

(1993) 04 KL CK 0017

In the High Court Of Kerala

Case No : O.P. No's. 16559 and 16672 of 1992

Fazaluddin Haque, A.

APPELLANT

Vs

The State of Kerala and Others

RESPONDENT

Date of Decision : 06-04-1993

Acts Referred:

Citation : (1993) 04 KL CK 0017

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : K. Balakrishnan, for the Appellant; Govt. Pleader, for the Respondent

Judgement

G.H. Guttal, J.—The Kerala State Handloom Weavers, Co-operative Society Limited (Hantex for short) is a central society as defined in Section 2(d) of the Kerala Co-operative Societies Act, hereinafter referred to as the Act. Hantex is the Respondent No. 4 in O.P. 16559/1992 and Respondent No. 2 in O.P. 16672/1992. The Petitioner in O.P. 16559/92. is a member of the Paroor North Handloom Weavers, Co-operative Society Ltd., Kollam. The Petitioners Nos. 1 and 2 in O.P. 16672/92 are members of two other primary societies affiliated to Hantex. The Respondent No. 1 in both the petitions is the State of Kerala. The Registrar of Cooperative Societies is the Respondent No. 2 in O.P. 16559/92. The Respondent Nos. 5 to 10 in O.P. 16559/92 and respondent Nos. 3 to 9 in O.P. 16672/92 are members of the Board of Directors appointed by the Government of Kerala by the G.O. (Rt.) No. 1127/92/ID, dated 24th November 1992 (Ext. P-2 in O.P. 16559/92 and Ext. P-3 to O.P. 16672/92). By notification No. 394/C2/ID, dated 3rd October 1992. (Ext. P-1 to O.P. 16559/92 and Ext. P-1 to O.P. 16672/92) purportedly issued u/s 101 of the Act, the Government of Kerala "exempted" Hantex from the provisions of Sections 28, 29, 30 and 31 of the Act and vested the powers of the general body of Hantex in the Board of Directors appointed under the aforesaid order, dated 24th November 1992. The notification of the Government of Kerala No. 39439/C2/92/ID dated 3rd October 1992 and the order No. 1127/92/ID, dated 24th November 1992 are referred to in this

judgment as Exts. P-1 and P-2 respectively.

2. Counsel for the Petitioners urged the following points:

(i) The Government of Kerala whose authority is limited to exempting societies from the application of the provisions of the Act, has exceeded its authority by vesting the powers of the general body of the society under Sections 29 and 30 of the Act in the Board of Directors.

(ii) What the Government has done by the impugned orders does not constitute exemption of Hantex from the provision of the Act. Therefore the impugned orders are ultra vires of the Government's authority.

(iii) The Supreme Court's order, dated 13th October 1992 in SLP (C) Nos. 6396, 6682, 6935 and 9989 of 1992 and Writ Petition (C) No. 379 of 1992 directing the Government of Kerala and the Registrar to complete the elections to all apex and central societies before 13th April 1993 is violated by the impugned orders. Therefore the impugned orders are illegal.

(iv) Section 101 of the Act has two pre-requisites. The Government must be satisfied that public interest demands resort to Section 101 and reason shall be recorded. Neither of these are fulfilled. Therefore the impugned order, dated 3rd October 1992 is vitiated by abuse of discretion.

3. I will briefly set out in paragraph 4 below the general principles of administrative law applicable to delegated legislation. In paragraphs that follow I will apply these principles to these cases and consider whether the impugned orders are valid.

4. The order, dated 24th November 1992 (Ext. P-2) appointing the Board of Directors follows the order, dated 3rd October 1992 (Ext. P-1) and stands or falls with the latter. The impugned order Ext. P-1 is made up of two parts. The first part "exempts" Hantex from the provisions of Sections 28, 29, 30 and 31 of the Act. The second part vests in the Board of Directors appointed by the Government, the powers of the general body under Sections 29 and 30. The legislature, by Section 101 has delegated to the Government the power to exempt societies from any provisions of the Act. The fundamental difference between an Act of the legislature which has sovereign force and legislation made under delegated power must be born in mind. The legislation made under delegated power can be valid only if it conforms exactly to the power granted. When the Government exempts a society, it makes subordinate legislation. Subordinate legislation takes the form of notification, circulars, orders, etc: This subordinate law-making power must be so exercised that the Government does not act outside its powers conferred by the Act. An act of the Government which is in excess of its delegated power is without authority and is void in law. The reason is that in order to be valid, an administrative act needs statutory authorisation. In the light of these principles the validity of the impugned orders may be examined.

5. The language of Section 101 must be noted. The Government on satisfaction that it is necessary so to do in the public interest may.

