
(2016) 08 KL CK 0037
In the High Court Of Kerala
Case No : WP(C).No. 24539 of 2016 (N)

A. Anil Kumar

APPELLANT

Vs

Joint Registrar of Co-Operative Societies

RESPONDENT

Date of Decision : 19-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Act, 1969 — Section 33

Citation : (2016) 4 KLT 25

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. P.N. Mohanan, Sri. C.P. Sabari and Sri. Hafis Babu, Advocates, for the Petitioner; Sr. Government Pleader, Sri. Paul Varghese, for the Respondent Nos. 1 and 4; Sri. V.G. Arun and Sri. T.R. Harikumar, Advocates, for the Respondent Nos. 2 and 3

Final Decision : Dismissed

Judgement

Mr. Shaji P. Chaly, J.—This writ petition is filed by the petitioner who is a member of the 3rd respondent Bank registered under the Kerala Co-operative Societies Act and Rules, 1969 [hereinafter called the "Act and the Rules"], seeking direction to the 1st respondent to appoint a Senior Officer of the Co-operative Department as Administrator of the 3rd respondent Bank, and further to declare that the present administrative committee appointed by Ext.P6 is not entitled to continue in office as they have violated the norms for appointment and swindled huge amount. Material facts for the disposal of the writ petition are thus:

2. The election to the 3rd respondent society was stayed by this Court as per Ext.P1 interim order in W.P.(C) No.21935 of 2015. When election was stayed by this Court, the Managing Committee then in office filed W.P.(C) No.22460 of 2015 to appoint them as administrative committee members under Section 33(1) of the Act. This Court as per Ext.P2 order directed the Joint Registrar to explore the

possibility of constituting an administrative committee consisting of the erstwhile managing committee members.

3. Accordingly, the Joint Registrar issued Ext.P3 order appointing three persons of the erstwhile Managing Committee members as the administrative committee. As per the said order, the term of the committee will be over on 04.02.2016. According to the petitioner, while in office, the present administrative committee acted against the interest of the Bank and regularised the services of certain employees who were working on consolidated pay, collecting huge amount. That apart, certain appointments to the post of Clerk were made who are not even qualified. In that circumstances, petitioner has filed Ext.P4 petition before the 1st respondent.

4. It is also stated that, as the period of the administrative committee is over on elapse of one year in terms of Section 33(1)(b) of the Act, they cannot continue in office. According to the petitioner, Article 243ZL of the Constitution prohibits continuance of the administrative committee in office exceeding six months. Section 33(1A) provides that the term of the committee can be extended exceeding one year by the Government, in a notification published in the Gazette for reasons to be recorded, permitting the Registrar to extend the term of the said committee. Therefore, petitioner filed a petition before the 1st respondent to appoint a Senior Officer of the Department as Administrator. While Ext.P4 was pending before the Joint Registrar, petitioner filed W.P.(C) No.3844 of 2016 before this Court to remove the present administrative committee members as they are acting against the interest of the Bank. As per Ext.P5 judgment, the said writ petition was disposed of directing the 1st respondent to take a decision on Ext.P4 at the earliest.

5. Thereupon, according to the petitioner, 1st respondent passed an order with a prior date extending the term of the administrative committee by an order dated 27.01.2016, evident from Ext.P6. In Ext.P6 order, 1st respondent has not considered Ext.P4 objection filed by the petitioner. Thereupon, petitioner has filed Exts.P7 and P8 on 05.02.2016, highlighting his grievances. Thereafter he filed W.P.(C) No.6948 of 2016 seeking to declare that the administrative committee appointed by Ext.P6 is not entitled to continue in office and secured Ext.P9 judgment whereby 1st respondent was directed to consider Exts.P7 and P8.

6. According to the petitioner, now the 1st respondent is taking steps to extend the term of the present committee in violation of the mandate contained in Section 33(1A) of the Act and further that the 1st respondent can extend the term of the administrative committee maximum up to one year and exceeding the same, power is vested only with the Government. That apart, it is also contended that, in the meanwhile, the administrative committee spent an amount of Rs. 1,03,247/- for conducting domestic enquiry against an employee, which was objected to by the general body. It is in this background, this writ petition is filed.

7. Respondents 2 and 3 have filed a counter affidavit contending that the written petition is mis-conceived and is filed suppressing material facts. The election stayed by this Court is admitted and the writ petition filed by the 3rd respondent is also admitted. However, it is contended that, petitioner has deliberately suppressed that he had filed W.P. (C) No.23813 of 2015, challenging Ext.P3 order alleging that the members of the administrative committee are ineligible to hold the post since they have committed acts of mismanagement as managing committee members. W.P.(C) No.23813 of 2015 was considered along with W.P. (C) No.22460 of 2015 filed by the members of the former managing committee and after detailed consideration, this Court found that there is no stigma against the members of the administrative committee and that the 3 members having been earlier elected by the will of the members of the society, their continuance in the administrative committee might suit the convenience of all, a copy of the judgment is produced as Ext.R2(a).

