(2014) 09 KL CK 0103

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 16734 of 2009

Divakaran APPELLANT

Vs

Joint Registrar of Co-operative Societies RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co-operative Societies Act, 1969 — Section 109, 33, 33(1)

Citation : (2014) 4 KLT 297

Hon'ble Judges : P.D. Rajan, J

Bench : Single Bench

Advocate : K. Ramakumar, Sr. Advocate, S.M. Prasanth and M. Manojkumar (Chelakkadan), Advocate for the Appellant; V.M. Kurian and S. Sreekumar (Adukkath), Advocate for the Respondent

Judgement

P.D. Rajan, J.—The Writ Petition is filed under Art. 226 of the Constitution of India to quash the order issued by the Joint Registrar (General) Palakkad on the ground that there is procedural irregularities in the order and seeking a direction to the 1st respondent to convene a meeting of the Managing Committee to decide the question whether the resignation of the members from the Managing Committee could be accepted or not. The petitioners are the Director Board members of the Karakurissi Service Co-operative Bank Ltd. in Palakkad District. On 4.5.2009, respondents 4 to 6, who were members of the 2nd respondent, submitted their resignation, which was accepted by the President. Later, on 9.5.2009 at 10 a.m. the President convened the Managing Committee meeting and referred the resignation letter to the Joint Registrar of Co-operative Societies, Palakkad for obtaining legal opinion. After getting opinion, petitioners and other members of the Managing Committee requested the Secretary to convene a meeting to decide on the question of acceptance of resignation, which is not possible according to the provisions of the Act. Hence the Writ Petition. In the counter affidavit of the 1st and 3rd respondents, it is stated that the resignation will come into effect from the tender of resignation itself. The 1st respondent contended that the Joint Registrar had simply explained the rule and it is not a mandatory direction. The 3rd respondent submitted that Explanation to the S. 33(1) says that a tender of resignation by a member of the committee shall have effect of terminating his membership from the committee. Thus it can be seen that an elected member of a committee on tendering resignation loses his membership in the committee forthwith. There is no requirement that the committee has to accept the resignation and the Rule does not empower the committee to reject the resignation.

2. The Managing Committee of the Society consists of 9 members selected in the year 2007 of which three of them resigned. The quorum of the Managing Committee will be five and therefore, there is no reduction in the quorum since six members are there in the Managing Committee. Respondents 4 to 6 submitted resignation on the ground that they have no confidence in the existing President. Since there was no reduction in the quorum of the Managing Committee required for the transaction of the business, President can act on the basis of existing strength.

3. Section 33 of the Co-operative Societies Act 1969, reads as follows:

Appointment of new committee or administrator on failure to constitute committee, etc - (1) 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 by the general body against the existing committee or where the existing committee resigns enbloc or where vacancies occur in the committee either by resignation or other wise 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 meeting consecutively for six months or where the Registrar is satisfied.

(a) that a new committee cannot be constituted before the expiry of the term of office of the existing committee; or

(aa) there is stalemate in the constitution or functions of the Committee.

(b) that a new committee is prevented from entering upon officer or a new committee fails to enter upon office, on the date on which the term of office of the existing committee expires, the Registrar may, either suo motu or on the application of any member of the society, after intimating the Circle Co-operative Union, appoint one administrator or an administrative committee consisting of not more than three individuals, who need not be members of the society, one among them as convener 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 the 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 one year or till a new committee enters upon office, whichever is earlier:

Provided that before making such order, the Registrar shall publish a notice on the notice board of the head office of the society inviting objections to the making of the order within a period specified in the notice and consider such objections:

Provided further that it shall not be necessary to publish such notice in cases where the Registrar is satisfied that it is not reasonably practicable to do so:

Provided also that, where a committee, Administrators, as the case may be, is in office at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1992, the Registrar may extend the term of such committee, Administrator or Administrators, as the case may be, for a further period not exceeding one year from the date of such commencement.

Explanation.- For the purpose of this sub-section, a tender of resignation by a member of the committee shall have the effect of terminating his membership from the committee.

[(1A) Notwithstanding anything contained in sub-section (1), where on receipt of a report from the Registrar, the Government are satisfied that a new committee cannot be constituted or cannot enter upon office of the society before the expiry of the term of office of the administrator or administrative committee, as the case may be appointed by the Registrar under sub-section (1) and that it is necessary in the public interest to manage the affairs of the society and to enable a new elected committee to enter upon office, the Government may, by notification in the Gazette, for reasons to be recorded, permit the Registrar to extend the term of the said administrator or administrative committee, as the case may be, for a further period not exceeding one year in the aggregate or till a new committee enter upon office, whichever is earlier.

