

(1999) 09 KL CK 0014

In the High Court Of Kerala

Case No : O.P. No. 22185 of 1998 and Connected Cases

Cherthala Agrl. R.D. Bank and Others

APPELLANT

Vs

Joint Registrar and Others

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Constitution of India, 1950 — Article 137, 14, 142, 16, 226

Citation : (2000) 1 KLJ 291

Hon'ble Judges : R. Rajendra Babu, J;K.K. Usha, J;K. Narayana Kurup, J

Bench : Full Bench

Advocate : Kurian Joseph, K. Ramakumar, C.P. Sudhakara Prasad, D. Somasundaram, T.R. Ramachandran Nair, T.R. Ravi, K. Anilkumar and P.C.Sasidharan, for the Appellant; Alexander Thomas, Govt. Pleader, for the Respondent

Judgement

Usha, J.—In Hassan v. Joint Registrar of Co-operative Societies, 1998 (2) KLT 746, a Full Bench of this court took the view that the power given to the administrator under sub section (4) of Sec. 32 of the Kerala Co-operative Societies Act, 1969 to exercise all or any of the functions of the committee would not take in the power to enrol new members to the society. One of the issues raised in O.P. No. 22185/98 and O.P. No. 602/99 is whether the above mentioned judgment of the Full Bench would operate retrospectively or not. A Learned single Judge before whom the above mentioned Writ Petitions came up for hearing found that in very many cases administrators having given membership to several persons and in certain cases such members have contested previous elections as well. It was also found that various members admitted by the administrators had obtained loans from the societies and are enjoying the benefit of membership for over many years. If it is declared that those members are not eligible to continue as members, that will adversely affect the interest of the society as well. The learned Judge felt that since the question involved, is interpretation of the effect of the judgment of the Full Bench referred above, it is only just and proper that these cases are considered by a Larger Bench: By

orders dated 3-3-99 and 15-3-99 a Division Bench referred the above mentioned two Original Petitions for consideration of Full Bench. The other original petitions were also referred for the same reason. In O.P. No. 602/99, the petitioner was enrolled as a member of Vallappuza Service Co-operative Bank Ltd. On 6-10-1981 when administrator was in charge of the society. Thereafter, he exercised several rights as a member including voting in the elections at least 4 times. He was elected as a member of the Board of Directors of the Society. The petitioner wanted to contest the election in 1999. He was then informed that his name has been deleted from the draft voters list submitted by the administrator for the reason that he was admitted as a member in the year 1981 by an administrator and that in the light of the Full Bench decision of this court he cannot be permitted to continue as a member.

2. O.P. No. 13173/99 is filed by Cherthala Agricultural and Rural Development Bank Ltd., its President and members of the Board of Directors. The prayer in the Original Petition is to quash the decision taken by the returning officer removing large number of members from the voters list for the reason that they were admitted by administrators. About 785 persons had been admitted by administrator during the period from 13-2-92 to 12-10-1992. The committee, subsequently elected, ratified their admission by giving them loans. They were in the voters list and they had voted in the elections in the year 1992 and 1996. Petitioners 3 and 9 had contested in the election and they were elected as board members. The decision to cancel their membership is sought to be justified on the basis of the Full Bench decision of this court.

3. O.P. No. 14477/99 is filed by the President of Puthur Service Cooperative Bank Ltd. The complaint of the petitioner is that 5065 members of the society are removed from the voters list by the returning officer for the reason that they were enrolled as members during the period from 14-2-1992 to 22-12-1992 by an administrator. It was contended by the learned counsel for the petitioner that their enrolment was ratified by the elected committee on 7-5-1993 and they were enjoying all the privileges of members. They took part in the election conducted in 1993 and in 1996, two of them were elected as members of the managing committee. Such managing committee has in turn admitted other members who are allowed to continue without any disqualification.

4. O.P. No. 239/99 is filed by 3 members of Palakkad District Cooperative Hospital. The first petitioner is a life member and petitioners 2 and 3 are ordinary members. There are 4 different types of members in the society namely, life members, ordinary members, institution members and professional members. The administrator who was in management of the society during the period from 7-12-1987 to 23-5-1988 enrolled 25 institution members, 7 life" members, 9 professional members and 44 ordinary members in the society in 1987. The administrator who was in charge during the year 1992 admitted 9 life members and 100 ordinary members. Elections were held to the board of directors during 1992 and 1995 on the basis¹ of the voters list including the members enrolled by

