

(1985) 12 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 10203 of 1985

Kottayam Co-op. Bank Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-12-1985

Acts Referred:

Citation : (1988) 1 KLJ 480

Hon'ble Judges : V. Sivaraman Nair, J

Bench : Single Bench

Advocate : N. Raghava Kurup and P.B. Radhakrishnan, for the Appellant; C K. Sivasankara Panicker, K.S. Radhakrishnan, M.N. Sukumaran Nair, A.N. Rajan Babu and Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Sivaraman Nair, J.—Three candidates, who had appeared for the tests conducted by the Kottayam Co-operative Bank Ltd., for selection for appointment as Junior Clerks in the Bank, sent a representation dated 16-10-1985 to the Government alleging certain irregularities in the conduct of the tests. These representations were sent to the Minister" for Cooperation and the Minister for Home Affairs. The Minister for Co-operation endorsed a note on receipt of the representation as follows:

Call for an urgent report from the J.R. Kottayam within 15 days Pending disposal of the petition, the J. R. may b e directed to" instruct the Society not to conduct the interview for making new appointments in the Bank

This endorsement was made on 17-10-1985. The copy addressed to the Home Minister appears to have been forwarded to the Co-operative Department for remarks. It was received by the Co-operative Department on 6-11-1985. The endorsement made by the Minister for Co-operation was communicated on the same day to the Joint Registrar of Co-operative Societies, Kottayam. The Joint Registrar in his turn issued an order on 25-10-1985 restraining the Bank from

conducting interview for appointment of Junior Clerks. The Vigilance Wing of the State Police had, in the meantime, moved in with agility and had taken files relating to the matter into custody. Petitioner challenges Exts. P3 order of the Government dated 17-10-1985 and Ext.P4 order of the Joint Registrar of Co-operative societies dated 25-10-1985, directing the bank not to conduct the interview for appointment of Junior Clerks in the bank. Petitioner submits that the Government has no power to pass Ext.P3 order. He also submits that neither the Government, nor the Joint Registrar Co-operative Societies has any power or competence to interfere with normal day to day functioning of the Bank. in any manner counsel for the petitioner submits that the Bank welcomes any enquiry into the allegations of impropriety in effecting appointments in the bank. The only objection is to the interdict issued by the State Government in Ext, P3 and given effect to in Ext P4 in the matter of effecting such appointments. The short facts necessary for understanding the controversy involved in this Original Petition are the following: Petitioner-bank is one of the prosperous Co-operative institutions of Kottayam District. It had a staff of 54 employees. After the present Board took charge on 1-7-1982 the turn-over of business increased from Rs. 5 crores to Rs. 9 crores in 1984-85, and its profit increased from Rs. 4 lakhs to Rs. 10 lakhs. Additional staff was necessary to handle the enhanced business Since regular appointment of additional staff has to be made with the sanction of the Department, this additional requirement of personnel was made by appointment of daily rated workmen. By order dated 5-2-1985, the Joint Registrar of Co-operative Societies sanctioned 9 more posts of Junior Clerks and 3 posts of peons. By Ext. P1 resolution dated 26-9-1985. it was decided to request for sanction of 10 more posts of Junior Clerks and 3 more posts of Peons. In the meantime, the Board of Directors by resolution dated 26-6-1985 authorised; the President to appoint an Examiner and to arrange to the conduct of tests. Applications were invited by Ext P5 notification dated 20-7-1985 published in the Makyala Manorama. Applications were to be sent to the President by registered post along with the required certificates. 926 applications were received, pursuant (hereto). Only 523 applications were found to be in order. All the 323 persons were required to present for (he test on 22-9-1985. The President had, in the meantime, entrusted Shri Thomas Mathew, Secretary of the Thimvalla Taluk Rubber Marketing Co-operative Society, Mallappally, to set the question papers. 292 candidates had attended the test held on 22-9-1985. The conduct of the test was supervised by retired High School Assistants and Successful Candidates were chosen for interview. 76 candidates were interviewed on 10th and 12th of October, 1985, and As a result thereof candidates were to be finally selected. Ext. P2 petition dated (nil) was filed by additional respondents 3 and 4 complaining about the irregularities to the conduct of the test and interview. As I have noticed at the commencement of this judgment, this representation was quick in evoking immediate response from the Minister for co-operation, who directed issue of Ext. P3 communication, which was given effect to by the Joint Registrar in Ext. P4.

