(1995) 01 KL CK 0044

In the High Court Of Kerala

Case No : W.A. No''s. 345, 672 of 1992 and 664 and 272 of 1993

Aji and Others APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 24-01-1995

Acts Referred:
Employees State Insurance Act, 1948 — Section 2

Citation : (1995) 01 KL CK 0044

Hon'ble Judges : M.M. Paretd Pillay, Acting C.J.;T.V. Ramakrishnan, J;P. Shanmugam, J

Bench : Full Bench

Advocate : C.K.S. Panicker and K.S. Radhakrishnan, for the Appellant; Kurian Joseph, A.A.G. for Respondent Nos. 1 and 2 and T.R. Ramachandran Nair, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Paretd Pillay, Actg. C.J.

1. Appellants in W.A. 345 of 1992 challenges the judgment in O.P. 6781 of 1991. They are third parties. W.A. 672 of 1992 is filed by the Petitioner in the O.P. W.A.664 of 1993 is filed by the Joint Registrar of Co-operative Societies, Alappuzha and W.A. 272 of 1993 is filed by third parties challenging the decision in O.P. 15848 of 1992.

2. The position of the parties as arrayed in O.P. 6781 of 1991 is followed in the discussion hereunder.

3. O.P. 6781 of 1991 was filed by the President of the Alleppey District Co-operative Bank Limited, Alappuzha challenging Exts. P-4 and P-5 orders of Respondents 1 and 3. As per Ext. P-4 order, first Respondent directed the Petitioner to keep in abeyance all further proceedings including interview and appointment proposed by the bank till the enquiry on the complaint petition is over and the fact intimated to the bank in writing. Ext.P-5 is a telegraphic

communication issued by the third Respondent staying appointments.

4. The learned Single Judge did not find any justifiable reason for cancelling the entire process of selection but directed the Joint Registrar to proceed with the inquiry with notice to the Petitioner and the Board of Directors. The Joint Registrar was directed to scrutinise the records relating to the selection of candidates and to pass final order after inquiry on or before 21st February 1992. In O.P. 15848 of 1992 filed by the Bank to direct the Joint Registrar to permit the Petitioner bank to proceed with the interview, the learned Single Judge held that it is only fair and proper that the Petitioner is permitted to go ahead with the interview provided the five persons named in Ext. P-7 constitute the Interview Board and actually interview the candidates.

5. It is as per Ext. P-3 dated 19th May 1990 (marked in O.P. 6781 of 1991) that the applications were invited. Written test was conducted on 2nd December 1990. Interview was scheduled on 1st July 1991 and other days. Complaints were filed against the selection process. Consequent to the complaints. Exts. P-4 and P-5 were issued.

6. At the outset, it has to be stated that the Government has no power under any provisions of the Act or Rules to interfere with the selection process of a co-operative society. As there is no provision under the Act or Rules which authorises the Government to interfere with the selection process of the society, Ext. P-5 order cannot be sustained. In Trivandrum District Co-operative Bank Ltd. v. State of Kerala 1992 1 KLT 381 a Division Bench of this Court held that Government has no such power. In Kottayam Co-operative Bank Ltd v. State of Kerala 1988 1 KLT 827 it was held that there cannot be an assumption that the Government has got the powers to intervene in the day-today administration of the co-operative society. In the said decision it was made clear that Government cannot restrain bank from conducting interview for appointment of clerks. With regard to the power of the Government in issuing Ext. P-5 order, counsel on both sides conceded the position that it cannot do it.

7. The central theme of the arguments on both sides is regarding the power of the Registrar to intervene in the selection process of the staff of the society. Whereas the Petitioner contended that Registrar is not clothed with any power to interfere with the day-today working of the society particularly the selection process of the staff, counsel for the Respondent and the Government Pleader contended that the Registrar is vested with ample powers under the Act.

8. Counsel for the Petitioner contended that the Registrar''s supervision as envisaged u/s 66 can only be with regard to the financial involvements or crisis of the society and it can never be construed that the Registrar is competent to interfere with the day-today working of the society or the selection process of its employees. It is contended that the Registrar is not empowered to interfere with the selection process of the society and he could not have cancelled the written test or interview or the select list prepared by the Board. It is urged that

Sections 63 to 68 of the Act relate only to the supervision of the accounts of the society and not to its day-today administration.

