

REJI THOMAS & ORS.

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v.

THE STATE OF KERALA & ORS.

(Civil Appeal No. 4001 of 2018)

APRIL 19, 2018

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**[KURIAN JOSEPH, MOHAN M. SHANTANAGOUDAR
AND NAVIN SINHA, JJ.]**

Kerala Cooperative Societies Act, 1969 – s. 69 – Whether the High Court, in exercise of its power u/Art. 226 of the Constitution could extend the statutory period prescribed u/s.69(3), within which an election petition under the Kerala Cooperative Societies Act, 1969 could be entertained – Held: s.69 of the Act is the mechanism provided by the State Legislature as contemplated u/Art. 243 ZK (2) of the Constitution of India – Once the mechanism provided under the Statute provides for a time schedule for preferring an election petition, then in the absence of a provision in the Statute for enlarging the time under any given circumstances, no court, whether the High Court u/Art. 226 or Supreme Court u/Arts. 32, 136 or 142 of the Constitution can extend the period in election matters – In the matter of limitation in election cases, the Court has to adopt strict interpretation of the provisions – Matter remitted to High Court for consideration afresh – Constitution of India – Art.243 ZK(2) – Election Laws – Limitation – Interpretation of Statutes.

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Disposing of the matters, the Court

HELD: The matters need to be considered afresh by the High Court since the Court could not have relegated the parties to the alternative remedy under the Statute by enlarging the time for preferring the election dispute. Accordingly, the impugned Judgment to that extent is set aside. The writ petitions are remitted to the High Court for fresh consideration. It will be open to the parties to raise all available contentions before the High Court. [Para 14] [813-C-D]

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Smita Subhash Sawant v. Jagdeeshwari Jagdish Amin & Ors. (2015) 12 SCC 169 : [2015] 9 SCR 600 ; Union

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A *of India & Anr. v. Kirloskar Pneumatic Co. Ltd.*
**(1996) 4 SCC 453 : [1996] 2 Suppl. SCR 326 – relied
 on.**

Case Law Reference

B **[2015] 9 SCR 600 relied on Para 11**
[1996] 2 Suppl. SCR 326 relied on Para 12

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4001
 of 2018.

C From the Judgment and Order dated 02.03.2017 of the High Court
 of Kerala at Ernakulam in WP (C) No. 34019 of 2016

WITH

Civil Appeal Nos. 4002-4006 of 2018

D Special Leave Petition (Civil) Nos. 16136-16140, 25720 &
 30308-30312 of 2017 and Special Leave Petition (Civil) No. 9858 of
 2018.

E Kapil Sibal, P. V. Surendra Nath, V. Giri, Sr. Advs., Renjith
 Thampan, AAG, Kerala, George Poonthottam, Atul Shankar Vinod, Dileep
 Pillai, Ajay K. Jain, Vikas Pathak, M. P. Vinod, Ms. Resmitha
 R. Chandran, Ms. Lekha Sudhakaran, G. Prakash, Jishnu M.L.,
 Ms. Priyanka Prakash, Ms. Beena Prakash, Vijay Shankar V. L.,
 Vijay Mohan V., V. K. Biju, C. K. Sasi, Ms. Nayantara Roy, Manukrishnan
 G., Hminder Lal Advs. for the Appellants.

The Judgment of the Court was delivered by

F **KURIAN, J.**

SLP (C) No. 15765 of 2017 and SLP (C) Nos.15768-15772
 of 2017

1. Leave granted.

G 2. Whether the High Court, in exercise of its power under Article
 226 of the Constitution of India could have extended the statutory period,
 within which an Election Petition under the Kerala Cooperative Societies
 Act, 1969 (in short, “the Act”) should have been entertained, is the legal
 question arising for consideration in these appeals.

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3. The dispute pertains to the election to the Thiruvalla East Cooperative Bank Ltd. (hereinafter referred to as, “Cooperative Society”). Writ Petition (C) No. 34019 of 2016 and other connected matters filed before the High Court of Kerala pertain to the election to the Cooperative Society. The prayers in the writ petition read as follows :-

“i) Issue a writ of certiorari, or other appropriate writ, order or direction to quash Ext. P3 election notification, Ext. P4 preliminary voters list, and Ext. P9 final voters list.

ii) To direct the respondents to prepare an electoral role including all the members of the society and publish and conduct the election with that voters list.

iii) To declare that the exclusion of members from the voters list for the ensuring election prepared applying Section 16A and 19A of the Cooperative Societies Act is inoperative and that in view of the exemption order issued by the Government by G. O. (P) No. 100/16 dated 15/10/2016 all members of the society are entitled to exercise their franchise in the election.

iv) Issue a writ of mandamus or other appropriate writ, order or direction directing the respondents to prepare the voters list including all members of the society and re-notify the election in accordance with law.”

