
(2016) 07 KL CK 0010
In the High Court Of Kerala
Case No : W.P. (C) . No. 19311 of 2016 (L)

K.P. Hamsa

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 07-07-2016

Acts Referred:

Citation : (2017) AIRCC 712 : (2016) 3 KerLJ 445 : (2016) 3 KLT 429

Hon'ble Judges : Mr. Shaji P. Chaly, J.

Bench : Single Bench

Advocate : Sri. B.S. Swathy Kumar and Smt. T. Reshma, Advocates, for the Appellant; Sri. V. Vijulal, Senior Govt. Pleader, Sri. P. Ravindran, (Senior Advocate) Sri. Sreedhar Ravindran, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Shaji P. Chaly, J.—This writ petition is filed by petitioners seeking to declare that the Administrative Committee appointed as per Ext. P1 with petitioners, are legally entitled for extension of its period from 20.3.2016 to 19.9.2016 in view of Exts. P6 and P8, and that Ext. P9 is illegal, violative of the provision of Section 33(1A) of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act") as well as the direction in Exts. P6 and P8 and further declare that, respondents 2 and 3 are legally and statutorily bound to grant extension to the Administrative Committee with the first petitioner as the Convenor from 20/3/2016 to 19/9.2016, and for other related reliefs.

2. Necessary facts required for the disposal of the above writ petition are as follows:- Petitioners are members of the Kumaramputhur Service Co-operative Bank (hereinafter referred to as "the Bank") with membership Nos. 7115, 8319 and 10471 respectively. Consequent to the expiry of the term of the previous elected managing committee on 20.9.2014, third respondent vide order dated 17.9.2014 appointed petitioners as the Administrative Committee of the Bank invoking the power under Section 33(1) of the Kerala Co-operative Societies Act for a period of six months with the first petitioner as the Convenor, evident from

Ext. P1.

3. On expiry of the said term, term was further extended for a period of six months from 20.3.2015 vide order dated 17.3.2015, evident from Ext. P2. Again the period was extended from 20.9.2015 to 19.3.2016 by Ext. P3 order dated 8.2.2016. Thus the power of the Registrar, to extend the period up to a maximum of one year expired.

4. While so, the Committee met on 15.2.2016 vide resolution, resolved to request the second respondent through the third respondent to seek permission to the Government to extend the term of the committee for a further period of six months, evident from Ext. P4. Accordingly, Ext. P5 application was made on 16.2.2016. In the meanwhile, elections were scheduled to be conducted on 23.5.2015. Certain members of the Bank challenged the proposal to conduct the election on the ground that, voters list prepared was not proper. Voters list was prepared on the basis of the directions of this Court in W.P.(C)No. 26129/2014, which was challenged in W.A.No.741/2015. In view of conflicting decisions on the point Division Bench referred the matter to a Full Bench. According to the petitioner, in the Writ Appeal there was an interim direction to maintain the status quo as on 3.2.2016, which was subsequently extended.

5. In spite of Ext. P5, since no action was initiated, petitioner has approached this Court by filing W.P.(C) No.15098/2016 and secured Ext. P7 judgment, by which the first respondent was directed to consider the application filed by petitioners, through the second respondent. That in compliance with the directions in Ext. P7 judgment, first respondent decided to extend the term of the Administrative Committee for a further period of six months from 20.3.2016 to 19.9.2016, in exercise of the power conferred under sub-section (1A) of Section 33 of the Act and issued Ext. P8 notification accordingly. According to petitioners, second respondent is legally and statutorily bound to issue consequential order extending the term of the Administrative Committee with the first petitioner as the Convenor. But, third respondent exercising the powers of the second respondent has removed the Administrative Committee from office and has appointed the 4th respondent in its place as per Ext. P9 order. It is thus challenging Ext. P9 order, petitioners have approached this Court by filing this writ petition.