the administrator. The term of the present board of directors was to expire on 5-2-1999. A preliminary voters list was published on 26-12-1998 including the names of the petitioners who were enrolled as members in 1992 when the administrator was in charge. When the final voters list was published on 4-1-1999 the names of 100 ordinary members and 8 life members who were enrolled by the administrator in 1992 were seen deleted. But the members who were enrolled by other, administrators in 1987 and 1988 were allowed to continue. The petitioners 1 and 2 are members of the board of directors of the society and the 2nd petitioner is its Vice-President also. The 2nd petitioner has been the Vice President from 9-2-1993 onwards. Petitioners seek to quash the final voters list and the notice issued by the returning officer. They also pray for a declaration that the members enrolled by the Administrator in the year 1992 are not liable to be deleted from the voters list and for other" reliefs. O.P. No. 2609/99 is filed by the society namely, Palakkad District Cooperative Hospital. The reliefs claimed in this Original Petition are consequential to the interim reliefs granted by this Court in O.P. No. 239/99.

5. O.P. No. 25789/98 is filed by two members of Cherpu Block Rajeev Gandhi Memorial Scheduled Caste Service Co-operative Society, Trichur. They made a representation dated 2-11-1998 before the 1st respondent, Joint Registrar of Co-operative Societies to remove the names of 172 persons from the voters list for the reason that they were granted membership by an administrator in the year 1996. Such members had taken part in the election conducted in the year 1997 and two of them were elected as members of the managing committee. The petitioner's complaint is that no action is being taken by the 1st respondent on their representation.

6. O.P. No. 22185/98 is also a petition challenging the inclusion of members enrolled by administrator in the voters list. An administrator was appointed to the Titanium Labour Co-operative Society Ltd., Thiruvahanthapuram on 1-11-1997. The Administrator enrolled 178 new members. According to the petitioner,"who is a member of the society included in the voters list for the reason they were enrolled by an administrator.

7. The facts stated above would show that the writ petitions come under two different categories. In O.P. No. 602/09, O.P. No. 13173/09, O.P. No. 14477/99, O.P. No. 239/99 and O.P. No. 2609/09 the petitioners would contend that the effect of the judgment of the Full Bench of this court in 1998 (2) KLT 746 can visit only on the enrolment of members by administrators from the date of the decision. It cannot have any effect on the enrolment already made by the administrators and which were not challenged in the petitions which come Up for consideration of the Full Bench. According to these petitioners, the established legal position in Kerala till the judgment of the Full Bench was that the administrators had the power to enrol members to the society, this was the view taken by several decisions of this court from 1980 onwards. George v. Joint Registrar, 1985 KLT 36, is a Bench decision which took the view that the

administrator appointed under Sec. 33(2) of the Kerala Cooperative Societies Act has all the powers of elected committee and that he is entitled to enrol new members. On the other hand, the petitioners in O.P. Nos. 25789 and 22185/98 would contend that the effect of the decision in 1998 (2) KLT 746 is that the scope of the power of the administrator under Sec. 33 (2) is as interpreted by this court in the above decision from the very inception. Therefore, no member enrolled by an administrator before or after the decision" can be allowed to continue.

8. No counter affidavit as such has been filed by the Returning Officers impleaded in the above original petitions. Statement filed by the 1st respondent in O.P. No. 602/99 is in the nature of a counter affidavit. The contention taken therein is that in the light of the decision of this court reported in 1998 (2) KLT 746, none of the members enrolled previously by administrators can be allowed to continue. The returning officers who are impleaded, as respondents in O.P. Nos. 25789/98 and 22185/98 have not followed the above principle. The learned Government Pleader who represented all the returning officers contended before this court that in the light of the decision in 1998 (2) KLT 746 no member enrolled by an administrator whether before or after the judgment can be allowed to continue.

9. We heard learned senior counsel Shri Kurian Joseph, learned counsel Shri. K. Ramakumar, C.P. Sudhakara Prasad, Shri. D. Somasundaram and Shri. T.R. Ravi for the petitioners and the respondents who Contended that on the basis of the judgment of this Court in 1998 (2) KLT 746 members who were enrolled by administrators prior to the judgment cannot be disqualified. Learned counsel Shri. K.Anilkumar, Shri. T.R. Ramachandran Nair and Shri. P.C. Sasidharan were heard on behalf of petitioners and respondents who took the contra contention. As mentioned earlier, learned Government Pleader Shri. Alexander Thomas supported their stand.

