(2014) 06 KL CK 0255

In the High Court Of Kerala

Case No : W.P.(C) No. 14851 of 2014

G.K. Saila Kumari APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 30-06-2014

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 32, 64, 65, 66, 66(1)

Citation : (2014) 4 KLJ 400

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : George Poonthottam, Advocates for the Appellant; Biju Meenattoor, GP, Advocates for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner is the Secretary of Chayam Service Co-operative Bank Ltd. No. 1514. She has filed this writ petition challenging Exts. P2, P3, P4 and P5 proceedings. The impugned proceedings have culminated in Ext. P5, by which, a direction has been issued by the 3rd respondent for the suspension of the petitioner.

2. According to the petitioner, the 5th respondent is a person who has been preferring various complaints against the Managing Committee of the Society, that is in office. An enquiry under Section 65 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act" in short) was conducted, the report of which is produced as Ext. P6. On the basis of the said report, the 5th respondent is alleged to have made other complaints to the Lok Ayukta as well as to various other authorities. Action had been initiated against the Managing Committee under Section 32 of the Act. The said proceedings were the subject matter of challenge in W.P.(C) No. 28832/2009 before this Court. That writ petition was allowed. The proceedings were quashed. The decision of the Single Bench has been confirmed in Writ Appeal also. According to the petitioner, on the basis of the complaints filed by the very same 5th respondent, a vigilance case has been registered as Vigilance Case No. 7/13.

3. As per Ext. P2 communication, the Director, Vigilance & Anti-Corruption Bureau requested the Government to take necessary action to suspend the petitioner, who is the first accused therein. Accordingly, the Government addressed Ext. P4 communication to the 2nd respondent. The 2nd respondent in turn directed the 3rd respondent, who has issued Ext. P4, to comply with the direction thereunder. Accordingly, the 3rd respondent has issued Ext. P5 proceedings to the President of the Society directing that the petitioner should be suspended.

4. The petitioner''s case is that, the entire proceedings are vitiated by an absolute lack of power. Therefore, it is contended that the said proceedings are all liable to be set aside.

5. According to the learned counsel, Sri. George Poondhottam, who appears for me petitioner, Section 66B confers powers on the Registrar to direct suspension of an officer of the Society. The said power is to be exercised only in the circumstances that are specifically made mention of in the provision itself. In view of the above, it is contended that the power to direct suspension of an employee does not extend to any matter that has not been mentioned in the said provision. The power being a drastic one and the legislative intent being that the same should be exercised only sparingly, the provision has to be construed strictly, it is contended. According to the counsel for the petitioner, neither the Act nor the Rules confer any power on the authority, to direct suspension of an employee. The above being me position, it is contended that the impugned proceedings Exts. P2 to P5 are all without jurisdiction and liable to be set aside.

6. The learned Special Government Pleader Sri. D. Somasundaram appearing for respondents 1 to 3 contends that, the authorities are clothed with sufficient powers to direct suspension of an employee. Section 66 of the Act confers powers on the Registrar to issue directions, which form part of the power of supervision and control, entrusted to the said authority. This is a case, in which, according to the counsel, in Ext. P6 also serious irregularities have been detected on the part of the petitioner. As per Ext. P2, the Director of Vigilance & Anti-Corruption Bureau has specifically requested that the petitioner be suspended. It was in the said circumstances that the impugned proceedings have been issued. According to the learned Special Government Pleader, the contention that the authorities are powerless in such a situation is without any basis. In view of the above, it is contended that Exts. P2 to P5 proceedings are legal and are not liable to be interfered with by this Court.

7. Heard. What requires to be noticed in this writ petition is that the Director, Vigilance & Anti-Corruption Bureau by Ext. P2 proceedings, has addressed the Principal Secretary to Government regarding the serious irregularities that were detected. Paragraphs 3, 4 and 5 of Ext. P2 are reproduced hereunder:--

"3. The case is that the accused persons entered into a criminal conspiracy to commit criminal misconduct by giving memberships to the relatives of the accused by furnishing false address and thereby sanctioned loans to the said relatives of secretary and to other persons who abused membership in false address. In furtherance of the conspiracy, later on, these loans were written off misusing the Central Government Agricultural Relief Scheme for causing pecuniary gain. The board members also violated the feeder category rules in the case of promotion to favour few by corrupt or illegal means. The accused persons have illegally sanctioned loans to several members on the basis of security of forged salary certificates of sureties and thereby favoured new loanees with corrupt motives.

4. The Investigating Officer has reported that, Accused 1 is still working as Secretary, Chayam Service Co- operative Society, hence there is every chance to influence the witness and to tamper the evidences in her favour. Hence the Investigating Officer had recommended to suspend Accused 1 till the completion of the investigation. Accused 2 to Accused 10 are private persons.

