

(2004) 09 KL CK 0042

High Court Of Kerala

Case No: W.A. No. 1704 of 2004

Kanjoor Ksheera Ulpadaka
Co-operative Society Ltd.

APPELLANT

Vs

P.K. Pappachan and Another

RESPONDENT

Date of Decision: Sept. 14, 2004

Citation: AIR 2005 Ker 40

Hon'ble Judges: K.K. Denesan, J; Cyriac Joseph, J

Bench: Division Bench

Advocate: Jacob Muricken, for the Appellant; E. Subramani and S. Easaran for No. 1 and P.V. Lonachan, Sr. Govt. Pleader for No. 2, for the Respondent

Final Decision: Allowed

Judgement

Cyriac Joseph, J.

This writ appeal is filed against the judgment dated 21-7- 2004 in W. P. (C) No. 20924/2004. The appellant is the second respondent in the writ petition which was filed by the first respondent herein. Second respondent herein is the first respondent in the writ petition.

2. The first respondent (petitioner in the writ petition) is a member of the appellant Kanjoor Ksheera Ulpadaka Co-operative Society Ltd. (hereinafter referred to as the Society). The first respondent and 63 other members of the Society submitted Ext. P3 representation dated 26-6-2004 to the President/Secretary of the Society requiring them to convene a special general body meeting of the Society. Copy of Ext. P3 representation was sent to the second respondent (Deputy Director of Dairy Development) also. Alleging that no action was being taken on Ext. P3, the first respondent filed the writ petition praying for a direction to the Deputy Director of Dairy Development to consider the dispose of Ext. P3 representation by directing the Society to convene an extraordinary general body meeting of the Society. The writ petition was disposed of at the admission stage and without issuing notice to the Society. The learned single Judge observed that prima facie the persons who

submitted Ext. P3 had a legal right to have the extraordinary general body meeting convened. The learned single Judge directed the Deputy Director of Dairy Development to take effective steps after verifying Ext. P3 for initiating steps for convening an extraordinary general body meeting of the Society as far as possible, within a period of six weeks from the date of receipt of a copy of the judgment. Aggrieved by the judgment of the learned single Judge, the Society has filed this writ appeal.

3. The writ appeal is admitted. We have heard Mr. Jacob Murickan on behalf of the appellant, Mr. Easwaran who accepted notice for the first respondent and the learned Government Pleader who accepted notice for the second respondent.

4. Having considered the submissions made by the learned counsel for the parties and the materials placed on record, we are of the view that the prayer in the writ petition was misconceived and could not have been allowed. The prayer in the writ petition was for a direction to the Deputy Director of Dairy Development to consider and dispose of Ext. P3 representation. Ext. P3 is not a representation submitted to the Deputy Director of Dairy Development. It is a representation submitted to the President Secretary of the Society. It is true that a copy of Ext. P3 was marked to the Deputy Director of Dairy Development. Merely because a copy of the representation was marked to the Deputy Director of Dairy Development it cannot be treated as a representation submitted to the Deputy Director of Dairy Development and he is not bound to act upon such representation. Hence the writ petitioner was not entitled to the relief of compelling the Deputy Director of Dairy Development to consider and dispose of Ext. P3. Therefore, the prayer in the writ petition was liable to be rejected. On this ground alone the writ appeal deserves to be allowed.

5. In the impugned judgment the learned single Judge has made an observation that prima facie the persons who submitted Ext. P3 are entitled to have an extraordinary general body meeting of the Society convened. The learned Judge has also directed the Deputy Director of Dairy Development to take effective steps for initiating steps for convening an extraordinary general body meeting of the Society within six weeks from the date of receipt of a copy of the judgment. The above mentioned observation and direction could not have been made by the learned single Judge without issuing notice to the Society and giving them an opportunity of being heard, because the effect of the judgment of the learned single Judge is that the Court has held that the persons who submitted Ext. P3 were entitled to have the extraordinary meeting of the general body convened, that the Society was liable to convene such an extraordinary general body meeting and that the Society was at fault in not convening the meeting pursuant to Ext. P3. Such a judgment could not have been rendered against the Society without hearing them. On this ground also the judgment of the learned single Judge is liable to be set aside.

6. As per Section 30(1) of the Kerala Cooperative Societies Act the committee of a society shall call a special general body meeting of the society within one month after receipt of a requisition in writing from the Registrar or from such number of members or a proportion of the total number of members as may be prescribed. As per Section 2(o) of the Act "prescribed" means prescribed by rules made under the Act. As per Rule 36 of the Kerala Co-operative Societies Rules, the committee of a society shall call a special general body meeting under subsection (I) of Section 30 within one month of the date of receipt of a requisition in writing from the Registrar or within one month from the date of receipt of a requisition in writing from 1/5th of the total number of members. Hence the committee of the appellant society was liable to convene the special general body meeting of the society only if Ext. P3 representation was signed at least by 1 / 5th of the total number of members. According to Mr. Easwaran, Ex. P3 was signed by 1/5th of the total number of members. According to Mr. Jacob Murickan Ext. P3 was not signed by 1/5th of the total number of members. However, we do not propose to resolve this dispute as there is no averment in the writ petition that Ext. P3 was signed by 1/5th of the total number of members of the society. Mr. Easwaran contended that as per Clause 4.3 of the bylaws of the Society the committee is bound to convene a special general body meeting if a requisition is received from 50 members of the Society. Though there is no such pleading in the writ petition it is seen from a copy of the bye-laws made available by Mr. Easwaran that a special general body meeting of the Society may be convened on the basis of the majority decision of the committee or on receipt of requisition from 1/5th of the total number of members Or 50 members of the Society or as per the direction of the Registrar. According to Mr. Jacob Murickan, when Rule 36 of the Kerala Cooperative Societies Rules has prescribed that the requisition should be made by 1 / 5th of the total number of members of the Society, the bye-laws of the Society cannot prescribe a lesser number and notwithstanding the provision in Clause 4.3 of the byelaws, the provisions in Rule 36 will prevail. We find force in the contention of Mr. Jacob Muricken. Section 30 of the Kerala Co-operative Societies Act and Rule 36 of the Kerala Co-operative Societies Rules contain the statutory provisions relating to the convening of special general body meetings of co-operative societies and the provisions in the bye-laws of a society cannot be inconsistent with or contrary to the said statutory provisions in the Act or the Rules.

7. As per sub-section (2) of Section 30 of the Kerala Co-operative Societies Act, if a special general body meeting of a society is not called in accordance with the requisition referred to in sub-section (1) of Section 30, the Registrar or any person authorised by him in that behalf shall have the power to call such meeting and that meeting shall be deemed to be a meeting called by the committee. Therefore, if the writ petitioner had any grievance that the committee of the society did not convene the special general body meeting on the basis of Ext. P3, it was open to him to approach the Registrar under sub-section (2) of Section 30 of the Act. If any such

grievance was raised by the writ petitioner it was open to the Registrar to look Into the grievance and to take appropriate action in accordance with law under subsection (2) of Section 30.

8. In the above circumstances, without prejudice to the right of the writ petitioner to approach the Registrar u/s 30(2) of the Kerala Co-operative Societies Act, the impugned judgment is set aside. Any order passed by the Deputy Director of Dairy Development on the basis of the impugned judgment also will stand set aside. The writ petition stands dismissed.

9. The writ appeal is allowed in the above terms.