
(2022) 02 KL CK 0222
In the High Court Of Kerala
Case No : Writ Appeal No. 232 Of 2022

K Sivasankaran

APPELLANT

Vs

Joint Registrar Of Co-Operative Societies (General)

RESPONDENT

Date of Decision : 24-02-2022

Acts Referred:

Kerala Co operative Societies Act, 1969 — Section 63, 65, 65(1), 65(1)(a), 66(2), 68A
Karnataka Societies Registration Act, 1960 — Section 25(1)

Citation : (2022) 02 KL CK 0222

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

Bench : Division Bench

Advocate : George Poonthottam, Arun Chandran, Nisha George, V.K.Sunil

Final Decision : Dismissed

Judgement

P.B.Suresh Kumar, J.

1. This writ appeal is directed against the judgment dated 02.02.2022 in W.P.(C) No.2474 of 2022. The appellant was the petitioner in the writ petition.

2. The appellant is the President of a Primary Co-operative Agricultural Credit Society registered under the Kerala Co-operative Societies Act, 1969 (the Act). As per Ext.P1 order, the Joint Registrar of Co-operative Societies exercising powers of the Registrar of Co-operative Societies under the Act over the Society of which the appellant is the President, ordered an inquiry under Section 65(1) of the Act into the loan transactions of the Society commencing from 01.01.2020 and also into the financial structure and stability of the Society. Ext.P1 order was issued on the basis of the reports dated 14.09.2021 and 12.11.2021 of the Unit Inspector attached to the office of the concerned Assistant Registrar of Co-operative Societies disclosing the irregularities noticed in the course of his inspections in the Society. The writ petition was one instituted challenging Ext.P1 order. Having regard to the materials on record, the learned Single Judge found that the satisfaction arrived at by the Joint Registrar for ordering an inquiry

under Section 65(1) of the Act cannot be said to be baseless or unfounded. Consequently, the writ petition was dismissed. The appellant is aggrieved by the decision of the learned Single Judge and hence this writ appeal.

3. The learned Senior Counsel for the appellant contended that in the absence of any of the reports and applications referred to in clauses (b) to (f) of Section 65(1) of the Act, an inquiry under Section 65(1) could be ordered by the Joint Registrar only "on his own motion" as provided for in clause (a) of Section 65(1) on his subjective satisfaction that it is essential to order an inquiry under that provision into the constitution, working and financial condition of the society. The learned counsel elaborated the said submission pointing out that when an inquiry is ordered by the Joint Registrar invoking clause (a) of Section 65(1), the order should reflect the materials, on the basis of which the Joint Registrar has arrived at the subjective satisfaction as to the requirement of ordering an inquiry under that provision and the same shall be based on materials independently collected by him. It was argued by the learned counsel that Ext.P1 order does not disclose the materials independently sourced by the Joint Registrar and the said order was issued solely based on the reports of the Unit Inspector, which is per se illegal and unsustainable. The learned counsel has relied on the decision of this Court in *Melukkara Service Co-operative Bank Ltd. v. Joint Registrar (General), District Co-operative Society*, 2018 (2) KHC 143, in support of the said contention. Placing reliance on the averments in paragraphs 11 to 13 of the writ petition, it was also contended by the learned counsel that the exercise of the power under Section 65(1) in the State is always selective, having regard to the political affiliation of the managing committee, and the power is invoked only with a view to find grounds for superseding the management of societies which do not owe allegiance to the political parties in power in the State. According to the learned counsel, the impugned order is therefore, vitiated by malice as well.

4. We have examined the arguments advanced by the learned Senior Counsel for the appellant.

5. Section 65 of the Act 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) on an application by the majority of the members of the committee of the society, or by not less than one third of the quorum for the general body meeting, whichever is less; or

(e) on an application by the apex society or financing bank of which such society is a member; or

(f) on an application of a society to which the society concerned is affiliated, 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 authorised 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) When an inquiry is made under this section, the Registrar may communicate the result of the inquiry to the financing bank, if any, to the society to which such society is affiliated and to the Circle Co-operative Union.