(2) The administrator or administrative committee appointed under sub-sections (1) and (1A) 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 powers and functions to the committee or of any officer of the society and take all such action as may be required in the interest of the society.

(3) The administrator or administrative committee shall arrange for the constitution of a new committee or for the entering upon office of the new committee as the case may be."

According to the Explanation to S. 33(1) of the Co-operative Societies Act, 1969, a tender of resignation by a member of the committee shall have the effect of terminating his membership from the Committee. The Explanation itself elucidate the nature resignation by a member of the Managing Committee of the Co-operative Society and its immediate effect.

4. The constitution of the committee, resignation of a member of the committee and removal from the membership of the committee are explained under R. 38 of the Kerala Co-operative Societies Rules 1969. Sub-rules (3) and (4) of R. 38 of

the Kerala Co-operative Societies Rules reads as follows:

"(3) Any member of a committee, whether elected or nominated may tender his resignation to the President of the committee.

(4) The President, on receipt of a resignation, shall within seven days from the date of receipt thereof place it before the committee of the society for consideration if the member is an elected person of send it to the authority who nominated the member, if he is a nominee. The resignation shall have effect only from the date of its acceptance by the committee or the authority who nominated the member concerned as the case may be. The fact of its acceptance or otherwise shall also be communicated to the member concerned. In the case of nominees the fact of acceptance or otherwise shall be communicated to the society also.

(5) xxx xxx

(6) xxx xxx"

5. The learned counsel for the petitioner put forward a contention that Explanation to S. 33 of the Act with regard to the termination shall have the effect only according to sub-rule (3) of R. 38 and Exts. P1 to P3 have no effect on the date of submission of resignation. It is found that respondents 4 to 6 submitted their resignation on 4.5.2009, the 3rd respondent summoned the Managing Committee on 9.5.2009 and discussed about Exts. P1 to P3, thereafter, the matter was referred to the Joint Registrar of Co-operative Societies, Palakkad. After getting Ext. P4 dated 15.5.2009, the Managing Committee again convened a meeting on 18.5.2009 and approved Exts. P1 to P3 resignation letters. Therefore, according to Explanation of S. 33(1), on the date of tendering of resignation itself, the membership of the Managing Committee of the Society will be terminated. A member of the committee may tender his resignation under R. 38(3) to the President, such resignation is valid u/S. 33(1) with immediate effect. The procedure on receipt of resignation by the member of a Managing Committee has been explained under sub-rule (4) of R. 38. The non compliance of R. 38(4) does not invalidate the resignation tendered to the President of the Committee. However, R. 38(4) directs the President to place the resignation before the committee for consideration with in seven days from the date of receipt thereof. The President has not conferred with any discretion to accept or reject the resignation under sub-rule (3) of R. 38 or in Explanation of S. 33(1). The Committee shall have no role in accepting or rejecting the resignation, therefore the provision that the resignation shall have effect only from the date of its acceptance by the committee under R. 38(4)has no relevancy in the light of Explanation of 33(1) of the Act.

6. The legislative power always proceeds from sovereign power in the State and subordinate legislation proceeds from an authority other than sovereign power. In the modem parliamentary democracy, it is found impossible to formulate all provisions in the Statute book because of the expansion of state activities. In

such situation it will confine the legislation to the main subject and policy and surrendering all details to be supplied by rules, regulations made by the executive or subordinate bodies. Such delegated legislation made by person under the authority of supreme legislation, often surpasses its limits of conferred delegation, in such situation it will ultra vires and has of no legal validity. According to the Co-operative Societies Act, a member of the Managing Committee may tender his resignation under R. 38(3) to the President and such resignation shall have immediate effect in tune with S. 33 of the Act. But, under R. 38(4), it says that on receipt of such resignation, the President shall place it before the Committee for consideration within seven days from the date of receipt thereof, if the member is an elected person or send it to the authority who nominated the member, if he is a nominee. The resignation shall have effect only from the date of its acceptance by the committee or the authority who nominated the member concerned as the case may be. The fact of its acceptance or otherwise shall also be communicated to the member concerned. In the case of nominees, the fact of acceptance or otherwise shall be communicated to the society also. This rule framed under R. 38(4) is inconsistent with S. 33(1) of the Act. If rule fails to follow the instructions of the legislation, Rules can be found to exceed statutory authority if they are too strict or toolax. If a law instructs a department to issue regulations or rule with immediate effect, but the executive issues instructions or rule that commence after seven days or vice versa, a court can say the department to issue a new rule as per legislation.