5. It is recommended to place the Accused 1 under suspension with immediate effect for the fair and smooth conduct of the investigation of the case."

8. A perusal of the above shows that serious acts of mismanagement and maladministration are alleged against the accused persons. The petitioner is the first accused named in Ext. P2. It is on the basis of Ext. P2, that Ext. P3 has been issued by the first respondent. The 2nd respondent has on the basis of Ext. P3, directed the 3rd respondent to take steps to suspend the petitioner. Accordingly, Ext. P5 has been issued by the 3rd respondent Society directing that the petitioner be suspended immediately. The conclusion in Ext. P2 are based on a Quick Verification Report, that has detected commission of offences not only under the Prevention of Corruption Act, 1988 as well as under the provisions of the Indian Penal Code. Considering the gravity of the offences detected, a direction to keep the Secretary under suspension has been issued. Therefore, the impugned proceedings have been issued on the basis of Ext. P2, which contains sufficient reasons for issuing the said proceedings.

9. The next question is whether the authorities have the power to issue the proceedings that are evidenced herein by Exts. P3 to P5. Section 66B confers the power to direct suspension of an employee. The said provision reads as follows:--

"66B. Suspension of Officers - If the Registrar, in the course of any enquiry under Section 65 or on inspection under Section 66 or on audit under Section 64 or on the report of Vigilance Officer appointed under Section 68A, is satisfied that any officer other man the President, Vice President, Chairman, Vice Chairman and member of the committee of any society has done any act detrimental to the interest of the society or its members and that there is reason to believe that such officer has indulged in misappropriation, manipulation of accounts, forgery, destruction or tampering of records of the society, he may, for the reasons to be recorded in writing issue a direction to the committee of the said society to suspend the officer or officers responsible for the offence forth with."

A reading of the above provision shows that the power is to be exercised by the Registrar on the basis of his satisfaction. Therefore in a case where:--

"(1) in the course of any enquiry under Section 65,

(2) or on inspection under Section 66,

(3) or on audit under Section 64,

(4) or on the report of Vigilance Officer appointed under Section 68A"

the Registrar is satisfied that any officer, which expression does not include the President, Vice President, Chairman, Vice Chairman or a member of the Committee of any society, has done any act detrimental to the interests of the society or its members and there is reason to believe that such officer has indulged in misappropriation, manipulation of accounts, forgery, destruction or tampering of accounts of the society he may for reasons to be recorded in writing, direct the committee to suspend such an employee. The power under the above provision having been specifically confined to the situations made mention therein, it is contended that it excludes all other situations.

10. It is true that, the above provision specifies the documents, on me basis of which, the Registrar is to arrive at a decision, by confining the same to the course of an enquiry under Section 65 or on inspection under Section 66 or on audit under Section 64 or on the report of Vigilance Officer appointed under Section 68A. However, the fact remains that, the power of the Registrar to issue directions, is not confined to the above provision alone. Section 66 of the Act confers power of supervision and inspection on the Registrar. Section 66(1) of the Act, which is the relevant provision, is extracted hereunder:--

"The Registrar shall supervise or cause to be supervised by a person authorised by him by general or special order in writing in this behalf, the working of every society as frequently as he may consider necessary. The supervision under this sub-section may include an inspection of the books of the society."

The above provision confers power of the Registrar to supervise or cause to be supervised by a person authorised by him, the working of every society as frequently as he may consider necessary. The person authorised by him would certainly include the Director, Vigilance & Anti-Corruption Bureau also, who has issued Ext. P2. Therefore, the Registrar has power to issue a direction to suspend the Secretary invoking the power conferred by Section 66 of the Act. In this case, Ext. P2 has been issued after an enquiry, which has revealed the commission of serious criminal offences punishable under the Prevention of Corruption Act as well as the Indian Penal Code. In order to facilitate a proper investigation, the Director, Vigilance & Anti-Corruption Bureau has opined that it is necessary to remove the petitioner from her seat, by placing her under suspension. In such a situation, the directions issued by the first respondent as well as the 2nd respondent and the 3rd respondent are only proper and justified. Suspension is not a punishment. When the same is necessitated for ensuring the proper investigation and completion of proceedings against a delinquent efficiently, it is only appropriate that the same is resorted to. Therefore, I am not satisfied that Exts. P2 to P5 require to be interfered with. In spite of the issue of Ext. P5, it is submitted that, the petitioner has not been suspended by the Managing Committee of the society.

For the above reasons, I do not find any reason to interfere with the impugned proceedings or to grant any of the reliefs sought for in this writ petition. The same is dismissed.

