

(2014) 10 KL CK 0122

In the High Court Of Kerala

Case No : W.P. (C). Nos. 18567 of 2014 (U) and 18530 of 2014-M

Asokan

APPELLANT

Vs

Joint Registrar of Co-Operative Societies (General)

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 66, 68

Citation : (2014) 10 KL CK 0122

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : O.D. Sivadas, Advocate for the Appellant; Biju Meenattoor, Senior Govt. Pleader, M. Gopikrishnan Nambiar, P. Gopinath, P. Benny Thomas, K. John Mathai, Joson Manavalan, Kuryan Thomas and George Poonthottam, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioners in both the writ petitions are aggrieved with an order dated 08.07.2014 passed by the Joint Registrar (General), which is said to be in effect a review of the earlier order of disqualification passed against three members, of the present Managing Committee, of the respondent-Society. They were members in the earlier Managing Committee also and were proceeded with under Section 68 of the Kerala Co-operative Societies Act, 1969 [for brevity "KCS Act"], being surcharge proceedings. This Court refers to the documents produced in W.P.(C) No. 18567 of 2014 and the parties arrayed therein, since the respondents have filed a counter affidavit in the said case.

2. The controversy in fact arose with Exhibit P2 order dated 04.03.2008. An enquiry was directed into the affairs of the respondent-Society by the Reserve Bank of India [RBI], which culminated in Section 66 proceedings, in conclusion of which Exhibit P2 order was passed. Surcharge proceedings were concluded under Section 68 against the then Managing Committee members who were found to be responsible for the loss caused to the respondent-Society. The 4th respondent was the Chairman of the then Managing Committee and respondents 5 and 6

were the members, against whom inter alia liability was mulcted, each to the extent of Rs. 69,240.60. An appeal was preferred by the Managing Committee members before the Government against Exhibit P2 order.

3. Since no orders were passed by the Government in the stay application, four persons including respondents 4 to 6, who moved the appeal, filed a writ petition before this Court, which was numbered as W.P.(C). No. 15540 of 2008, the judgment in which is produced at Exhibit R4(b). This Court by Exhibit R4(b) judgment, directed consideration of the interim relief sought for in the appeal. The operation of the order under Section 68 was directed to be kept in abeyance till such consideration was made. Stay was declined by the appellate authority with a cursory order, produced at Exhibit R4(c). The appellants moved this Court again by another writ petition, the judgment in which is produced as Exhibit R4(d). It came out in the hearing of the said writ petition that the appellants were not given an opportunity for hearing before rejecting the stay application. The order was set aside for reason only of violation of principles of natural justice and a fresh consideration was ordered. Hence, definitely then, the earlier order which kept Exhibit P2 in abeyance would be operative.

4. The stay application was rejected pursuant to a hearing, in compliance with Exhibit R4(d) judgment. The rejection of the stay application as per Exhibit R4(e) was challenged in writ petition, WP.(C). No. 14971 of 2009, in which Exhibit R4(f) judgment was passed. This Court found that though the interim relief was directed to be considered, none of the contentions raised were in fact considered in the order passed. Considering the fact that the appeal was filed in May, 2008 and the appellants had been frequently before this Court, on the issue of consideration of stay application itself, by Exhibit R4(f) this Court directed the appeal itself to be considered finally. Status-quo as on date was directed to be maintained in Exhibit R4(f), passed on 05.06.2009. The disqualification was thus kept in abeyance.

5. The Government disposed of the appeal by Exhibit P3 order dated 24.09.2009, upholding Exhibit P2 order of the Joint Registrar. Pursuant to that order, Exhibit P4 dated 01.10.2009 was passed by the Joint Registrar (General), disqualifying the appellants, four in member. An order dated 01.10.2009 was passed appointing an Administrator, since the Managing Committee was disqualified. The appellants filed writ petition, W.P.(C). No. 28629 of 2009, challenging the order of the Government. I have called for the Judges Papers in the said case. Another W.P.(C). No. 30184 of 2009 was also filed challenging the order of supersession, by some other Managing Committee members. Both the writ petitions were heard together and a common judgment passed, dated 24.03.2010, setting aside all the orders, finding procedural violation as provided under Section 66; specifically for reason of no opportunity of hearing having been granted under sub-section (5). The Managing Committee was directed to be put back in office. That judgment was reversed in W.A. No. 579 of 2010, on 31.03.2010, but the Division Bench granted stay of all the orders in the writ petition for three

months, with discretion conferred on the learned Single Judge to extend the stay, if writ petition cannot be disposed of in three months. Stay was extended until further orders in the writ petition, on 02.07.2010. The Managing Committee, obviously, was put back in office by virtue of the aforesaid orders, and continued in office.