4. The learned Single Judge referred all the matters to a Larger Bench by order dated 27.10.2016. The Division Bench, as per order dated 01.11.2016 passed an interim order. The order reads as follows :-

“1. We would not have normally interfered with the election process to the managing committee of the Thiruvalla East Co-operative Bank Limited but for the startling developments unfolded. It is not in dispute that the election calender has been published pursuant to the judgment in W.A. No. 1869/2016 as per which the polling has to take place on 05/11/2016. But what baffles us is the fact that the final voters list contains only 28 members as against 611 members found in the preliminary voters list published. The reason for such drastic depletion in the number of members eligible to vote has been disclosed in the statement filed by the electoral officer as follows:

A *“Out of more than 70,000 members of the society in the 57th General Body Meeting, only 94 members attended the meeting. In 58th General Body Meeting, 121 members attended the meeting. It is recorded that in the 59th General Body Meeting, 749 members attended the meeting. A perusal of the attendance in three consecutive General Body Meetings would show that only 33 members have attended all the three consecutive General Body Meetings and out of the said 33 members, only 28 members availed the service of the Bank for the two consecutive years.”*

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C *Thus the reason for exclusion of 611-28 = 583 members is that they have not attended three general body meetings of the society consecutively in order to be eligible for figuring as a voter.*

D *2. There is no hesitation for us to hold that the statutory provision contained in Section 16A(1)(b) of the Kerala Co-operative Societies Act has been misconstrued by the electoral officer. The same reads as follows:*

“16A. Ensuring participation of members in the management of societies :-

E *(1) no member shall be eligible to continue to be a member of a co-operative society if he, (a) is not using the services of the society for two consecutive years or using the services below the minimum level as may be prescribed in the rules or the bye-laws;*

F *(b) has not attended three consecutive general meetings of the society and such absence has not been condoned by the members in the general meeting.”*

G *Thus only members who have not attended at least any one of the three consecutive general body meetings of the society are alone ineligible to continue as a member of the Co-operative Bank. The exclusion of 583 members from the preliminary voters list in the final voters list on the basis of the misinterpretation of the statutory provision is prima facie illegal.*

H *3. An Annual General Body Meeting has obviously to be convened for the purpose of election in the prescribed manner*

as per Section 29(1)(b) of the Kerala Co-operative Societies Act. But the quorum for a General Meeting in order to transact business therein is 50 as per Clause 22 of the bye-laws of the Co-operative Bank in question. No election can be conducted even if all the 28 members are present in the General Meeting when the number falls short of 50 as the quorum specified in the bye-laws. The General Meeting convened to conduct an election in compliance with the judgment in W.A. No. 1869/2016 would be reduced into a mockery in the circumstances. This is one way of entrusting the management of a Co-operative Bank to an Administrator under the Kerala Co-operative Societies Act in the guise of an election. We are also of the prima facie opinion that the Government Order dated 15/10/2016 granting exemption under Section 101 of the Act does not apply to this Co-operative Bank.

4. We are not for a moment holding that all these 611 members found in the preliminary voters list are eligible to vote as the same is open to question in an election dispute, whether a register in Form 32 on the basis of which the list of 611 members has been prepared has to be gone into under Section 69 of the Kerala Co-operative Societies Act. Similarly the infraction if any of Section 16A and 19A of the Kerala Co-operative Societies Act are also matters to be adjudicated as and when a statutory dispute is raised. The cut-off date for implementation of the amended provision of Rule 18A of the Kerala Co-operative Societies Rules has been clarified to be 26/11/2016 in SLP No. 27046/2016. The judgment in Pradeep U.R. and Another v. Kerala State Co-operative Election Commission and Others 2016 (4) KHC 93 (FB) stands modified as above. The implementation of the amended provisions of the Kerala Co-operative Societies Act and the Rules does not therefore depend on the birth of a 'Co-operative year'.

Interest of justice would be met by directing the election to go on as scheduled permitting all the 611 members aforesaid to cast their vote in the election to the managing committee. The same would however be provisional and subject to these writ petitions and also the invocation of Section 69 of the Kerala Co-operative Societies Act."

A 5. The above order was challenged before this Court. The appeals were disposed of by a common Judgment dated 05.12.2016. The Judgment took note of the fact that the writ petitions were pending before the High Court and it was only appropriate that the writ petitions be disposed of on merits. It was specifically made clear that “*all contentions raised by the writ petitioners are left open before the High Court.*”

B It was also noted in the Judgment that elections have been conducted on 05.11.2016 and 13 members have been elected to the Managing Committee and, therefore, this Court permitted the said Committee to continue in office subject to final orders passed in the writ petitions. It was also made clear that the Committee shall not take any policy decisions.

