

(2022) 02 KL CK 0060
In the High Court Of Kerala
Case No : Writ Appeal No. 1199 Of 2020

Joint Registrar (General) Of Co Operative Societies	APPELLANT
Vs	
Charley Panthallookaran	RESPONDENT

Date of Decision : 07-02-2022

Acts Referred:

Kerala Co operative Societies Act, 1969 — Section 63, 64, 65, 66, 67, 68, 68A, 68(1)
Kerala Co operative Societies Rules, 1969 — Rule 66A

Citation : (2022) 02 KL CK 0060

Hon'ble Judges : P.B.Suresh Kumar, J;C.S.Sudha, J

Bench : Division Bench

Advocate : T.K.Vipindas, Nisha George

Final Decision : Dismissed

Judgement

P.B.Suresh Kumar, J.

1. This writ appeal is directed against the judgment dated 27.01.2020 in W.P.(C) No.21646 of 2019. The appellants were respondents 1 and 2 in the

writ petition. Parties and documents are referred to in this judgment for convenience, as they appear in the writ petition.

2. The petitioner is a member of the third respondent, a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 (the Act).

He was also the President of the Society for some time. The petitioner and others were surcharged by the first respondent, the Joint Registrar of Co-

operative societies, under Section 68(2) of the Act in terms of Ext.P1 order, on the ground that they have caused loss to the Society to the tune of

Rs.3,15,269/- by taking out a building on lease unnecessarily and without the permission of the competent authority under the Act. Earlier, based on an

inquiry report of the Vigilance Officer appointed under Section 68A, an inquiry

has been ordered by the Joint Registrar under Section 68(1) through the second respondent, the concerned Assistant Registrar of Co-operative Societies, and it is based on the report in the said inquiry that Ext.P1 order was passed. The petitioner challenged Ext.P1 order in the writ petition from which this writ appeal arises, mainly on the ground that there cannot be an inquiry under Section 68(1) based on the report of the Vigilance Officer appointed under Section 68A. The learned Single Judge accepted the said ground and quashed Ext.P1 order. Respondents 1 and 2 are aggrieved by the said decision of the learned Single Judge.

3. Heard the learned Senior Government Pleader on behalf of respondents 1 and 2, the learned Senior Counsel for the petitioner as also the learned counsel for respondents 4 and 5.

4. The learned Senior Government Pleader argued that the plain meaning of the words used in Section 68(1) of the Act would show that an inquiry thereunder could be ordered if it is found in the course of an inquiry that any of the persons referred to therein has caused loss to the society by any one of the conducts mentioned therein, and there is absolutely no justification to hold that such an inquiry cannot be ordered based on the report of an inquiry by the Vigilance Officer appointed under Section 68A.

5. Per contra, the learned Senior Counsel for the petitioner contended that the term "inquiry" in Section 68(1) refers only to the inquiry provided for under Section 65 and the scope of the said term cannot be expanded to include the inquiry of the Vigilance Officer appointed under Section 68A. It was pointed out by the learned counsel that based on an inquiry report of the Vigilance Officer appointed under Section 68A, the Registrar is empowered only to order an inquiry under Section 65 and as such, if it is held that there can be an inquiry straight away under Section 68(1) based on the inquiry report of the Vigilance Officer, the competent authority under Section 68 would be bypassing the requirement of inquiry under Section 65 before initiating proceedings for surcharge. It was also argued by the learned counsel that Section 68A was introduced only with effect from 5.6.2007 and the provision in Section 68(1) even before 5.6.2007 was substantially the same and as such, it cannot be said that the term "inquiry" under Section 68(1) takes within its scope the inquiry of the Vigilance Officer also. The learned Senior Counsel conceded that while Section 65 empowers

the Registrar to order an inquiry under that provision based on the report of the Director of Co-operative Audit appointed under Section 63, it is permissible for the Registrar to initiate proceedings for surcharge under Section 68(1) also based on the materials disclosed in the audit straight away, without waiting for an inquiry under Section 65 based on the report of the audit. It was, however, argued by the learned counsel that an inquiry report of the Vigilance Officer appointed under Section 68A cannot be compared with a report of the Director of Co-operative Audit appointed under Section 63, for before a report is drawn by the Director of Co-operative Audit, the findings therein are scrutinised at different stages after affording the parties concerned an opportunity of hearing. The learned counsel has also argued that the inquiry provided for under Section 68(1) is only a limited inquiry for the purpose of apportionment and similar, and not for the purpose of determining the liability of the person concerned to be surcharged and therefore, if it is held that proceedings for surcharge can be initiated based on the report of the Vigilance Officer, it will have the effect of permitting the competent authority under Section 68 to fasten civil liability on individuals based on reports of police officers.