6. 4th respondent has filed a counter affidavit refuting the allegations, claims and demands made by the petitioners. The paramount contention raised by the 4th respondent is that, the first respondent by State Government invoking Section 33(1A) can only permit the Joint Registrar to extend the period of Administrator or Administrative committee, for a further period, and it is not open to the Government under Section 33(1A) to require the Joint Registrar to extend the period of the Administrative Committee. That apart, it is also contended that, term of the Committee expired on 19.3.2016 and thereafter, petitioners have no right, statutory or otherwise to continue in office. It is for the Joint Registrar after obtaining permission from the Government under Section 33(1A) to decide

whether the term of the existing Administrative Committee should be extended or continue the administrative affairs of the Committee through an Administrator. It is also urged that, petitioners cannot be aggrieved if an Administrator is appointed in the place of the Administrative Committee, since the term of the Administrative Committee is over. Therefore, it is contended that, petitioners have no locus standi at all to approach this Court by filing the writ petition and insist that they should be permitted to continue as Administrative Committee of the Society till elections are held to the managing committee of the society.

7. Therefore, it is contended that, Ext. P9 order passed by the third respondent has no manner of illegality or irrationality, warranting interference of this Court exercising the power of judicial review.

8. First respondent-Government have made their submissions in line with the contentions raised by the 4th respondent and submitted that Ext. P9 order is perfectly justified in view of Ext. P8 notification issued by the Government permitting the third respondent to extend the period invoking the power under Section 33(1A) of the Act.

9. Heard learned counsel for petitioners, learned Government Pleader, learned senior counsel for the 4th respondent and perused the pleadings and documents on record.

10. Learned counsel for petitioners reiterated the contentions in the writ petition. The predominant contention advanced by learned counsel is that, phraseology used in sub section (1A) of Section 33 of the Act is "constituted", which thus means the committee already in power. According to learned counsel, giving due importance to the said phraseology only, the Government issued Ext. P8 notification permitting the Registrar to pass an order extending the period of the administrative committee already in existence. Learned senior counsel for 4th respondent retained the stand taken in the counter affidavit and canvassed that, orders passed by the third respondent does not suffer from any legal infirmity enabling this Court to exercise the power of judicial review.

11. On an evaluation of facts and circumstances and law involved in the subject matter, the question to be decided is whether Ext. P9 order passed by the third respondent has any legal infirmity or irrationality warranting interference of this Court by exercising the power of judicial review under Article 226 of the Constitution of India. In order to decide the said question reference to section 33(1) of the Act is material. As per Section 33(1) where the term of Committee has expired and a new committee has not been constituted or under the circumstances mentioned thereunder, if there is no committee to manage the affairs of the society, power is vested with the Registrar under Clause (b) of Section 33(1) either suo motu or on an application of any member of the Society after intimating the circle Co-operative Union to appoint one Administrator or an Administrative Committee consisting of not more than three individuals who need not be members of the society, one among them as Convenor to manage the

affairs of the Society for a period not exceeding six months, as may be specified in the order. By virtue of the said clause, Registrar is vested with powers to "extend" the period so provided from time to time. But, however, the aggregate period shall not, in any case, exceed one year or till a new committee enters upon office, whichever is earlier.

12. In order to tackle the situation after one year as aforesaid, sub Section (1A) to Section 33 was introduced, which read thus:-

"Notwithstanding anything contained in sub-section (1), where on receipt of a report from the Registrar, the Government is satisfied that a new committee cannot be constituted or cannot enter upon office of the society before the expiry of the term of the office of the administrator or administrative committee, as the case may be, appointed by the Registrar under sub-section (1) and that it is necessary in the public interest to manage the affairs of the society and to enable a new elected committee to enter upon office, the Government may, by notification in the Gazette, for reasons to be recorded, permit the registrar to extend the terms of the "said" administrator or administrative committee, as the case may be, for a further period not exceeding one year in the aggregate or till a new committee enters upon office, whichever is earlier. "

Sub-section 2 of Section 33 further provides that the administrator or administrative committee appointed under sub-sections(1) and (1A) shall, subject to the control of the Registrar and to such instructions as he may have given from time to time, have power to exercise all or any of the powers and functions of the committee or of any officer of the committee and take all such action as may be required in the interest of the society.