6. An election was conducted; and the respondents 4 to 6 contested the same, since Section 68 order passed was under stay. The respondents 4 to 6 were elected members of the newly elected Committee; along with respondents 7 to 10 and 2 others. The elections were held on 09.10.2011 and the respondents 4 to 6 were elected to a 9 (nine) member Managing Committee. W.P.(C). No. 28629 of 2009 was heard and dismissed, confirming Exhibit P2 order, by Exhibit P5 judgment dated 12.03.2013. The concurrent finding of the Joint Registrar (General) and the Government were upheld by this Court, dismissing the writ petition. On the writ petition being dismissed by Exhibit P5 on 12.03.2013, the Joint Registrar (General) passed Exhibit P6 order dated 22.03.2013.

7. The three persons, whose writ petition stood dismissed, were again disqualified by Exhibit P6 dated 22.03.2013. Two members resigned from the elected Managing Committee on 06.05.2014 and three were earlier disqualified by Exhibit P6. The members remaining in the Committee being respondents 7 to 10, could not satisfy the quorum of "six". Hence, Exhibit P7 order dated 13.05.2014 was passed, superseding the Committee. An Administrator was put in charge.

8. Respondents 4 to 6 moved an appeal against Exhibit P5 judgment. I have called for and looked into the Judges Papers of W.A. No. 540 of 2013. There was no interim order passed in the appeal, which was eventually allowed as per Exhibit P8 dated 06.06.2014. All this while the Administrator was in charge, i.e., from Exhibit P7 [13.05.2014]. The respondents 4 to 6 were also not included in the Managing committee after their ouster on disqualification by Exhibit P6 dated 22.03.2013. Exhibit P8 directed de novo consideration of the appeal before the Government, after vacating the order of the learned Single Judge and the appellate order. It was pursuant to Exhibit P8 that Exhibit P9 order was passed on 08.07.2014, purportedly reviewing the earlier order of disqualification and putting the respondents 4 to 10 in charge of the affairs of the Society, being a validly elected Managing Committee having quorum. When the appeal was allowed, the respondents 4 to 10 were not in office.

9. The petitioners contend that no such review could have been effected, especially since the Writ Appeal judgment in Exhibit P8 did not permit the disqualified persons to be put back in office. It is also submitted that the status-quo order in Exhibit R4(f) dated 05.06.2009 could not have any effect, since admittedly a fresh election was conducted on 09.10.2011, subsequent to that judgment. The status of respondents 4 to 6 is not that which existed at the time of Exhibit R4(f) judgment. The respondents 4 to 6 though continued to be Committee members, after 09.10.2011 they were members of a newly elected

Committee, is the argument advanced.

10. The learned counsel appearing for the party-respondents, however, would contend that the disqualification order was a "dependant order" passed on the basis of judgment of the learned Single Judge in Exhibit P5 which confirmed the appellate order passed by the Government. On the judgment of the learned Single Judge, as also the appellate order, being reversed by the Division Bench, one would have to revert back to the position that existed as on the date of Exhibit R4(f) and status-quo would have to be continued. The learned counsel for the respondents also would place reliance on the judgment of the Hon'ble Supreme Court in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras, , wherein the effect of an interim order staying operation of an order and the quashing of an order was distinguished in the following words:

"While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed".

11. The judgment of the learned Single Judge and the appellate order itself having been set aside, it is the contention of the party-respondents that their disqualification would then be removed and they would be entitled to be continued in the Committee and the disqualification orders passed consequent to the judgment of this Court in Exhibit P5 would stand revoked on the principle of "dependant orders".

12. This Court is not convinced that the principle of "dependant orders" can be imported into the present case, since the order which brought into effect the rigour of disqualification was Exhibit P2 and the appellate order and the judgment of the learned Single Judge merely confirmed that order. The orders set aside by the Division Bench were the appellate order and that of the learned Single. Merely because the appellate order was set aside, that would not lead to a definite consequence of the disqualification having been set aside. It would not be a correct understanding to hold the disqualification to be on the basis of the appellate order or dependant upon the judgment in the writ petition. Solely on the ground that the disqualification order was passed after Exhibit P2 order was confirmed in appeal or by this Court; does not make it dependant on the appellate order. Definitely disqualification is a direct consequence of the original order passed under Section 68; Exhibit P2. The reason only of the appellate order being set aside, the disqualified persons could not have been put back in office, since the original order at Exhibit P2 is in force, especially since the appellants did not seek or obtain a stay of Exhibit P2 order in Exhibit P8 judgment in appeal.