6. The learned counsel for respondents 4 and 5, however, supported the argument of the learned Senior Government Pleader pointing out that insofar as the Vigilance Officer is empowered in terms of Rule 66A of the Kerala Co-operative Societies Rules, 1969 (the Rules) to inquire, investigate and report to the Registrar on any matters referred to him by the Registrar, it cannot be said that the Registrar is not empowered to order an inquiry under Section 68(1) based on such a report.

7. The short question that falls for consideration is whether the term 'inquiry' referred to in Section 68(1) of the Act would include the inquiry of the Vigilance Officer appointed under Section 68A.

8. It is seen that the learned Single Judge has proceeded on the premise that the term 'inquiry' used in Section 68(1) refers to the inquiry under Section 65, for Section 65 empowers the Registrar to order an inquiry under that provision based on the report of the Vigilance Officer appointed under Section 68A and that a contrary view would place a report of an inquiry under Section 65 and a report of the Vigilance Officer appointed under Section 68A on equal footing for the purposes of Section 68(1), which is not the

intention of the legislature. To reinforce the said view, it was also held by the learned Single Judge that an inquiry under Section 65 is one to be conducted by the Registrar himself, whereas an inquiry under Section 68A is one to be conducted by the Vigilance Officer.

9. Section 68 of the Act dealing with surcharge reads thus:

68. Surcharge. (1) If in the course of an audit, inquiry, inspection or the winding up of a society, it is found that any person, who is or was entrusted with the

organization or management of such society or who is or has at any time been an officer or an employee of the society, has made any payment contrary to the Act

and the rules or the bye-laws, or has caused any loss or damage in the assets of the society by breach of trust or wilful negligence or mismanagement or has

misappropriated or fraudulently retained any money or other property belonging to such society or has destroyed or caused the destruction of the records, the

Registrar may, of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him by an order

in writing in this behalf, to inquire into the conduct of such person.

(2) Where an inquiry is made under sub-section

(1), the Registrar may, after giving the person concerned an opportunity of being heard, by order in writing, require him to repay or restore the money or other

property or any part thereof, with interest at such rate, or to pay contribution and costs or compensation to such extent, as the Registrar may consider just and equitable.

(3) Where the money, property, interest, cost or compensation is not repaid or restored as per sub-section (2), the Registrar shall take urgent steps to recover such

amounts from the concerned persons as arrears of public revenue due on land as specified in Section 79 of the Act.

It is evident from the extracted provision that the Act does not confer any authority on the Registrar to require any person straight away to repay or

restore the money or other property or part thereof to the society based on the materials disclosed in an inquiry. On the other hand, Section 68(1) only

empowers the Registrar to order a further inquiry, if the materials in an inquiry

reveal that any of the persons referred to in the provision has caused loss to the society by any one of the conducts mentioned therein. There cannot be any doubt that the term ""inquiry"" is used in the provision to mean investigation, and not mere enquiry, namely seeking information. In other words, the purpose of inquiry under Section 68(1) is to enable the Registrar to satisfy himself by an investigation either directly or through any person authorised by him by an order in writing in this behalf, that the materials disclosed in the inquiry makes out a case for surcharge as provided for in Section 68(1), for the scheme of the Act is that one shall not be surcharged without an inquiry.

10. The relevant portion of Section 65 of the Act dealing with the inquiry by the Registrar reads thus:

65. Inquiry by Registrar.- (1) The Registrar may,-

- (a) on his own motion; or
- (b) on an inquiry report of the Vigilance Officer appointed under section 68A; or
- (c) on a report of the Director of Co-operative Audit appointed under section 63; or
- (d) x x x x x
- (e) x x x x x
- (f) x x x x x

hold an enquiry by himself or by a person authorized by order in writing, into the constitution, working and financial condition of the society, if he is satisfied that it is necessary so to do.

(2) The Registrar or the person authorized by him under sub-section (1) shall, for the purpose of an inquiry under this section have the following powers, namely:-

(a) he shall, at all reasonable times, have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of the

society and may summon any

person in possession of or responsible for the custody of any such books, accounts, documents, securities, cash or other properties, to produce the same at any

place at the headquarters of the society.

or at any branch thereof or where there is no working office for the society, at the office of the Registrar or at the office of any of his subordinate officers;

(b) he may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society to appear before him at any place at the

headquarters of the society or any branch thereof and may examine such person on oath; and

(c) (i) he may, notwithstanding any rule or bye-law specifying the period of notice for a general body meeting of the society himself call a general body meeting or

require the President or Secretary of the society to call a general body meeting at such time and place at the headquarters of the society or any branch thereof, to

determine such matters as may be directed by him;

(ii) any meeting called under sub-clause (i), shall have all the powers of a general body meeting called under the bye-laws of the society.