10. The learned counsel who appeared on behalf of the petitioners in O.P. No. 14477/99 and other connected original petitions where similar prayers were made contended that the decision of this Court in 1998 (2) KLT 746 cannot have any application to those members who are enrolled years back in different societies where administrators were in charge. If the judgment is made applicable to all such members, it will have the effect of taking away the members" vested civil rights and that it will be against the interest of the society also. The facts stated in the earlier portion of the judgment would clearly show that large number of such members had been enrolled from the year 1981 onwards. They have participated in several elections conducted in the society and some of them have become members of the board of directors. Such board of directors have enrolled fresh members and while such members enrolled by them would be allowed to continue the members of the board of directors who enrolled them will have to go out by applying the principle in the judgment in 1998 (2) KLT 746. Learned counsel submits that this would be an anomalous

situation. Apart from the above, large number of members enrolled by administrators have availed of monetary benefits from the society. Such benefits are granted to them by the regularly constituted managing committee. If they were to be removed from the list of membership, the effect would be disastrous. Once the relationship between the society and members is served, there will be difficulty for the society to get back the amount granted as loan. The learned counsel further contended that even if the doctrine of prospective overruling is not applied in this case, the High Court can mould the relief in such a manner that it will be equitable and in larger interest of the public. On the other hand, the contention on the other side is that by exercising the power to mould the relief High Court cannot do something, which would come under the principle of prospective over-ruling. Therefore, declaration of law made in 1998 (2) KLT 746 should be applied from the very beginning and all those who were enrolled as members by administrators should be removed from the membership of the societies.

11. We are of the view it will be highly unjust to expel members who were enrolled years back by administrators at a time this Court had interpreted the law that the administrators have such power. Especially, it is so as there was no challenge against their membership all these years. We also agree with the petitioners that such action would be against the interest of the societies and also against public interest. But the question raised is whether this court has the power to mould the relief in such a manner.

12. In *I.C. Golak Nath and Others Vs. State of Punjab and Another*, , the Supreme Court applied the doctrine of prospective over-ruling. Since the above doctrine was being applied for the first time in this country, the Supreme Court laid down the following propositions:-

(51). As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions:-

(1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (3) the scope of the retroactive operation of the law declared by the Supreme Court superseding its "earlier decisions" is left to its discretion to be moulded in accordance with the justice of the cause or matter before it.

It is not contended before us that this court has the power to apply the doctrine of prospective overruling in the present case. But there are several decisions of the Supreme Court where relief was so moulded not to affect past transactions in public interest. In *Managing Director, ECIL, Hyderabad, etc. v. B.Karunakar, etc.*, AIR 1094 SC 1074 the question whether the law laid down in *Union of India and others Vs. Mohd. Ramzan Khan*, , should be made only prospective in operation

was considered and it was observed as follows:-

As pointed out above, in view of the unsettled position of the law on the subject, the authorities/managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To re-open all the disciplinary proceedings now would result in grave prejudice to administration which will far out weigh the benefit to the employees concerned. Both administrative reality and public interests do not therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case (supra) without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account.

13. In *State of Karnataka v. Kumari Gowri Narayana Ambiga and others*, 1995 Sup. (2) SCC 560, Supreme Court while declaring certain rules of the Karnataka State Civil Services (Direct Recruitment of Scheduled Castes, Scheduled Tribes and Backward Tribes to Class III Posts) (Special) Rules, 1977 as unconstitutional affirming the Bench decision of High Court of Karnataka, it was observed that the rights of Scheduled Caste and Scheduled Tribes and backward tribes candidate who have been appointed/regularised during the pendency of the appeals before the Supreme Court are to be protected. In *Collector, Allahabad and Another Vs. Chhote Lal*, , an order issued by the Government of Andhra Pradesh requiring retrenchment of non-SC/ST temporary appointees, probationers and approved probationers before retrenching even a temporary SC/ST employee was held arbitrary and violative of Articles 14 and 16 of the Constitution, but since the impugned G.O. had remained in operation for about three decades and many retrenchments had already taken place in pursuance thereof the Supreme Court held that the impugned G.O. would become non-operative from the date of the decision.

14. In *Dr. Suresh Chandra Verma and others Vs. The Chancellor, Nagpur University and others*, , challenge was against the advertisement relating to appointment of teaching staff in Nagpur University. The scope of Sec. 57(4) (a) of Nagpur University Act, 1974 came up for consideration and it was held that the advertisement or employment notice for appointment of teaching staff should indicate clearly the number of reserved posts subject wise. Mere mention in the advertisement of the total number of reserved posts is not sufficient and it is not in accordance with the requirement of Sec. 57(4) (a). A contention was raised on behalf of the appellants that since their appointments were made pursuant to the law laid down by a Division Bench in *Bhakare's case*, 1985 Lab IC 1481

(Bombay) their services are not liable to be terminated in the light of the decision of the subsequent Full Bench and of the Supreme Court. This contention was rejected. It was held that when the court decides that the interpretation of a particular provision as given earlier was not legal, it in effect declares that the law as it stood from the beginning was as per its decision, and that it was never the law otherwise. Since the Full Bench and then the Supreme Court have taken a view that Bhakare's case was erroneously decided, it will have to be held that the appointments made by the University on March 30th, 1985 pursuant to the law laid down in Bhakare's case were not according to law and thus, the appellants services are liable to be terminated. It is relevant to note that in the above case the very appointments made following Bhakare's case were subject matter of the appeal and Supreme Court took the view that merely because the impugned appointments were made on the basis of decision in favour of the appointees available at that time, the appointees cannot escape the direct consequences of the decision declaring that Bhakare's case was erroneously decided.

