

(2022) 09 KL CK 0001
In the High Court Of Kerala
Case No : Writ Appeal No.1179 Of 2021

A.Krishnan

APPELLANT

Vs

Kerala State Co Operative Marketing Federation Ltd

RESPONDENT

Date of Decision : 01-09-2022

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Kerala Co Operative Societies Act, 1969 — Section 80, 80B
Kerala Co operative Societies Rules, 1969 — Rule 196
Advocates Act, 1961 — Section 38<

Citation : (2022) 09 KL CK 0001

Hon'ble Judges : A.K. Jayasankaran Nambiar, J;Mohammed Nias C.P., J

Bench : Division Bench

Advocate : P.K.Suresh Kumar, Rinny Stephen Chamaparampil, Ashok M. Cherian, P.P.Thajudheen, B.Ashok Shenoy, N.N.Sugunapalan, S.Sujin, P.S.Gireesh

Final Decision : Disposed Of

Judgement

A.K. Jayasankaran Nambiar, J.

1. The petitioner in W.P.(C).No.14176 of 2020 is the appellant herein, aggrieved by the judgment dated 28.7.2021 of the learned Single Judge in the writ petition. The brief facts necessary for disposal of the Writ Appeal is as follows:

The appellant/writ petitioner is a member of the South Wayanad Co-operative Rubber & Agricultural Marketing Society, which is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969. It is affiliated to the Kerala State Co-operative Marketing Federation Limited [MARKETFED], which is the Apex Society in relation to the Primary Society aforementioned. As per the bye-laws of the MARKETFED, that are produced as Ext.P2 in the writ petition, the Managing Director had to be appointed by the Board of Directors in consultation with the State Government. The Subsidiary Rules and Service Regulations of MARKETFED, that were framed by the Board of Directors in exercise of their powers under the bye-laws, and which were approved by the Registrar of Co-

operative Societies, in terms of the Kerala Co-operative Societies Act, the Managing Director of the Society had to be appointed by deputation of an Officer by the Government in the IAS cadre in the senior time - scale. The said provisions is found in Schedule - B to Ext.P3 Subsidiary Rules and Service Regulations.

2. It was the case of the writ petitioner that taking note of a communication [Ext.P4] dated 22.2.2018 issued by the Private Secretary to the Minister for Co-operation, Tourism & Devaswom addressed to the Special Secretary, Department of Co-operation, Government of Kerala, that the Minister concerned had instructed to appoint Sri.S.K.Sanil as Managing Director, and to take necessary action, the Government, through Ext.P6 Government Order dated 25.5.2018, appointed the said Sri.S.K.Sanil, the 4th respondent herein, as Managing Director of MARKETFED. The writ petitioner relied on Ext.P7 file notings to demonstrate the manner of movement of the file and the fact that the provisions of the Subsidiary Rules and Service Regulations of MARKETFED and the provisions of the bye-laws with regard to appointment of the Managing Director had not been specifically noticed by the Government while appointing the 4th respondent as the Managing Director of MARKETFED. It was under the above circumstances that the Government Order was impugned in the writ petition, where, a declaration was also sought that the 4th respondent was not entitled to hold the post of Managing Director.

3. In the statement filed on behalf of the State Government, and in the counter affidavit filed on behalf of the 4th respondent to the writ petition, the stand taken was that the appellant/writ petitioner had no locus standi to maintain a writ petition impugning the order of appointment of the 4th respondent as the Managing Director of MARKETFED. It was pointed out that although the bye-laws contemplated that the appointment of the Managing Director had to be done by the Board of Directors, based on the practice hitherto followed in the MARKETFED, the nomination of the Managing Director was done by the Government, and the said nomination was ratified by the Board of Directors. It was contended therefore that even if there was an irregularity in the method of appointment, the same stood regularised through the ratification done by the Board of Directors. With regard to the contention in the writ petition that the 4th respondent was not qualified, in terms of the Subsidiary Rules and Service Regulations, to be appointed as the Managing Director, it was contended that the said Subsidiary Rules and Service Regulations were against the specific provisions of Sections 80 and 80B of the Kerala Co-operative Societies Act read with Rule 196 of the Kerala Co-operative Societies Rules, and therefore, the Rules and Regulations were not adhered to by the Society. It was also pointed out that, at any rate, the Rules had been subsequently amended to confer the power of appointment of Managing Director to the State Government vide the Government Order dated 4.10.2019.