(3) x x x x x

(4) x x x x x

(5) x x x x x

(6) x x x x x

The relevant portion of Rule 66 of the Rules dealing the procedure for conduct of an inquiry reads thus:

66. Procedure for the conduct of inquiry and inspection:-

(1) x x x x x

(2) x x x x x

(3) If the inquiry or inspection cannot be completed within the time specified in the order referred to in sub-rule (1)(c), the person conducting the inquiry or inspection

shall submit an interim report stating the reasons for failure to complete the inquiry or inspection, and the Registrar, if he is satisfied, may grant such extension of time

as he may deem necessary or he may withdraw the inquiry or inspection from the officer to whom it is entrusted and hold the inquiry or inspection himself or entrust

to such other person as he deems fit.

(4) On receipt of the orders referred to in sub-rule

(1) the person authorised to conduct the inquiry or inspection shall proceed to examine the relevant books of accounts and other documents in the possession of the

society or any of its officers, members, agents or servants and obtain such information or explanation from any such officer, members, agents or servants of the

society in regard to the transaction and working of the society as he deems necessary for the conduct of such inquiry or inspection.

x x x x x

Section 68A dealing with the appointment of the Vigilance Officer reads thus:

68A. Vigilance Officer.- (1) The Government shall appoint an officer, not below the rank of Deputy Inspector General of Police, as Vigilance Officer with powers to inquire into and investigate the cases of misappropriation, corruption and any other major irregularities in the societies as may be referred to him by the Registrar.

(2) The Vigilance Officer shall conduct the inquiry and investigation in such manner, as may be prescribed.

(3) The Vigilance Officer shall be under the administrative control of the Registrar of Cooperative Societies:

Provided that the powers of the Registrar of Co-operative Societies under this section shall not be conferred on any other person.â??

Rule 66A of the Rules dealing with the inquiry and investigation of Vigilance Officer reads thus:

66A. Inquiry and investigation of Vigilance Officer.- (1) The Vigilance Officer appointed under Section 68A of the Act shall be under the administrative control of

the Registrar.

(2) The headquarters of the Vigilance Officer shall be the headquarters of the Registrar and the staff to assist him will be provided by the Registrar.

(3) The Vigilance Officer shall have powers to inquire, investigate and report to the Registrar on any matters of corruption, misappropriation, fraud, manipulation or

tampering or destruction of records or any other matters as referred to him by the Registrar. He shall have powers to call for any of the records of the society for the

conduct of inquiry or investigation.

(4) The Vigilance Officer shall investigate the cases as referred to him by the Registrar. The Vigilance Officer shall not initiate inquiries suo-moto even when a complaint is made in person or in a signed petition. The Vigilance Officer shall invariably report such complaints to the Registrar who will issue necessary instructions in the matter.

(5) The Vigilance Officer shall be responsible to conduct the inquiry in matters referred to him and submit the inquiry report in time to the Registrar. He shall also be

responsible to give advice of recommendations to the Registrar.

(6) If in the course of an inquiry or investigation the records of any Co-operative Institutions are required, the Vigilance Officer may summon any person related to the case for taking evidence and produce the records to the Office of the Vigilance Officer or any other office specified for the purpose. The records should ordinarily

be made available to the Vigilance Officer on the date specified for it, in default Vigilance Officer will be free to make personal visits to the Offices where the records

are kept for the purpose of confiscating them.

(7) Cases of causing deliberate hindrance or delay to the inquiry will be reported to the Registrar and further action against the delinquents shall be taken as per the

instructions given in the matter. In case the hindrance is that of a criminal nature he may take suitable action in accordance with law.

(8) The inquiry or investigation shall ordinarily be completed within a period of three months which may be extended for a further period of three months also, on

satisfaction of interim report submitted by Vigilance Officer.

(9) The Vigilance Officer shall have powers to take further action on the inquiry report as per the orders of the Registrar.

(10) For the inquiry by Vigilance Officer, procedure mentioned in [Sub R(3) and (4) of Rule 60] has to be followed.

(11) Registrar shall issue any direction to the Vigilance Officer, which shall be binding on the Vigilance Officer.