2. There was considerable argument relating to the merits of the controversy. The Vigilance Department of the State Police seems to have commenced an enquiry into the allegations contained in Ext. P2. Similar enquiry by the Co-operative Department was also in progress. It will be highly improper for me in these proceedings to consider the merits of the allegations and counter allegations. I have, therefore, to confine myself to the question of jurisdiction of the Government to issue Ext. P3 order.

3. Counsel for the petitioner submits that the only provision of the Co-operative Societies Act which vests any authority in the State Government is Section 87 of the Act, which confers a - supervisory power. Sections 65 and 66 of the Act deal with powers of audit, inspection and enquiry, Such powers are hedged in by restrictive conditions. It is necessary for us to consider these provisions in farther detail, The case of the petitioner is that neither section 65 nor section 66 authorises the Government to interfere with the routine day to day administration or to stay the proceedings for interview and appointment of candidates by a Co-operative Society. Reference is made to the decision reported in Dalel Singh Vs. Honorary Secretary, Co-operative Union Ltd., U.P., Lucknow and Others, in support of this proposition. It is also submitted that the Joint Registrar, who is an independent functionary should not have acted under the dictates of the extraneous authority. Even assuming that section 65 and section 66 were applicable, the Registrar or the person exercising the powers of the Registrar had-to satisfy himself that an enquiry, audit or inspection into the affairs of the Society was essential. Petitioner submits that in the present case, Ext. P3 or Ext. P4 do not indicate the existence of such satisfaction as is obligatory for enabling the Joint Registrar to take any action under any of the enabling provisions under the Kerala Co-operative Societies Act. Reference is made to the decision reported in 1976 KLT 353 to the effect that noncompliance with rule 66 of the rules invalidates action u/s 65 of the Kerala Co-operative Societies Act, and the decision reported in 1978 KLT 392 to the effect that if there was no independent exercise of discretion by the statutory functionary, the resultant action is liable to be avoided.

4. Shri Radhakrishnan, counsel appearing for some of the additional respondents, submitted that the Joint Registrar is also "Registrar" as defined in section 3 (2) of the Kerala Co-operative Societies Act read with Notification dated 28-6-1969 and published Gazette dated 8-7-1969 investing all the powers of the Registrar in the Registrars as well. He relies upon section 32 of the Act, which deals with the powers of the Registrar in the matter of Supersession of Committee of Management, Section 65 dealing with Enquiry by Registrar into the constitution, working and financial condition of Co-operative Societies, section 66 dealing with Supervision and Inspection of Co-operative Societies by the Registrar, section 68 enabling Surcharge as a result of proceedings under sections 65 and 66 of the Act, and section 87 whereby the power is conferred on the Government to call for any orders of the: Registrar or person exercising such powers. Reference is also made to rule 174 of the Kerala Co-operative Societies

Rules, dealing with the power to fix qualifications by staff with the approval of the State Government. He also took an objection to the maintainability of the Original Petition brought by the President of the Society, since rule 22 (c) of the Byelaws of the Society enables only Secretary to sue and be sued on behalf of the Society. Objection was also taken to the non-impleadment of affected parties as party-respondents in the Original Petition.

5. As I have stated already, it is not for me to consider the merits of the objections contained in the various complaints raised by some of the candidates for appointment under the Society. Those are subject matters of enquiry by the Vigilance Department of the State Police as also by the Joint Registrar.

6. Counsel for the petitioner very fairly conceded that he is not interested in avoiding any enquiry on the basis of any technical plea. Each one of the allegations were sought to be explained in detail in the reply affidavit filed by the petitioner. I refrain from considering the merits of these submissions. I will confine only to the points of jurisdiction relating to the competence of the Government and the Joint Registrar to interfere with the appointment of personnel to the posts sanctioned by the Joint Registrar of Co-operative Societies.