15. In the Original Petitions before this Court the contention raised is slightly different. The petitioners in O.P. No. 14477/99 and connected cases do not plead for those members enrolled by administrators and were directly affected by the decision in 1998 (2) K.LT 746. The plea is made on behalf of large number so such members who were enrolled by other administrators and whose memberships were not under challenge at any time before this court on the ground that they were enrolled by administrators.

16. In Shiv Shankar Dal Mills and Others Vs. State of Haryana and Others, , the scope of the remedy under Article 226 has been considered. It was observed that "Article 226 grants an extraordinary remedy which is essentially discretionary, although founded on legal injury. It is perfectly open for the court, exercising this flexible power, to pass such order as public interest dictates and equity projects. Courts of equity may, and frequently do, go much further both to give and withhold relief in furtherance of the public interest than they are accustomed to go where only private interests are involved. Accordingly, the granting or withholding of relief may properly be dependent upon considerations as of public interest." As observed earlier, in the facts of the present case substantial public interest is involved, apart from the private interest of the large number of members enrolled by the administrators.

17. In B.C. Chaturvedi Vs. Union of India and others, , the power of the High Court and Administrative Tribunal to interfere with the imposition of punishment on Government servant by disciplinary and appellate authority was considered. K. Ramaswamy, J. observed in his judgment for himself and B.P. Jeevan Reddy, J. that High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately

mould the relief either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof. In his concurring judgment Hansaria, J. observed as follows:-

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provisions like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this court held as early as 1961 in *Shivdeo Singh and Others Vs. State of Punjab and Others*, , that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction like of High Court. Of course, this power is not as wide which this Court has under Article 142. That, however, is a different matter.

In *Sanchalakshri and Another Vs. Vijayakumar Raghuvirprasad Mehta and Another*, , Nanavati, J. observed that it would not be correct to say that the Supreme Court in *B.C. Chaturvedi* case has accepted the view that the High Courts/Tribunals possess the same power which the Supreme Court has under Article 142 of the Constitution for doing complete justice. But it is relevant to note that the later decision does not hold that under no circumstances the High Court has power to pass appropriate orders for doing complete justice.

18. It was also submitted before us that de facto doctrine has been accepted by the Supreme Court and other High Courts. Detailed reference was made to the decision of Chinnappa Reddy, J. in *Gokaraju Rangaraju Vs. State of Andhra Pradesh*, . The following observation of a Full Bench of this Court in *P.S. Menon Vs. State of Kerala and Others*, , was quoted with approval of by the Supreme Court:-

This doctrine was engrafted as a matter of policy and necessity to protect the interest of the public and individuals involved in the official acts of persons exercising the duty of an officer without actually being one in strict point of law. But although these officers are not officers de jure they are by virtue of the particular circumstances, officers, in fact, whose acts, public policy requires should be considered valid.

The Supreme Court then observed that the de facto doctrine born of necessity and public policy is to prevent needless confusion and endless mischief.

19. In the present case there is no dispute regarding the appointment of the administrators, but the dispute relates to their exercise of certain jurisdiction which they had in them according to the interpretation of Sec. 33 (4) by the binding decisions of this Court during the relevant period. In *Pritam Pal Vs. High Court of Madhya Pradesh, Jabalpur through Registrar*, , while considering the power of the High Court as a court of record it was observed that the power is

inherent, elastic, unfettered and not subjected to any limit. As observed by the Supreme Court in AIR 1980 SC page 1037, it is open to this Court while exercising flexible power under Article 226 of the Constitution to take such a view as public interest dictates and equity projects.

20. According to us, if we have to hold that in the light of the declaration of law in 1998 (2) KLT 746 all members enrolled by the administrators from the year 1981 onwards or even earlier period are disqualified, it would certainly end up the functioning of the societies in chaos. Such an action will be totally against public interest. According to us, this Court will be fully justified in holding that the decision will have only prospective effect. We make it clear that parties to the original petitions which were subject matter of the Full Bench decision are bound by the judgment.

21. We, therefore, answer the question referred to us by holding that the judgment of the Full Bench in 1998 (2) KLT 746 will act only prospectively and not retrospectively. The Writ Petitions are sent back to the appropriate court.