7. This Court in Nataraj Gownder S. Vs. Registrar and Dy. Director of Dairy Devt. Dept., had the occasion to consider S. 33(1) and R. 38(4) and held as follows:

"6. Section 33(1) of the Act provides, among other things, that 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, the Registrar may, either suo motu or on the application of any member of the society, appoint administrator or administrators. The terms "resigns" and "resignation" in S. 33(1) have an explanation at the foot of S. 33(1) which provides that for the purpose of that sub-section, a tender of resignation by a member of the committee shall have the effect of terminating his membership from the committee. R.38 of the Rules deals with, among other things, resignation from membership in the committee. Sub-r. (3) thereof enjoins that any member of a committee may tender his resignation to the President of the committee. Sub-r. (4) of R. 38 reads as follows:

"(4) The President, on receipt of a resignation, shall within seven days from the date of receipt thereof place it before the committee of the society for consideration if the member is an elected person or send it to the authority who nominated the member, if he is a nominee. The resignation shall have effect only from the date of its acceptance by the committee or the authority who nominated the member concerned as the case may be. The fact of its acceptance or otherwise shall also be communicated to the member concerned. In the case of nominees the fact of acceptance or otherwise shall be communicated to the society also."

7. It appears that the aforesaid provision was among the rules even before the introduction of the Explanation to S. 33(1) referred to above. Even otherwise, a provision among the rules, being a piece of subordinate legislation, cannot contradict a specific provision in the parent statute. Therefore, sub-r. (4) of R. 38 to the extent it provides that the resignation shall have the effect only from the date of its acceptance by the committee is ultra vires S. 33(1) read with Explanation thereto and is hence void. I may hasten to add that this conclusion is arrived at only as regards elected members and not regarding nominated members. (See also Deputy Registrar of Co-operative Society & Anr. v. P.K. George (1974 KLT 189)) holding that in the case of nominated members, the President is a mere conduit pipe for transmitting the resignation to the nominating authority. Formidable support to this, can be found in the unreported judgment of this Court in O.P. No. 13060/1998 and connected cases delivered taking note of the decisions in Varma v. Joint Registrar (1987 (2) KLT 420) and P.K. Sadasivan and others Vs. Joint Registrar (Dairy) and others, . The requirement that the President shall place the resignation before the committee for consideration does not clothe the committee with any role in the matter of acceptance or non-acceptance of the resignation, in as much as, the resignation takes effect on it being tendered to the President and does not depend upon acceptance by the committee or even the Presidents. In support, is Thomas v. Jaihind Powerloom Industry (2001 (1) KLT SN 10 (C. No. 12))."

(underlined by me)

8. In an earlier decision in Deputy Registrar of Co-operative Society & Anr. v. P.K. George (1974 KLT 189) discussed the above point and held as follows:

"The learned Judge was of the view that neither of the two nominated members had tendered their resignations to the President as enjoined by clause (3) of R. 38; and, had not been done, the President would have had seven days'' time to persuade the members to withdraw the resignations if possible, and as that opportunity was denied, the acceptance of the resignation by the respondent was a nullity and the two nominated members continued as Members of the Committee. We regret our inability to accept this reasoning. True, that R. 38(3) ordains a tender of resignation to the president of the Committee. The right of accepting the resignation, in the case of nominated member, is in the authority who nominated him, and clause (4) of R. 38 provides that the resignation shall be placed before that authority and shall be effective only from the date of acceptance by such authority. It is clear therefore that the President to whom the resignation is to be tendered is a mere conduit pipe for transmitting the same to the authority who is to accept the resignation, and on whose acceptances alone the resignation is to become effective. We are not prepared to hold that non-conformity with sub-rule (3) of R. 38, would invalidate the resignation.

Counsel for the respondent stressed the well-known principle that when the law has ordained that a certain act shall be done in a certain manner, it shall be done only in that particular manner, or, not at all. He pointed out that under the Explanation to S. 33 a tender of resignation shall have the effect of terminating the membership of the Committee, and that a tender of resignation is contemplated only by sub-rule (3) of R.38 and therefore must be done as enjoined by that sub-rule; and if not, cannot be regarded as valid. Sub-rules (3) and (4) between them provide for the whole process of resignation, from tender to acceptance. Non-compliance with every step does not invalidate the resignation. We are unable to read sub-rule (3) as anything more than a procedural provision. The same is only directory, and non-compliance with it, does not, in our opinion, invalidate the resignation, as the same is to be accepted by the appointing authority, and is to become effective only on such acceptance. The Explanation to S. 33 is for the limited purpose of action under the said Section. The ordinary mode of resignation and its acceptance is contained in R. 38 and despite the Explanation, nothing precludes the Registrar from acting under S. 33 after a resignation has taken effect in the usual way."