4. The learned Single Judge, who considered the matter, found that the writ

petitioner did not have the desired locus standi to maintain a challenge against the appointment of the 4th respondent, and therefore proceeded to dismiss the writ petition on that basis.

5. In the appeal before us, it is the contention of Sri.P.K.Suresh Kumar, the learned senior counsel appearing along with Adv.Sri.Rinny Stephen Chamaparampil on behalf of the appellant, that a perusal of the bye-laws of the MARKETFED would clearly reveal that the primary object to be pursued by MARKETFED is to arrange for the purchase, marketing and sale of agricultural and other produce belonging to its affiliated Societies and their members to their best advantage within the country and outside. It is contended therefore that the writ petitioner, being a member of a Primary Society that was affiliated to the MARKETFED, cannot be said to be a person who is not interested in the appointment of the Managing Director of the Apex Society, since the decisions to be taken by the Apex Society would directly impact the economic interest of the writ petitioner, who was a supplier of produce to the Primary Society for the purposes of marketing. The contention, in other words, is that the appellant/writ petitioner could not have been seen as a person who did not have the locus standi to maintain the writ petition, more so, when the subject matter of the writ petition was not a service dispute but a matter involving the administration of a Society, in which the appellant was materially interested. Reliance was placed by the learned counsel on the decisions in *Bar Council of Maharashtra v. M.V. Dabholkar and Others* – [(1975) 2 SCC 702], *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed and Others* - [AIR 1976 SC 578], *Ghulam Qadir v. Special Tribunal and Others* - [(2002) 1 SCC 33], *Krishnan T. v. Joint Registrar of Co-operative Societies (General), Kasaragod and Others* - [2017 (5) KHC 726] and the judgment dated 11.10.2017 in W.P.(C).No.40247 of 2016, produced as Annexure A in the Writ Appeal. It is the further contention of the learned senior counsel that, at any rate, the issue of locus standi in relation to the appellant had to be seen against the backdrop of the Co-operative principles which accord due importance to members of the Societies concerned. Referring to the manner of appointment of the 4th respondent, it is the submission of the learned senior counsel that the appointment was clearly contrary to the bye-laws and the Subsidiary Rules and Service Regulations of MARKETFED, and even if it was the case of the respondents that the irregularity in the appointment of the 4th respondent was set right through the ratification of the appointment by the Board of Directors, the ratification could only be a valid one if the decision ratified was one that conformed to the Rules. In the instant case, it is pointed out that the appointment of the 4th respondent was contrary to the bye-laws and the Service Rules, and to that extent, an illegal one that could not be regularised through a mere ratification by the Board of Directors. Lastly, it is contended that even if the State Government had the power to make an appointment, consequent to the amendment of the Rules, the appointment in accordance with the amended Rule had to be pursuant to a transparent selection procedure followed by the Government. It is not in dispute that, in the instant case, the

appointment of the 4th respondent did not follow any such procedure.

