

(2004) 07 KL CK 0003

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5594 of 2004

Mohanachandran Nair

APPELLANT

Vs

Andoorkonam Service Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 08-07-2004

Acts Referred:

Citation : (2004) 2 KLT 1062

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : P. Ramakrishnan, for the Appellant; George Poonthottam and P.N. Ravindran and Swathikumar, Spl. Government Pleader, for the Respondent

Judgement

Kurian Joseph, J.—The requirements for the invocation of power u/s 32(3) of the Kerala Cooperative Societies Act, is the main issue in this Writ Petition.

2. Ext.P 11 order passed by the third respondent Joint Registrar is under challenge in this Writ Petition. As per the said order, the Joint Registrar invoking the power u/s 32(3) of the Kerala Co-operative Societies Act, 1969 (hereinafter called "the Act") superseded the elected Managing Committee of the first respondent Co-operative Society. The Committee was elected to power on 4.10.2002 and they had a tenure of five years, upto 3.10.2007. At the outset, it may be noted that u/s 32(3) of the Act, the Registrar is empowered to supersede the Committee dispensing with notice and consultation.

3. A reading of the impugned order as clarified in the Counter Affidavit, clearly shows that it is passed only on one ground -- the Committee did not implement the lawful orders issued by the Department. Learned Special Government Pleader submits that the non implementation is not only of the orders issued by the Department, but that of the Government and this Court also.

4. The crux of the whole issue relates to the appointment of five employees in the Society. The Society had issued a Notification on 13.4.1996 inviting applications for appointment to the post of Junior Clerk, Peon and Attender. The

Managing Committee selected five of them. Alleging irregularities, the matter was pursued by the aggrieved parties, leading to Ext.R3(a) order dated 6.3.1997 of the Government cancelling the selection. In the meanwhile, a new Committee was elected, but the said Committee was superseded on 8.7.2000. The Administrative Committee which took charge pursuant to the supersession, appointed the five persons whose appointments had been cancelled by the Government. Thereafter, the elected Managing Committee was reinstated and it reassumed office on 4.10.2000. The Committee passed a resolution on 7.12.2000 cancelling the appointments made by the Administrative Committee. The Joint Registrar rescinded the resolution. The matter was pursued before the Government. But the Government confirmed the stand of the Joint Registrar by order dated 30.8.2003. The superseded Committee took up the matter before this Court in W.P.(C) No.32552/03. By Ext.P8 Judgment dated 29.11.2003, this Court directed the Committee to take a fresh decision after hearing the affected five employees within two months from the date of receipt of a copy of the Judgment. The Joint Registrar issued a direction dated 12.12.2003 to take a decision in the light of the Judgment. That communication is Ext.R3(c). However, the Bank replied as per Ext.R3(d) letter dated 228.1.2004 that the matter was being pursued in Writ Appeal. But, the number of the Writ Appeal was not furnished. The Bank was directed to furnish the number of the Writ Appeal and clarify whether there was an interim order, as per communication dated 4.2.2004 (Ext.R3(e)), despatched on 7.4.2004. It is stated in the Counter affidavit that no reply was given. But, the contention of the petitioner is that Ext.P10 reply dated 10.2.2004 had been furnished stating that the appeal was likely to be taken up on 13th or 16th of February, 2004. However, the impugned Ext.P11 order was passed on 13.2.2004.

5. The narration of the events and the dates is based on the counter affidavit filed on behalf of the Joint Registrar of Co-operative Societies. Thus, it can be seen that the only reason for passing the impugned order invoking Section 32(3) of the Act is non-implementation of the directions issued in Ext.P8 Judgment.

6. The main contention of the petitioner is that as against Ext.P8 Judgment in W.P.(C) 32552/03, they had preferred W.A.No.308/04. On verification of the Judges Papers in W.A.No.308/04, it is seen that the appeal had already been filed on 3.1.2004. There were certain defects and for curing the defects, the same was returned on 7.2.2004 and on curing the defects, the same was represented on 13.2.2004. The appeal came up for admission on 16.2.2004. But, on the request of the counsel for the appellant, the same was adjourned to 23.2.2004 and still further to 8.3.2004. Thereafter, the then counsel relinquished the vakalath for the appellant and on instructions from the Part-time Administrator appointed pursuant to the impugned order Ext.P11, the appeal was withdrawn. It is submitted that during the pendency of the Writ Appeal, the directions in Ext.P8 Judgment was complied with by the Part-time Administrator by affording an opportunity to the affected employee and it has been decided to cancel the earlier resolution and the five employees have been reinstated in service.

