

(1994) 02 KL CK 0049
In the High Court Of Kerala
Case No : W.A. No. 758 of 1993-A

Joint Registrar and Another

APPELLANT

Vs

M.R. Cherian and Others

RESPONDENT

Date of Decision : 28-02-1994

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 101, 28(1A)

Citation : (1994) 1 KLJ 603

Hon'ble Judges : M. Jagannadha Rao, C.J;K. G. Balakrishnan, J

Bench : Division Bench

Advocate : Cyriac Joseph, A.A.G, for the Appellant; M. K. Damodaran and T. R. Ramchadran Nair, for the Respondent

Final Decision : Dismissed

Judgement

Jagaonadha Rao, C. J.

1. This writ appeal has been preferred by the Joint Registrar of - Cooperative Societies, Idukki and the Administrator of the Thodupuzha -Muvattupuzha Primary Cooperative Agricultural Development Bank Limited (hereinafter called the- Primary Bank), Muvattupuzha. They were respondents land 2 In the writ petition, OP 3561 of 1993-Y dated 7-4-1993. The facts of the case are as follows: The Writ Petitioner Sri M. P. Cherlan (respondent No. 1 In this writ appeal was elected as a member of the Board of Directors of the Primary Bank on 29-9-1988, On the same day, the Board, of Directors of the said Bank nominated. the said M. P. the Han a" the delegate or the said Bank to the Kerala State Cooperative Agricultural Development Bank Limited (hereinafter called the Central Bank) While things stood thus, by virtue of the Kerala Ordinance No. 3 of 1992, the term of Cooperative Societies was reduced and because of that the term of the Board of the Primary Bank expired on 7-2-1992 Then an Administrator was appointed to administer the Primary Bank u/s 33 of the Kerala Cooperative Societies Act.

2. Now, u/s 28 (1A) of the Act, the Administrator can continue only upto a maximum period of one year and he has to take necessary steps to pass the appropriate resolutions for conduct of fresh elections culminating in an election notification, appointment of Returning Officer etc.

3. But In the present case, a question of bifurcation of the Primary Bank arose in the meantime consequent to certain directions given by this Court In OP 634/89-A on 22-7-1992 within four months. The bifurcation as contemplated u/s 14 of the Act and Rule 13 of the Rules was likely to take time. Further, new bye-laws had to be framed for the new Banks and the existing bye-law had also to be amended suitably. The Registrar of Cooperative Societies, therefore applied for extension of time before this Court and the same was granted upto 31-3-1993. But In the Civil Appeal No. 4481 of 1992 filed In the Supreme Court I As 4 and 5 of 1992 were filed. IA 4 of 1992 was filed on 18-12-1992 for farther time upto 30-6-1993 to complete the elections In ThodupuzhaMuyattupuzha PCADB and other societies and the same was allowed by the Supreme Court on 8-2-1993 stating:

I. A. No 4 is allowed The time for holding the election of the four Primary Societies Is extended upto May 31, 1993.

4. Thus, when the Supreme Court allowed the I. A. and granted time upto 31-5-1993, for conducting the election of the Primary Society or of the two societies Into which It was to be bifurcated, the need arose for extending the term of the Administrator beyond 10-2-1993

5. The provisions of Section 28 I. A permitted the administrator to continue only for a maximum period of one year upto 10-2-1993 but without modifying Section 28 I. A Government or Registrar could not order extension of the term beyond the maximum period prescribed by the statute.

6. It is at that juncture that the Govt. Issued orders u/s 101 of the Act In GO (P) J6/93/Co-op dated 8-2-1993 in regard to this Society and two other societies. After stating that earlier the Supreme Court had directed elections to all societies to be completed by 12-2-93 and that the High Court had directed bifurcation of the societies and that the Supreme Court by orders dated 8-2-1993 had extended time for election upto 31-5-1992, the G. O. stated:

" Whereas the period of one year which to the maximum term fixed for the Administrators appointed under sub-section (1A) of Section 28 of the said Act to the said three societies would expire by 10th February 1993;

And where as it would not be possible to conduct the election to the committees of the above three societies before the bifurcation of the assets and liabilities or the bifurcation, as the case may, is completed.

