

(2002) 07 KL CK 0074

High Court Of Kerala

Case No: O.P. No. 17912 of 2002

Subairkunju

APPELLANT

Vs

Kerala Co-operative Election
CommissionRESPONDENT

Date of Decision: July 24, 2002**Hon'ble Judges:** Kurian Joseph, J**Bench:** Single Bench**Advocate:** D. Somasundaram, for the Appellant; B.S. Swathi Kumar, P. Parameswaran Nair, Sreelatha Parameswaran Nair and P.V. Baby, for the Respondent**Final Decision:** Dismissed

Judgement

Kurian Joseph, J.

Whether a member of the administrative committee of a society is eligible to be a delegate in any other society is the question involved in this case. Prima facie, one is inclined to think that the question is no more res Integra, being covered by the Bench decision of this Court in Kurien v. Registrar of Co-operative Societies (1996 (2) KLT 117). However, it appears, there is something deeper to be probed into since the delegate in the instant case, though a member of the administrative committee is otherwise a member of the society.

2. The petitioner is a delegate of a primary society to the third respondent-society. The 4th respondent is also a delegate to the apex society. But the nomination of the 4th respondent for election to the third respondent-apex society was objected to by the petitioner on the ground that the 4th respondent is a member of the administrative committee (he is the convenor of the committee) of Nedumangad Taluk Marketing & Processing Co-operative Society Ltd. and being a delegate delegated by the administrative committee, it was contended that the 4th respondent is not eligible to be a candidate. As per Ext. P3, the Returning Officer rejected the objection and held that since the 4th respondent is otherwise a member of the said society, he is eligible to be a delegate. Rule 44A of the Kerala

Co-operative Societies Rules deals with delegation. It reads as follows:

Rule 44A: "The persons appointed to represent a society in any other society and vote shall be a member of the committee of the society which he represents:

Provided that if the affairs of the society are managed by Administrator/Administrators/ Administrative Committee appointed (Under Section 28 or Section 32 or S, 33) of the Act, the person or persons so appointed shall have power to nominate any member of the society to be its delegate in the other society and such delegate shall be eligible to be elected as a member of the committee of the other society in which he sits as a delegate if he is otherwise qualified to be a delegate under the relevant rules".

3. It may be seen that the person appointed to represent the society in any other society and vote should be a member of the managing committee of the society which he represents. The appointment as a representative of the society is by the managing committee itself. In other words, the managing committee appoints one among its members to, be a delegate to represent the society and vote in another society. The proviso provides that in case any society is managed by an Administrator/Administrators or Administrative Committee, they will have power to nominate any member of the society to be its delegate in any other society and such nominee will be eligible to be elected to the committee of the other society, if he is otherwise qualified under the rules.

4. Under Ss. 28, 32 or 33 of the Act, the Registrar may appoint Administrators who need not be members of the society, to manage the affairs of the society in the place of an elected committee.

5. But what would be the situation where the Administrators are members of the society and one among them is nominated as a delegate? That takes us to the Bench decision of this Court in Kurien 's case (supra). In the said case, one. Stanly Sathyanesan was sent as a delegate of the Trivandrum District Wholesale Co-operative Consumers Stores to the Apex Society. It has to be specifically noted that he was not a member of the primary society. The issue is discussed at paragraphs 9 and 10 of the judgments and it is profitable to extract the same:

9. The Administrative Committee has no power to send one member from among them as a delegate to the Federation. Reference in this regard should be made to Rule 44A and proviso to it. Rule specifies that the person appointed to represent a society in any other society or vote shall be a member of committee of the society which he represents. If Stanly Sathyanesan is to be considered as a member of the General Body of the Trivandrum Wholesale Co-operative Consumer Store, he should have been a member of the Managing Committee of a primary society. Respondents have no case that Stanly Sathyanesan was such a member. So Stanly Sathyanesan could be a member of the General body of the Trivandrum Wholesale Co-operative Consumers Store only if he was sent up as a delegate by the Administrator who was

in control of the primary society of which Stanly Sathyanesan happened to be a member. Respondents have no case that the Administrator of the primary society of which Stanly Sathyanesan was a member sent him up as a delegate of that society to be a member of the General Body of the District Forum.

10. Proviso to Rule 44A makes it clear that neither the Administrator nor a member of the Administrative Committee can be a delegate in the other society. As per the proviso, the powers that are conferred on the Administrator/Administrative Committee is only to nominate a member of the society to be its delegate in the other society. If Stanly Sathyanesan was a member of the Administrative Committee of the Trivandrum District Wholesale Co-operative Consumer Stores, he had the right alone with the other members of the Administrative Committee to nominate a member of the society as its delegate to the Federation. In other words, as a member of the Administrative Committee, Stanly Sathyanesan had obtained no other right than to nominate as a member of the General Body of the District Forum as a delegate to the Federation. Viewed in this light, Stanly Sathyanesan could not represent the Trivandrum District Wholesale Cooperative Consumer Stores in the General Body of the Federation. Same is the position as far as Sri. Parthasarathy, who represented the Alleppey District Wholesale Co-operative Consumers Stores is concerned. Respondents have not advanced an argument on the basis that Sri. Parthasarathy was a delegate to the Alleppy District Forum. All the defects that were found in the nomination of Stanly Sathyanesan as delegate to the Federation is applicable to Sri, Parthasarathy who sought to represent the Alleppy District Forum. No argument was advanced before this Court by learned counsel representing the respondents to separate the case of Parthasarathy from that of Stanly Sathyanesan. This shows that Stanly Sathyanesan and Parthasarathy stand on the same footing or are having the same disqualifications to represent their respective District Forums in the General Body of the Federation".

6. As already stated above, the case before the Division Bench was a situation where the delegatee was not a member of the society and it was in that context it was held that the Administrative Committee is not entitled to nominate one among them as a delegate to the Apex Society. Proviso to Rule 44A is very clear. The Administrative Committee is entitled to nominate any member as delegate. When the managing committee appoints a member of the committee as a representative of that society to the Apex Society, the Administrator/Administrative Committee nominates a member of the society to be the delegate of the society in the Apex Society. In the latter situation, the field of choice in the matter of nomination is in the sense wider since any member of the society is eligible to be nominated. But for the only reason that a member of the society happened to be one among the Administrators/Administrative Committee, he does not entail a disqualification to be nominated as a delegate. As already observed above, the managing committee appoints only one among them as a representative and coming to the power of the Administrator/Administrators/ Administrative Committee, any member of the

society can be nominated. A member of the Administrative Committee, if he is a member of the society is not subjected to any particular disadvantage.

The nomination of the 4th respondent has been validly accepted since he is member of the primary society wherein he is the convenor of the Administrative Committee.

The Original Petition is dismissed.