

(1993) 02 KL CK 0048

High Court Of Kerala

Case No: O.P. No. 15849 of 1992-J

P. Vasudevan
Namboodiri

APPELLANT

Vs

State of Kerala and
Others

RESPONDENT

Date of Decision: Feb. 15, 1993

Acts Referred:

- Constitution of India, 1950 - Article 245

Citation: AIR 1993 Ker 212

Hon'ble Judges: G.H. Guttal, J

Bench: Single Bench

Advocate: K. Ramkumar, for the Appellant; Govt. Pleader and D. Somasundaram, for the Respondent

Final Decision: Dismissed

Judgement

G.H. Guttal, J.

The Government of Kerala, Co-operation Department by its notification G.O. (M.S.) No. 72/92/Co-op dated 28-8-1992 excepted from the operation of the Kerala Co-operative Societies (Amendment) Rules 1992, those Co-operative Societies where intimation under clause (a) of Sub-rule (3) of Rule 35 of the Kerala Co-operative Societies Rules 1969 has been issued. The petitioner impugns the validity of this notification.

The Kerala Co-operative Societies Rules 1969 are hereinafter referred to as the Rules and the Kerala Co-operative Societies (Amendment) Rules 1992 as the Amending Rules.

2. The petitioner is a member of the Marakkara Service Co-operative Bank Ltd., hereinafter referred to as the Society. Respondent Nos. 1, 2, 3 and 4 are respectively, the State of Kerala, the Joint Registrar of Co-operative Societies, Malappuram, the Returning Officer for the elections to the committee of the Society and the Administrator of the

Society.

3. The broad scheme of the amending rules in relation to the relevant provisions of the rules is as stated hereinbelow.

Sub-rule (2) of Rule 1 of the Amending Rules lays down that Sub-rules (1) and (2) of Rule 2 thereof shall come into force on such date as the Government may, by notification in the Gazette, appoint. But it also empowers the government to appoint different dates for different class or classes of Societies. It is in pursuance of this power to appoint by notification different dates of commencement of the rules that the impugned notification was issued. The notification purports to be in exercise of the powers of the Government under Sub-rule (2) of the Amending Rules. The notification brought into force the Amending Rules with immediate effect. But it excludes from the commencement clause "... those societies where intimation under clause (a) of Sub-rule (3) of Rule 35 of the Kerala Co-operative Societies Rules, 1969 has already been issued." Rule 35 of the Rules lays down the procedure regarding the conduct of elections to the committees of societies. Clause (a) of Sub-rule (3) of Rule 35 enjoins the Returning Officer to give intimation regarding the details of the elections of the members of the committee specifying the number of vacancies to be filled up by election, the area or constituency that is specified in the bye-laws from which members are to be elected, the date on which, the place at which, the hours between which nomination paper shall be filed by the contesting candidate, the date and hour when the nomination papers will be scrutinised and the date on which, the place at which and the hours between which polling will take place. The effect of the exception created by the notification is that the Amending Rules shall not come into force or operate in respect of the societies where such intimation has been given.

It is now necessary to see what the Amending Rules provide. Rule 16A introduced in the rules by the Amending Rules enjoins the society to issue identity cards to members of the society. Such identity card is conclusive evidence of the membership of the society. In order to obtain identity card the member is required to furnish two copies of his recent photograph of passport size. The Chief Executive of the Society or an officer specifically empowered by the committee of the Society, is required to attest these photographs. An attested copy shall be affixed on the identity card and other copy shall be affixed in the Register in Form 6B maintained for that purpose. Sub-rule (2) of Rule 16A enables the existing member to apply for an identity card within one month from the date of commencement of the rules i.e. within one month from 28-8-1992. Thereafter the society shall issue the identity card to such member within 15 days from the receipt of the photographs. The Registrar of Co-operative is empowered to extend the aforesaid period of one month and 15 days for a further period of one month or 15 days as the case may be.