9. It is contended by the Petitioner that Section 66 is in Chapter VIII of the Act and the Chapter is specifically captioned as "Audit, Inquiry, Inspection and Surcharge" it can never be said that the Registrar has all pervasive powers of supervision with regard to the day-today working of the society. On the other hand it is contended that Section 66(1)(a) gives ample power to the Registrar to go into the working of every society as frequently as he may consider necessary and hence the aforesaid contention is not tenable. In other words, it is submitted that merely because "Audit, Inquiry, Inspection and Surcharge" find specifically captioned in Chapter VIII the supervision of the Registrar cannot be confined to the financial position and dealings of the society.

10. Section 66(1)(a) enables the Registrar to supervise or cause to be supervised by a person authorised by him by general or special order in writing in this behalf, the working of every society as frequently as he may consider necessary. Section 66(1)(b) states that the supervision may include inspection of the books of the society. Sub-section (2) enables the Registrar of his own motion or on the application of a creditor of a society to inspect or direct any person authorised by him by order in writing in this behalf to inspect the books of the society. Sub-section (4) enables the Registrar or any person authorised by the Registrar under Sub-section (1) or (2) at all reasonable times to have free access to the books, records and accounts of the society and may summon any person in possession of or responsible for the custody of such books, records and accounts, to produce the same for inspection at any place at the headquarters of the society or any branch thereof and it shall be the duty of every officer and employee of the society to assist in such supervision or inspection and to furnish any information that may be required for the purpose.

11. It is not possible to hold that Registrar''s power is limited to the supervision of the financial dealings of the society. Rule 176 clothes the Registrar with the power to rescind any resolution of any meeting of any society or of the committee of any society, if it appears to him that such resolution is ultra vires of the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society. Thus the position is abundantly clear that the Registrar is not a mere passive spectator against an erring society. Registrar is vested with adequate power to rescind resolutions whenever situations demand. Contention that Registrar''s power is limited only to supervise the financial dealings of the society is not tenable.

12. The Act has been enacted to consolidate, amend and unify the law relating to co-operative societies in the State of Kerala to provide for the orderly development of the co-operative movement in the State of Kerala in accordance with the relevant directive principles of State policy enunciated in the

Constitution of India. The object and reasons of the Act reveal that it is a consolidating law.

13. Section 3 permits the Government to appoint the Registrar of Co-operative Societies for the State. Section 4 provides that a co-operative society will be subject to the provisions of the Act and it should have been its object the promotion of the economic interests of its members or of the interests of the public in accordance with the co-operative principles. Section 5 mandates that the co-operative societies shall be registered only with limited liability. Section 6 enjoins the procedure for registration of co-operative societies and it provides that application for registration of a co-operative society shall be made to the Registrar in such form as may be prescribed; and prescribed means prescribed under the Rules.

14. Section 29 enables the Registrar or any other person deputed by him to have the right to attend the committee or general body meeting of any society. Rule 186 prescribes qualifications. It states that no person shall be eligible for appointment in any post unless he possesses the qualifications prescribed for the post as shown under the Rule. This would definitely show that the committee cannot on its own appoint any person who does not have the requisite qualifications under Rule 186. If unqualified person is appointed the Registrar who has power of supervision in the working of the society can interfere and correct the same. In view of Registrar''s power of supersession of the committee u/s 29 being of widest amplitude and drastic in nature it is not possible to hold that his power is only if superintendence over the financial dealings of the society and that alone.

15. Section 65 concerns inquiry by the Registrar. The Registrar may, of his own motion or on the application of a society to which the society concerned is affiliated, by himself or by a person authorised by him by order in writing hold an inquiry into the constitution, working and financial condition of the society. Though Section 65 specifically mentions inquiry regarding the constitution, working and financial condition of the society it is not possible to hold that the supervisory power given to the Registrar u/s 66 cannot be exercised when he receives adverse report regarding the working of any society. Merely because Sub-rule (b) says that the Supervision may include inspection of the books of the society it would not be justifiable to hold that the supervision is confined to the working and financial conditions of the society only.

16. Merely on account of the fact that Chapter VIII is captioned with "Audit, Inquiry, Inspection and Surcharge" it would not be possible to hold that Section 66(1)(a) containing specific provision of supervision by the Registrar cannot be given effect to. Title of a Chapter cannot be given undue importance to efface the scheme of the Act. When a statute is construed it is really improper to omit any word which has a reasonable and proper place in it or to refrain from giving effect to its meaning A.K. Gopalan Vs. The State of Madras, .

