

S.K.Paramasivam etc.

Vs

Government of Tamil Nadu & Ors.

(S. P. Bharucha, V. N. Khare JJ)

20.01.998

JUDGEMENT

BHARUCHA J

1. These appeals by special leave impugn the judgment and order of the High Court at Madras dismissing the writ petitions filed by the present appellants, along with other similar writ petitions, and giving certain directions (with which we are not immediately concerned).

2. For the purposes of appreciating what is involved, certain provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the Rules and Bye-laws made thereunder need to be cited. Section 21 of the said Act prescribes the qualifications for membership of a co-operative society. What is relevant is that it provides that the individual or registered society or the body of persons referred to in items (i), (ii) and (iv) thereof shall possess such further qualifications as may be specified in the Rules or the Bye-laws. Section 23 sets out the disqualification's for membership of a society. Among them is the following:

"does not possess the qualification, with reference to the principal object of the society, prescribed in the rules or the bye-laws".

Section 26 relates to the votes of members. Under sub-section (1) clause (a) thereof, no member of a registered society shall have more than one vote in the affairs of the society, and clause @ reads thus :

"@ Save as otherwise provided under this Act and the rules, no member of a registered society shall be deprived of his right to vote in the election of the members of the board of such society." Section 170 empowers the State Government, in the public interest, by general or special order, whether prospectively or retrospectively, to exempt any registered society from any of the provisions of the Act (except some provisions with which we are not here concerned) or of the Rules, subject to such conditions as may be specified. Rule 14 of the Rules made under the Act empowers the Registrar to classify and categorize societies into the classes therein mentioned, according to the principal object provided in the bye-laws thereof. The 6th class thereunder is "Dairy Society" and this class has 5 categories, namely, Milk Producers Society, Milk Consumers Society, Milk Supply Society, Milk Supply Union and Dairy Farm. Rule 51A provides for the eligibility of members to vote at, or stand for, elections.

It reads thus:

"Notwithstanding anything contained in the bye-laws of a society, the members who are not otherwise disqualified to vote at, or stand for, any election in accordance with the provisions of the Act or these rules, shall be eligible to vote at, or stand for, any election to the society. "Bye-law 5, specifically applicable to Milk Producers Co-operative Societies, upon which reliance is placed by the appellants, reads thus:

"Bye-law 5 (1) (a). Any person who is residing in the area within the jurisdiction of the Society, who is above 18 years of age, who is competent to enter into a contract, who is a genuine milk producer, who undertakes to sell the milk produced by him through the society, is eligible to become a member.

(b) The application for becoming a member is to be approved by the Board of Directors of the Society. (Rejection of applications should strictly be under the provisions of the Co-operative Societies Act).

@ The person should not be a milk vendor or a vendor of milk products.

(ii) Any member who had supplied less than 300 liters of milk or supplied milk for less than 120 days in the preceding co-operative year, will not be entitled to any rights, other than pecuniary rights such as bonus, dividend, etc."

3. On 26th April, 1990, the State Government issued a Government Order which provided that for participating in an election to a Milk Producers Co-operative Society, a member should have supplied a minimum quantity of 300 liters of milk, or should have supplied milk for a minimum period of 120 days, in the previous co-operative year. On 10th September, 1990, another Government Order was issued. The earlier G.O. was referred to therein as having been issued to exempt all Milk Producers Co-operative Societies from the provisions of Rule 51A. The later order amended the earlier order so that what was now provided read:

"Notwithstanding anything contained in the bye-laws of the Primary Milk Producers Co-operative Society, its members who are not otherwise disqualified to vote at, or stand for, any election in accordance with the provision of the Act or the rules, thereunder and who have supplied milk to the society for 120 days or 300 liters during the period commencing from the date of commencement of the preceding co-operative year and ending on the date 30 days prior to the date of election shall be eligible to vote at or stand for, any election to the society."

On 27th September, 1966, G.O. Ms. No.166, which was impugned in the writ petitions, was issued. It read thus:

"ORDER: In the order second read above, Government in suppression of the orders issued in G.O.Ms.No.226, Animal Husbandry and Fisheries, Dated 26.4.1990 have ordered that notwithstanding anything contained in the bye-laws of the Primary Milk

Producers' Co-operative Societies, the Members who are not otherwise disqualified to vote at, or stand for, any election in accordance with the provision of the Act or the Rules thereunder and who have supplied Milk to the Society for 120 days or 300 liters during the period commencing from the date of commencement of the preceding Co-operative Year and ending on that date 30 days prior to the date of election shall be eligible to vote at or stand for any election to the society.

2. In the order third read above, Government have issued an election schedule to complete the election process to the Co-operative since a number of representation have been received to rescind the exemption granted in the order second read above so that all the members as contemplated in Rules 51A are made eligible to vote at or stand for any election to the society.

3. Government after consideration have decided to remove the conditions imposed in the Government order second read above. Accordingly, Government direct that the orders issued in the Government order second read above shall be cancelled with effect from the date of issue of this order. The effect of this order is that all the Members of the Primary Dairy Co-operative Societies, who satisfy the conditions of rule 51A of the Tamil Nadu Co-operative Societies Rules 1988 shall be eligible to vote at or stand for any election to the society. (BY ORDER OF THE GOVERNOR). Sd./-M. RAMAN Secretary to Government."

4. It was contended on behalf of the appellants that Section 21 had to be read with Bye-law 5 so that, to vote at an election, a member must have supplied not less than 300 liters of milk or supplied milk for 120 days, in the preceding co-operative year and that, therefore, the impugned Government Order was contrary to the requirements of the statute and had in law.

5. We are here concerned with the right of persons or parties who are already members to vote. It is Section 26 of the Act and Rule 51A of the Rules which are relevant. Sub-section (1), clause @ of Section 26 states that no member of a registered society shall be deprived of his right to vote in the election of the members of the board of such society, "save as otherwise provided under this Act". To deprive a member of his right to vote, therefore, the Act has to be looked at and no provision of the Act has been pointed out by reason of which a member can be deprived of his right to vote. Rule 51A states that all members of a society shall be eligible to vote at an election to the society, unless otherwise disqualified. It is not the case of the appellants that any disqualification attaches to certain members, for the provisions the appellants rely upon do not prescribe conditions which disqualify members from voting. These provisions, namely, Section 21 and Bye-law 5, deal principally, with qualifications for the purposes of membership and cannot be determinative of the right of those who are already members to vote. Sub-clause (2) of Bye-law 5 speaks in general terms of "any rights, other than pecuniary rights"; it is difficult to read this general provision in the Bye-laws as prevailing over the specific provisions dealing with the right of members to vote in the Act and the Rules made thereunder.

6. The earlier G.O. Ms. were issued under the provisions of Section 170 of the Act, which has been quoted above. There is nothing which prevents the State Government in law from issuing the impugned Government Order rescinding the exemption that was given earlier.

7. It was contended that a letter of understanding had been signed by the State Government and the National Dairy Development Board on 3rd March, 1988, by reason of which the earlier Government orders had been issued, that the impugned Government order was contrary to that understanding, that the said Board had informed the State Government that its decision to issue the impugned

Government order would be detrimental to the interest of milk producers and a set back to the Operation Flood programme in the State, and that the said Board, which was a party respondent in some of the other writ petitions, had filed an affidavit in support of the writ petitions. The breach of understanding, if any, between the said Board and the State Government is a matter for the said Board to take up and cannot furnish a ground to the appellants.

8. The appeals are dismissed. No order as to costs.