
(1992) 04 KL CK 0007
In the High Court Of Kerala
Case No : O.P. No. 3651 of 1992

C.J. John

APPELLANT

Vs

Joint Registrar and Others

RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 28(1A), 33(2)

Citation : (1992) 1 KLJ 622

Hon'ble Judges : T.L. Viswanatha Iyer, J

Bench : Single Bench

Advocate : M.K. Damodaran, for the Appellant; V. Bhaskara Menon, Senior Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

T.L. Viswanatha Iyer, J.

The petitioner is a member of the third respondent the Chakkittapara Service Co-operative Bank Ltd., (the Society), which is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 (the Act). He is "very much interested in the smooth functioning of the Society". The managing committee of the Society which had been elected on September 26, 1987 ceased to hold office on February 7, 1992 on the promulgation of the Kerala Cooperative Societies (Amendment) Ordinance 3 of 1992, by which a proviso was added to sub-section (1) of section 28 reducing the term of office of managing committees of all co-operative societies to three years. The Ordinance also introduced sub section (1A) in the section providing for the appointment of a committee or an Administrator or Administrators in cases where the term of the managing committee stood expired under the newly introduced proviso to sub-section (1) of section 28. Section 28 (1A) reads:-

Where the committee of a society has ceased to be in existence as provided in the third proviso to sub-section (1), the Registrar shall appoint -

- (i) a new committee consisting of not more than three members of the society; or
- (ii) one or more administrator or administrators, who need not be a member or members of the society, to manage the affairs of the society for a period not exceeding six months as may be specified in the order, which period may, at the discretion of Registrar and for reasons to be recorded in writing, be extended from time to time, so however, that the aggregate period shall not, in any case, exceed more than one year or till the new committee enters upon office, whichever is earlier,

Accordingly, an administrator was appointed to the third respondent society. He is the fourth respondent and he is now in management of the society. Apparently anticipating the promulgation of the Ordinance, the managing committee passed a resolution on January 29, 1992 resolving to hold elections to the managing committee on June 7, 1992. It is stated that a copy of this resolution was forwarded to the Assistant Registrar of Co-operative Societies, the second respondent with request to appoint a Returning Officer. This request was not complied with and no Returning Officer was appointed, for that matter the request was not also turned down. It was in that context the original petition was filed.

2. The grievance of the petitioner in this original petition is two fold, one that the second respondent has not so far appointed a Returning Officer for holding the elections to the managing committee, inspite of the fact that resolution for the purpose was passed as early as on January 29, 1992 and request made soon thereafter to appoint a Returning Officer; and, secondly that the Administrator was enrolling new members to the society for which he had no authority, It was on this latter point that the original petition was mainly argued. The allegation is that the Administrator is taking "hectic steps" to enrol new members. Being an Administrator appointed u/s 28 (1A) he is not entitled to do so. What the petitioner seeks primarily is a direction to the fourth respondent Administrator not to enrol new members to the society. Incidentally (and this prayer is only secondary); there is also the prayer to direct the Assistant Registrar to appoint a Returning Officer to conduct the election on June 7, 1992.

3. The learned Government Pleader who appeared for the respondents on being served with a copy of the original petition, pointed out that the powers of the Administrator are coeval with those of the managing committee and that no limitation could be found in those powers merely because the appointment was u/s 28 (1A). He points out further that on the allegations in the original petition, the writ is sought against the Administrator representing the society. Such a writ is not maintainable in view of the decision of the Full Bench of this Court in *Bhaskaran v. Additional Secretary* 1987 (2) KLT 903. Regarding the prayer for appointment of Returning Officer, he refers to the incongruity of holding the election on June 7, 1992 and the assumption of office soon thereafter by the new managing committee, thereby whittling down its term considerably. I shall refer to this in detail later.

