

(2001) 07 KL CK 0064

In the High Court Of Kerala

Case No : O.P. No"s. 3996 and 26651 of 2000

M. Selvi

APPELLANT

Vs

General Manager, Dist. Industrial Centre and another

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)
Co-operative Societies Act, 1912 — Section 32

Citation : AIR 2002 Ker 172

Hon'ble Judges : J.B. Koshy, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; R. Muraleedharan Pillai, for the Respondent

Judgement

J.B. Koshy, J.—Petitioner in these two original petitions was the elected President of Thrikkannapuram Handloom Weavers Industrial Co-operative Society Ltd. which is a Society registered under the Co-operative Societies Act. She was elected to the Managing Committee of the Society in the election conducted on 22-5-1999. The term of the previous Committee was over on 28-2-1999. That Committee on 28-9-1998 in the absence of regular Secretary appointed a temporary Secretary for a period of four months on a consolidated pay of Rs. 1,500/-. That appointment was questioned and this Court directed the Society to appoint a regular Secretary within four months from the date of the judgment (Ext. P3 in O.P. No. 3996/2000). Learned Judge also observed that there is no illegality in the temporary appointment. Consequently by order dated 2-12-1998 departmental sanction was received to appoint a Secretary as can be seen from Ext. P2. A Writ Appeal was filed by the General Manager and Division Bench directed (he Society to appoint the Secretary within eight weeks from the date of the judgment (Ext. P4). Meanwhile earlier Committee was issued with a notice dated 10-2-1999, just 15 days prior to the date of expiry of their term, asking them to show cause why they should not be superseded.

2. It is the case of the petitioner that the action for supersession of the previous Committee was taken mala fide with a plan to see that the then Committee members should not contest the election again and the Committee should be administered by the Administrator for the political party favouring the General Manager during that time. The petitioner approached this Court and considering the prima facie nature of the contentions, this Court held that even though proceedings for supersession can go on, if adverse order is passed that should not be implemented for a period of two weeks so that they can take further proceedings as can be seen from Ext. P5 judgment in O.P. No. 3905/1999, dated 16-2-1999. In view of the above judgment the plan for superseding the earlier Committee and thus disabling the Managing Committee members to contest the election next time was spoiled and, therefore, no supersession orders were also passed. The Committee's term came to an end on 28-2-1999.

3. Previous Committee has taken a decision to conduct the election as their term will be over on 28-2-1999. But no Returning Officer was appointed for completing the formalities. That also shows a mala fide nature of the General Manager at that time in not appointing Returning Officer in time as per the resolution passed by the previous Committee. They filed O.P. No. 2625/1999 for compelling the appointment of Returning Officer. The above writ petition was disposed of recording the submission of the Government Pleader that Returning Officer was already appointed and election will be conducted on 25-2-1999 before the expiry of the term of the previous Committee, i.e. 28-2-1999. It is contended that only after the judgment in O.P. No. 2625/99. dated 5-2-99 notice for supersession dated 10-2-1999 was made mala fide for preventing the Committee members from contesting the election. On 26-2-1999 C.M.P. No 8593/99 in O.P. No. 2625/99 for extending the time for conducting the election (sic) By Ext 86 dated 1-3-1999 time was extended on condition that elected Committee will continue till new election is over.

4. Disregarding the above directions in Ext. P6 and also without getting permission from this Court an Administrator was appointed violating the Court order in utter contempt of this Court's order. Contempt of Court Petition (C.C.C. No. 137/99) was filed. By that time against the interim order a Writ Appeal was filed and in the Writ Appeal the Court ordered (to) delete the direction of the learned single Judge that the existing Managing Committee will continue till the election is over by Ext. P5 judgment. But Court ordered following directions :

"The Administrator will be incharge of the day-to-day affairs and management of the society and shall not take any policy-decision or incur huge expenditure. He shall not make appointments to any post till the next Committee take charge. The Administrator shall conduct the election and complete the entire process of election including the declaration of results etc. within two months from today. The time now granted will not be extended on any ground. The appellant shall see that the election is conducted in a fair and proper manner and without giving any room for any complaint from any quarters. Writ Appeal is disposed of on the

above terms."

Since Administrator was appointed when order of the learned single Judge was in force, in C.C.C. No. 137/99 this Court admonished the General Manager and Junior Co-operative Inspector. While dropping the proceedings in view of Ext. P8 judgment, Division Bench while disposing of the Contempt of Court Case ordered as follows :

"But we think it necessary to warn the respondents that such a conduct will not be appreciated or tolerated in future and it is their duty to know what exactly is the order that passed by this Court before taking further steps regarding a matter pending in the Court or covered by any direction, interim or otherwise of the Court."