7. The first provision which has to be considered is section 87 of the Kerala Co-Co-operative Societies Act. That section so far as it is relevant is in the following terms:

87. Powers of Revision of Registrar and Government.-- (1) The Registrar may of his own motion or on application call for and examine the record of any officer subordinate to him not being an officer exercising the powers of the Registrar, and the Government may of their own motion or on application call for and examine the record of the Registrar including any officer exercising the powers of the Registrar, in respect of any proceeding, not being a proceeding in respect of which an appeal to the Tribunal is provided by section 82, to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made thereon, and if, in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders "accordingly"

It is evident from the above provision that the Registrar or the Government may call for and examine the records only of any subordinate officer in the case of the former and of the Registrar or any person exercising the powers of the Registrar in the case of the latter. In both cases, it has to be a proceeding in respect of which an appeal to the Tribunal is provided, and examination shall be for the purpose of satisfying himself or themselves as to the regularity of such proceedings, or correctness, legality or propriety of any decision passed or order made thereon. Exercise of the power is further circumscribed by the condition that it should also appear to the Registrar or the Government that any such decision or order may be modified, annulled, reversed or remitted for

reconsideration,

8. Obviously, that power is available for exercise only in cases where orders have been passed or decisions have been taken. Such power is not available in cases where the order is yet to be passed or decisions are yet to be made. The conduct of an examination is neither an order passed, nor a decision taken. Government did not purport to revise the decision of the Co-operative Society to select candidates for appointment by conducting an examination and an interview. Nor is it evident from the records produced in this case that the decision to authorise the petitioner to choose the examiner was the subject matter of scrutiny by the state Government. As a matter of fact, it appears that in effecting an endorsement on the complaint of the additional respondents, it was assumed that the Government had got all supervisory powers to pass any order in respect of any matter affecting any Co-operative Society. I do not find any of the provisions in the Kerala Co-operative Societies Act which justifies this assumed omnipotence to the State Government. What I find in the detailed provisions of the Co-operative Societies Act, on the other hand, is the anxiety to preserve autonomy and internal democracy of Co-operative institutions to the extent possible.

Circumstances when a Society behaves in a wayward manner and that affects the working and impairs its constitution, function and financial conditions are taken care of by section 32. Exercise of such drastic powers are hedged in by serious circumscribing conditions. The assumption that the Government has got the powers to intervene in the day-to-day administration of any Co-operative Society is not supported by the provisions of the Act or the Rules.

9. Section 32 of the Kerala Co-operative Societies Act provides for supersession of a committee of a Co-operative Society. For exercise of that power, the Registrar should be satisfied of persistent default or negligence in the performance of the duties imposed by the Act or the Rules or the Bye-laws of the Society, or that the Committee commits any act prejudicial to the interests of the Society or wilfully fails to comply with any lawful order or direction issued under the Act or the Rules. Ordinarily action thereunder, should be preceded by an opportunity to the Committee to state its objections to the proposed supersession. There is not even an averment that any of the circumstances justifying action u/s 32 of the Act was in existence at the time when the Government issued Ext.P3 order. Nor is there any assertion that circumstances justifying action under, section 32 of the Act was present, and the Joint Registrar was satisfied about such circumstances when he issued Ext.P4 order in apparent obedience to the directions contained in Ext. P3 order. It seems to me that the petitioner is correct in his assertion that the Joint Registrar had not exercised his independent discretion on being personally satisfied about the need for any action u/s 32 of the Act.

10. Section 65 of the Act deals with Inquiry by the Registrar. Any inquiry may be ordered by the Registrar on his own motion or on any application. If it is the

latter" the application must have been made by a majority of the members of the Committee of the Society, or by not less than one third of the total number of members of the Society or the number of members required for the quorum of the general body, whichever is less. Admittedly, the majority of the members of the Committee of the Society have not made any application in that regard: nor had one-third of the total number of members or the number of members required for the quorum of the Society applied for action u/s 65 of the Act. It must, therefore, be a case in which action was initiated by the Registrar on his own motion ordering enquiry into the constitution, working and financial condition of the Society. Excepting compliance with the directions contained in Ext.P3, the Joint Registrar does not seem to have exercised such power on his own, nor is there any averment that an enquiry into the constitution, working and financial conditions of the Society was necessary. Much less is there any Compliance with Rule 66 of the titles. It is not, therefore, possible to justify Ext.P3 or Ext.P4 as an instance of exercise of the power u/s 65 of the Act.

