
(2014) 08 KL CK 0037
In the High Court Of Kerala
Case No : WP (C). No. 19257 of 2013 (F)

B.K. Saidalavi

APPELLANT

Vs

The Thennala Service Co-Operative Bank Ltd.

RESPONDENT

Date of Decision : 28-08-2014

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 31(1)(e), 32, 32(1), 32(1)(e), 32(2)

Citation : (2014) 08 KL CK 0037

Hon'ble Judges : A.K. Jayasankaran Nambiar, J

Bench : Single Bench

Advocate : P.V. Baby and P.K. Anil, Advocate for the Appellant; V. Rajendran and P. Riji, Advocates and D. Somasundaram, Adv., SPL. G.P, Advocate for the Respondent

Judgement

A.K. Jayasankaran Nambiar, J.—This writ petition is filed by the petitioners who are the managing committee members of the first respondent co-operative bank and were elected as such during the year 2008 for a period of five years. The writ petition is filed challenging Ext. P6 order of the fourth respondent whereby the managing committee of the first respondent bank was superceded at a time when their term was even otherwise to expire on 29.8.2013. Ext. P6 order of the fourth respondent is dated 27.7.2013.

2. The primary contention of the petitioners against Ext. P6 order of the fourth respondent is that, before issuing the order of supersession, the fourth respondent had not complied with the statutory requirement of consultation with the financing banks and circle co-operative union/state co-operative union. The petitioners rely on the decision of a Division Bench of this Court in State of Kerala v. Urukunnu Service Co-operative Bank Ltd. [2013 (2) KLT 74] as also the decision of the Supreme Court reported in State of M.P. and Others Vs. Sanjay Nagayach and Others, to contend that the exercise of power, invoking section 32(1), is not a mechanical act and the fourth respondent was statutorily obliged to make an effective consultation with the authorities mentioned in section 32(2)

of the Co-operative Societies Act. It is pointed out that the consultation contemplated under the Act is for the purposes of ensuring the valid exercise of the powers under section 32 and hence it has to be read as mandatory, subject to the exception provided in clause (3) of section 32. The petitioners contend that in the instant case although the fourth respondent has indicated that he is exercising the discretion under section 32(3), there are no valid reasons stated in Ext. P6 for resorting to the said provision and making a departure from the established procedure. It is also pointed out that immediately after Ext. P6 order was passed, there was a regular election held on 18.8.2013 to elect the managing committee of the first respondent society and a new committee had since come into place. Under these circumstances, the only fall out of Ext. P6 order would be the disqualification that is attracted to the petitioners by virtue of section 31(1)(e) of the Co-operative Societies Act.

3. A counter affidavit has been filed on behalf of the fourth respondent wherein Ext. P6 order of the fourth respondent is sought to be justified. In respect of the specific contention of the petitioners with regard to the manner of exercise of the discretion under section 32(3), however, the counter affidavit is silent and merely indicates that it was taking recourse to section 32(3) that the fourth respondent exercised his powers. No reasons are stated as to why recourse had to be taken to the provisions of section 32(3).

4. I have heard Sri. P.V. Baby, learned counsel appearing for the petitioners, Sri. V. Rajendran, learned counsel appearing for the first respondent and Sri. D. Somasundaram, learned Special Government Pleader appearing on behalf of respondents 3 and 4. On a consideration of the facts and circumstances of the case and also the submissions made across the Bar, I am of the view that the writ petition must succeed. This is a case where the managing committee of the first respondent bank has been superceded by Ext. P6 order of the fourth respondent. The fourth respondent was exercising his powers in terms of section 32 of the Co-operative Societies Act. The parameters for exercise of jurisdiction under section 32 of the Co-operative Societies Act are, by now, well settled as is apparent from the judgments referred to above. In this case, recourse seems to have been taken by the fourth respondent to the provisions of section 32(3) of the Co-operative Societies Act. By virtue of the said provision, the fourth respondent is conferred a discretion to deviate from the mandatory requirements of section 32(2) if he is of the opinion that it is not reasonably practicable to comply with the procedure in section 32(2) regarding consultation with financing banks and circle co-operative union/state cooperative union. In the instant case, on a perusal of Ext. P6 order, other than merely stating that he is exercising the powers under section 32(3), there is no reason discernible therefrom justifying the recourse to section 32(3) by the fourth respondent. Under these circumstances, and in view of the mandatory nature of the procedure contemplated under section 32(2), the recourse to section 32(3) has to be viewed as an exception that can be resorted to only on the establishment of adequate reasons for the same. Since in this case those reasons have not been

stated by the fourth respondent, Ext. P6 order of supersession deserves to be quashed and I do so. Resultantly the effect of Ext. P6 order on the petitioners by virtue of section 32(1)(e) will stand obliterated.

The writ petition is allowed as above.