

(1997) 11 KL CK 0050
In the High Court Of Kerala
Case No : O.P. No. 10751 of 1997

Kunhammad, T.P. and Another	Vs	APPELLANT
Joint Registrar of Co-operative Societies and Another		RESPONDENT

Date of Decision : 13-11-1997

Acts Referred:

Citation : (1997) 11 KL CK 0050

Hon'ble Judges : C.S. Rajan, J

Bench : Single Bench

Advocate : K. Ramakumar, for the Appellant; Ajith Narayanan, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

C.S. Rajan, J.—Petitioners are the President and the Secretary of a Co-operative Society. The second Respondent was the Branch Manager of the Co-operative Bank. A punishment of dismissal from service was imposed on the second Respondent by the Sub Committee constituted to take disciplinary action. This was by Exhibit P-1. The second Respondent filed an appeal before the Director Board of the Society. By Exhibit P-2 the appeal was dismissed. Against Exhibits P-1 and P-2 the second Respondent filed Exhibit P-3 petition before the first Respondent under Rule 176 of the Kerala Co-operative Societies Rules (hereinafter referred to as "the Rules"). In Exhibit P-3, apart from disputing the correctness of the factual findings of the disciplinary authority, the following contention has been taken:

The proceedings of the Appellate Authority is illegal and it has no sanctity of law. The Members of the Disciplinary Committee who passed the Resolution. Dismissing the Petitioner from service have also participated in the hearing of the appeal and passing the order in the appeal. The illegally constituted appellate authority failed to consider the Petitioner's memorandum of appeal on merit and deliberately failed to apply its mind while dealing the Petitioner's appeal and disposed of the appeal in a most biased manner.

The Society has filed a counter-affidavit before the first Respondent evidenced by Exhibit P-4. In Exhibit P-4 the above allegation has not been denied. The first Respondent passed Exhibit P-5 order rescinding the resolution of the Disciplinary Sub Committee dismissing the second Respondent from the service. The subsequent resolution of the Board of Directors of the Society upholding the decision of the Disciplinary Sub Committee was also rescinded. The first Respondent in Exhibit P-5 came to the conclusion that the charges proved against the second Respondent are rather flimsy and the punishment inflicted on him is a grave one and could not be imposed for such flimsy charges. The first Respondent also came to the conclusion that the participation of members of the Sub Committee headed by the President of the Society in the deliberations by the Board of Directors while considering the appeal is also illegal.

2. Shri K. Ramakumar, learned Counsel for the Petitioners submitted that the first Respondent has exceeded his jurisdiction in exercising the power conferred on him under Rule 176 of the rules in rescinding the two resolutions passed by the Sub Committee of the Society and the Board of Directors of the Society. The learned Counsel cited a Division Bench ruling of this Court reported in *Pudupariyaram Service Co-operative Society v. Rugmini Amma* 1996 (1) KLT 100. In the above case two questions arose. The first question was whether the failure to constitute a Sub Committee to take the decision in a disciplinary matter is contrary to the provisions of the Rules and therefore whether the Registrar was justified in interfering with the resolution of the Society. The second question was whether a second opportunity of being heard must be afforded to the delinquent employees of the Co-operative Society after receipt of the enquiry report. On the first question the Judges were unanimous in holding that the failure to constitute a Subcommittee is an infraction of the rules. On the second question, one learned Judge constituting the Division Bench differed and held that there need not be any second opportunity to be extended for the delinquent employee after receipt of the enquiry report. The learned Counsel relied on paragraph 16 of the judgment which is as follows:

16. Learned Counsel for the Appellant lastly contended that third Respondent has no jurisdiction to interfere with the reasoning adopted by the enquiry officer on merits in reaching the findings. I find force in the said contention that a different factual finding or conclusion was not expected from the joint Registrar while exercising power under Rule 176 of the Rules.

Therefore, it was contended that the first Respondent is not empowered to interfere with the factual findings of the Sub Committee constituted for taking disciplinary action against the delinquent employees. The learned Counsel also relied on paragraph 32 of the judgment which reads as follows:

32. Yet another contention raised on behalf of the Appellant is that under Rule 176 the Joint Registrar has no authority to order reinstatement. A reading of the Rule 176 enables the Registrar to rescind a resolution and does not authorised the Registrar to issue a direction of reinstatement. That is exclusively the

province of the Society governed by its own bye-laws. However, that portion of the order which says that there is violation of the principles of natural justice and the 1st Respondent must be reinstated in service is not in accordance with law.

Thus, it was argued that the direction of the first Respondent to reinstate the second Respondent in service is not in accordance with law.