By the time when the judgment was pronounced on 27-5-1999 election was already conducted and new Committee headed by the petitioner has already taken charge. All these facts which are not disputed clearly show that there was mala fide and victimization on the part of the General Manager.

5. In accordance with the directions of this Court to appoint a regular Secretary, steps were taken by the previous Committee and it was continued by the present Committee. Meanwhile, an employee of the Industries Department was deputed as Secretary when the Administrator was incharge. He without considering the proceedings already taken by the elected Committee legally in appointing a Secretary, issued fresh steps to appoint a Secretary. Meanwhile interview was conducted by the elected President and selection list was made. It is contended by the respondents that these averments of the petitioner are not correct. In fact in pursuance of the decision of the Managing Committee fresh notification was published in Malayala Manorama and 25 applications were received. But ignoring the same the President continued with the earlier proceedings and fixed interview. Since that is not the subject-matter of these original petitions, I am not going into the correctness of these proceedings. It is submitted that selection process for appointment of the Secretary is under challenge in another original petition. Notice was issued to the petitioner as well as other Committee members for stopping the selection process. It is the case of the petitioner that such notice was not received by her. Information regarding the same was also not received in time. Files were called for. The returned covers show that notices issued to them were not in their residential addresses. Such covers returned saying that "no such addressee". Appointments were not made in view of Ext. R1 (c) order passed by the General Manager.

6. Thereafter an order of supersession was passed superseding the newly elected Committee within seven months of the election without issuing notice and without complying with the statutory formalities. The following is the operative part of the order :

"In view of the alarming situation prevailing the management of the affairs of the society and the urgency in resorting to earn remedial measures to safeguard the

interest of the members in the society and investments and interest of Government and the Bank, it is considered that it is not feasible and practicable to give further opportunity to state its objections, if any, in taking action against them. The consultation with the Financing Bank viz. the District Coop. Bank, Trivandrum and with the Circle Co-operative Union are also dispensed with the steps as contemplated under sub-sections (1) and (2) of Section 32 and this order is issued under sub-section (3) of Section 32 and also after dispensing with serving of notice to the Committee and consultation with the Financing Bank."

An Administrator was appointed. O.P. No. 3996/2000 was filed mainly challenging the order of supersession. As repeatedly held by this Court the provision for supersession has to be used very cautiously as a Society has to be ruled by an elected body. It cannot be superseded by flimsy reasons. The position was reiterated by this Court in *M. Rajagopalan Nair and Others Vs. State of Kerala and Others*, .

7. Here in this case the main allegation against the Society is non-receipt of the orders from the Registrar (General Manager) and wilful disobedience of the orders of the Registrar. This is only one solitary instance of appointment of one Secretary. Here also final appointment was not done. We have already seen the mala fide attitude of the General Manager in this matter. Even if the allegations are true, is it a matter requiring supersession of an elected Committee? What is wilful negligence is clearly mentioned by the Supreme Court in the decision in *Pollachi Co-operative Marketing Society v. K.N. Valuswami*, 1994 Supp. (3) SCC 134 . In the decision reported in 1997 (1) KLJ 607, *T.T. James and others v. Joint Registrar and others* it was held by this Court that mere default or disobedience or failure to comply with the provisions assuming to be found to be true cannot be a ground for supersession unless it is shown that there is persistent and wilful negligence and wilful disobedience. A similar view was taken in the decision reported in *P. Govindankutty and others Vs. State and Others*, . Here as already stated that the order which was said to be not obeyed was sent and returned unserved. No final appointment was made. In any event, that cannot be constituted as a major wilful default warranting supersession of the Committee.

8. Section 32 of the Co-operative Societies Act provides as follows :

32. Supersession of Committee.? (1) If the Registrar, after an inquiry by himself or through his subordinates or on a report of the financing bank, or the Vigilance Anticorruption Bureau of the Government or the Vigilance Officer or otherwise is satisfied that the committee of any society.?

(a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or bye- laws or does anything which is prejudicial to the interests of the society; or

(b) wilfully disobeys or fails to comply with any lawful order or direction issued under this Act or the rules; or

(c) makes any payment contrary to this Act or the rules or the bye-laws or causes any loss or damage to the assets of the society by breach of trust or wilful negligence; or

(d) misappropriates or destroys or tampers with the records or causes the destruction of records to cover up any misconduct or malpractice, he may, after giving the committee an opportunity to state its objections if any, by order in writing, remove the committee and, appoint a new committee consisting of not more than three members of the society in its place or, appoint not more than three administrators, who need not be members of the society, to manage the affairs of the society for a period not exceeding six months, as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so however, that the aggregate period does not exceed one year.