C Paragraphs 5 and 6 of the Judgment dated 05.12.2016 read as follows :-

D “5. *Though several contentions are taken by the parties, we do not propose to go into the merits of the matter since the writ petitions are pending before the High Court. Since, by the time this Court passed the order dated 11.11.2016, a Managing Committee had already been elected on 5.11.2016, we dispose of these appeals permitting the Committee elected on 5.11.2016 to manage the affairs of the Society for the time being, on a provisional basis with the rider that the said Committee shall only perform the day-to-day work of the Co-operative Society and shall not take any policy decision, till the writ petitions are disposed of.*

E 6. *All contentions raised by the writ petitioners are left open before the High Court.*”

F 6. The writ petitions were heard by the High Court leading to the impugned Judgment dated 02.03.2017. The Division Bench was of the view that the disputes raised in the writ petitions were fit to be tried as an election dispute under Section 69 of the Act and hence, declined to consider the contentions on merits. The operative portion of the impugned Judgment reads as follows :-

G “11. *We therefore relegate the petitioners to the alternate statutory remedy available under Section 69(3) of the Act wherein all the factual and legal issues could be gone into. It is pointed out that a dispute arising in connection with the election should be raised within one month from the date of election as per the Act. But we notice that the election to the*

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Managing Committee of the bank was held subject to the result of the writ petitions only by virtue of the interim order. Therefore it is clarified that any dispute raised in connection with the election to the Managing Committee of the bank within one month from today shall be dealt with as per law. What exactly should be the arrangement in the meanwhile is the further question since more than three months have elapsed since the conduct of election. The Supreme Court has permitted the Managing Committee to perform the day-to-day work on provisional basis without taking any policy decision. We make it clear that the status quo as ordered by the Supreme Court in its judgment dated 05.12.2016 shall hold the field till the culmination of the dispute.”

Contextually, it is also significant to note that even in the interim order dated 01.11.2016, the Court had taken the view that certain disputes regarding the eligibility, infractions, if any, of Sections 16A and 19A of the Act etc. are all subject matter of the Statutory dispute under Section 69 of the Act.

7. It may be noted that the election had already been conducted on 05.11.2016. Under Section 69(3) of the Act, “*No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Cooperative Arbitration Court unless it is referred to it within one month from the date of the election.*”

8. The Division Bench, however, was of the view that since the writ petitioners had approached the High Court prior to the election and since by way of an interim order, the election was permitted to be conducted as scheduled making it subject to the result of the writ petitions and also Section 69 of the Act, it is only appropriate that while relegating the parties to the Arbitration Court trying the election dispute, a further period of thirty days be granted.

9. Whether, in view of the statutory period prescribed under Section 69(3), the High Court could have extended the period, is the question.

10. Article 243ZK of the Constitution of India, which provides for Election of Members to the Managing Committee of a Cooperative Society, reads as follows :-

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A “(1) Notwithstanding anything contained in any law made by the Legislature of a State, the election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the office of members of the outgoing board.

B “(2) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in such an authority or body, as may be provided by the Legislature of a State, by law:

C *Provided that the Legislature of a State may, by law, provide for the procedure and guidelines for the conduct of such elections.”*

D 11. Section 69 of the Act is the mechanism provided by the State Legislature as contemplated under Article 243 ZK (2) of the Constitution of India. Once the mechanism provided under the Statute provides for a time schedule for preferring an election petition, in the absence of a provision in the Statute for enlarging the time under any given circumstances, no court, whether the High Court under Article 226 or this Court under Article 32, 136 or 142 of the Constitution can extend the period in election matters. In the matter of limitation in election cases, the Court has to adopt strict interpretation of the provisions. This Court in Smita Subhash Sawant Vs. Jagdeeshwari Jagdish Amin & Ors. reported in (2015) 12 SCC 169, though in a different context, has held at paragraph 33 that “*In the absence of any provision made in the Act for condoning the delay in filing the election petition, the Chief Judge had no power to condone the delay in filing the election petition beyond the period of limitation prescribed in law*”.

F 12. In Union of India & Anr. vs. Kirloskar Pneumatic Co. Ltd. reported in (1996) 4 SCC 453, at paragraph 10, this Court has held as under :-

G “.....*The power conferred by Articles 226/227 is designed to effectuate the law, to enforce the rule of law and to ensure that the several authorities and organs of the State act in accordance with law. It cannot be invoked for directing the*

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authorities to act contrary to law. In particular, the Customs authorities, who are the creature of the Customs Act, cannot be directed to ignore or act contrary to Section 27, whether before or after amendment. Maybe the High Court or a civil court is not bound by the said provisions but the authorities under the Act are. Nor can there be any question of the High Court clothing the authorities with its power under Article 226 or the power of a civil court. No such delegation or conferment can ever be conceived.”

13. It has also to be noted that while passing the interim order dated 01.11.2016, the High Court had specifically noted that the same was subject to the writ petitions and also Section 69 of the Act.

14. In the above circumstances, we are of the view that the matters need to be considered afresh by the High Court since the Court could not have relegated the parties to the alternative remedy under the Statute by enlarging the time for preferring the election dispute. Accordingly, the impugned Judgment to that extent is set aside. The writ petitions are remitted to the High Court for fresh consideration. It will be open to the parties to raise all available contentions before the High Court. We request the High Court to dispose of the writ petitions expeditiously.

15. We make it clear that till the writ petitions are disposed of by the High Court, the interim arrangement made by this Court in the Judgment dated 05.12.2016 will continue.

These appeals are disposed of as above.

SLP (C) Nos. 16136-16140 of 2017, 25720 of 2017, 30308-30312 of 2017 and 9858 of 2018

In view of the Judgment passed above, these Special Leave Petitions are also disposed of.