(4) When an inquiry made under this section reveals only minor defects which in the opinion of the Registrar, can be remedied by the society, he shall communicate the result of the inquiry to the society and the society, if any, to which that society is affiliated. He shall also direct the society or its officers to take such action within the time specified therein to rectify the defects disclosed in such inquiry.

(5) The inquiry under this section shall be completed within a period of six months 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 way, exceed one year.

(6) If the Registrar, on completion of the inquiry finds that, there is a major defect in the constitution or working or financial condition of the society, he may

initiate action in accordance with the provisions of section 32.

As seen from the extracted provision, the Registrar is empowered to order an inquiry under Section 65(1) under any one of the six circumstances enumerated in clauses (a) to (f) of Section 65(1). As rightly pointed out by the learned counsel for the appellant, the circumstances enumerated in clauses (b) to (f) are absent in the case on hand and the impugned order is issued by the Joint Registrar invoking the power under clause (a) . As noted, the argument advanced by the learned counsel for the appellant is that when an inquiry is ordered by the Joint Registrar invoking clause (a) of Section 65(1), the same shall not be based on materials provided by others, but it shall be based on materials independently sourced by him. The argument is obviously in the light of the expression "on his own motion" contained in clause (a) of Section 65(1).

6. Let us therefore, first examine the scope of the expression "on his own motion". A Full Bench of the High Court of Karnataka in Bangalore Grain Merchants Association v. The District Registrar for Societies and Others, 2001 (1) KCCR 292, had occasion to consider the meaning of the expression "on his own motion" in the context of the enquiry provided for under Section 25(1) of the Karnataka Societies Registration Act, 1960. It was held in the said case that the expression "on his own motion" although means "on one's own initiative" and implies application of mind and formation of one's own opinion, it does not matter how and from what source he gets the information and it does not mean that the authority conferred with such power should eschew from consideration the information or material furnished from external sources and should look into the information collected by him on self effort. It was also held in the said case that the only requirement of law is that on the basis of information and materials gathered either on its own initiative or received from other sources, the competent authority has to come to a conclusion on an active application of mind, whether to take up the enquiry or not, and that he shall not act mechanically at the behest of others without independent application of mind. The relevant paragraph of the judgment reads thus:

"9. Now, we come to the more crucial and controversial question i.e., what is the meaning and import of the expression 'on his own motion' and what is its inter-relation to the immediately following clauses of the same Sub-section. There could be no doubt, that the expression 'on his own motion' is synonymous to suo-motu, which according to the dictionary means, "on one's own initiative". 'Own motion' obviously implies application of mind and formation of one's own opinion. It does not matter how and from what source he gets information. But it does not mean that the authority conferred with such power should eschew from consideration information or material furnished by external sources and should look to the information collected by him own self-effort. The exercise of powers suo-motu or on one's own motion, cannot and ought not to be construed in a narrow sense and in a sense which defeats the salutary purpose of the provision. No fetters can be placed on the specified authority from the stand point of source

material on which it should exercise the power. An authority exercising the suo-motu power is not debarred from obtaining informations and materials from various sources. The only requirement is that on the basis of such informations and materials gathered either on its own initiative or received from other sources, the concerned authority has to come to the conclusion, on an active application of mind whether to take up the enquiry or not. Undoubtedly, the decision must be his own. He cannot mechanically act at the behest of some other person or authority without independent application of mind to arrive at a conclusion on the need and expediency of holding an enquiry. It is not argued before us nor can it be disputed that the suo-motu exercise of power does not cease to be such merely because a member of the public or someone in the know of things brings relevant facts to the notice of the prescribed authority, in this case, the Registrar. The Registrar, on a consideration of such facts has to decide whether it is a fit case warranting initiation of enquiry in the over-all interests of the society. The decision must be his and the decision must of course be based on relevant factors, but there is no limitation as to the sources by which he should be prompted to action."

