

(2005) 06 KL CK 0041

In the High Court Of Kerala

Case No : W.A. No's. 321 and 376 of 2004

Karunakaran Pillai

APPELLANT

Vs

Venugopala Pillai

RESPONDENT

Date of Decision : 29-06-2005

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 16(2), 16(2A), 33(1), 33(1A), 33(2)

Citation : (2005) 3 ILR (Ker) 285 : (2005) 3 KLT 348

Hon'ble Judges : Rajeev Gupta, C.J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : K. Jaja Baba and M.U. Vijayalakshmi, for the Appellant; B.S. Swathikumar, Government Pleader, T.R. Ramachandran Nair, D. Somasundaram, P.B. Sureshkumar, S. Brijesh Mohan, Abraham Vakkanal, Saji Kuriachan, M.R. Nandakumar, D. Sreekumar and Paul Abraham Vakkanal, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Radhakrishnan, J.—The question that is posed for consideration in these cases is whether the Committee or Administrator appointed under Sub-sections (1) and (1A) of Section 33 of the Cooperative Societies Act, 1969 could enrol members in exercise of the powers conferred u/s 33(2) of the Act.

2. A Full Bench of this Court in Hassan v. Joint Registrar of Co-operative Societies 1998 (2) KLT 746 interpreting the unamended provisions of Sub-section (2) of Section 33 of the Act held that the power given to the Administrator to exercise all or any of the functions of the committee under Sub-section (2) of Section 33 would not take in the power to enrol new members. Judgment was delivered by the Full Bench on 28.8.1998. Full Bench was interpreting the unamended provisions of Sub-section (2) of Section 33, which reads as follows:

(2) The Committee or Administrator or Administrators appointed under Sub-section (1) and (1 A) shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all of any of the functions of the committee or of any officer of the society and take all such

action as may be required in the interest of the society.

The above mentioned provision was amended by Act 1 of 2000 with effect from 1st January, 2000 and the amended provision reads as follows:

(2) The Committee or Administrator or Administrators appointed under Sub-sections (1) and (1A) shall, subject to the control of the Registrar and to such instructions as he may from time to time given, have power to exercise all or any of the powers and functions of the committee or of any officer of the society and take all such action as may be required in the interest of the society.

Contention was raised, in view of the amendment the Administrator could exercise all the powers and functions of the committee including enrolment of new members.

3. Apex Court had occasion to consider the scope of Section 30A(3) of the Karnataka Co-operative Societies Act in K. Shantharaj and another Vs. M.L. Nagaraja and others, . The said provision is extracted below for easy reference.

(3) The Special Officer shall, subject to the control of the State Government and the Registrar, exercise and perform all the powers and functions of the committee of the co-operative society or any officer of the co-operative society and take all such actions as may be required in the interest of the co-operative society.

Interpreting the above provision, Apex Court held:

It would be clear from the language of the provisions that the Administrator or special officer, subject to control of any of the functions of the society, and in the interest of the society can take such action as is necessary for proper functioning of the society as per law. He should conduct elections as is enjoined thereunder. In other words, he is to conduct election with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society.

Referring to the above mentioned decision, Apex Court in Joint Registrar of Cooperative Societies v. T.A. Kuttappan 2000 (2) KLT 480 (SC) held that the role of an administrator or a committee appointed by the Registrar while the committee of management is under supersession, is as pointed out by the Apex Court, cannot have power to enrol new members. If we carefully analyse the provisions of the Act, it would be clear that the administrator or a committee appointed while the Committee of Management of the Society is under supersession cannot have the power to enrol new members and such a question ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression "have power to exercise all or any of the functions." Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. Often we do express that functions are discharged or powers exercised or vice versa

depending upon the context of the duty or power enjoined under the law if the two expressions are interchangeable. What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Apex Court reminded of the fact that it is the nature of the function which was exercised and not the manner in which it is done.

4. We need not further elaborate the matter since the provision interpreted by the Supreme Court is pan materia with the amended provision of the Kerala Co-operative Societies Act. We therefore hold that the amended provision would not confer any power on the Administrator to enrol new members to the co-operative society. Act 1 of 2000 also added Sub-section (2A) to Section 16 which enables the Registrar to determine whether membership should be given or not when the application for membership in a society is not disposed of within the time specified in Sub-section (2) of Section 16. Section 16(2) would not clothe with any power on the Administrator. We find no infirmity in the judgment of the learned single Judge to be interfered by us. The appeals lack merits and are accordingly dismissed.