(i) exempt any society or any class of societies from any of the provisions of this Act; or

(ii) direct that such provision may apply to such society or class of societies with such modifications as may be specified in the order.

These are the outer limits of the authority delegated to the Government u/s 101. The Government's power u/s 101 is limited to exempting societies from any of the provisions of the Act and nothing beyond that.

6. As already stated, Section 101 which is the empowering law, limits the Government's power to exempting societies from any provisions of the Act. The application of this limit is merely construing the statutory language by applying it to the facts of this case. It is inevitable, therefore, that I must, determine whether the act of the Government constitutes "exemption". It follows that if what is done by the Government under the order dated 3rd October 1992 (Ext. P-1) is not "exemption" the exercise of the power is in excess of Government's authority. If the notification dated 3rd October 1992 does not exempt, it is a misuse of the delegated power. If, in a purported exercise of the authority to exempt, the Government deprives the societies of its powers, it acts beyond its powers.

7. The plain dictionary meaning of "exempt" when used as a verb is "to free from". The Webster's dictionary assigns the following meanings to "exempt":

To free or permit it to be free from any burden, promise or duty to which Ors. are subject; to grant immunity to.

It will be noticed that the words "exempt" is always used to convey the idea of relieving someone of a burden. The correct use of the word "exempt" may be illustrated by two examples. The common example is of exemption from taxation. A person exempted is thus precluded from being chargeable to taxes. Another example of exemption is when a student is exempted from appearing for examination.

On the other hand, where a person enjoying a privilege or right is relieved of such privilege or right, you do not say that he has been "exempted" from enjoying such right or privilege. Such "exemption" is in reality deprivation of a right or privilege.

Against the background of the meaning of the word "exempt", consider what the impugned orders have done. They "exempt" the Hantex from the provisions of Sections 28, 29, 30 and 31 of the Act. The result is that these sections will not apply to Hantex. What this "exemption" means to a co-operative society like Hantex may be gauged from some provisions of the Act.

Section 28 empowers the general body to constitute the Managing Committee or

the Board of Directors. So now, the general body cannot constitute the Board. Since Sections 29 and 30 do not apply the general body also cannot hold annual general body meetings or special general body meetings. The budget, election and other matters cannot be considered. What is more, the general body itself has been abolished because the notification "vests the powers of the general body under Sections 29 and 30" in the Board of Directors constituted by the impugned orders.

Under Section 27 of the Act the final authority of a society vests in the general body. But the "exemption" from Sections 28, 29, 30 and 31 denudes the general body of the power to exercise its final authority. Every society exercises its power, through the general body and its committee. When these bodies are deprived of their authority to perform and function what is brought about is deprivation of power and not exemption.

The power to hold meetings, pass budgets, approve audit reports, dispose of profits, are not burdens which a society carries. They are their rights. The society and its general body perform its co-operative function by exercise of its authority. The whole Chapter IV of the Act captioned "Management of Co-operative Societies" comprising of Sections 27 to 34 deals with the authority of management by societies. There can be no power or authority without duties and burdens. The exercise of power, authority and right by a society cannot be subject matter of exemption. In order to enable a society to exercise its power and authority for a co-operative object, it may be relieved of some burdens. There are situations conceived by the Act, in which societies cannot meaningfully exercise their authority and function effectively, if they are not relieved of certain burdens and duties. The power to exempt has been granted for relieving societies such burdens. It is these duties and burdens that can be subject matter of exemption u/s 101 of the Act.

8. A search for such burdens from which societies may be exempted leads to discovery of provisions from which societies may be exempted. Sections 55, 56, 57, 58 and 59 restrict the societies' authority in matters of division of funds, disposal of net profits, investments of funds; borrowings and lendings. Section 61 obliges a society to establish contributory provident fund. Sub-section (4) of Section 80 obliges the societies to reserve posts in the service, for members of the Backward Classes and Scheduled Tribes. Rules 183, 184, 185 and 186 create similar burdens in the matter of service conditions.

These provisions of the Act and the Rules referred to above illustrate the matters in respect of which societies may be exempted. A careful look at the various notifications issued by the Government u/s 101 shows that the Government, aware of the limited situations in which Section 101 is intended to be invoked, did in fact exempt various societies. For example societies have been exempted from Clause (c) of Sub-section (1) of Section 7 of the Act. Never before, has the power u/s 101 to "exempt" a society, been used to relieve the society of its rights and privileges. The provisions of Section 101 are meant to exempt

societies from burdens which may hamper their functioning as co-operative bodies.