(emphasis supplied)

And that, therefore, the Government, on recommendation of the Registrar, had

decided to extend the term of the Administrator further "to enable them to complete the execution process within the time limit ordered now by the Supreme Court. The Government, therefore, finally stated, exercising powers u/s 101, in the G. O. above mentioned as follows:

Now, therefore, in exercise of the powers conferred by Section 101 of the Kerala Cooperative Societies Act, 1969 (21 of 1969), the Government of Kerala hereby direct that sub-section (A) of Section 28 of the said Act shall apply to Thodupuzha-Muvattupuzha Primary Cooperative Agricultural Development Bank Ltd, with the effect of substituting the words and figures "upto 31st day of May 1993 for the words "from time to time, so, however, that the aggregate period shall not, in any case, exceed one year

(emphasis supplied)

7. In other words, with a view to comply with the directions of this Court to bifurcate the Society and with a view to conform to the extended time limits granted by the Supreme Court to conduct election on or before 31-5-1993, the Government exercised powers u/s 101 as they felt compelled to amend Section 28(A) of the Act, which fixed only a maximum period of one year for an Administrator to continue, - by permitting the Administrator to continue beyond one year, upto 31-5-1993. "

8. It was during this Interregnum of extension "if the tenure of the Administrator that he withdrew the writ petitioner (Mr. Chertan) (who was a member "of the unbifurcated primary society) who was earlier nominated to the Central Bank, from such nomination and nominated another person Mr. Antony, ? This took place on 4-3-1993. If the extension of the Administrator's term upto 31-5-1993 is valid, then this Act of the Administrator is not ultra vires. That brings us to the validity of H. CMP) 16/93 dated 8-2-1-93 extending the term of Administrator up to 31-5-1993.

9. In this context, it is necessary to refer to Section 101 of the Act which reads as follows:

S. 101: Power to exempt societies:- The Government may, If they are satisfied that it is necessary so to do in the public Interests by general or special order for reasons to be recorded, exempt any society or any class of societies from any of the provisions of this Act or direct that such provisions shall apply to such society or class of societies subject to such modifications ? as may be specified in the order.

10. The constitutional validity of Section 101 of the Act came up for consideration before this Court in WA 550 of 1993 in a Division Bench consisting of one of us (Jagannadha Rao, C. J.) and Sreedharan, J. It was contended ? that when Section 101 permits the Government to grant exemptions from the provisions of the Act by directing that the provisions of the Act shall apply to such a society subject to such modification, may be specified in the order there was excessive

delegation of legislative powers without guidelines. We rejected the said contention, rely leg on the judgment of the Supreme Court in Registrar. Coop Societies v. K. Kunjambn (AIR 1980 SC 350) wherein similar provisions of Section 60 of the Madras Cooperative Societies Act, 1932 - is applicable to Malabar area of State of Kerala - came up for consideration. Chinappa Reddy, J. observed that Section 60 of that Act was valid though it delegated various legislative powers to the State, After following the said ruling and upholding Section 101 of the present Act, we rtated In paragraph 10 of the Judgment In WA 550 of 1993 as follows :

Section 101 of the Act empowers the Government to exempt any society or class of societies from any of the provisions of the Act or direct that such provision shall apply to such society subject to such modification as may be specified in the order The modifications are to to be made within the frame work of the Act. The power. to modify should certainly involve a discretion to make suitable changes The modification must be confined to alteration of such a character which keeps the policy of the Act intact. The modifications" must be appropriate to the particular situation in which (he power Is exercised. Whether such a modification is required on "be particular circumstance is to be judged by the executive Government. If the modifications come within the object of the Act, they are not to be interfered with." (emphasis supplied)

11. Thus the question is whether the exercise of powers u/s 101 by the Government under the G O (P) 16/93 dated 8-2-1993 by way of amending Section 28(IA) of the Act, Is within the frame work or object of the Act and "appropriate to the particular situation"?

