

## Joy Neeralakottil Vs Joint Registrar and others

**Court:** High Court Of Kerala

**Date of Decision:** April 17, 1989

**Acts Referred:** Constitution of India, 1950 " Article 299

Government of India Act, 1935 " Section 175(3)

Representation of the People Act, 1951 " Section 7(d)

**Citation:** (1989) 1 KLJ 736

**Hon'ble Judges:** T.L. Viswanatha Iyer, J

**Bench:** Single Bench

**Advocate:** Cyriac Joseph, for the Appellant; Rajendran Nair Govt. Pleader, for the Respondent

**Final Decision:** Allowed

### Judgement

T.L. Viswanatha Iyer, J.

Petitioner has been disqualified from being a member of the Committee of the third respondent Kaduthuruthy Co-

operative Rubber Marketing and Processing Society Ltd., which is a Co-operative Society registered under the Kerala Co-operative Societies

Act, 1969 (the Act, for short). He has been disqualified under rule 44(1)(d) of the Rules framed under the Act, which runs as under:-

44. Disqualification for membership of committee-(1) No member of the society shall be eligible for being elected, or appointed as a member of

the committee of the society u/s 28 if he:-

xxx

(d) is interested directly or indirectly in any contract made with the society or in any sale or purchase made by the society privately or in any

auction or any transaction of the society other than investment and borrowing involving financial, interest, if the contract or transaction is subsisting

or if the contract, sale, purchase or transaction be not completed.

The reason for disqualification was as follows:

The Society was on the look-out for a suitable place to install a crumb rubber factory. They advertised in the dailies, but the lands offered were not

suitable. The managing committee, on its enquiry located four sites as suitable for the purpose. One of these sites under consideration belonged to

the petitioner, who was a member of the managing committee of the Society. A sub-committee was constituted to consider the suitability of the

four sites, and it recommended purchase of the petitioner's site having an extent of 2.35 acres for a price of rupees five lakhs, at the rate of Rs.

2,135/- per cent. A copy of the report is Ext. P1. This was communicated to the petitioner by the President of the Society by his letter Ext P2

dated 10-4-1988. The petitioner was requested to give consent before 12-4-1988 to assign the land to the society. The petitioner accordingly

gave what is called a deed of consent, namely Ext. P3 on 12-4-1988. He agreed thereby to assign to the society 2.35 acres of land for a total

consideration of rupees five lakhs. He also agreed to have the property measured to the satisfaction of the society and to reduce the price, if the

extent was less. The society was itself to arrange for getting legal opinion, valuation as also necessary permission from the department.

2. It would appear that the petitioner had apprehended disqualification from membership of the committee by virtue of the proposed sale. Ext. P2

the letter from the President, had sought to allay this apprehension of the petitioner by intimating that the petitioner need enter into any agreement

for sale or execute the deed of sale only after the requisite sanction was obtained from the department. His consent for the sale was required to

enable the society to go through the preliminaries like getting legal opinion, and valuation and for securing departmental sanction, besides exemption

u/s 101 of the Act. It was in these circumstances that the petitioner was requested to give his consent before 12-4-1988.

3. The society applied to government by their petition Ext. P6 to exempt the society from the operation of rule 44(1) (d) in respect of the proposed

purchase of the petitioner's land. No orders have been passed thereon. It was in the meanwhile and two days before Ext. P6 was sent, that the

Joint Registrar initiated proceedings by Ext. P7 to disqualify the petitioner for his entering into the ""agreement"" Ext. P3. The petitioner replied by

Ext. P8 pointing out that the society had chosen this land from among various lands offered for sale, that he had consented to sell the land only

subject to the condition that exemption u/s 101 was obtained and that he will not be disqualified thereby. He had not entered into any contract

entailing disqualification under rule 44(1)(d). The explanation was not accepted by the Joint Registrar and the order of disqualification Ext. P9

followed.

4. I am afraid Ext. P9 is unsustainable in law. Rule 44(1) (d) disqualifies a person if he is interested directly or indirectly in any contract made with

the society, or in any sale or purchase made by the society privately or in any auction or in any transaction of the society other than investment, if

the contract or transaction be subsisting or not completed.

5. To entail disqualification under the first part of the rule, the existence of a contract is a sine qua non. Such a contract should be one which is

legal, valid and binding on both the parties, one which is liable to be enforced by or against the society. (Vide in this connection Lalitshwar Prasad

Sahi Vs. Bateshwar Prasad and Others, , where it was held that a contract entered into with government in contravention of section 175(3) of the

Government of India Act 1935 or Article 299 of the Constitution was void and unenforceable and such an agreement could not be called a

contract within section 7(d) of the Representation of People Act, 1951.) A mere consent to sell property as that contained in Ext. P3 is nothing,

but an expression of the willingness of the petitioner to sell the property to the society, if they deem fit to purchase it. It is not a bilateral agreement

and it does not cast any obligation on the society to purchase the property or on the petitioner to sell it. It is not supported by consideration, to be

a contract in law. It is not even an undertaking to sell the property to the society. When a binding enforceable agreement between the parties is

called for to make it a contract for the purpose of the Rule, a consent letter Ext. P3 which is not even an agreement to sell, cannot prove lethal to

the petitioner's membership of the committee of the society.

6. The facts narrated earlier show that the petitioner was very anxious to retain his membership of the committee of the society and was not willing

to enter into any transaction, if he was liable to be disqualified. Even his consent in Ext. P3 was only conditional on the society obtaining necessary

exemption u/s 101 from government from the operation of Rule 44. In other words, the transaction would not have gone through if the exemption

u/s 101 had not been granted. I am therefore, of the view that there was no contract as envisaged by the rule, disqualifying the petitioner from

membership of the committee of the society. If on the other hand the consent subsequently fructifies into an agreement to sell or into a transaction

of sale itself, Rule 44(1) (d) will be attracted. That stage has not reached in this case. The Joint Registrar, was therefore, in error in disqualifying the

petitioner invoking rule 44(1) (d). Ext. P9 is not sustainable in law.

I therefore, allow the original petition and quash Ext. P9. No costs.