7. The crucial question is whether in this factual situation, could the power u/s 32(3) of the Act to supersede an elected Committee without notice be exercised. Section 32(1) of the Act gives power to the Registrar to supersede an elected Committee in certain given circumstances. The gravity of those circumstances is particularly indicated in the Section as persistent default, negligence in the performance of duties, acting prejudicial to the interest of the Society, wilful disobedience and failure to comply with the lawful orders and directions, making appointment contrary to the provisions of the Act and causing loss or damage to the assets of the Society, misappropriation, destruction of the records, etc.. It is clearly provided under the Section that the Committee sought to be superseded shall be issued notice and they shall be given "an opportunity to state its objections". Section 32(2) provides that the Registrar shall consult the financing Bank and Circle Co-operative Union. However, Section 32(3) provides that these two mandatory requirements of hearing and consultation can be dispensed with, if the Registrar is of opinion that it is not reasonably practicable to do so. It will be profitable to refer to Section 32 to the extent relevant in this context. It reads:

"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 and 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 Cooperative Union".

8. As already observed above, the only allegation is that the Bank did not comply with the directions issued by this Court in Ext.P8 Judgment, in spite of being directed by the Department. Defence is that the Committee had been pursuing the matter in Writ Appeal. True, there is a statement that despite direction, the Committee did not furnish even the number of the Writ Appeal. Even assuming so, is this a situation where the Registrar should form an opinion that it is not reasonably practicable to give an opportunity to the Committee to state its objections. I do not think that it requires any elaborate discussion to hold that no reasonable man would have taken such a stand that invocation of Section 32(3) dispensing with the hearing and consultation is to be invoked in a situation where the only charge was that a judgment was not complied with when the Committee had informed the Joint Registrar that the matter was being pursued in Writ Appeal. The Department has a full-fledged liaison wing in the Office of the Advocate General. Therefore, verification of the pendency of Writ Appeal was not an impossible task. Even otherwise, had a notice been given u/s 32(1), as is ordinarily required, the Committee would have got an opportunity to submit before the Joint Registrar the position regarding the Writ Appeal.

9. There were no exceptional or extraordinary circumstances warranting an emergent action on the part of the Joint Registrar in superseding a Committee without notice and consultation. What was the imminent and irreparable situation which made the notice impracticable, is not clear either in the order or in the counter affidavit. It may be seen that u/s 32(1), the Registrar has to satisfy himself as to the merits of the case whereas u/s 32(3) he has also to form an opinion as to the impracticability of the procedural formality of giving an opportunity to the Committee to state its objections. In other words, the requirement of invocation of Section 32(3) should be such that, apart from the gravity of the situation, the service of notice and Consultation should also be impracticable. Notice is not an empty formality to be casually dispensed with. It is a notice to state objections. Therefore, only if in view of a situation of immence or emergency which cannot brook the delay due to notice and

situations where it is not feasible or practicable to serve notice, the same can be dispensed with. In any case, being an extremely rare situation, the Registrar should record the reasons for the opinion on impracticability. It is significant to note that in the matter of consultation, the Joint Registrar has recorded a justifiable reason as to the impracticability, that there is no elected Managing Committee. The fact remains that as on the date of the supersession, on the ground of non-implementation of Ext.P8 judgment of this Court, the then Committee had already filed a Writ Appeal before this Court. It has also to be noted that the Writ Appeal was filed in time there was no delay in filing the Writ Appeal.

10. Shri Swathi Kumar, learned Special Government Pleader and Shri George Poonthotam, learned counsel appearing for the second respondent vehemently contended that the Committee had been making consistent and persistent defaults in implementing the lawful directions issued by the Department, Government and this Court. As clearly observed above, the only reason in the instant case leading to Ext.P11 as clarified in the counter affidavit, is that the Committee failed to comply with the directions issued in Ext.P8 judgment. Another vehement contention is that Ext.P11 is an appealable order and the petitioner should be relegated to pursue the ordinary remedy of appeal. I am afraid, the contention cannot be appreciated. This is a case of arbitrary exercise of power whereby the third respondent has passed a patently unreasonable order with scant respect to the statutory provisions and in the circumstances, it is not necessary to relegate the petitioner to the statutory remedy of appeal. The Committee was elected to power on 4.10.2002. Until Ext.P11 was issued, there was no allegation that any direction issued by the Department was disobeyed by the Committee. Though there is an allegation in the impugned order regarding the engagement of temporary employees, the same is strongly refuted in the Writ Petition. At any rate, there is no such case in the counter. On the face of such unjust, unreasonable, arbitrary and illegal conduct, it is a fit case where this Court should interfere under Article 226 of the Constitution of India.

11. I set aside Ext.P11. There will be a direction to the respondents to forthwith reinstate the Committee which was elected to power on 4.10.2002.

The Writ Petition is disposed of as above.