11. That takes us to section 66 of the Act, which deals with Supervision and Inspection by the Registrar, or person authorised by him, into the working of every Society. Any supervision by the Registrar or by any person having the powers of the Registrar is not sought to be resisted by the petitioner. An inspection of the books of the Society in aid of supervision as provided in sub-section (2) of section 66, or an inquiry in aid of such inspection and supervision are not even attempted to be pleaded by the respondents. It may, perhaps, be within the powers of the Registrar or the person exercising the powers of the Registrar to supervise management of the Society and inspect its books. No such power is sought to be exercised by the issue of Ext." P4: no such power is available to the Government u/s 65 or section 66 of the Act to direct the Registrar to interfere with the conduct of the interview leading to appointment of personnel against the sanctioned posts in the Society.

12. Rule 174 of the Rules, which was pleaded by the counsel for the additional respondents as justification for Ext. P4, only provides, that "the Registrar shall with the approval of Government fix the strength of the Establishment, scale of pay, qualifications, mode of recruitment, and service conditions of employees". The Registrar has got the power of fixation of establishment and related matters and such fixation shall obtain the approval of the Government. All these matters are covered by the provisions contained in Chapter 15 of the Kerala Co-operative Societies Rules. Classification, qualifications, eligibility for promotions, scale of salary etc., are all covered by such rules. I do not, therefore, find it possible to agree with the submission made by the counsel for respondents 3 to 5 that Ext. P3 and P4 are capable of being justified in terms of rule 174 of the rules.

13. I am reasonably certain that there is no power in the Government or the Joint Registrar of - Co-operative Societies to issue Ext,P3 and P4. The promptitude with which Ext.P3 order was passed on a petition dated 15-10-1985 and which was received by the Minister for Co-operation on 16-10-1985 is really

commendable. Even though that order cannot be justified on points of jurisdiction, I can only wish that the Government emulates the expedition with which Ext.P3 was passed in such cases also where" orders within jurisdiction can be passed by Government.

14. I have already noticed, that Ext.P3, unfortunately, indicates an anxiety on the part of the Government to interfere with the internal democratic functioning of a Co-operative Society. This, to say the least is most regrettable. There are various provisions in the Act, some of which, I have referred to earlier, which enable the authorities to deal with the way and conduct of any Co-operative Society in the master of its internal administration. Such provisions arm the supervising authorities with adequate power to deal with emergent situations and safeguard the interests of its members. There is, however, no justification for exercise of such power in a situation where some of the candidates who appeared for the written test complained to the Government that they were not satisfied with the conduct of the examination or the test leading to the appointment. Such persons have ample opportunity to bring out the alleged improprieties to the notice of the appropriate authorities. It is not as if the only opportunity which they have to voice their complaint against the impropriety in conduct of the preliminary tests leading to the appointment of personnel in a Co-operative Society is to make a bee-line to the Minister. Even assuming that the Government is all powerful, the discretion on the part of such high-ranking authority can be exercised only in most exceptional cases. This is far more so in a case where it deals with the internal democracy of an autonomous institution. I have, therefore, no hesitation in holding that Exts. P3 and P4 orders were passed incompetently and beyond jurisdiction. Those orders will, therefore, stand quashed - As far as the conduct of the enquiry either by the Vigilance Department of the State Police or by the Co-operative Department into the allegations of impropriety in the conduct of the written test in the matter of appointments of Clerks and Peons in the petitioner Society is concerned, it is made absolutely clear that the observations contained in this judgment will not preclude the appropriate authority from proceeding further in the matter in accordance with law as are found necessary.

The Original Petition is allowed as above, There will be no order as to costs.