Rule 16B applies to members who have failed to obtain the identity card as provided in Rule 16A. Such members may apply for an identity card under Sub-rule (1) of Rule 16B

The officer specified under Sub-rule (1) is required to satisfy himself as to the correctness of the facts and particulars furnished by the member in his application. For this purpose he is empowered to make such "inquiry as he deems fit." The officer may reject the application for issue of identity card for reasons which he shall record and communicate the rejection to the applicant.

If an identity card issued to a member has been lost, defaced or, accidentally destroyed or damaged, a duplicate identity card may be issued on application of such member made under Rule 16C. Here again the concerned officer is required to satisfy himself, after an inquiry, about the correctness of the facts and particulars furnished in the application for issue of a duplicate identity card. The order refusing to issue identity card to any member is appealable. The appeal has to be filed to the Registrar of Co-operative Societies within 15 days from the date of receipt of order of refusal. The Registrar has to dispose of the appeal within 30 days" from the date of receipt of the appeal.

The effect of the identity card is laid down in Clause (o) of Sub-rule (3) of Rule 35 of the Rules. No ballot paper shall be issued to a member "unless the polling officer is satisfied" that the member concerned is the same person as noted in the list furnished to him. This clause was amended by Sub-rule (2) of Rule 16D of the Amending Rules. After the amendment the above provision of Clause (o) of Sub-rule (3) of Rule 35 would read thus: "no ballot paper shall be issued to a member unless he produces identity card and the polling officer is satisfied that the member concerned is the same person as noted in the list furnished to him. "The thrust of Clause (o) of Sub-rule (3) of Rule 35 as amended, is that without an identity card a member shall not receive a ballot paper and therefore shall not cast his vote.

4. The argument of learned counsel for the petitioner on the question of validity of the notification is this :

Sub-rule (2) of Rule (1) of the Amending rules which is the source of Government's power to issue the impugned notification, empowers the government, firstly to appoint the date of commencement of the Amending Rules and secondly to appoint different dates of commencement of the Amending Rules for different "class or classes of societies". The power to issue the notification is thus limited to the appointment of date or dates of the commencement of Rules 16A, 16B, 16C and 16D. The impugned notification travels beyond this limit laid down by the Amending Rules and exempts from operation of the Amending Rules the societies where the intimation under Clause (a) of Sub-rule (3) of Rule 35 of the rules has been issued. This exemption does not constitute appointment of the date of commencement of the Rules. It is therefore ultra vires of the power delegated to the Government under Sub-rule (2) of Rule 1 of the Amending Rules.

5. The central principle of Administrative Law is that a public authority may not act outside its powers. This rule known as the doctrine of ultra vires applies to this case because the Government in issuing the notification is exercising its delegated legislative power. Where

the empowering legislation in this case the Amending Rules, lays down the limits of the delegated authority the application of these limits is an exercise in construing the statutory language and applying it to the facts. While legislative act has a sovereign force, the legislation made under delegated power can be valid only if it conforms exactly to the powers granted. If the act of issuing the impugned notification is outside the authority conferred on the government by Sub-rule (2) of Rule 1 of Amending Rules, it is void in law which means that it is deprived of its legal effect. The reason is that in order to be valid, the exercise of such delegated authority needs statutory authorisation, in the absence of which it has no legal leg to stand on. The court is then required to quash it or prohibit any action to enforce it.

6. On the basis of these rules of Administrative Law I am called upon to consider whether the exception of societies where the intimation of election has been issued, from the operation of the Amending Rules, is valid. As already stated, the application of the limits of exercise of delegated powers is merely an exercise in construing the statutory language and applying it to the facts. The question, therefore, is essentially one of construing the statutory instrument, viz., the Amending Rules and the notification. Naturally, rules of interpretation of statutes will govern a decision on this question. This necessarily means that not only Sub-rule (2) of Rule 1 which creates the delegated authority but also the intention of the legislature expressed in the whole body of the rule, has to be construed.

7. There are two features of Sub-rule (2) of Rule 1 of the Amending Rules whose significance should not be lost sight off.

