

(2018) 01 KL CK 0092
In the High Court Of Kerala
Case No : 39007 of 2017

G.R.AJITH & ORS.

APPELLANT

Vs

THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL) & ORS.

RESPONDENT

Date of Decision : 15-01-2018

Acts Referred:

Constitution of India, Article 226 -
Kerala Co-operative Societies Act, 1969, — Section 101, Section 64, Section 29,
Section 63, Section 33(1), Section 65, Section 66C

Citation : (2018) 01 KL CK 0092

Hon'ble Judges : Anil K.Narendran

Bench : Single Bench

Advocate : GEORGE POONTHOTTAM, MOHAMMED HASHIM, BABU S. NAIR,
P.C.SASIDHARAN

Final Decision : Dismissed

Judgement

1. The petitioners are the elected/nominated members in the managing committee of the Police Co-operative Society Ltd. No.T.696, the 3rd

respondent herein. They have filed this writ petition under Article 226 of the Constitution of India seeking a writ of certiorari to quash Ext.P14

order dated 1.12.2017 of the 1st respondent Joint Registrar of Co-operative Society and seeking a declaration that the issuance of Ext.P14 is a

colourable exercise of power and issued without any justification and therefore, the removal of a democratically elected committee is bad in law.

The petitioners have also sought for other consequential reliefs. By Ext.P14 order, the 1st respondent Joint Registrar, in exercise of his powers

under Section 33(1)(aa) of the Kerala Co-operative Societies Act, 1969 (for brevity "the Act") appointed the 4th respondent as the Part Time

Administrator of the 3rd respondent Society on the ground that there is stalemate in the functions of the committee.

2. On 6.12.2017, when this writ petition came up for admission, the learned Government Pleader took notice for the 1st and 2nd respondents and

urgent notice on admission was ordered to the 3rd and 4th respondents by special messenger. By the order dated 12.12.2017 in I.A.No.20286 of

2017, two members of the 3rd respondent Society were impleaded as additional 5th and 6th respondents.

3. A counter affidavit has been filed on behalf of the 1st respondent Joint Registrar opposing the reliefs sought for in this writ petition. Additional

5th and 6th respondents have also filed their counter affidavits. The petitioner has also filed a reply affidavit to the counter affidavit filed by the 1st

respondent.

4. Heard the learned counsel for the petitioner, the learned Special Government Pleader for the 1st and 2nd respondents, the learned counsel for

the 3rd and 4th respondents and also the learned counsel for additional 5th and 6th respondents.

5. Petitioners 1 to 5, 9 and 10 are elected members and petitioners 6 to 8 and 11 are nominated members in the managing committee of the 3rd

respondent Society. The 14th annual general body meeting of the Society, which was scheduled to be held on 18.12.2016, was stayed by the 1st

respondent Joint Registrar by Ext.P1 order dated 16.12.2016, based on the complaint made by one member by name Ratheesh. Some of the

members of the Society had approached the Lok Ayukta by filing a complaint against the then Joint Registrar and the Assistant Registrar. In the

said complaint, the Lok Ayukta passed Ext.P2 order dated 11.1.2017, wherein it was found that the action on the part of the then Joint Registrar

constitute maladministration. Therefore, vide Ext.P2 order, the competent authority was recommended to take appropriate action against him.

After Ext.P2 order, the 14th annual general body meeting of the Society was held on 7.1.2017. According to the petitioners, in the said meeting all

the items in Ext.P3 notice were passed, including the annual budget for the year 2017-18.

6. On 9.11.2017, the 3rd respondent Society published Ext.P9 notice regarding the 15th annual general body meeting scheduled to be held on

26.11.2017. After the publication of Ext.P9 notice, the member who had earlier filed complaint against the conduct of the 14th annual general body meeting, filed another complaint before the 1st respondent Joint Registrar, who has issued Ext.P10 order dated 25.11.2017 appointing the Unit Inspector, Vanchiyoor in the office of the 2nd respondent Assistant Registrar as an Observer in the meeting. After the issuance of Ext.P10 order, on the request made by the Observer, the Unit Inspector, Sreekaryam, was appointed as Additional Observer, by Ext.P11 order of the 2nd respondent.