(2) The Registrar shall consult the financing bank and Circle Co-operative Union or State Co-operative Union, as the case may be, before passing an order under sub-section (1).

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2) it shall not be necessary to give an opportunity to the committee to state its objections and to consult the Unions and financing banks, in cases where the Registrar is of the opinion that it is not reasonably practicable to do so, subject however to the condition that in such cases the period of supersession shall generally be for six months and in case a new committee, cannot be constituted or enter upon office in accordance with the bye-laws of the society within the period of supersession the period may be extended for a further period not exceeding six months?

(a) in the case of a co-operative society only after consulting the Circle Co-operative Union concerned; and

(b) in the case of an Apex Society or a Central Society only after consulting the State Co-operative Union.

(4) The committee or administrator or administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, (have power to exercise all or any of the powers and functions) of the committee or of any officer of the society and take such action as may be required in the interest of the society.

(5) The committee or administrator or administrators shall, before the expiry of its or his or their term of office, arrange for the constitution of a new committee in accordance with the bye-laws of the society.

(6) every order made by the Registrar under subsection (1) shall be communicated to the Circle Co-operative Union."

9. Within seven months of election to the Managing Committee of the Society,

without giving a chance to explain, it was superseded even without issuing a show cause notice violating the principles of natural justice. Admittedly no show cause notice was issued. Statutory rules contemplated for giving notice to Co-operative Union etc. were also violated. A reading of Section 32 itself shows that Legislature has prescribed very strict formalities before supersession of the elected body. Provisions for relaxing such procedural formalities can be done only in emergent situations. Even without the formalities prescribed u/s 32, principles of natural justice should have been followed before superseding the elected Committee. In *Ridge v. Baldwin*, (1964 AC 40) House of Lords pointed out the extent of the area where the principles of natural justice have to be followed and judicial approach has to be adopted, must depend, principally on the nature of the jurisdiction and the power conferred on the authority or body by statutory questions to deal with the question affecting the rights of citizens. Unlike general principles of natural justice, when principles of natural justice are enshrined in a statutory provision, the statutory authorities are bound to obey the rule strictly. As held in *Wiseman v. Borneman*, 1971 AC 297 it is well established that when a statute has conferred on anybody the power to make any decisions affecting individuals, Court will ensure that the procedural safeguards as mentioned in the rules are followed. It is true that procedural objections are often raised by unmeritorious parties. Judges may then be tempted to refuse relief on the ground that a fair hearing could have made on difference to the result. But, in principle, it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudiced unfairly especially when there is every likelihood of prejudice. In *General Medical Council v. Spackman*, 1943 AC 627. it was held by Lord Wright as follows :

"If the principles of natural justice are violated in respect of any decision it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision."

Theory of "no likelihood of prejudice" even if some of the procedures are not complied with is also not applicable on the facts of the case.

10. As held by the Supreme Court in *Hira Nath Mishra and Others Vs. The Principal, Rajendra Medical College, Ranchi and Another, and Swadeshi Cotton Mills Vs. Union of India (UOI)*, , where the statute under which an authority functions provides for the observance of the principles of natural justice in a particular manner, natural justice will have to be observed in that manner. In the decision of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, , it was held as follows :

".....It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Viterelli v. Seaton*, (1959) 359 US 535 : 3 L Ed 2d 1012 where the

learned Judge said :

"An executive agency must be rigorously held to the standards by which it professes its action to be judged.....Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.....This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

This Court accepted the rule as valid and applicable in India in *Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others*, and in subsequent decision given in *Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, .*

If mandatory principles of natural justice enshrined in the statute are to be dispensed with, it is for the respondents to explain with cogent reasons. When procedural formalities prescribed in Section 32 are to be dispensed with, burden of authorities are very heavy.

11. This Court had occasion to consider the scope of enquiry by the Court into the Registrar's satisfaction about matters referred in sub-s. (1) before passing an order of supersession, in *Jose Kuttiyani and Others Vs. The Registrar of Co-operative Societies, Kerala, Trivandrum and Others, .* It was observed as follows :

"No doubt whether these conditions exist or not it is for the Registrar to be satisfied. No doubt the satisfaction may be subjective, but it shall not be arbitrary."

A mere statement in the order that an alarming situation" is present is not enough in doing away with procedural requirements while taking a drastic step of removing an elected body even before it completes 1/4 of the elected term. Mere assertions are not enough.