The above argument against the validity of the notification assumes that the Government in exercise of its power under Sub-rule (2) of the Amending Rules has no alternative but to appoint dates of commencement of the Amending Rules in respect of every society. Sub-rule (2) by (a) employing the word "may" and (b) leaving the option to notify different dates for different societies, has left a discretion in the government not to notify date/dates of commencement in respect of some societies. In exercise of this discretion, it was open to the Government not to issue the notification at all until the election to the committees were complete. There is thus an implied authority not to notify dates of commencement of the Amending Rules in respect of some societies. It follows that this authority authorises the Government to postpone the application of the Amending Rules to the societies where the process of election has reached a stage, where the application of Amending Rules was considered impractical or unreasonable.

Another feature of Sub-rule (2) of Rule 1 of the Amending Rules is this. It creates in the Government an enabling power to bring into force the provisions of the rules. It does not intend to take away the power to exclude from the operation of the rules those societies where application of the rules may be impractical or such application is likely to result in repugnancy with other provisions of the Act or the Rules.

8. No doubt Sub-rule (2) of Rule 1 empowers the Government to appoint, by notification, the dates of commencement of the rules. The Government has not appointed different dates of commencement to different societies, but has carved out an exception from the application of the Amending Rules in the case of societies where the intimation of election has been issued. On a strict interpretation of the delegated power, the act of exempting such societies from the operation of the Act does not conform to the limit expressed by the words "different dates may be appointed for different class or classes of societies." It was open to the Government to classify the societies in which the intimation of election has been issued and prescribe a distant date for the commencement of the Amending Rules. In that event it would have strictly conformed to the authority expressed by the words "different dates may be appointed for different class or classes of societies." Since this has not been done, the creation of exception may appear to be outside the authority conferred by Sub-rule (2) of Rule 1. This is one way of construing Sub-rule (2) of Rule (I).

9. Now consider whether the argument of transgression of delegated power, is in accord with the Act and the Amending Rules. The process of elections to the committees of thousands of societies in this State commenced soon after 12-4-1992 when Kerala Cooperative Societies (Amendment) Act (Act 5/1992) came into force. At that time the provisions in regard to the identity cards did not exist. The question is whether the Amending Rules intend that they shall apply to all the elections or whether they intend to govern only those societies where it was feasible to apply them. The provisions of Rule 16A, 16B, 16C and 16D manifest legislative awareness that the applications for identity cards, the procedural requirements and the disposal of appeals would occupy a time span extending over several months. The rule-makers were aware of the physical impossibility of securing identity cards to members of all societies. On the one hand was the need to provide identity cards. On the other, was the fact that in numerous societies intimation was issued making the issue of identity cards before the election physically impossible. These facts strongly suggest that the Amending Rules were not intended to be applied to all societies immediately.

10. Another index to the intention of the Rule makers is seen in the scheme of subsection (I A) of Section 28 which was introduced by the Kerala Co-operative Societies (Amendment) Act (Act 5/1992). It stipulates that the Registrar shall appoint a new committee consisting of not more than three members of the society, or one or more administrator or administrators, to manage the affairs of the society for a period not exceeding six months which could be extended for a maximum period of one year. Under this sub-section the Administrator may continue for a maximum period of one year or "till the new committee enters upon the office whichever is earlier". The legislature stipulated that the election to the committees of all societies shall be completed within the period of one year. The Administrators were appointed to different societies at different points of time. Therefore, the legislature was aware of the urgency demanded by the statutory stipulation that the Administrator shall not stay beyond one year or beyond the date on which the elected committee enters office. The legislative intent in regard to the

application of the Amending Rules to Societies where the process of election has reached the stage of intimation of the election programme, should be understood in the context of the outer limit fixed for completing the elections.