7. According to the petitioners, in the annual general body meeting of the Society held on 26.11.2017, item Nos.1 to 6 in the agenda of Ext.P9 notice were taken in order and passed. Since two senior police officials are to attend other functions, item No.13 in the agenda, i.e., the distribution of prizes and cash awards to the children of the members of the Society, was taken up after item Nos.1 to 6. After leaving the stage by the two senior police officials, few members of the Society disrupted the normal transaction of business. Though all the items in the agenda, i.e., item Nos.7 to 12 were called, in view of the disruption caused by few members, the remaining items were deferred for consideration by the next general body meeting, since the annual budget for the year 2017-18 was passed in the meeting held on 7.1.2017, and the same having been approved in the meeting held on 26.11.2017, vide item No.6.

8. The petitioners would contend that, in the meeting of the Board of Directors held on 25.11.2017, it was decided to conduct election to the Board of Directors on 28.1.2018 as the period of the existing committee will expire on 8.2.2018. The said resolution dated 25.11.2017 was forwarded to the Kerala State Co-operative Election Commission, through the office of the 2nd respondent Assistant Registrar, vide Ext.P12 covering letter dated 28.11.2017. On receipt of Ext.P12, a team of officials including the 2nd respondent Assistant Registrar came to the office of the 3rd respondent Society on 1.12.2017 and demanded records relating to the general body meeting, the minutes of the managing committee, etc., vide Ext.P13 communication dated 1.12.2017. The Observer appointed vide Ext.P10 order was also present there. On the very same day, the 1st respondent Joint Registrar has issued Ext.P14 order dated 1.12.2017,

invoking his powers under Section 33(1)(aa) of the Act, whereby the 4th respondent has been appointed as the Part Time Administrator, on the ground that there is stalemate in the functions of the committee, inasmuch as, major items in the agenda of the annual general meeting are not passed by the general body and there are mass complaints by the members of the Society.

9. The learned counsel for the petitioners would contend that Ext.P14 order is a naked abuse of power and misuse of statutory provision by the

1st respondent Joint Registrar and as such, the same is liable to be interfered with by this Court. Relying on Exts.P4 to P8 documents, the learned

counsel would point out that, due to political animosity towards the members of the managing committee, no action was taken by the 1st

respondent Joint Registrar on the request made by the 3rd respondent Society for the appointment of appraiser; the permission sought for

subsidiary rules for the family group insurance of the members and to increase the deposit in the Police Housing Co-operative Society; etc. and the

1st respondent has also interfered with the steps taken by the Society for the appointment of a peon. Therefore, the Society had to approach this

Court and also the Lok Ayukta seeking interference. The learned counsel would also point out that the crime registered at the Museum Police

Station against the 1st petitioner was based on a complaint made by one Somanandan, who was the former President of the Society, who is in

inimical terms with all the members of the managing committee. The FIR in the said crime is under challenge in CrI.M.C.No.6254 of 2016 and

based on Ext.P17 interim order of this Court the arrest of petitioners 1 and 4 herein and also the Secretary-in-charge stands deferred for the time

being. The managing committee has received Exts.P15 and P15(a) complaints from the Secretary-in-charge and other staff of the Society voicing

serious allegations against Somanandan, who is arrayed as an accused in a crime registered at the Museum Police Station, as evident from Ext.P16

FIR.

10. According to the 1st respondent Joint Registrar, by Ext.P14 order the managing committee of the 3rd respondent Society was removed and

the 4th respondent has been appointed as the Part Time Administrator, invoking the powers under Section 33(1)(aa) of the Act, on the ground that

there is stalemate in the functioning of the committee. The said order has been passed after considering the report of the authorities concerned and

also taking note of the events occurred in the annual general body meeting of the Society held on 26.11.2017. Pursuant to Ext.P14 order, the 4th

respondent Part Time Administrator took charge on 1.12.2017 itself, as evident from Ext.R1(a) report dated 1.12.2017.

11. The 1st respondent would contend that, there were complaints from the members and others with regard to the affairs of the 3rd respondent

Society and allegations of corruption at the instance of the present managing committee, which resulted in an enquiry under Section 65 of the Act.