4. Counsel for the petitioner develops his contention regarding the fourth respondent Administrator's power to enrol new members, this way. He refers to sections 32 and 33 of the Act. Section 32 deals with supersession of the managing committee in certain contingencies. It provides that if the Registrar is satisfied that the committee of any society persistently makes default or is negligent in the performance of its duties or commits any act which is prejudicial to the interests of the society or wilfully disobeys or fails to comply with any lawful order or direction issued under the Act or the Rules, the Registrar may, after following the procedure prescribed, appoint a new committee consisting of not more than three members of the society or appoint one or more administrator or administrators, who need not be a member or members of the society to manage its affairs. Section 33 deals with cases where the term of office of a committee has expired and a new committee has not been constituted, or where a no confidence motion is passed against the existing committee, or where the committee resigns enbloc or where vacancies occur in the committee, either by resignation or otherwise, and the number of remaining members cannot constitute the quorum for the meeting of the committee or where the committee fails to hold its regular meetings consecutively for six months, or where the Registrar is satisfied that a new committee cannot be constituted before the expiry of the term of the existing committee, or that the new committee is prevented from entering upon office or fails to enter upon office. In any of these contingencies, the Registrar may either suo motu or on the application of any member of the society appoint either an administrative committee of three members or one or more administrators to manage the affairs of the society till a new committee enters upon the office. Sub-section (4) of section 32 and sub-section (2) of section 33 provide that the committee or the administrator or administrators shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the managing committee or of any officer of the society and take all such action as may be required in the interests of the society.

5. Section 28(1A) introduced by Ordinance 3 of 1992 provides for the appointment of a committee or administrator or administrators in case where the committee of a society ceases to be in existence on completion of three years of its term. Section 28 (1A) does not contain any provision analogous to sections 32 (4) or 33 (2). Counsel for the petitioner therefore draws a distinction between an administrator appointed under sections 32 and 33, and one appointed u/s 28.(1 A) and contends that in the absence of a provision akin to sections 32 (4) and 33 (2), the powers of the Administrator appointed u/s 28 (1A) are limited to the carrying on of the routine day-to-day affairs of the society, and no more. This does not include a power to enrol new members which is vital to the functioning of the society.

6. AH these provisions, sections 28 (1A), 32 and 33 provide for the appointment of a committee or administrator to manage the affairs of the society. The only difference between them is that while there is specific provision in sections 32

and 33 that the committee or the administrator appointed thereunder shall exercise all or any of the powers of the committee or of any officer of the society, there is no such express provision in section 28 (1 A). The question is whether the absence of such a provision in section 28 (I A) restricts the powers of the administrator in any manner and deprives him of the right to enrol new members, Now, the power conferred on the administrator is the power to manage the affairs of the society. The right to manage the affairs of the society is not the right merely to manage its day-to day routine matters. The term "manage" takes within its ambit everything that falls for decision in the interests of the society. It means "to have charge of: direct, conduct, administer; as she manages the household". (Webster's New world Dictionary). Chambers Twentieth Century Dictionary gives as its meaning: "to wield : to conduct; to control : to administer, be at the head of". To the like effect is the meaning in Funk and Wagnall Practical Standard Dictionary, what the administrator does when he assumes office is to displace the managing committee and get substituted in its place. He steps into the shoes of the committee, Nowhere in the Act or the Rules is it stated. that the powers of the Administrator are less comprehensive than those of the managing committee. An Administrator is appointed to ensure continuity in the administration and not to create any hiatus or stagnation in its working. The affairs of a society are not expected to come to a standstill (except for routine clerical work) on the appointment of the Administrator. As such, an Administrator appointed to manage the affairs of the society could exercise all those powers which the managing committee could itself have exercised if it were in office. Of course, this could be restricted by express provision in the order of appointment or in exercise of the powers of the Registrar by issuing directions u/s 66. But in the absence of any provision so limiting his powers, or directions, it has to be taken that his powers are plenary and coeval with those of the managing committee. Else it will be a matter of confusion and doubt as to what functions the administrator could or could not perform and where the border line of his rights and duties lies. A co-operative institution is intended to subserve a social purpose and to be of benefit to those members of the public for whose service it is constituted. Management of the affairs of the society should therefore connote all those functions which are necessary for the achievement of its objects, which will include the reaching of those who are the beneficiaries of the society and its working. This cannot be done without enrolment of the eligible members.of the public. Enrolment of members is one of the normal functions of management, within the purview of the powers of the managing committee, and therefore of the administrator. In my opinion, the very ambit of the appointment, namely to manage the affairs of the society by itself is sufficient to vest him with the right to exercise all the powers of the managing committee including the power to enrol new members, unless restricted by the express provision in the order of appointment or by directions issued by the competent authorities. The provisions in sub-sections (4) of section 32 and (2) of section 33 are only declaratory of this power. The contrary view of a learned single Judge expressed in *Gopalan v. Joint Registrar of*