17. Supreme Court had occasion to consider the scope of ''heading in Commissioner of Income Tax, Bombay Vs. Ahmedbhai Umarbhai and Co., Bombay, . The court held that marginal notes in an Indian statute, as in an Act of Parliament, cannot be referred to for the purpose of construing the statute and the title of a Chapter cannot be legitimately used to restrict the plain terms of an enactment. The Court has referred to the Privy council decision in Balraj Kunwar v. Jagatpal Singh 26 All. 393.

18. The Supreme Court had occasion to consider the impact of heading prefixed to section or sections of a statute. The Supreme Court held that the heading prefixed to sections or entries cannot control the plain words of the provision and that they cannot also be referred to for construing the provisions where the words used in the provision are clear and unambiguous. Heading prefixed to a section cannot be used for cutting down the plain meaning of the words in the section. If there is any ambiguity or doubt, of course the heading or sub-heading can be referred to as an aid in construing the provision. The Supreme Court made the position clear that even in such a case the heading cannot be used for cutting down the wide application of the clear words used in the provision. That being the legal position contention of the Petitioner that Section 66 being found in Chapter VIII with the heading "Audit, Inquiry, Inspection and Surcharge" can have application only to the topics mentioned in the heading of the Chapter is untenable. When Section 66(1)(a) in unmistakable terms enables the Registrar to supervise the working of the society and as that power is not limited or circumscribed to any particular situations it is futile to contend that the power can be exercised only in cases where the society is involved in a financial crisis.

19. The Supreme Court had occasion to interpret the word ''supervision'' found in Section 2(f) of the Employees State Insurance Act, 1948 in C.E.S.C. Limited and Others Vs. Subhash Chandra Bose and Others, . The court stated in paragraph 14 that in the ordinary dictional sense " to supervise" means to direct or oversee the performance or operation of an activity and to over see it, watch over and direct and it is work under eye and gaze of someone who can immediately direct a corrective and tender advice. When Section 66(1)(a) provides for supervision by the Registrar it has to be read in the totality of the scheme of the Act and the Court has to adopt a harmonious construction of the statute and the importance of the word ''supervision'' cannot be under estimated. In webster comprehensive dictionary (international edition) the word ''supervision'' has been defined at page 1260 in Vol. II as "authority to direct or supervise", supervise means-have a "general oversight of." In the Law Lexicon the meaning of "supervision" is given as "to oversee for direction to superintend, to inspect." In the Law Lexicon ''superintend'' means:

to have or exercise the charge and oversight of; to oversea, with the power of direction: to take care of, with authority, as an officer superintends the building of a ship or the construction of a Fort; to have charge and direction of, as of a school; direct the course and details of some work, as the construction of a building, or movement, as of any army; to regulate with authority manage.

20. We make it clear that though Section 66(1)(a) gives the power enabling the Registrar to supervise the working of the society he cannot act in an arbitrary and capricious manner. He should not forget the importance of the fact that the society has its own autonomy and the supreme power is vested with the General Body. In other words, on flimsy reasons or on extraneous considerations the Registrar should not misuse the powers u/s 66(1)(a). That power should be exercised with due caution and circumspection and only in cases where it is really called for.

21. Contention of the Petitioner that the provision contained in Chapter VIII of the Act relate only to audit, inquiry, inspection and surcharge and so the Registrar under Sections 63 to 68 of the Act cannot supervise the working of the society is unacceptable. The Registrar has general power of supervision in the working of the society. As already indicated he cannot misuse it on extraneous considerations or at the instance of any outside agency.

22. The learned Single Judge directed that the interview has to be conducted afresh, by persons who are not aware of the marks obtained by the candidates in the written examination. That direction was given on considering the rival contentions of the parties. Learned Single Judge directed the joint Registrar who issued Ext. P-6 notice to proceed with the inquiry with notice to the Petitioner and the Board of Directors. He was directed to scrutinise the records relating to the selection of candidates for the post which are maintained in the Bank. The ground urged by the Joint Registrar for cancelling the written test is the absence of the advocate who was entrusted with the duty in the examination hall. Learned Judge held that that ground cannot be considered as sufficient to cancel the test as the test was conducted under the supervision of teachers of educational institutions. He also held that the valuation of the answer book is also not to be interfered with by the Joint Registrar. As the learned Judge on consideration of all aspects of the matter held that interview has to be conducted afresh by persons who are not aware of the marks obtained by the candidates in the written examination we hold that no interference is warranted against the judgment of the learned Single Judge.

The writ appeals are dismissed. No costs.