3. There is a passage of the Full Bench of this Court in the ruling reported in *Aji v. State of Kerala* 1995 (1) K.L.T 363 (F.B.) with regard to the power of the Registrar under Rule 176 of the Rules which reads as follows:

11. It is not possible to hold that Registrar's power is limited to the supervision of the financial dealings of the society. Rule 176 clothes the Registrar with the power to rescind any resolution of any meeting of any society or of the committee of any society, if it appears to him that such resolution is ultra vires of the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society. Thus the position is abundantly clear that the Registrar is not a mere passive spectator against an erring society. Registrar is vested with adequate power to rescind resolutions whenever situations demand. Contention that Registrar's power is limited only to supervise the financial dealings of the society is not tenable.

Another useful discussion is also available in the ruling reported in *A.P. Padmakumari Vs. S.R.O. Employees Co. Op. Society and Another*, .

4. What emerges from reading all these decisions is that the powers under Rule 176 of the Rules empower the Registrar to rescind any resolution of the society in case he finds that such a resolution is against the objects of the Society, provisions of the Act, Rules or Bye-laws or of any directions or instructions issued by the Department. The Registrar can also interfere with the resolution if the above resolution is calculated to disturb the peaceful and orderly working of the Society or is contrary to the better interest of the Society. Thus, it can be seen that disciplinary proceedings are not taken out of the purview of Rule 176 of the Rules. As held by Justice T.L. Viswanatha Iyer, in *A.P. Padmakumari Vs. S.R.O. Employees Co. Op. Society and Another*, Rule 176 should be available to check wanton discharge or termination of service of the employees of the Society. Therefore, I think it is no longer possible to entertain an argument that the Registrar is helpless in the matter of interfering with any disciplinary action taken by the Society against an erring employee. It is equally beyond the dispute that the Registrar cannot while passing orders under Rule 176 of the Rules interfere with the findings of the fact arrived either by the Sub Committee or by the appellate body. The power is restricted to the area where the Registrar is only to see that the Society works within the four corners of the Co-operative Societies Acts, Rules, Bye-laws or orders issued under the Act or Rules.

5. The first Respondent while interfering with the resolution passed by the

Society has come to the conclusion that three members of the Sub Committee constituted for taking action against the second Respondent had participated in the deliberations of the meeting of the Board of Directors while considering the resolution against the second Respondent. It must be remembered that the sub committee is headed by none other than the President of the Society. He also presided over the meeting of the Board of Directors which considered the appeal. These facts were not disputed in the counter-affidavit filed by the Society evidenced by Exhibit P-4 before the first Respondent.

6. As against these facts the learned Counsel for the Petitioners submitted that the Society has not acted against any of the provisions contained in the Rules or Bye-laws. This is because Rule 198 deals with the authorities who are to impose punishments and also the appellate body who is to hear the appeals. An order passed by the Sub Committee is appealable before the Board of Directors. Nowhere in the Rules it is stated that members of the Sub Committee shall not participate in the meeting of the Board of Directors. Thus, according to the learned Counsel, the legislature consciously knowing fully well the accepted principles of natural justice excluded the principles of natural justice while enacting Rule 198 of the Rules. But it is difficult to accept the above proposition. Every principle of natural justice must be considered to be a part of the Act or rules unless it is specifically excluded. Merely because no mention has been made about this aspect in the rules it cannot be held that the principles of natural justice are excluded by the legislature. It must also be born in mind that it is only a subordinate legislation as far as Rule 198 concerned.

7. The authority is not wanting where Courts have intercepted the orders passed by the appellate body wherein the authority who passed the original order has also participated. Please see *Gangadharan v. Managing Director* 1983 KLT 741. Therefore, Ext. P-5 can very well be sustained on the basis that Exhibit P-2 order has been passed in violation of the principles of natural justice. Since the second Respondent succeeded only on the basis of violation of principles of natural justice, the appeal filed by the second Respondent can very well be considered by the appellate body which may consist of members of Board of Directors excluding the members of the Sub Committee.

8. The argument that the first Respondent has no authority to reinstate an employee against whom, an order of dismissal was passed and which was set aside may not be quite correct. In any view of the matter, since one learned Judge of this Court has expressed his opinion on that point, I am not going to decide the question in this Original Petition because it is not necessary to decide it. Therefore, the Original Petition is dismissed sustaining Exhibit P-5 but with the observation that the Board of Directors of the Society is free to take up the appeal filed by the 2nd Respondent and pass appropriate orders in accordance with law. Since my finding that the decision of the appellate body is vitiated by the above fact, that part of the order which rescinds the resolution of the Board of Directors rejecting the appeal is sustained. The rescinding of Exhibit P-1

resolution is not to be interfered with. At present the whole matter is at large before the appellate body and the appellate body is directed to consider and take a decision on the appeal filed by the second Respondent in accordance with law. If the Board of Directors of the Society want to take further action, it must be done within one month from the date of receipt of a copy of this judgment.