Co-operative Societies, 1985 KLT 446, was not accepted by a Division Bench in *George v. Joint Registrar of Co-operative Societies*, 1985 KLT 836 and was treated as obiter by Bhat, J. in *Gangadharan v. Administrator*, 1988 (1) KLT 624.

7. It is noteworthy in this context that section 28 which provides for the constitution of the management committee and entrustment of the management of the affairs of the society to such committee does not further outline the powers of the committee. It is significant that there is no provision in this section or in the Rules specifically conferring power on the managing committee to enrol members. The managing committee functions in accordance with the Act, the Rules and the Bye-laws. It has never been in dispute that the very width of the power of management of a committee constituted u/s 28 embraced within it the power to enrol new members as well.

8. In *Sudhakaran v. Deputy Registrar of Co-operative Societies*, 1980 KLT 658, after a careful consideration of the scheme of the Act and the Rules, Bhaskaran J. described the admission of members to the rolls of a society as a routine function of the committee which was not anything extraordinary in character. The learned Judge treated it as part of the day to day administration of the society. In fact the very intendment of the legislature was that applications for membership should receive prompt attention at the hands of the managing committee.

9. The learned Judge reiterated this view in another decision of this court in O. P. No. 3187 of 1980 reported in the Short Notes section of 1980 KLT at page 46. The powers of an Administrator came up for detailed consideration by a Division Bench of this court in *George v. Joint Registrar*, 1985 KLT 836. No doubt, the decision was rendered specifically with reference to sub-section (2) of section 33, but the decision was not rested on the terms of that sub-section alone. On the other hand, there was discussion regarding the powers of the Administrator and it was observed that section 33 (2) statutorily clarified that the Administrator has the same powers as the managing committee. This is what the Bench said:-

The administrator functions as the managing committee of the society, in its absence. The administrator is the de jure committee in power when there is no elected committee. He has thus all the powers of the committee. It is admitted that the committee was entitled to enrol new members. If so, S. 33 (2) statutorily clarifies that the administrator also has the same powers.

The Bench then went on to observe:-

The width of the power of the administrator is outlined in S.33(2) of the Act. It is not necessary to curtail the ambit of that power by any judicial interpretation of the scope of the expression "manage" occurring in S.33(1) of the Act, for, the statute does not insist that the administrator should be given all the powers provided for under S. 33 (2). These powers can be controlled, curtailed, defined and limited in appropriate cases by the appointment order itself. The administrator is not a body subordinate to the committee or Board of Directors.

He is the committee or the Board itself.

It will be seen from the above observations of the Bench that in the absence of any express limitation, the court did not find any distinction between the managing committee and the Administrator in regard to the powers to be exercised by either. Section 33(2) was only clarificatory of what was even otherwise implicit in sub-section (1).