12. In *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, the scope of judicial review of the exercise of the power depending upon the satisfaction on the existence of one or the other ground has been considered and it was observed as follows :

The words "in the opinion of the Central Government" indicate that the opinion must be formed by the Central Government and it is of course implicit that the opinion must be an honest opinion. The next requirement is that "there are circumstances suggesting, etc.". These words indicate that before the Central Government forms Its opinion it must have before it circumstances suggesting certain inferences."

"It is not sufficient to assert that the circumstances exist and give no clue what they are because the circumstances must be such as to lead to conclusions of

certain definiteness."

In *Jaswant Singh Vs. State of Punjab and others*, Supreme Court considered a case arising under Clause (b) of the second proviso under Art. 311 of the Constitution. Cl. (b) provides that reasonable opportunity of being heard to be given to the delinquent as per Article 311 (2) can be dispensed with where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such enquiry. It was observed that when the satisfaction of the concerned authority is challenged in a Court of law, it is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and is not the outcome of the whim or caprice of the concerned officer.

13. In *S.J. Meshram v. Union of India*, 1987 (Supp) SCC 164) Supreme Court considered a case where the appellant was removed from service for alleged misconduct without conducting departmental enquiry on the ground that it is not reasonably practicable to hold the enquiry. One of the reasons given for coming to the above conclusion was that the appellant may destroy the evidence. The Apex Court took the view that for such reasons, it cannot be held that departmental enquiry is not reasonably practicable. There is elaborate discussion as to the meaning of the term "reasonably practicable" in *Union of India and Another Vs. Tulsiram Patel and Others*, by a Constitutional Bench, while discussing the scope of Clause (b) in the second proviso to Article 311 (2). Some of the circumstances under which it can be taken that conduct of an enquiry contemplated under Art. 311 (2) is not reasonably practicable are also discussed therein. This decision is also an authority for the legal position that an opinion formed by the authority concerned that it is not reasonably practicable to conduct an enquiry is amenable to judicial review.

14. On the facts of this case there was no "alarming situation" for superseding an elected managing committee dispensing with even a show cause notice and other procedural requirements. Otherwise in every case such a step can be used and violating the principles of natural justice and procedural formalities, elected body can be superseded arbitrarily. No emergency was here to make such a supersession without notice on the facts of the case. Real prejudice was caused to the petitioner in not giving an opportunity to explain. Nothing would have taken place if at least a week's time was allowed to explain. There is no allegation that there is misappropriation by the committee members or because of their act the Co-operative Society was running in a loss. Absolutely no personal allegations were there. The supersession order was passed in continuation of the mala fide action of the Secretary. Therefore, I see no ground to uphold the order of supersession passed against the Society and I set aside the order of supersession passed Ext. R1 (e) and O.P. No. 3996/2000 is allowed. However, this is without prejudice to the right of the department to pass fresh order after complying with procedural formalities required u/s 32 if facts of the

case warrant so.

15. After supersession of the committee, steps were taken to elect a new committee. In view of the supersession of the committee, the then members are debarred from contesting the election again. Therefore, challenging the new election process O.P. No. 26651/2000 was filed. This Court has stayed the election by an interim order. Since order of supersession was already set aside, as a natural consequence, elected members wrongly superseded has to be reinstated in office and they can continue in office till their statutory term is over or till they are superseded as per law. Hence then should be reinstated forthwith. Managing Committee elected on 22-5-1999 shall take charge and administrator is directed to hand over charge to the elected committee immediately. Since there is an elected committee, whose statutory term is not over and whose supersession was set aside, there is no need to conduct a fresh election. Hence Ext. P2 challenged in O.P. No. 26651/2000 is set aside.

16. Learned counsel appearing for the first respondent submitted that challenging the election of the Managing Committee headed by the petitioner on 22-5-1999 there was an election dispute and Ext. R1A order was passed on 28th June, 2000. In the above case it is seen that even though a prima facie view was taken by the Arbitrator that returning officer (who was appointed by the department) conducted the election without proper records, no final decision was taken. After noticing that committee whose election was challenged was superseded. Arbitrator disposed of the suit as infructuous. He held as follows :

"As the managing committee is not in force, there is no need to continue the suit. The suit is accordingly disposed."

Even though Ext. R1A was not specifically challenged by the respondents, since Election Suit was disposed of without a final decision only on the ground that committee was superseded and order of supersession is set aside by this Court, as a corollary, in the interest of justice Ext. R1A is also set aside. Arbitrator may issue notice to the parties and re-hear the matter de novo and fresh award be passed in A.R.C. No. 1/1999 expeditiously.

Both the original petitions are disposed of accordingly.