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As noted, while Section 65 of the Act empowers the Registrar to conduct an inquiry by himself or by a person authorised by him into the constitution,

working and financial condition of a society, Section 68A empowers the Registrar to obtain a report from the Vigilance Officer, after conducting an inquiry concerning misappropriation, corruption and other major irregularities in the society. The first part of Section 68(1) only uses the word "inquiry" and it does not refer specifically either to the inquiry under Section 65 or to the inquiry under Section 68A. Sections 63 to 68A form part of Chapter VIII of the Act. There are no indications in the said Chapter also to infer that the term "inquiry" used in the first part of Section 68(1) refers to the inquiry under Section 65. We are therefore unable to agree with the view taken by the learned Single Judge that the term "inquiry" used in Section 68(1) refers only to the inquiry under Section 65. If the materials disclosed in an inquiry under Section 65 could be made use of for the purpose of surcharging a person after an inquiry under Section 68(1), there is no reason why the materials disclosed in an inquiry conducted by the Vigilance Officer cannot be made use of for the said purpose after conducting an identical inquiry. True, an inquiry report of the Vigilance Officer can be the basis of an order for inquiry under Section 65, but that by itself is not sufficient to hold that the materials disclosed in an inquiry report of the Vigilance Officer cannot be made use of for surcharging a person after an inquiry in terms of Section 68(1). Merely for the reason that an inquiry under Section 65 can be conducted by the Registrar directly, a report of inquiry under Section 65 cannot be placed in a better pedestal than an inquiry conducted by the Vigilance Officer on a reference from the Registrar, especially when the scope of an inquiry under Section 65 and an inquiry by the Vigilance Officer under Section 68A are entirely different, for Section 65 provides for an inquiry only into the constitution, working and financial condition of the society, whereas Section 68A provides for an inquiry into the cases of misappropriation, corruption and other major irregularities in the society. On a scrutiny of the provisions contained in Chapter VIII of the Act, it seems to us that the Registrar is empowered to order an inquiry under Section 65 based on the report of the Vigilance Officer appointed under Section 68A only to ensure that if the materials disclosed in the report of the Vigilance Officer make out circumstances warranting an inquiry into the constitution, working and financial condition of the society, the Registrar shall not be powerless to order such an inquiry based on the same as well. It is all the more so since, while Section 65 also empowers the Registrar to order

an inquiry under that provision based on the report of the Director of Co-operative Audit appointed under Section 63, it is permissible for the Registrar to initiate proceedings for surcharge under Section 68(1) based on the materials disclosed in the audit straight away without waiting for an inquiry under Section 65 based on the report of audit. True, there are scrutinies at different levels before a report is drawn by the Director of Co-operative Audit, but it cannot be said merely on account of that reason that such a report would stand in a higher pedestal in the context of surcharge proceedings than an inquiry report of the Vigilance Officer, when, as already noted, surcharge is contemplated under Section 68 only after a further inquiry in the case of both the reports. That apart, as noted, Section 68(1) empowers the Registrar to surcharge a person who has caused loss or damage to the assets of a society by breach of trust or wilful negligence or mismanagement or, has misappropriated or fraudulently retained any money or other property belonging to the society or has destroyed or caused destruction of the records of the society. The Act provides for appointment of a Vigilance Officer to conduct inquiries and investigations specifically into the cases of misappropriation, corruption and other major irregularities in the society obviously for the reason that a Vigilance Officer would be better placed to report to the Registrar in relation to those matters. It may not, therefore be correct to hold that the report of inquiry and investigation conducted by the Vigilance Officer under Section 68A in relation to matters involving breach of trust, misappropriation etc. is to be endorsed by an officer functioning under the Registrar who normally conducts an inquiry under Section 65 of the Act before making use of the same for an inquiry under Section 68(1).

11. The argument advanced by the learned Senior Counsel for the respondent that the inquiry provided for under Section 68(1) is only a limited inquiry for the purpose of apportionment and similar, and not for the purpose of determining the liability of the person concerned to be surcharged also cannot be accepted. A bare reading of the said provision, especially the expression "to inquire into the conduct of such person" used therein would indicate beyond doubt that the inquiry provided therein is for the purpose of ascertaining whether the person concerned is liable to be surcharged in terms of the said provision and not merely for the purpose of apportionment of liability and similar. True, Section 68A is a provision introduced only

with effect from 05.06.2007 and the provision in Section 68(1) even before 05.06.2007 was substantially the same. But, it is seen that though there was simultaneous amendment to Section 68(1) when Section 68A was introduced in the statute, the scope of the term "inquiry" in Section 68(1) was not limited in any manner in the amended provision. As such, it cannot be contended that the term "inquiry" in Section 68(1) does not take within its fold the inquiry of the Vigilance Officer appointed under Section 68A merely for the reason that Section 68A is a provision introduced when Section 68(1) was already there in the statute. In short, we are of the view that the materials disclosed in an inquiry report of the Vigilance Officer can certainly be used for the purpose of surcharging a person after due inquiry as provided for under Section 68(1).

For the aforesaid reasons, we allow the appeal and dismiss the writ petition, reversing the impugned judgment.