

(2015) 09 KL CK 0071

In the High Court Of Kerala

Case No : W.P. (C) Nos. 27413 of 2013 and 27310 of 2014

Kuriakose

APPELLANT

Vs

Kodencherry Service Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 23
Kerala Co-operative Societies Act, 1969 — Section 83

Citation : (2015) 4 ILR Ker 998 : (2015) 4 KLT 808

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : P.P. Jacob and Johnson Allese, for the Appellant; Tom K. Thomas, Arun Krishna Dhan, Shaila Shafeeq, P.N. Mohanan, P.S. Sreedharan Pillai, Arjun Sreedhar, Babu Joseph Kuruvathazha, P.T. Abhilash and K.C. Vincent, Spl. Government Pleader, for the Respondent

Judgement

Dama Seshadri Naidu, J.—The petitioner in W.P.(C) No. 27413 of 2013 is an employee working in the first respondent Bank in the cadre of Secretary, whereas the petitioner in W.P.(C) No. 27310 of 2014 is the Board of Directors of the first respondent Bank in the other Writ Petition. The former was filed in 2013, and the latter in 2014. Today at the Bar, the learned counsel for the petitioners in both the Writ Petitions sought the leave of the Court to have the Writ Petitions dismissed as withdrawn, for they have initially filed these Writ Petitions by inadvertence overlooking the alternative remedy available to them to impugn Ext. P9. Innocuous I felt the request was. Nevertheless, the learned counsel for additional respondents 6 and 7 and also the learned counsel for the additional respondent 8 in W.P.(C) No. 27143 of 2013 have raised serious objections. They questioned what is said to be the petitioners' ploy to withdraw the Writ Petitions after about two years, when faced with difficulty, having illegally obtained the stay in the beginning.

2. The learned Government Pleader has also expressed reservations about the method adopted by the petitioners.

3. As both the Writ Petitions raise the same issue, involving the same parties, this Court has proposed to dispose of the Writ Petitions through a common judgment. For discussion, I take the facts pleaded and the documents filed in W.P. (C) No. 27143 of 2013 as the basis.

4. Shri. Arun Krishna Dhan, the learned counsel for additional respondents 6 and 7 has taken me through the entire record. Chronologically submitting, the learned counsel has asserted that the petitioner joined the service of the first respondent Bank on 11.02.1982 as an Attender. Later, he obtained a series of promotions till 2012 when he became the Secretary. According to the learned counsel, on 01.04.2009, the petitioner was promoted as the Chief Accountant on the strength of the degree certificate produced by him.

5. In further elaboration of his submissions, the learned counsel has submitted that the petitioner has allegedly obtained the graduation certificate from the 5th respondent University at Meerut, as if he had undergone the course through the 4th respondent College at Calicut. He has further contended that the additional 6th respondent initially made a complaint to the Joint Registrar, the second respondent, seeking an enquiry into the genuineness of the degree certificate produced by the petitioner. Acting on the said complaint, the second respondent, in turn, has requested the 5th respondent to supply information concerning the degree certificate the petitioner is said to have obtained from the said University.

6. Eventually, the 5th respondent issued Ext. R6(a) communication making it clear that the University has never issued any degree certificate to the petitioner. Subsequently, the President of the first respondent Bank has submitted Ext. R6(b) representation to the second respondent. He has asserted that the Bank has received further clarification, Ext. R6(c), from the 5th respondent University that its first communication was a mistake of fact. He, in fact, informed the second respondent that the petitioner did obtain a degree certificate from the said University after pursuing his graduation. Hence, he pleaded with the second respondent not to proceed further against the petitioner on the issue of his producing a false certificate.

7. Not satisfied with the 5th respondent's supposed corrective communication, as was submitted by the President, this time, the third respondent has sought further clarification from the 5th respondent. Ext. R6(d) is the reply. As can be seen, the 5th respondent has informed the 3rd respondent that it has never issued Ext. R6(c) alleged clarification, and that its earlier communication in Ext. R6(a) still stands.

8. In the face of these damning developments, the third respondent directed a vigilance enquiry in terms of S. 68-A of the Kerala Co-operative Societies Act ("the Act" for brevity). Eventually, the Vigilance Officer, having thoroughly investigated the issue, submitted Ext. R6(g) report to the 3rd respondent. In furtherance of the vigilance report, the 3rd respondent required the first respondent through Ext. P9 communication to initiate criminal action against the

petitioner.

9. Under those circumstances, assailing Ext. P9 the petitioner filed W.P.(C) No. 27413 of 2013 and obtained an interim stay of all further proceedings pursuant to Ext. P9. On the other hand, the very respondent Bank, the employer, lending support to the petitioner, filed W.P.(C) No. 27310 of 2014 assailing the same Ext. P9.

10. Pending consideration of the Writ Petitions, additional respondents 6 to 8 came on record in W.P.(C) No. 27413 of 2013. As can be seen from the record, the additional respondents 6 and 7 filed a detailed counter affidavit, apart from submitting the relevant documents concerning the vigilance enquiry and the consequent steps taken by the third respondent. The second respondent as well filed a detailed counter affidavit stressing the not so holy an approach adopted by the petitioners in both the Writ Petitions.