When the said enquiry was in progress, the managing committee approached the Lok Ayukta and as per the order dated 21.7.2017, the enquiry

was stayed and the matter is still pending consideration before the Lok Ayukta. The actual expenditure of the Society for the year 2016- 17 is not

even approved by the general body and the audit for the year 2016-17 is not so far completed. Based on the petition filed by one member of the

Society, two Inspectors were deputed as Observers under Section 29(2) of the Act for watching the proceedings of the annual general body

meeting scheduled on 26.11.2017.

12. The Observers appointed by the 1st respondent Joint Registrar submitted Ext.R1(b) report, wherein it has been stated that, when the 6th item

in the agenda of Ext.P9 notice, i.e., recording of the minutes of previous general body meeting was taken up for consideration majority of the

members objected the recording of the minutes and hence the same was not approved. The general body has not approved the working report of

2016- 17, the profit and loss account, the balance sheet, etc. The President of the Society reported the same before the general body and when

the 10th item in the agenda regarding profit sharing was considered, the members requested for voting and in the voting 154 out of 220 members

present voted against the proposal and the same was also not approved by the general body and it was also reported by the President before the

general body. The budget for the year 2018-19 was considered as the 11th item in the agenda. In the voting, 153 members out of 220 members

present objected the budget and the same was also not approved by the general body. Similarly, the proposal for bye-law amendment was also

not approved by the general body. Other items in the agenda were also considered by the general body and the meeting dispersed at 1.35 pm.

The learned Special Government Pleader would submit that non-approval of major items in the agenda of the 15th annual general body meeting

convened vide Ext.P9 notice, led to administrative stalemate in the 3rd respondent Society, warranting an interference of the 1st respondent Joint

Registrar under Section 33(1)(aa) of the Act. Accordingly, the 1st respondent has issued Ext.P14 order, whereby the 4th respondent has been

appointed as the Part Time Administrator. The learned Special Government Pleader would point out that the Circle Co-operative Union and the

Financing Bank have ratified the action taken by the 1st respondent Joint Registrar in Ext.P14 order.

13. Section 29 of the Act deals with annual general body meeting. Going by Section 29(1) of the Act, a general body meeting of a society shall be

held within a period of six months of close of the financial year for any of the purposes enumerated in clauses (a) to (e) of sub-section (1). Clause

(a) provides for approval of the budget with reference to the programme of the activities of the society prepared by the committee for the ensuing

year; clause (b) provides for election, if any, in the prescribed manner of the members of the committee other than nominated members; clause (c)

provides for consideration of the audit report and the report and follow up action of the committee thereon and the annual report; etc. As per

Section 29(2), the Registrar or any other person deputed by him shall have the right to attend the committee or general body meeting of any

society.

14. Section 29(3) of the Act provides that, where the board of a co-operative society fails to convene the annual general meeting within the period

specified in sub-section (1), the Registrar or the person authorised by him in this behalf shall be competent to convene such annual general meeting

within a period of ninety days from the date of expiry of the period mentioned in sub-section (1) and the expenditure incurred on such meeting shall

be borne by the co-operative society. As per Section 29(4), members of the board who, in the opinion of the Registrar, were responsible for not

convening the annual general meeting within the stipulated period shall be disqualified for one term for being elected as committee members and to

continue as members of a society in addition to being liable for any other provisions under the Act. Going by the proviso to Section 29(4), the

Registrar shall, before passing order under sub-section (4), afford a reasonable opportunity of being heard to each such person, who in his opinion

were responsible for not convening the annual general meeting within the specified period. Vide G.O. (P)No.51/2017/Co-op. dated 19.9.2017 the

Government, in exercise of the powers conferred under Section 101 of the Act, have exempted all Co-operative Societies from the provisions of

sub-sections (1), (3) and (4) of Section 29 and also the provisions of various sub-sections of Section 63, 64 and 66C of the Act for a period of

three months from 1.10.2017 to 31.12.2017.

