

(1993) 03 KL CK 0067

High Court Of Kerala

Case No: W.A. No. 1164 of 1092

Joint Registrar of Co-Operative
Societies and Another

APPELLANT

Vs

Sivaraman and Another

RESPONDENT

Date of Decision: March 22, 1993

Acts Referred:

- Co-operative Societies Act, 1912 - Section 28(1A), 32, 33

Hon'ble Judges: M. Jagannadha Rao, C.J; K. Sreedharan, J

Bench: Division Bench

Advocate: Cyriac Joseph, A.A.G, for the Appellant; M.K. Damodaran, for 1st Respondent, for the Respondent

Final Decision: Allowed

Judgement

M. Jagaanadha Rao, C.J.

This is an appeal preferred by the Joint Registrar of Co-operative Societies, Palakkad and the Administrator, Palakkad District Co-operative Bank Ltd., Palakkad, against the judgment of the learned Single Judge in O.P. No. 10247 of 1992 dated 20th August, 1992.

2. The following are the facts:

The first Respondent/writ Petitioner was the President of the Palakkad District Co-operative Bank, the managing committee of which ceased to exist with effect from 7th February 1992, because of the Ordinance issued by the Governor of Kerala. That Ordinance was subsequently replaced by a Statute by the Legislature. The Bank is a Central Society in which there are about 350 members of them 150 societies were under the Management of Administrators, appointed u/s 28(1A) of the Co-operative Societies Act. If in such a situation election to the Managing Committee of the Central Society is to be conducted, it would be a farce. According to the writ Petitioner, till election to all the remaining 150 societies were completed, the

election to the Central Society should not be held.

3. The learned Single Judge noticed that about 150 primary societies which were members of the Bank were under the Management of Administrators. In case election to the Central Society is conducted before elections in the primary societies are completed, the intended candidates may not be in a position to participate in the election of the Central Society. The learned Single Judge therefore allowed the writ petition and directed the Joint Registrar of Co-operative Societies not to, conduct election to the Central Co-operative Bank, which is the Central Society, before elections to the member primary societies were completed. The learned Single Judge further directed the Joint Registrar of Cooperative Societies to take expeditious steps to complete the elections, in all the primary co-operative societies. Aggrieved by the said judgment this appeal has been filed by the Joint Registrar of Co-operative Societies and the Palakkad District Co-operative Bank, represented by its General Manager.

4. In this appeal an additional affidavit has been filed on behalf of the first Appellant stating that out of 432 Co-operative Societies, which are members of the Palakkad District Co-operative Bank, elections are to be held only in 45 societies. Among them, only two societies are managed by Administrators u/s 28(1A) of the Act. Elections are held up in those two societies in view of the directions in the judgment in O.P. No. 11027 of 1992. It was also pointed out that out of the 432 societies which are members of the Central Society, 285 are under the administrative control of the Co-operative Department, 41 are Industrial Co-operative Societies, 34 are Handloom Weavers Co-operative Societies, and 15 are Khadi and Village Industrial Co-operative Societies. The remaining 57 are Milk Societies under the administrative control of the Diary Development Department. It is stated by the Appellant that consequent on the promulgation of Ordinance No. 3 of 1992, Administrators were appointed in 110 societies under the administrative control of Co-operative Department in Palakkad District u/s 28(1A) of the Kerala Co-operative Societies Act. Among them, elections have been held and committees have been constituted in 108 societies. In the remaining 2 societies elections could not be held in view of the judgment in O.P. No. 11027 of 1992, wherein it has been directed to conduct election in the Palakkad Primary Co-operative Agricultural Development Bank and Alathur Primary Co-operative Agricultural Development Bank only after effecting the trifurcation of the Palakkad Primary Co-operative Agricultural Development Bank. The trifurcation proceedings have not been completed so far.

5. It was further stated by the Appellant/Respondent that consequent on the promulgation of Ordinance No. 3 of 1992, Administrators have been appointed u/s 28(1A) of the Kerala Co-operative Societies Act in 21 societies under the administrative control of departments other than Cooperative Department. In all those societies elections have been conducted and committees have been constituted. There are again 21 societies managed by administrators appointed u/s

32 or 33 Of the Kerala Co-operative Societies Act under the administrative control of the Co-operative Department in Palakkad District. 11 out of them are defunct societies and their financial position provides no scope for revival Out of, the remaining 10 societies, 7 societies do not have the financial position for the conduct of the election. Thus, election could not be conducted in the above mentioned 18 (11+7) societies. In the remaining 3 societies, election could not be conducted due to non-availability of sufficient officers for election work. All the available officers were deployed for conducting, election by Administrators appointed u/s 28(1A) of the Act. Within the time limit stipulated by the Honourable Supreme Court, elections will be conducted in those three societies also at the earliest.

6. The Appellant further states that there are 22 societies in Palakkad District under the administrative control of departments Other than Co-Operative Department and where Administrators were appointed u/s 32 or 33 of the Act. Out of them, 7 are Khadi and Village Industrial Societies, in which the Administrators have not taken charge in the absence of any records or activity In the society. Out of the 22 societies mentioned above, 2 are Milk societies. In one of them, namely, Parli Co-operative Milk Society, election is scheduled to be held on 21st April 1993. In the other society, namely, Erattakkulam Ksheera Vyavasaya Co-operative Society, the Administrator has taken charge only on 17th February 1993. The remaining 13 but of the 22 societies are under the control of the Industries Department. The General Manager, District Industries Centre has reported that election could not be held in those societies for reasons like poor financial position of the society, lack of interest of the members in the affairs of the society and shortage of officers to conduct election in several societies simultaneously. The General Manager also reported that action is being taken to conduct elections expeditiously.

7. The result therefore is that, out of the total 432 primary societies, elections are to be held only in 45 societies. The question is whether election in the main society, namely, the Bank, can be allowed to be proceeded with even though the elections in the primary societies have not been completed. Initially we have heard learned Additional Advocate General and the counsel for the Respondent/writ Petitioner, M.K. Damodaran, represented by his Junior, Vijay a Mohan.

8. A similar situation arose in the Supreme Court in [Narayan Bhaskar Khare Vs. The Election Commission of India](#), . It was contended that the electoral college must be constituted after the elections in all States and Union Territories were completed and should Consist of all the elected members falling within both the categories and that the elections could not be held until the vacancies were filled up. Elections had not taken place in Himachal Pradesh and in two constituencies of the State of Punjab also. It was held that election process could not be held up till after the expiry of five years Chief. Justice S.R. Das, referring to the above decision held that suppose there are vacancies in Parliament or in the Legislature of one or more States, surely, the election of the President required by Article 62(1) to be held

before the expiry of the term of outgoing President, could not be held up until the vacancies were filled up. The above said decision was again followed in In re Presidential Election, 1974 AIR 1974 S.C. 1682. Following the above decision we hold that election to the Central Society need not be held up because the election to a few of the primary societies are held up. If the Appellant is not able to conduct election in a small number of 45 societies out of 465, the election in the Central Society need not be stopped.

For the aforesaid reasons and in view of the changed circumstances which came into being subsequent to the disposal of the Original Petition, the Writ Appeal is allowed. judgment of the learned Single Judge is set aside and the writ petition is dismissed.