13. Admittedly, in this case, the period of the administrative committee appointed by the Registrar under Section 33(1)(b) expired on 20.3.2016 and it is thereupon that, Ext. P4 resolution was passed by the administrative committee to seek extension of the period further, since no election has taken place in the society. It is on expiry of the period of one year, Registrar has sought permission of the Government. Government, accordingly issued Ext. P8 notification. In Ext. P8, it is recited that, the Government have examined the matter in detail, and are satisfied that, it is necessary in public interest to permit the Registrar of Co-operative Societies to extend the term of the administrative committee appointed to manage the affairs of the said Bank for a further period of six months from 20.3.2016 to 19.9.2016 or till a newly elected committee enters upon office, whichever is earlier, in order to avoid administrative vacuum in the Bank.

14. Third respondent quite contrary to the direction contained in Ext. P8 to extend the term of the Administrative Committee appointed for a period of six months, appointed the 4th respondent as the Administrator after withdrawing the Administrative Committee appointed by the Registrar under Section 33(1) (b). The question is whether the Registrar is vested with powers to re-place the Administrative Committee in power on the basis of permission granted by the

Government under Section 33 (1A) of the Act. To understand the legal situation envisaged under Section 33(1A), a reference to the phraseology used is very vital and important. Under Section 33(1)(b) of the Act the word used is Registrar shall appoint one Administrator or an Administrative Committee consisting of not more than three individuals. Admittedly, petitioners were appointed as the Administrative Committee and thereafter as provided under the said clause itself, period of the said Administrative Committee was extended for a further period of six months. Now looking at the phraseology used in sub-section (1A) it is categoric and clear that, the Registrar on securing permission from the Government is to extend the term of the "said Administrator or Administrative Committee". Which thus means if already the authority in power was the Administrative Committee, on the basis of permission secured from the Government, the Registrar has only the power under sub-section (1A) to extend the term of the said "Administrative Committee". To put it otherwise, the Registrar is entitled to extend the period of the Administrator only if an Administrator was appointed under Section 33(1)(b) of the Act. However, the phraseology used is "extend", in sub-section (1A) and in the 2nd limb of Clause (b) of Section 33(1). If the intention was to replace the administrative committee after the expiry of one year period, the term used would have been "appoint". The terms "extend" and "appoint" are different connotations carrying different meanings, and cannot replace each other, unless it is defined so under the Act. Again, another definite term "said" is used under sub-section (1A), which also is a clear indicative factor to legally think that the power of the Registrar is only to extend the term of the authority in power appointed under Section 33(1)(b) of the Act.

15. Therefore, reckoning the factual and legal situations available in this case, it is vivid and clear that the third respondent legally erred, appointing the 4th respondent as Administrator, replacing the Administrative Committee, by issuing Ext. P9 order. It is well settled that, the provisions of a statute is to be applied in accordance with the terms contained thereunder. The permission granted by the Government is in accordance with the provisions of Section 33(1A), but, the Registrar has chosen to deviate from the said permission, and appoint the 4th respondent as the Administrator. In that view of the matter, I am of the considered opinion that, Ext. P9 order is arbitrary, illegal, irrational and illogical, warranting interference of this Court exercising the power of judicial review under Article 226 of the Constitution of India.

16. Resultantly, petitioners are entitled to succeed and the writ petition is allowed. Consequentially, Ext. P9 order is quashed and direct the third respondent to pass an order in terms of Ext. P8 by appointing petitioners as the Administrative Committee within a period of two weeks from the date of receipt of a copy of this judgment.