11. As already stated, the doctrine of ultra vires as applied to delegated legislation is really a question of interpretation of the rules. I have analysed above the provisions of Rules 16A, Rule 16B in juxtaposition with the provisions of Sub-rule (2) of Rule 1 of the Amending Rules. The established rule of construction is "to make construction on all parts together, and not of one part only by itself." The scheme of Rules 16A and 16B which are the operative rules, is inconsistent with the application of Rules 16A, 16B and Clause (o) of Sub-rule (3) of Rule 35, to those societies where it is physically impossible to apply them without offending the legislative mandate of Section 28(1A) of the Act. The legislative stipulation is that the Administrator shall not continue beyond one year or after the elected committee enters office. The application of the Amending Rules to such societies would contravene the legislative object of completing the elections within one year and discharge of the administrators.

12. The process of interpretation of the Amending Rules extends to the comprehension of the Amending Rules, the Rules and the Act. Neither of them can be read in isolation. They have to be so understood as to make a consistent body of the whole statute. Otherwise we will have different fragments of inconsistent legal provisions bundled together by fragile bond.

Sub-rule (2) of Rule 1 has the limited object of enabling the Government to notify the date or dates of commencement. By its very nature, it is incapable of controlling the inevitable consequences of Rules 16A, 16B and 35(3)(o).

The legislative intent to complete the elections within one year, points to one conclusion. If Rules 16A and 16B are applied to those societies, where intimation of election have been issued, the legislative stipulation that elections shall be completed within one year will be violated. No legislature would confer a power on the Government to undo by a notification, what it has enacted by the Act.

13. I summarise my conclusion on the question of the validity of the impugned notification:

(i) Sub-rule (2) of Rule 1 of the Amending Rules enables the Government to notify date or dates of commencement of the Amending Rules. It does not take away the power to postpone or limit the application of the rules in the case of societies where it is impossible or impracticable to apply them.

(ii) Sub-rule (2) of Rule 1 is not intended to provoke the inevitable consequences of Rules 16A, 16B and 35(3)(o), which is to delay the election contrary to Section 28A of the Act. But it is intended to subserve the object of completing the elections within the statutory time frame.

(iii) Rules 16A, 16B and 16C manifest the legislative intent, that they shall not be applied if their enforcement violates the scheme by which elections have to be completed within one year.

(iv) The Rule makers were aware of the impossibility of enforcing the Amending Rules in the case of societies where intimation of election has been issued. If enforced, they violative the scheme of completing elections within one year. Therefore they intended that the Rules shall not apply to such societies.

14. In view of my conclusions the question of transgression of the delegated authority, it is not necessary to consider whether the societies where the intimation of election has been issued constitute a class of societies.

15. The next ground urged is this. In respect of societies where the intimation under Clause (a) of Sub-rule (3) of Rule 35 has not been issued the members who received identity cards will poll. In respect of the exempted categories of societies polling will take place without identity cards. This will create two separate types of elections not contemplated by the law. This submission is considered in the next paragraph.

16. In some societies the elections may be held on the basis of ballot papers issued against identity cards and in others without such identity cards. Whether identity cards have been issued or not every member eligible to vote will cast his vote. Therefore in so far as the right to vote is concerned, Clause (o) of Sub-rule (3) of Rule 35 treats every member equally. The member who votes with his identity card and the member who votes without requiring to hold and produce it, are equals in regard to their right to vote. It is significant that the amendment to Clause (o) of Sub-rule (3) of Rule 35 has substituted the words "unless he produces his identity card the polling officer is satisfied" for the words "unless the polling officer is satisfied". The words "and the polling officer is satisfied" have been retained by the Amending Rules. These words show that even where identity cards are produced, the polling officer has to be satisfied about the identity of the member. The polling in societies where identity cards are issued and the societies which are exempted, proceeds on proof of identity of the members. That is why the words "and the polling officer is satisfied" have been retained despite the provision of identity cards as evidence of identity of members. There is only one election at which members poll by ballot papers issued on proof of identity. The rules and the Amending Rules treat all members -- with or without identity cards -- even-handedly for everyone has to prove his identity as member. The petitioner's submission that the Amending Rules create two types of elections or that the Amending Rules are discriminatory is untenable.

17. For these reasons the Original Petition is dismissed.