9. The authority to take away the power of the general body of a society under Sections 29 and 30 is not a part of the authority conferred by Section 101. The delegated power is limited to grant immunity to societies ifrom burdens which threaten their survival or hamper their co-operative functioning. Therefore, the impugned order dated 3rd October 1992 (Ext. P-1) is clearly beyond the legislative authorisation. It is void. The impugned order dated 24th November 1992 (Ext. P-2) was made "consequent upon exemption" of the Hantex from the provisions of Sections 28, 29, 30 and 31 of the Act. Since the order "exempting" the Hantex from the aforesaid sections of the Act is void, the order appointing the Board of Directors (Ext. P-2) is also without authority and void.

The order dated 24th November 1992 (Ext. P-2) is void not merely because it is a consequence of the order dated 3rd October 1992 (Ext. P-1). The delegated power of the Government ends with just the power to exempt the society from the provision of the Act. Appointment of the Board of Directors and vesting them with the authority of the general body is not a part of such delegated authority. This additional reason also makes the order dated 24th November 1992 (Ext. P-2) void as it is ultra vires of the delegated power.

10. The power to exempt societies by resorting to Section 101, is meant for regulating the proper functioning of co-operative societies. The power to regulate the working of societies implies the continued existence of the co-operative society concerned. The impugned notification by divesting the general body of its powers has, struck at the very existence of the Hantex. Instead of using the power to regulate, the regulating power has been used to extinguish the general body which is the fesspository of final authority of the society. For this reason also the impugned notification and order are ultra vires of the Government's authority u/s 101 of the Act.

11. For the reasons stated in the preceding paragraphs I hold that the impugned notification (Ext. P-1) and the order (Ext. P-2) are void.

12. The second point is whether the impugned orders contravene the judgment of the Supreme Court referred to earlier. It is not disputed that the result of the impugned orders is to postpone indefinitely the election to the Board of Directors of Hantex. The counter-affidavit of the Respondent No. 1 in O.P. 16559/92 contains this statement:

As the reorganisation proposal has to be spelt out in detail and for its speedy and effective implementation it is felt that the election of the Board of Directors has to be postponed for sometime till the reorganisation process is over.

(emphasis supplied)

Therefore, the Government, aware of its obligation to comply with the Supreme Court's order, has chosen to postpone the election. This is clear breach of the

Supreme Court's order. The Supreme Court, aware that unforeseen reasons may cause postponement of election beyond 13th April 1993, gave to the Government and the Registrar of Co-operative Societies the "liberty to seek further instructions". The Government and the Registrar aware that the impugned orders result in violation of the Supreme Court's mandate, have not chosen to seek extension of time to hold election to the Board of Directors of Hantex. Therefore they have violated the order of the Supreme Court.

Since, it is open to the Government and the Registrar even now, to seek from the Supreme Court extension of time, I refrain from pronouncing a verdict that the impugned orders are illegal as they violate the Supreme Court's order.

13. As an alternative to total "exemption" from the provisions of the Act, Section 101 also authorises the Government to direct that the exempted provisions of the Act may apply to the society "subject to such modifications as may be specified in the order." The Respondents took shelter under the word "modifications" and urged that what has been done is modified application of the provisions of the sections referred to earlier. I have already explained how the exemption totally deprives the society of its power to function as a society. To modify does not mean total deprivation of the power of the society. The word modification implies changes of minor character. In this case the society is precluded from functioning as a society. It cannot be said that there is an element of modification in the Government's orders. *Lachmi Narain and Others Vs. Union of India (UOI) and Others*, .

14. The last question is whether the impugned orders suffer from, abuse of discretion. The Government's authority u/s 101 has two important elements:

(i) the Government must be satisfied that public interest requires that the society be exempted from certain provisions of the Act.

(ii) Reasons shall be recorded for the decision so to exempt to the society.

The words "if they are satisfied..." are designed to make the Government the sole judge of the existence of public interest which makes the power to exempt exercisable. But it is an established rule of Administrative Law that the Government can be satisfied only if it has before it circumstances to entitle it to be so satisfied. Sufficiency of the circumstances or the propriety of the action cannot, however, be investigated while judicially reviewing the Government's action. But the courts can penetrate behind the "satisfaction" on grounds like absence of material leading to an inference of public interest, mala fides, non-application of mind and so on. *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, .

15. I will therefore endeavour to find out whether the Government had before it any material to come to a conclusion that the public interest required the exemption. The notification dated 3rd October 1992 (Ext. P-1) does not even use the words "public interest". There is not even a mention of the fact that the

Government has considered public interest as a factor which led it to exempt Hantex from the aforesaid provisions of the Act. All that is referred to is the need of "re-organisation of the functioning" of Hantex. The counter affidavit has brought out a picture of the bad economy of Hantex, presumably to highlight the responsibility of the committees of the society for the present state of affairs. But the fact remains that the Government's satisfaction recorded in the notification is not in regard to the existence of public interest justifying the resort to Section 101. Its satisfaction is about the need to re-organise Hantex.

