. This status is confined to a period of one year only. The expression used is that the affiliation shall be in force for a period of one year. Coupled with the above, Section 88(5) in unambiguous terms lays down that affiliated and functioning Societies alone shall have the right to vote and contest in the election in the Circle Co-operative Union.

9. Certain other relevant circumstances also need to be mentioned. It is stated that mandatory conditions were not satisfied in respect of the petitioner's Society, as the committee had not forwarded (1) the list of committee members and (2) the list of full time employees. As the reckoning date had been 30.5.2004 for the purpose of said rule and in so far as there was remittance of fee only on a later date, namely on 8.6.2004, in both the cases, they were basically ineligible to urge contentions. It could not have been possible for the Society to be considered as affiliated for the purpose of the rule. He also refers to the position that a reading of the relevant rule would indicate that there is an automatic loss of the affiliation facilities and had particularly refers to Rule 148, since application for affiliation or renewal was to be sent to the Secretary, State Co-operative Union, in Form No. 14, alongwith fee at the rate specified in Sub-section (2), at least one month before the date on which the affiliation ceases to be in force. Therefore, the argument is that it was a case where the petitioners, who represented the respective Societies, had lost chance for participating in the

election. Because of the default the rights had been forfeited. An interference, at this stage, according to him, for inclusion of the names of the groups, would upset the time table of election, which was being held State wide.

10. The answer of the petitioner is that this position had been noticed by this Court in one of the earlier decisions, reported in 1991 (1) KLJ 693, *Raju John v. Asst. Registrar of Co-operative Societies*. A learned Single Judge had practically held that Section 90 of the Act was a complete code in itself. Although the affiliation is for a period of one year from the date of affiliation and required to be renewed on the expiry of that period, under Sub-section (4), the consequences had also been given. It was not as the Government suggest. If any Co-operative Society failed to affiliate to the State Co-operative Union as required by Sub-section (1) or to renew such affiliation as required by Sub-section (2), the consequence was that such society was not entitled to claim any of the privileges conferred on a Co-operative Society under Chapter V of the Act. Mr. Sasikumar argues that perhaps in the case of a new Society, which did not bother for affiliation, the right to partake in the election might not have been there, but once affiliated, it was only a case of curable irregularity. They stood to temporarily lose the status and privileges, but nevertheless could not have been warded off from a process of election. The petitioners are also positive in their stand that the returning officer had never bothered to address the committee as per the mandate of the rule, and the election proposed was stage-managed.

11. Sri. Swathi Kumar, however, submits that the decision as above had been doubted. In fact, in O.P.No. 33453 of 2002 and connected cases, a learned Judge had referred the matter to a Bench for consideration of the issue. This is also for the reason that the impact of Section 88(5) of the Act newly introduced also has to be appropriately noticed. Under Section 88(5), the affiliated and functioning societies alone shall have the right to vote and contest in the election in the Circle Co-operative Union. However, I cannot oblige the respondents by referring these Writ Petitions also to a Bench, at least now, since a decision on the issue agitated has become essential, in view of the impending election. I may also refer to one other circumstance, at a later stage, for not following the suggested course. Therefore, the question is whether interference is required so as to direct inclusion of the petitioners, in the appropriate colleges for the purpose of participating in the election to be held later this month.

12. The learned counsel for the petitioners points out that before the amendment, Section 90(4) of the Act was to the effect that any Society, which had failed to obtain affiliation or renew affiliation, was not entitled to any of the privileges conferred on a Co-operative Society. On substitution, by Act No. 16/93, a restriction has been brought to the operation of the sub-section, and the disabilities are now confined as those coming under Chapter V of the Act. So, the legislative intention, according to the petitioners, is clear that a non-affiliation or non-renewal of affiliation was only to operate in a very limited field. Even otherwise, there should be a distinction between a Society which had been affiliated and which is yet to get affiliation. There might have been cases of delay in remittance of fee, but the statute makes it clear that getting affiliation is crucial for workability. In case of delay in making such applications, I am of the opinion that the accrued rights are not intended as wholly forfeited, but as and when the affiliation fee is remitted, the disability has to be treated as having been cured.