12. We have stated that In view of the orders of this Court in OP 634 of, 1989-A dated 22-7-1992, the Primary society had to be bifurcated. We have, also stated that by orders passed In I. A. 4 of 1992 Civil Appeal No. 4481 of 1992 on 8-2-1993, the Supreme Court granted extension of time, for election up to 3(5-1993. But, if as per Sec. 28(1A) the Administrator who was functioning after the statutory dissolution of the committees of societies by the Ordinance with effect from 7-2-1992 could be continued only for a maximum of on? year, I.e., up to 10-2- 1993 in this case, it well - nigh became impossible to conduct elections before 31-5-1993. without a committee in the society and without also an Administrator, there would be a vacuum. A Cooperative Society had to be managed by a democratically elected committer. Therefore, obviously, the Government had to exercise- powers u/s 101 and modify Section 28 (1A)for the purpose of making the Act workable, and for bringing into being an elected beady. Unless ?,he Administrator continued beyond 10-2-1993 and passed the required resolution for conducting the elections by appointment of a Returning Officer who could publish the voters list and conduct the election, there was so possibility of conduct the election, there was no possibility of condition elections. The Administrator alone could achieve these purposed and necessarily his tenure had to marginally exceed the maximum of one year, I.e. from 10-2-1993 up to

31-5-1993 and surely as the delegate of the Legislature, the Government could exercise this power by suitably amending Section 28(1A) In as much as such an act would be for the purpose of making the Act effective and would meet the "exigencies of the particular situation. The Supreme Court had accepted the validity of a provision like Section 101 which gave power to the Government to exempt a society from operation of some provisions of the Act or apply the Act with certain modifications, (see: Register of Co-operative Societies v. K Kanjamba AIR 1980 SC 350). We accordingly hold that GO (P) 16/93 dated 8-2-1993 is not ultra vires of Section 101 of the Act.

The learned single Judge after coming to the conclusion that G O. (P) 16/93 dated 8-2-1993 was "legislative" In character thought that the Government, as the delegate of the Legislature, could not modify Section 28(1A) even In the exigencies present. The learned Judge did not notice the constraints arising out of the judgment of this Court in an" earlier, with petition regarding bifurcation and the judgment of the Supreme Court extending time for election upto 31-5-1993 while the term of the Administrator would expire on 10-2-1993, The delegated legislative powers, as stated in Kunjambus case (AIR 1980 SC 350) by the Supreme Court (regarding Section 60 of the Madras Co-operative Societies Act, (1932) had to" be exercised. Chinnappa Roddy, J. Pointed there:

We refrain from referring to the details of the provision except to say that they are generally designed to further the objective set out In the preamble. But numerous as the provisions are, they are not capable of meeting the extensive demands of the complex situations which may arise in the course of the working of the Act and the formation and the functioning of the societies.

(emphasis supplied)

Chinnappa Reddy, J. observed:

In fact, the too rigorous applications of some of the provisions of the Act may itself occasionally result in frustrating the very objects of the Act instead of advancing them, It is to provide for such situations, the Government is invested by Section 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the objects of the Act. Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modifications.

(emphasis supplied)

13. Therefore, the present situation, in our view was one which clearly fell within the principles laid down by the Supreme Court and Govt. could modify S. 28(1A). Hence G O. (P) 16/93 dated 8-2-1993 should not have been struck down by the learned single Judge as being ultra vires merely because it has a legislative flavor.

14. If, therefore, the G O. (P) 16/93 dated 8-2-1993 is valid, then the continuance of the Administrator beyond 10-2-1993 and up to 31-3-1993 is

valid. It was during that interregnum that on 4-3-1993, he withdrew the nomination of the writ petitioner, Mr. Cherian (who was a member of the Primary society) to the Central society and nominated one Mr. Antony and the said action is, therefore, not without jurisdiction.

15. In fact, now the position is that the elections to the Central society have taken place wherein the new nominee Mr. Antony participated and that election in subject matter of an election petition u/s 69 of the Act and is pending. That Petition will be decided in accordance with law, subject to what we have held above. Before parting with the case, we must add a word of caution, namely, that we are not to be understood as giving a blanket power to the Government to exercise powers u/s 101. Powers have to be exercised within the norms specified above.

The Writ Appeal is allowed. The judgment of the learned single Judge is set aside and the writ petition is dismissed.