16. However, I do not venture to conclude that merely because the word "public interest" is not used in the notification, the facts constituting public interest were not present to the mind of the Government. If the counter-affidavit brings out facts which show that the urge to protect public interest went into the Government's decision, the Government's satisfaction may be attributed to public interest. The lack of skill or ignorance of the draftsman of the impugned notification cannot be permitted to nullify the notification except in a case of absolute necessity or absolute intractability of the language used (Maxwell on Interpretation of Statutes, Eleventh Edition, Page 221).

17. Paragraph 13 of the counter-affidavit in O.P. No. 16559/92 made by the Respondent No. 1 spells out the Government's intention in issuing the impugned notifications. The intention "is to redress the problems of Hantex and the Weavers Go-operative Societies" and "to save Hantex from its crisis and thereby to save traditional handloom industry of Kerala from standstill." The counter-affidavit sets out a wealth of evidence in regard to the economy of Hantex and handloom weavers. What or who caused the present state of affairs may be a matter of opinion. But the fact is that the Government had in mind the poor economy of the Hantex and the Handloom weavers. The thrust of the statements in the counter-affidavit is that the Hantex has been running into losses, the consequence of which is that the community of weavers has been impoverished. Improvement of the economy of weavers is undoubtedly a public purpose.

18. The impugned notification (Ext. P-1) records the Government's satisfaction that there is urgent need to re-organise Hantex. The urge to re-organise by itself is not indicative of public interest. But the question should be considered in the light of the facts which provided the impetus to reorganise the Hantex. These facts, abundantly disclosed in the counter-affidavit, unmistakably point out that the Government had before it the material relevant to the welfare of the Handloom weavers and restoration of the economic health of Hantex. The urge to reorganise Hantex followed consideration of the facts stated in the counter-affidavit. It is necessary to understand the draftsman's unskilful use of the words "satisfied that a reorganisation of the functioning of... Hantex...." against the background of the facts present to the mind of the Government. When these facts are so understood, saving Hantex and the Handloom weavers from the economic crisis becomes the cause of the Government's satisfaction. To read only the word "reorganisation" and ignore the facts leading to the urge to

reorganise Hantex, is to accept the failing of the unskilled draftsman as determinative of the validity of an instrument. The correct way of interpreting the impugned notification is to read the facts constituting public interest revealed in the counter-affidavit into the impugned notification and consider whether the satisfaction that Hantex needs to be reorganised, is the satisfaction that public interest needs such reorganisation. Upon a true interpretation of the notification and the facts present before the Government it is clear that the Government was satisfied that in view of the facts set out in the counter-affidavit which unmistakably spell out public interest, public interest demands reorganisation of Hantex.

19. The second requirement of the exercise of the authority u/s 101 is recording reasons. The reason is reorganisation for the purpose of improving the economic conditions of weavers. The explanatory statement annexed to the notification brings out this reason.

20. The Petitioners' submission that absence of public interest and a record of reasons vitiates the impugned orders is untenable.

21. In conclusion, I reiterate that the Government of Kerala has acted beyond its power conferred on it by Section 101 of the Act by (i) using the power to exempt Hantex from burdensome provisions of the Act to deprive it of its rights and privileges (ii) eliminating, in the name of exemption, the very general body and committee of Hantex whose affairs Section 101 is intended to regulate and control. No doubt, public purpose motivated the Government's action. But the Government acted without authority. However, desirable it may seem to the Government to deny Hantex the right to function as a co-operative society and however earnestly the Government might have thought that public interest demands such action, it has no authority to do so by misusing the power to exempt societies from any provisions of the Act. Nor can it use such authority to terminate, however temporarily, the general body or the committees of Hantex. The whole action of the Government lacks legislative authorisation and is void.

22. I therefore allow these petitions and make the following order:

(i) The notification No. 39439/G2/92/ID, dated 3rd October 1992 by the Industries (C) Department, Government of Kerala and the order G.O. (Rt.) No. 1127/92/ID, dated 24th November 1992 made by the Industries (C) Department, Government of Kerala are quashed.

(ii) I direct the State of Kerala and the Registrar of Co-operative Societies, to forthwith withdraw the Board of Directors named in the order No. G.O. (Rt.) 1127/92/ID, dated 24th November 1992.

(iii) I prohibit the Respondents 5 to 10 in O.P. No. 16559 of 1992 who are the Respondents 3 to 9 in O.P. No. 16672/1992 from acting or functioning as the Board of Directors of the Kerala State Handloom Weavers' Co-operative Society Limited No. 232 (Hantex).