11. Per contra, the learned counsel for the petitioners, who initially sought leave of this Court to withdraw the Writ Petitions, in the face of stiff resistance from the additional respondents, has advanced arguments on the merits of the matter. According to him, at the time when the petitioner filed the Writ Petition, he had no knowledge about Ext. R6(g) i.e., the Vigilance report. Ext. P9 communication from the 3rd respondent, too, does not have any reference to it, contends the learned counsel.

12. To a specific query from the Court, the learned counsel has, however, replied that the Vigilance Officer did examine the petitioner and obtain his statement. Undeniably, the petitioner obtained a stay on 22.11.2013 and avoided enquiry for about two years. As is evident from the pleadings, he has never uttered a word about his having been examined by the Vigilance Officer.

13. On the other hand, if we examine Ext. P9 on merits, it is apparent that the second respondent, acting on the directions of the third respondent, only communicated to the respondent Bank, the employer, to act on the allegations against the petitioner Secretary concerning the production of a false certificate. It contained a direction to initiate necessary penal action on the allegation of the petitioner's producing a false certificate; nothing more, nothing less. Ext. P9 is, at best, a piece of communication enabling the society to act.

14. Much cogitation is not needed to hold that Ext. P9 is by no means prejudicial to the petitioner's interest. If the respondent Society were to act, the steps it might take would definitely be in consonance with law, especially with adherence to procedural fairness. As such, Ext. P9 is not an order punitive in nature, more particularly, resulting in calamitous consequences to the petitioner, requiring to be nipped in the bud. No steps by then had been taken warranting any prior notice to the petitioner, much less causing any prejudice to him.

15. In the facts and circumstances, I do find strength in the submission of the learned counsel for additional respondents 6 and 7 that the approach of the

petitioner is mala fide, and that he has resorted to the abuse of process. Today as well, the petitioners at the Bar have not made any efforts to justify the Writ Petitions on merits. The only plea of the learned counsel for the petitioners is that in the face of the efficacious alternative remedy being available under S. 83 of the Act, especially in the light of the objections raised by the respondents, it is desirable for the petitioners to pursue that remedy.

16. Viewed compendiously the whole issue, I am of the considered opinion that the petitioners have not approached the Court with clean hands and have, in fact, abused of the process. When the entire allegation is concerning the Secretary, an employee of the respondent Bank, it is incomprehensible how the employer Bank could file a Writ Petition questioning the disciplinary proceedings or any other legal steps sought to be taken against one of its employees, by itself. It does appear that the employer has been in an unholy nexus with its employee, thereby acting in negation of public interest and fairness.

17. The Hon'ble Supreme Court in *Kishore Samrite Vs. State of U.P. and Others*, has summarised the judicial dicta on the issue of the suitor's approach to an equitable remedy thus:

1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief.

2. The people, who approach the court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

5. A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty bound to impose heavy costs.

7. Wherever a public interest is invoked, the court must examine the petition

carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

18. Guided by the above dictum, it is apparent that the petitioner has concealed--in my view, deliberately--the issue of the vigilance enquiry in the Writ Petition. Startling is the approach of the 1st respondent, who, as the President of the Respondent Bank, has gone to the extraordinary length of informing the 2nd respondent that the 5th respondent University had informed the Bank that the communication the 2nd respondent received did not emanate from them, and that the petitioner did acquire the qualification. Very disturbing are the developments in this case.

19. In any private dispute, the plaintiff or the petitioner, being the dominus litis, has the privilege or prerogative to withdraw the lis at his option. So long as the suitor does not ask the court the leave to approach it once again in future on the same cause of action, the Court, for example, acting under Order XXIII of C.P.C. cannot refuse the leave to withdraw the lis. In a public law remedy, the common law doctrine of "dominus litis" does not apply; of course, even in civil proceedings, that doctrine has its limitations.

20. I may, thus, add emphasis to the fact that a Writ Petition, a public law remedy, as being a part of the prerogative judicial dispensation, cannot be allowed to be withdrawn at the sweet will of the suitor. If the Court is of the opinion that the Writ Petition raises an issue of public importance or that it needs adjudication in the public interest, despite the disinclination of the parties thereto, it can proceed further and adjudicate on the merits of the matter.

21. As has been contended by the learned counsel for the respondents, the writ proceedings have resulted in stalling of further enquiry into very grave allegations. Now, having felt that the writ proceedings have outlived their utility, so to say, the petitioners seem to have chosen the bogey of the alternative remedy. And the reasons for this stratagem are not far to seek: Before a new forum--in the present instance, a quasi-judicial one--the petitioners can, hopefully, drag the proceedings for a few more years. In the meanwhile, horses may fly; so optimistic can the petitioners afford to be, desperate as they are. In these circumstances, this Court dismisses both the Writ Petitions with costs quantified at Rs. 25,000/- (Rupees twenty five thousand only) in each Writ Petition to be paid by the respective petitioners to the Kerala State Legal Services Authority.

Nevertheless, in the light of the representations made by the learned counsel for the petitioners that the petitioners intend to approach the appellate authority under S. 83 of the Act, it is made clear that it is entirely open for the petitioners to take recourse to such course of action as is permissible under law. Unethical or condemnable the course of action thus far adopted by the petitioners may be, such conduct cannot, in my view, result in denial of access to them to any legitimately available judicial remedies, of course, subject to their sustainability.