15. In the instant case, as discernible from Ext.R1(b) report of the Observers, the 15th annual general body meeting of the 3rd respondent Society

held on 26.11.2017 was attended by 428 members. As mandated by clause (a) of Section 29(1) of the Act, the budget for the ensuing year, i.e.,

for the year 2018-19 was considered as the 11th item in the agenda. In the voting, 153 members out of 220 members present objected the budget

and the same was not approved by the general body. Ext.R1(b) report would also show that, when the 6th item in the agenda, i.e., recording of

the minutes of previous general body meeting was taken up for consideration majority of the members objected the recording of the minutes and

hence the same was not approved. As pointed out by the learned counsel for additional 5th and 6th respondents, the managing committee failed

get approval for the working report of the year 2016-17. So also the budget for the year 2016-17, audit reports for the years 2014-15 and 2015-

16, apportionment of profit for the years 2014-15 and 2015-16, etc. As such, the managing committee failed to discharge its essential duties and

functions.

16. Though the term of the present managing committee will expire on 8.2.2018, the election to the managing committee was not included as an

item in the agenda of the annual general body meeting held on 26.11.2017. The learned counsel for the petitioners would point out that in the

meeting of the Board of Directors held on 25.11.2017, it was decided to conduct election on 28.1.2018, and the said resolution dated

25.11.2017 was forwarded to the Kerala State Co-operative Election

Commission, through the office of the 2nd respondent Assistant Registrar, vide Ext.P12 covering letter dated 28.11.2017. The learned counsel would submit that, election to the managing committee was not included as an item in the agenda of the annual general body meeting held on 26.11.2017, since the notice of the annual general body meeting was published on 9.11.2017, even prior to the said decision of the Board of Directors. The learned counsel would contend that, since the resolution regarding the election has already been taken by the Board of Directors on 25.11.2017, the said fact was informed in the annual general body meeting. However, as discernible from Ext.R1(b) report of the Observers, the resolution taken by Board of Directors on 25.11.2017 to conduct election on 28.1.2018 was never placed before the annual general body in its meeting held on 26.11.2017.

17. In Board of Directors of Kottappady Service Cooperative Bank v. Joint Registrar and others [1994 (2) KLJ 795] a Division Bench of this

Court held that, under the provisions of the Kerala Co-operative Societies Act or the Kerala Co-operative Societies Rules, the Registrar and the

Joint Registrar have no power or duty to allow a managing committee to continue in office after the expiry of its term. Therefore, the High Court

cannot compel them to exercise a power or to perform a duty which they do not have. If a new committee is not constituted before the expiry of

the term of the existing committee, provision has been made in Section 33 of the Act to avoid administrative stalemate in the society and to ensure

proper management of the affairs of the society. In such a circumstance, the authority concerned will invoke the provisions in Section 33 of the Act

and ensure that the affairs of the society are managed properly.

18. As per Section 33(1)(aa) of the Act, where the Registrar is satisfied that there is stalemate in the constitution or functions of the committee he

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 member 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.

19. In the instant case, non-approval of major items in the agenda of the annual general body meeting held on 26.11.2017, led to administrative

stalemate in the 3rd respondent Society, warranting an interference of the 1st respondent Joint Registrar, in exercise of his powers under Section

33(1)(aa) of the Act. In such circumstances, the 1st respondent Joint Registrar, after considering Ext.R1(b) report of the Observers and taking

note of the events occurred in the annual general body meeting held on 26.11.2017, appointed the 4th respondent as the Part Time Administrator,

vide Ext.P14 order. As pointed out by the learned Special Government Pleader, the Circle Co-operative Union and the Financing Bank have

already ratified the said action taken by the 1st respondent.

20. A reading of Ext.R1(b) report of the Observers would make it explicitly clear that Ext.P14 order of the 1st respondent Joint Registrar is not

vitiating by abuse of power or misuse of statutory provisions. The reasoning of the 1st respondent in Ext.P14 order is neither perverse nor patently

illegal, warranting an interference of this Court in exercise of the extra ordinary jurisdiction under Article 226 of the Constitution of India. In such

circumstances, I find absolutely no grounds to interfere with Ext.P14 order passed by the 1st respondent Joint Registrar. In the result, this writ

petition fails and the same is accordingly dismissed.