6. Per contra, it is the submission of Sri.Ashok M. Cherian, the learned Additional Advocate General appearing for the State Government, Sri.Ashok B. Shenoy, the learned Standing counsel for the respondent MARKETFED and Sri.N.N.Sugunapalan, the learned senior counsel appearing on behalf of the 4th respondent that the learned Single Judge was correct in dismissing the writ petition by holding that the appellant was not a person who had the locus standi to maintain a challenge against the appointment of the 4th respondent as Managing Director of MARKETFED. They refer to the appellant as a mere busybody, who does not have any special interest over and above the general public in the matter of appointment of the Managing Director of MARKETFED. Reliance is placed on the decision in *Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed and Others* - [AIR 1976 SC 578] and the tests enumerated therein to contend that the appellant was only a meddlesome interloper and a busybody, who could not maintain a challenge against the appointment of the 4th respondent. With regard to the legality of the appointment of the 4th respondent itself, it is argued that the nomination by the Government was only in view of the provisions that mandated that the appointment of the Managing Director had to be through deputation of an IAS Officer by the Government. In the instant case, it is pointed out that the nomination of the Government was approved by the Board of Directors, which ratified the decision of the Government, and in that sense, the appointment was in fact made by the Board of Directors itself. As regards the qualifications of the 4th respondent, it is stated that the Government took into account the qualifications possessed by the 4th respondent to find that he was eminently suitable to hold the post of Managing Director of MARKETFED, and it was under those circumstances that they deviated from the provisions in the Subsidiary Rules and Service Regulations of MARKETFED.

7. On a consideration of the rival submissions, we find force in the contention of the learned senior counsel for the appellant that this was not a case where the appellant could have been non-suited on the ground of absence of locus standi. The decisions relied upon by the learned counsel on either side clearly lay down the tests for determining the circumstances under which a person will fail to qualify as an 'aggrieved person' for the purposes of litigation. In *Bar Council of Maharashtra v. M.V. Dabholkar and Others* - [(1975) 2 SCC 702], a seven Judge Bench of the Supreme Court considered the question as to who would qualify as a "person aggrieved" in the context of the provisions of Section 38 of the Advocates Act, 1961. The question for consideration was whether the Bar Council of Maharashtra would fall within the ambit of the phrase "aggrieved person" for the purposes of maintaining an appeal against an order passed by the Disciplinary Committee of the Bar Council of India. In a concurring judgment rendered by Justice V.R. Krishna Iyer in the said case, it was observed as follows:

"47. The hackneyed phrase, 'person aggrieved', is not merely of frequent

47occurrence. in statutes and in the writ jurisdiction but has come up for judicial consideration in Anglo American and Indian courts in a variety of situations and legislative settings. Notwithstanding the slippery semantics of such legalese, the Indian legislative draftsmen have continued to use them, out of linguistic allegiance to the British art and Indian judges have frequently sought interpretative light from English authorities of ancient vintage. These 'borrowed' drafting and interpretative exercises are sometimes inept when time and country change and the context and text of the statute vary. I stress this aspect since much of the time of the courts in India is consumed by massive, and sometimes mechanical, reliance on exotic constructions and default in evolving legislative simplicity and avoiding interpretative complexity. At a time when our courts are on trial for delayed disposals and mystifying processes, this desideratum becomes all the more urgent. Otherwise, why should decoding a single expression - 'person aggrieved' - take two days of learned length ?”

In a later decision - Jasbhai Motibhai Desai [supra], a Bench of four Judges surveyed the English, American and Indian judgments on the issue of “aggrieved person”, and set out the tests to be adopted for the purposes of determining whether a person had the locus standi to apply for a writ of certiorari. The relevant paragraphs of the said judgment read as follows:

“36. It will be seen that in the context of locus standi to apply for a writ of certiorari,36. an applicant may ordinarily fall in any of these categories:

(i) 'person aggrieved'; (ii) 'stranger'; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

37. The distinction between the first and second categories of applicants,37. though real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer-circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outerzone may not be "persons aggrieved”

38. To distinguish such applicants from 'strangers', among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are: Whether the applicant is a person whose legal right has been infringed ? Has he suffered a legal wrong or injury, in the sense that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of ? Is he a person who has suffered a legal grievance, a person "against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something" ? Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public ? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority ? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community ? or is it a statute dealing with private rights of particular individuals ?"