13. The next question to be decided is, as to whether by virtue of the earlier

orders the respondents 4 to 6 could have been continued in the Managing Committee which was elected on 09.10.2011. Admittedly the respondents 4 to 6 were continued in the earlier Managing Committee by virtue of the various orders passed by this Court keeping Exhibit P2 order under suspension and ordering status-quo; the last of which was by Exhibit R4(f) on 05.06.2009. It was pursuant to Exhibit R4(f) that Exhibit P3 order was passed on 24.09.2009, pursuant to which Exhibit P4 order of disqualification dated 01.10.2009 was also passed. An Administrator was also appointed on 01.10.2009 by order No. CRB/860/04/Kdis [produced as Exhibit P25 in W.P.(C). No. 28629 of 2009].

14. W.P.(C). No. 28629 of 2009 was initially allowed and in W.A. No. 579 of 2010, that judgment was reversed on 31.03.2010; but however staying the impugned orders which stay continued till the disposal of W.P.(C). No. 28629 of 2009, by Exhibit P5. The respondents 4 to 6 were put back in office of the earlier Managing Committee on the basis of the initial disposal of W.P.(C). No. 28629 of 2009 as also was permitted to stand for the elections which were held on 09.10.2011 by virtue of interim order in appeal. It was later to the election that Exhibit P5 judgment was passed in the said writ petition, in which the appellate order was confirmed. The learned counsel appearing for the respondent would urge that the earlier judgment in W.P.(C). No. 28629 of 2009 was challenged in appeal and the Division Bench clearly specified in the judgment that the stay granted would be operative only till the final disposal of the writ petition. Hence, there is no question of any relation back to Exhibit R4(f) and the status-quo order passed therein would be of no consequence on the disposal of W.P.(C). No. 28629 of 2009, is the argument raised.

15. It was also pursuant to Exhibit P5 judgment that Exhibit P6 order was passed, again disqualifying the respondents 4 to 6, which, along with resignation of two other members, finally led to the Administrator taking charge as per Exhibit P7. Though stay of judgment and stay of passing an order of disqualification was sought in the Writ Appeal, as an interim prayer it was not allowed. When the Writ Appeal was considered on 06.06.2014, admittedly the Committee had been superseded for lack of quorum. The disqualification of respondents 4 to 6 also was one of the reasons for the validly elected Managing Committee having fallen below the required quorum. The appellants in Exhibit P8, who were the respondents 4 to 6, could have validly raised a contention before the Division Bench to continue them in office till the appellate decision was taken. This is more so since the respondents 4 to 6 were out of the Managing Committee on the basis of a disqualification order, dependant on Exhibit P2 surcharge order. Such disqualification, it is to be emphasised, is a statutory rigour; a direct consequence of the order under Section 68.

16. True, the respondents 4 to 6 who were validly continued in the earlier Committee; were permitted to stand for the elections on 09.10.2011 and were continued in the newly elected Committee on the basis of the interim orders issued by this Court, when the appeal was pending before the Government and

later when the writ petition was remanded for fresh consideration. The permission to participate in the election was also by virtue of the orders passed in the Writ Appeal; which stands effaced on the writ petition itself being dismissed. As a consequence of the disqualification effected on the basis of Exhibit P2 order; confirmed in appeal and by this Court, an Administrator was appointed. This brought in serious consequences to the status of respondents 4 to 6 as Committee members of the Society. The Division Bench in Exhibit P8 having not granted a specific order for continuance, the respondents 4 to 6 cannot claim that the order of status-quo in Exhibit R4(f) would have to be revived. Exhibit R4(f) order of status quo is no more operative; since the circumstances stood substantially altered after Exhibit R4(f). Exhibit P2 order being in force, there was no warrant for passing Exhibit P9 order. The disqualification as was noticed, was dependant on Exhibit P2 order, which as of now stands undisturbed.

17. A stay application, in the appeal, having not been considered and when considered; the appellate authority having not properly dealt with the contentions; this Court had interfered and kept the order under Section 68 in abeyance. Such order cannot be said to be revived, when the considerations that apply now are quite different. The respondents 4 to 6 were disqualified twice and the Committee itself, to which they were elected, on both occasions superseded. This change in circumstance; rather than the subsequent election held, is of considerable import in deciding the issue. It is trite that the authority who passed the order of disqualification, has no power of review much less any suo motu review; that too on the basis of a decision of the Division Bench of this Court, when no such reconsideration was specifically directed. The continuance of the respondents 4 to 7 was a prayer sought for in the Writ Appeal, which was not granted by the Division Bench. The respondents 4 to 6 could seek for stay of Exhibit P2 order in appeal; but no relief to that end can be granted by this Court in a writ petition by another. The writ petitions, hence, are to be allowed, finding the impugned order to be without jurisdiction.

In the result, the writ petitions are allowed. The order of the Joint Registrar (General) in C.R.B./5889/2014 dated 08.07.2014 [Exhibit P9 in WP(C). No. 18567 of 2014 and Exhibit P10 in WP(C). No. 18530 of 2014] is quashed. The parties are left to suffer their respective costs.