8. That apart, it is also contended that, the allegation made against the members of the administrative committee are patently false and respondents have also filed a statement before the 1st respondent controverting the allegations raised by the petitioner, with the support of relevant documents, evident from Ext.R2(b). It is also contended that, without any basis, petitioner is filing repeated complaints followed by unmerited writ petitions before this Court, with the sole intention of seeing that the administrative committee is ousted from office and a departmental officer is appointed as Part-time Administrator. It is also urged that, petitioner in conspiracy with a former Secretary of the 3rd respondent society had misappropriated huge amounts from the society by fabrication of records and the Secretary was terminated from service. Further, Crime No.600 of 2016 has been registered at the Kovalam Police Station against the former Secretary and the petitioner for offences under Sections 465, 468, 471, 406 and 420 read with Section 34 of I.P.C, evident from Ext.R2(c). It is also stated, intention of the petitioner, is to see that the Part-time Administrator is appointed, and then he would be able to bring back the former Secretary into service and thereafter obliterate all evidences against the petitioner as well as the former Secretary.

9. Heard learned counsel for the petitioner, learned Government Pleader and the learned counsel appearing for respondents 2 and 3. Perused the pleadings and documents on record.

10. In view of the facts narrated above, the prime question to be considered is whether there is any material suppression of facts in the writ petition, in the light of Ext.R2 (a) judgment. In my considered opinion, there is sufficient force in the contention raised by the respondents accordingly, worth consideration. On evaluation of Ext.R2(a) judgment, it is patent and clear that petitioner was the petitioner in the said writ petition and the reliefs sought for in the said writ petition was against the continuance of the administrative committee in power, alleging that the committee is indulging in maladministration and

misappropriation. Apparently, from the facts discernible in the writ petition pertaining to Ext.R2(a), it is categoric and clear that same are similar with the contentions raised in this writ petition. Although petitioner has produced Ext.P2 interim order dated 24.07.2015 in one of the writ petition viz., W.P.(C) No.22460 of 2015 pertaining to Ext.R2(a), nowhere in the writ petition it is stated that the same was disposed of finally, and that too, along with W.P.(C) No.23813 of 2015 filed by the petitioner. Therefore, in two respects material suppression is employed by the petitioner; firstly, it is not stated in the writ petition that W.P.(C) No.22460 of 2015 was disposed of finally, and secondly, the filing of W.P.(C) No.23813 of 2015 by the petitioner pertaining to common judgment in Ext.R2(a), is not at all disclosed. Therefore, it is categoric and clear that the disposal of the writ petition filed by the 2nd respondent was materially suppressed with the malafide intention of ensuring that the judgment is not resorted to by this Court in any manner. The said suppression can never be stated to be an innocent mistake on the part of the petitioner since the petitioner is very well aware that the writ petitions filed by the petitioner were disposed of by a common judgment. In that view of the matter, the act and conduct on the part of the petitioner cannot be viewed lightly. The action of the petitioner is clearly an abuse of the process of the Court. So also, Ext.P9 judgment was rendered by this Court on 24.05.2016, directing the 1st respondent to consider Exts.P7 and P8 representations and take a decision on the same within two months from the date of receipt of a copy of the said judgment. Even from the date of the said judgment, two months expires only on 23.07.2016, however the present writ petition is filed on 22.07.2016. Therefore, the conduct of the petitioner establishes, same is also an abuse of the process of the Court. The contention raised by respondents 2 and 3 with respect to the conduct of the petitioner is evident from these aspects. Moreover, the reliefs sought for by the petitioner in this writ petition as well as the writ petition pertaining to Ext.R2(a) are similar. So also is the case with Ext.P9 judgment.

11. Reckoning all these facts and circumstances and taking serious note of the fact that petitioner has suppressed material facts, abused the processes of this Court, interfered with the impartial and independent administration of justice, petitioner is not entitled to secure any relief under Article 226 of the Constitution of India, and the writ petition is also liable to be dismissed with appropriate cost. In my considered opinion, petitioner is liable to pay a cost of Rs. 50,000/-, in that regard. The 1st respondent is directed to make requisition to the District Collector, Thiruvananthapuram to recover the said amount, within three weeks from the date of receipt of a copy of this judgment, which will be treated as a requisition under Section 69(2) of the Kerala Revenue Recovery Act, and effect recovery at the earliest and at any rate within four months from the date of receipt of a copy of this judgment, in accordance with law. Even though I am reminded, District Collector is not a party to the writ petition, since State of Kerala is a party, this Court is vested with ample powers to direct the executive head of the District administration to comply with the directives. When the said

amount is recovered, after adjusting an amount of Rs. 5,000/- towards recovery charges, balance amount shall be deposited with the Registrar General of the High Court of Kerala, who in turn will take steps to pay an amount of Rs. 25,000/- to the Kerala Mediation Centre and Rs. 20,000/- to the Kerala High Court Advocates' Welfare Fund Trust and secure receipts accordingly. It is also directed, a copy of the judgment shall be forwarded to the District Collector, Thiruvananthapuram for appropriate action.

12. The writ petition is dismissed accordingly.