9. In P.K. Sadasivan and others Vs. Joint Registrar (Dairy) and others, held as follows:

"The Explanation to S. 33(1) states that the tendering of resignation by a member of the committee shall have the effect of terminating his membership from the committee. As to who he should tender his resignation is laid down in R. 38(3) namely that it should be tendered to the President of the committee. As soon as the resignation is so tendered it takes effect and the member ceases to be a member of the committee. Though sub-rule (4) requires the President to place the resignation before the committee for consideration, the committee has no role to play in the matter of acceptance or non-acceptance of the resignation, inasmuch as it takes effect on its being tendered to the President, and the member ceases to be a member when it is tendered to the President. When the consequence of tender of a resignation is so serious and the member ceases to be in the committee immediately on such tender, it is imperative that the mode prescribed for tender of resignation is strictly followed, before it can take effect as a resignation. The procedure prescribed is mandatory. The Act or the Rules do not prescribe any other mode of tendering resignation by a member of the committee. It is beyond controversy that when an act is required to be done in a particular manner, it shall be done in that manner and not in any other. Other modes of performance are necessarily forbidden. This is so even if there are no negative words. If this be so, the only permitted mode of resignation of a member of a committee is to tender it to the President, except in the exceptional circumstance postulated in 1987 (2) KLT 420."

(underlined by me)

10. Now the question is whether a rule made by the executive inconsistent with the legislation, which was declared by this Court in earlier decision in Nataraj

Gowder''s case (supra) as void, could be continued or struck down? The rule making refers to the process that executive used to create rules or regulations in matter on the basis of a statute promulgated by a legislature. Court generally expresses significant differences to the Rules, on close judicial scrutiny because the rule making authority often exceeds the legislative intention. In certain circumstances, the rule will become ineffective after its publication because of lack of standard to understand the actual legislation. This court can intervene if it finds that there is no reasonableness that the agency have drafted the rule inconsistent with the Section. A court may send the rule back to the parent department for further analysis, generally leaving the department to decide whether to change the rule to match the existing Explanation to S. 33 or to amend the rule to show how it arrived at the original Law. If this Court is not inclined to remand this rule back to the department it involves an additional burden to the public. A reading of Explanation of S. 33(1) reveals that a tender of resignation by a member of the Committee shall have the immediate effect of terminating his membership from the Committee. There is no provision for referring the resignation letter to the Registrar for obtaining his opinion or sanction about the validity of the resignation. Therefore, on tendering the resignation to the President itself, the resignation will come into effect and there is no reason to interfere in the opinion held in Et. P4 order.

11. Explanation to S. 33(1) was incorporated by the Act 33 of 1971 dated 23.12.1971. The rules were framed in exercise of the powers conferred by S. 109 of the Kerala Co-operative Societies Act, 1969 (21 of 1969) and in supersession of the Kerala Cooperative Societies Rules, 1969 published under Notification of the Agriculture (Co-operation) Department No. 24595/C3/69/AD, dated the 15th May, 1969 as S.R.O. No. 206/69 in the Kerala Gazette Extraordinary dated the 21st May, 1969 and the Rules on the subject made under Madras Co-operative Societies Act, 1932 (Madras Act VI of 1932) and the Travancore-Cochin Co-operative Societies Rules, 1953, the Government of Kerala hereby make the following Rules, the same having been previously published as required by sub-section (1) of the said Section. R. 38(3) was declared mandatory in Sadasivan''s case (supra), in which 1987 (2) KLT 420 was referred. Accordingly, that part of R. 38(4) of the Co-operative Societies Rules, which invalidates Explanation of S. 33(1), is to be struck down and I do so. Therefore, I make it clear that the Registrar Co-operative Societies shall place the invalidate R. 38(4) before the Secretary of the Co-operative Department and the Secretary shall take up the matter before the Rule making Committee and carry out the appropriate amendment in the Rules. I am of the view that since the existing Managing Committee''s period is already over, the 2nd prayer in this Writ Petition also need not be considered. In such circumstances, this is not a fit case to invoke the jurisdiction under Art. 226 of the Constitution of India and it is dismissed accordingly.

The Registry will communicate the copy of the judgment to the Government for compliance as directed above.