After holding that the expression 'on his own motion' is synonymous to 'suo-motu', the Full Bench has also quoted with approval in the said case a passage from an earlier judgement of the same Court in Muslim Co-Operative Bank Ltd v. Assistant Registrar of Cooperative Societies, ILR 1990 Karnataka 3705, dealing with "suo motu power". The said passage reads thus:

"Naturally for exercise of suo-motu powers also, there must be some source of information for the Registrar to do so. Such information may come to the Registrar of the Societies during his inspection of a Society or by any other means including written complaint by a member."

7. In this context, it is also apposite to mention that similar view has been taken by this Court in K.G.Sadasivan v. Joint Registrar of Cooperative Societies, 2008 (1) KHC 556, in the context of the expression "on his own motion" contained in Section 66(2) of the Act dealing with the power of the Registrar to inspect or direct any person authorised by him by order in writing in his behalf to inspect the books of the society. The question considered in that case was whether the Registrar would be justified in invoking the power conferred on him under Section 66(2) "on his own motion", on the basis of a complaint received by him and it was held in the said case that it is not within the province of judicial review to search for the source of the material which triggered a suo motu action. It was clarified in the said case that if a member of a society makes a complaint and if by that complaint, the Registrar is notified of certain fact situation which triggers action under Section 66(2), that procedure is only one which could be treated as the Registrar acting on his own motion. Paragraph 6 of the said judgment reads thus:

6. On to the question of jurisdiction, when the Joint Registrar or Registrar of Cooperative Societies has the power to act on his own motion, i.e, suo motu, it is

not within the province of the judicial review to search for the source of the material which triggered a suo motu action. The plethora of instances which have been considered by this Court would show that material information may reach the Registrar of Cooperative Societies or the Joint Registrar, including from non traceable sources. If a member of a society makes a complaint and if by that complaint, the Registrar is notified of certain fact situation which triggers action under Section 66(2), that procedure is only one which could be treated as suo motu, the Registrar or Joint Registrar acting on his own motion. The provision that such an inspection under S.66(2) can be commenced on an application of a creditor of a society does not place any embargo on the power of the Joint Registrar or Registrar to act as aforesaid."

That apart, having regard to the object of the inquiry under Section 65(1), viz, to protect the interests of the society and its members, if it is held that a competent authority exercising the power under Section 65(1) could order an inquiry under that provision only based on independent materials sourced by him and shall not act based on materials provided in the complaints received, or the reports called for on complaints, or on reports submitted by subordinate officers, having regard to the large numbers of societies placed under the administrative control of the Registrar, Section 65(1) would be a dead letter, incapable of enforcement and the object of the same would be defeated. We are, therefore, in respectful agreement with the view expressed by the Full Bench of the High Court of Karnataka in Bangalore Grain Merchants Association and we are of the view that the very same meaning shall be given to the expression "on his own motion" contained in clause (a) to Section 65 (1) of the Act also.

8. As in the case on hand, Melukkara Service Co-operative Bank Ltd. is also a case where the decision of the Joint Registrar to order an inquiry under Section 65(1) of the Act based on the report called for from an officer subordinate to him on a complaint lodged by a member of the society was impugned on the ground that the order in this regard was one issued without there being any material on record justifying it and without there being any subjective satisfaction that such an action was necessary. It was held in the said case that the exercise of the power by the Registrar on his own motion under Section 65(1) shall be with a greater circumspection and circumscription and that he shall not solely and perforce be guided by recommendations of the officers subordinate to him. It is apposite to mention that even in Melukkara Service Cooperative Bank Ltd., this Court clarified that there is no impediment in law in ordering an inquiry under Section 65(1) based on the reports of the subordinate officers of the competent authority. The dictum in the said case is consistent with the view we have expressed in the preceding paragraphs of this judgment.

