
(1958) 10 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 490 of 1958

Krishnan

APPELLANT

Vs

Joint Director of Industries and Commerce (Coir) and Others

RESPONDENT

Date of Decision : 16-10-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) KLJ 93

Hon'ble Judges : N. Varadaraja Iyengar, J

Bench : Single Bench

Advocate : Panampilli Govinda Menon, P.K. Krishnankutty Menon and P. Narendra Menon, for the Appellant; P. Balagangadhara Menon, V. Viswanatha Menon and V.N. Gopalakrishnan Nair For Respondents 2 to 6, for the Respondent

Judgement

N.V. Iyengar J.

1. This is a petition under Art. 226 of the Constitution. The petitioner is the President of the Vyttila Coir Co-operative Society Ltd. hereinafter called the Society. The complaint is mainly that an order of supersession of the Committee of the Society dated 26-7-1958, and passed by the 1st respondent, Joint Director of Industries & Commerce (Coir) is ultra vires and should be quashed. The prayer is also made that another order of earlier date viz. 24-7-58 staying the holding of the general body meeting on 28-7-58 when it was proposed to be held should also be cancelled. These two orders are filed as Ext. P.6 and Ext. P.4. The present committee came in by election and commenced functioning on 17-11-1957. On 26-12-1957 by Ext. P.1 order, the 1st respondent nominated the respondents 2 and 3 as additional members of the Society apparently for special representation of labour interests. The order did not mention any reason however and was further wrong in quoting Bye-law No. 19 which had nothing to do with nomination. The Society convened a committee meeting to consider the question of nomination on 7-1-1958 and naturally did not issue notice to the respondents 2 and 3 about that proposed meeting. In due course the co-option took place

and Respondents 2 and 3 functioned at all relevant times as members of the committee. But this so called consideration of the nomination must have rankled in the mind of the 1st respondent. Anyhow the affairs of the Society soon after came in for severe scrutiny at the hands of the Inspector of Co-operative Societies. On 4-6-1958 he sent in a report to the 1st respondent about what he termed very serious irregularities. On this a notice to show cause against supersession was issued to the committee on 27-6-1958 as Ext. P5. The committee submitted its explanation on 7-7-58. It is after finding that this explanation was unsatisfactory that Ext. P6 order was passed. There was in the interval a resolution on 19-7-1958 convening a general Body meeting on 28-7-58. Arising out of that Ext. P4 order came into being.

2. Now it would appear that the Inspector's report of 4-6-58 listed three irregularities only viz. (1) Disbursement of pay to the Secretary without sanction of the - 1st respondent (2) meeting of the Committee on 22-1-1958 without quorum and (3) Non issue of notice to the respondents 2 and 3 as regards the meeting on 7-1-1958. These charges along with a number of very minor, also vague charges formed the subject matter of the show cause notice. The explanation of the Committee met these three charges and all the others as well. But Ext. P6 proceeded as if these three charges were made out and supersession was therefore called for. The complaint before me is that the explanation submitted by the Society had not been referred to in Ext. P6 as one of the papers read and therefore was not considered at all by the 1st respondent when he passed Ext. P6 and the order was accordingly wanting in natural justice and on this sole ground must go Even otherwise, there was no substance in the three charges relied on and the order Ext. P6 must then be taken to be mala fide.

3. The counter affidavit in the case is filed by the special marketing officer, Coir purchasing scheme. This is to begin with very unsatisfactory. He had nothing to do with the matter and should not have been put forward to swear the counter. The counter affidavit in proceedings of the kind here is a solemn document and ought not to be taken lightly. It is only those who personally could vouch for the details that should come forward and it is not the case here that such persons were unavailable. Apart however from this defect, the Counter affidavit itself would concede that the question as regards charge No. 1 is really the want of sanction of the Inspector as laid down in some circular and not the want of sanction of the 1st respondent as mentioned in Ext. P5. Secondly that there was really a quorum for the meeting of 22-1-1958 of the Committee, contrary to what was asserted in the charge. The counter affidavit also relied upon a report of the inspector, apparently that dated 4-7-1958 referred to in Ext. P6 order, for saying that he had recommended that the explanation offered by the society in connection with the show cause notice was unsatisfactory and a proper disposal called for the supersession of the Committee and appointment of the respondents 2 & 3 and others to function as a fresh Committee. This report dated 4-7-1958 has not been filed in the case. But when it was looked into in the connected file, it contained only a request from the Inspector for serving some

more charges and the view of the Inspector that the society affairs had become too bad. Indeed it was earlier than the explanation.

4. It is clear therefore that the charges leveled against the society and for which action was taken were not all supportable. The only charge left is the third which on its face was meaningless particularly when it was conceded that in the order of nomination the Bye-law was wrongly quoted. In fact any committee worth the name would like to discuss what it meant at all.

5. Learned Government Pleader said that there were a number of other charges mentioned in Ext. P5 and if they were considered and found upon against the society the order passed could quite well sustain. But these were taken to be too minor and not worth-while even in Ext. P6. Even so, if the main charges listed as 1 to 3 above have gone overboard there is nothing substantial to sustain Ext. P6.

6. Learned Government Pleader referred to a report of the Inspector dated 17-7-1958 forwarding the explanation after styling it unsatisfactory. But this report is not even referred to in Ext. P6 and has therefore to be ignored.

7. I therefore hold that Ext. P6 order cannot amount to a proper adjudication u/s 49 of the Co-operative Societies Act as to the proper functioning of the petitioner's society. The jurisdictional facts were totally wanting and section 49 did not properly arise for application. The order Ext. P6 cannot accordingly be sustained.

8. The objection raised by learned Govt. Pleader that the remedy by way of appeal available for the petitioner precluded an application under Article 226 as here, has no substance, in the circumstances of the case. The question raised is one of want of jurisdiction and if so, the judicial review under the Article is always available. The order staying the holding of the General body meeting was passed in anticipation of Ext. P6 order. Even otherwise the date fixed for the meeting has long since passed. That order also has to go.

I therefore quash Exts. P6 and P4 order as prayed for. The petitioner will get his costs from the 1st respondent with counsel's fee Rs. 100/-.