The position has been reiterated more recently in Ghulam Qadir [supra], where, at paragraph 36, it was observed as follows:

"36. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid Article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has undergone a sea- change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hyper -technical grounds. If a person approaching the court can satisfy that the impugned action is likely to adversely affect his right which is shown to be having source in some statutory provision, the petition filed by such a person cannot be rejected on the ground of his having not the locus standi. In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi."

8. The legal principle that can be gleaned from the above decisions is that save for a meddlesome interloper or a busybody, a person whose interests/rights are in some sense infringed through an action of an other, can be seen as an aggrieved person for the purposes of initiating legal action. This is more so when the alleged offending action is at the instance of the State that is expected to act

fairly in matters of administration. On the facts of the case before us, we cannot, but, see the appellant, who was a member of the Primary Society that was affiliated to the MARKETFED, as an aggrieved person, aggrieved by the appointment of an unqualified person as Managing Director of the Apex Society. A cultivator of agricultural produce, who depends on the administration of the Apex Society, for the purposes of marketing his produce through a marketing hierarchy established with the Apex Society at the helm, can hardly be seen as a person having no interest whatsoever in the administration of the Apex Society. We therefore cannot accept the finding of the learned Single Judge that the appellant/writ petitioner did not have the locus standi to challenge the appointment of the 4th respondent as Managing Director of MARKETFED.

9. On the aspect of legality of the appointment of the 4th respondent, we find that inasmuch as the 4th respondent did not possess the qualifications prescribed in the Subsidiary Rules and Service Regulations of MARKETFED that were in vogue at the time of his appointment, his appointment has necessarily to be seen as illegal and void ab initio. The mere fact that there was a ratification with regard to the irregularity in the authority that appointed him cannot undo the illegality that was occasioned in appointing the 4th respondent in contravention of the extant Rules. The contention on behalf of the respondents herein that the Subsidiary Rules and Service Regulations were considered by them, as opposed to the provisions of the Kerala Co-operative Societies Act and Rules, and therefore have been consistently deviated from in the past, does not appeal to us as an argument that can be maintained by the respondents. It is trite that so long as the Subsidiary Rules and Service Regulations have the force of law as regards MARKETFED, in the absence of a repeal or suitable amendment to those Rules and Regulations, their provisions have to be scrupulously adhered to by the respondents. This, not having been done, the appointment of the 4th respondent cannot be legally sustained on any grounds whatsoever.

10. The upshot of the above discussion is that we set aside the impugned judgment of the learned Single Judge, and allow this Writ Appeal, by quashing Ext.P6 Government Order, and holding that the 4th respondent was ineligible and unqualified to hold the post of Managing Director of MARKETFED in view of the fact that he was not an Officer in the IAS cadre in the senior time - scale at the relevant point in time. While the above declaration should suffice to ensure that the 4th respondent does not continue in the post of Managing Director of MARKETFED from this day onwards, taking note of the fact that he has occupied the post for the last four years and that many policy decisions might have been taken at his instance or with his involvement during the said years, we do not deem it appropriate to nullify any action taken by him in the last four years. Resultantly, the salary and emoluments paid to the 4th respondent shall not be recovered from him nor will any of the decisions taken by him during the said tenure be seen as illegal or void. The said actions of the 4th respondent will be saved by the de facto principle.

11. We do, however, express our displeasure at the callous manner in which the State Government and the MARKETFED have acted in the matter of appointing the 4th respondent as the Managing Director, in patent disregard of the applicable Rules and Regulations. The State Executive is expected to adhere to the rule of law and set an example in matters of statutory compliance by adhering to its Constitutional role as a 'State' within the meaning of the term under Article 12 of the Constitution of India. While disposing this Writ Appeal, therefore, we caution the State and the MARKETFED against resorting to such exercises in future.

The Writ Appeal is thus disposed as above.