10. The matter entailed further discussion at the hands of Bhat, J. in *Gangadharan v. Administrator*, 1988 (1) KLT 624. The question raised was whether an Administrator functioning u/s 32 or 33 could appoint or withdraw a delegate. The question was answered in the affirmative with the following ratio :-

The statute has conferred on the administrator all the functions of the Managing Committee, subject of course to such restrictions as the Registrar may impose. The expressions "manage" and "management" cannot be considered out of context. They have to be appreciated in the context of the provision in S. 28 (1) which states that the general body of the society shall constitute Managing Committee and entrust the management of the affairs of the society to such committee. The elected committee is to manage the affairs of the society. Proviso to sub-section 28 (1) also contemplates cases where first Managing Committee is to be nominated by the Registrar. In such cases the nominated committee shall be in management of the affairs of the society. It is difficult to draw a distinction between the powers of an administrator and the powers of an elected or nominated Managing Committee in the management of the affairs of the society. The powers of the committee are delineated in the bye-laws of the respective co-operative societies; there is no dispute that powers include power to enrol new members, to nominate or withdraw delegates etc. Necessarily these powers must vest with the administrator also, subject to any restrictions imposed by the Registrar.

Though these cases did not have to reckon with the absence of a provision like section 32 (4) or section 33 (2), the principles laid down are general and proceed on an overall conspectus of the powers of the administrator. It is not as if they trace the width of his powers to the above two sub-sections treating their absence as fatal to anything other than mere day-to-day clerical work. On the other hand, Bhaskaran, J. is categorical that enrolment of members is part of the day-to-day administration by the committee and the Administrator. In fact Bhat, J. struck the right note in *Gangadharan's* case when he drew inspiration from sub-section (1) of section 28 to arrive at the true interpretation of sections 32(1) and 33(1). I have therefore no hesitation to hold that sections 32 (4) and 33 (2) are only clarificatory and declaratory of the powers of the Administrator and that the absence of such a provision in section 28 (1A) does not make any difference. He possesses, and he can exercise, all the powers of the managing committee, under the Act, the Rules or the bye-laws, unless expressly restricted by the terms of his appointment or by lawful directions issued by the statutory authorities. The petitioners contention that the Administrator appointed u/s 28

(1A) has no power to enrol new members is therefore bereft of substance and has only to be rejected.

11. In this view of the matter, the proposed insertion of sub-section (1B) in section 28 akin to sections 32(4) and 33 (2) in the Co-operative Societies (Amendment) Bill 1992) is irrelevant and does not support the petitioner in his contentions. It is apparently being introduced *ex abundanti cautela* and not as one of necessity.

12. Even otherwise, the prayer to restrain the Administrator from enrolling new members is not liable to be entertained having regard to the decision of the Full Bench in Bhaskaran's case, 1987 (2) KLT 903. Though the fourth respondent is an officer of the Co-operative Department, it is the exercise of his powers as the managing committee of the Co-operative Society that is under challenge. As such the writ petition is not maintainable so far as this prayer is concerned. It entails dismissal on this ground as well. Coming to the other point raised by the petitioner regarding the appointment of the returning officer, the contention of the learned Government Pleader is that if the election is held on June 7, 1992, as proposed and the new managing committee assumes office soon thereafter, its term of three years will get considerably reduced, in view of the definition of "year" in Rule 39. He points out that the first year will be the short truncated period upto June 30, 1992, with the result the committee will have to demit office on June 30, 1994, as against a full term of three years if it assumes office on July 1, 1992. I am inclined to agree. The new committee should not be deprived of its full term of three years or have it reduced to less than 25 months at the instance of one member like the petitioner. Section 28 (1A) itself prescribes that the normal term of the Administrator shall be six months. Having regard to the aspects presented by the Government Pleader, with which I am inclined to agree. I am not acceding to the prayer to direct appointment of a Returning Officer for holding election on June 7, 1992. The respondents will however ensure that the election is held with all expedition to enable the new managing committee to assume office on July 1, 1992 or soon thereafter.

The Original petition is therefore dismissed.