9. True, it was observed in the said case that if a report of a subordinate officer is taken note of by the Registrar for the purpose of ordering an inquiry under Section 65(1), it is obligatory on the part of the Registrar to personally satisfy himself by evaluation and assessment of all the relevant records which should

have guided him to a valid conclusion as to the requirement of an inquiry under that provision. The said observation cannot be understood to hold that the competent authority ordering an inquiry under Section 65(1) should satisfy himself that there are defects in the constitution, working or financial condition of the society before ordering the inquiry, for, the purpose of inquiry is to ascertain as to whether there are any defects in the constitution, working or financial condition of the society. As noted, the only requirement of law in the matter of ordering an inquiry on the basis of information and materials gathered either on its own initiative or received from other sources is that the competent authority has to come to a conclusion on an active application of mind, whether to order the inquiry or not, and that he shall not act mechanically at the behest of others without independent application of mind. In other words, what is expected from the competent authority in the matter of ordering an inquiry on the basis of information and materials gathered either on his own initiative or received from other sources is that there shall be an independent and active application of mind on the question as to whether there shall be an inquiry or not under Section 65(1) on the basis of the said materials.

10. Let us now examine the order impugned in the writ petition. It is seen that in the inspection conducted by the Unit Inspector at the Society on 13.09.2021, various irregularities relating to the loans granted by the Society such as want of security, insufficiency of security, acceptance of security otherwise than in accordance with the norms etc. were found out, and the matter was reported to the Joint Registrar. Later, in compliance with the direction issued by the Director of Co-operative Audit, the Unit Inspector has inspected the Society again on 08.10.2021 and serious irregularities were revealed in the said inspection as well. The irregularities noticed in the inspection held on 08.10.2021 were also brought to the notice of the Joint Registrar. In the report filed by the Unit Inspector to the Joint Registrar in this regard, it is stated, among others, that loan applications were found incomplete, that there was no repayment at all in several loans, that the loans were granted without due execution of Gahans (mortgage) etc. It is seen that it is on the basis of the reports of the Unit Inspector and the various documents appended to the reports, the Joint Registrar has ordered the inquiry under Section 65(1) of the Act. The relevant portion of the order reads thus :

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A reading of the extracted portion of Ext.P1 order would indicate beyond doubt that it is not a case where the Joint Registrar has acted mechanically on the reports filed by the Unit Inspector, but it is a case where on an active and independent application of mind on the reports and the various documents appended to the reports, the Joint Registrar has found that it is expedient in the interests of the Society to order an inquiry under Section 65(1) and accordingly issued the order impugned in the writ petition. This is the view taken by the learned Single Judge as well. We are, therefore, of the view that the order impugned in the writ petition is in conformity with the requirements under Section 65(1) of the Act.

11. That apart, as noted, in terms of the impugned order, the Joint Registrar has ordered an inquiry into the loan transactions of the Society commencing from 01.01.2020 and the financial structure and stability of the Society. Of course, if any major defect in the constitution, working or financial condition of the society is found in the inquiry under Section 65(1) of the Act, the Joint Registrar is empowered even to initiate steps for superseding the managing committee under Section 32 of the Act. But, in the event of such actions, society and the persons concerned will certainly be heard and the irregularities, if any, in the report of inquiry under Section 65(1) could certainly be pointed out at that stage and there is, therefore, no reason at all for the society to be aggrieved by an order directing an inquiry under Section 65(1).

12. In paragraphs 11 to 13 of the writ petition, it was averred by the appellant that exercise of the power under Section 65(1) in the State is always selective, having regard to the political affiliation of the managing committee, and the power is invoked only with a view to find grounds for superseding the management of societies which do not owe allegiance to the political parties in power in the State. The averments in the said paragraphs are irrelevant in the context of this case, for it is found that Ext.P1 order of the Joint Registrar directing an inquiry under Section 65(1) of the Act is in conformity with the statutory requirement.

In the facts and circumstances, the writ appeal is without merits and the same is, accordingly, dismissed.