13. Of course, Sri. Swathi Kumar points out that this may create difficulties, especially because of the presence of Rules. The electoral rolls are prepared on the basis of the position that existed 60 days prior to the date of election. However, when in Raju John's case (cited supra) this court has clearly laid down the proposition, as the disability being confined to Chapter V of the Act, I think it will be safe to follow it, since by deleting an institution from the purview of election, excepting that such rights are denied, no further substantial benefits are there in the matter of formation of Circle Co-operative Union. The Rules also cannot operate in a manner not warranted by the principal section.

14. Also, there appears to be some gray areas, to which the required attention has not been conferred by the statute maker. Section 88 governs the constitution of the Circle Union. Seven members have to come from the Committees of affiliated Societies. Likewise, employees of affiliated Societies in the electoral college for at least two representatives. The inaction on the part of the Society, viz., the Director Board should not interfere with the rights so conferred on the sector of employees and also the members of the Committee. They have no direct hand in the remittance of fee or forwarding of application for affiliation. There can therefore be no circumstance to allege that they were guilty of any lapses. The employees of the Societies are not to be punished or denied opportunity to exercise their franchise for the default of another. When the right is thus independent, it cannot be scuttled down.

15. The special Government Pleader emphatically relies on Section 88(5) of the Act to over reach Raju John's case (cited supra). But for some reason or other, the expression used is 'affiliated and functioning Societies alone shall have the right to vote and contest in the election'. It has to be noticed that this is not conceivable. The Society as such has no role to play. The rights are exclusively conferred on the Director Board Members, and the employees, who do not come at all within the expression 'Society'. By any stretch of imagination, it cannot be conceived that the Society is the Committee members, or the employees, the pattern of grouping is self evident to show their status. As such the provision which speaks about the disability of the Society, does not convey any intelligible meaning, and therefore is unreliable.

16. Further, this is a case, where it is alleged that procedural formalities prescribed by the Rules for issuing an appropriate notice about the election had not been observed. Therefore, there is substance in the contention of the petitioners that there was more an attempt to shunt away a sizable section of eligible persons from participation. Ulterior motives are attributed, but for want of materials, I am refraining from going to the said regions.

17. In addition to the functions of the State Co-operative Union visualised under Section 91, to which reference had been made earlier, the areas of activities of Circle Union have been given by Rule 139. No where in the Act or Rules, it is seen that the right of participation has to be scrupulously restricted. The legislative intent, appears to be that opportunities are to be given to maximum possible extent for participation in such general activities. The restrictions therefore are to be understood in the above background alone.

18. I cannot but help observing that a recent trend arrests our attention. It is that there is hot contest for position and power, be it to the school parliament, nongovernmental organisations, trade unions, Co-operative Societies, local bodies, Legislative Assembly or Parliament. The word election raises adrenaline levels in the blood. The lure, if it had been for service, could have been appreciated, but in most cases the motivation is personal. The fact remains that democracy could be successful only if there is back up of informed public opinion, and a sense of responsibility, as our first Prime Minister had observed in his autobiography. Let us hope that the aspirants for the positions satisfy the twin test.

19. Consequently, both the Writ Petitions are allowed. There will be a direction that the Committees and permanent employees, now represented by the petitioners, are to be included as members of the electorate in the respective constituencies in the forthcoming election to the Karthikappally Circle Co-operative Union. Necessary additions are to be brought to the electoral rolls, so as to ensure that such benefits are conferred on the respective groups. Perhaps they have lost the chance for contesting in the election, but their right to exercise votes are to be safeguarded. In view of the stand adopted by the Special Government Pleader, Ext.P1 and P3 respectively are to be appropriately redrafted, to ensure that election is carried out as envisaged by the Rules.