

(2004) 06 KL CK 0057

In the High Court Of Kerala

Case No : Writ Petition (C) No. 5686 of 2004

Mohanan

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 22-06-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 KLT 873

Hon'ble Judges : M. Ramachandran, J

Bench : Single Bench

Advocate : P.C. Sasidharan, for the Appellant; B.S. Swathikumar Government Pleader and T.R. Ramachandran Nair, for the Respondent

Final Decision : Dismissed

Judgement

M. Ramachandran, J.—The Joint Registrar of Co-operative Societies (General), Wayanad, by Ext.P1 dated 30.12.2003, had directed the President and members of the Director Board of the Wayanad Primary Agricultural and Rural Development Bank to show cause as to why action u/s 32(1) of the Kerala Co-operative Societies Act were not to be taken against them. A notice of hearing had also been offered. The complaint is that in spite of satisfactory explanation being given, by Ext. P2 dated 27.1.2004, the committee had been superseded by Ext. P3 order passed on 12.2.2004 and because of external interference. This has been subjected to challenge in these proceedings.

2. The petitioner, who is the President of the superseded Director Board, submits that the steps taken were vitiated by mala fides, without authority of law and especially were not maintainable or sustainable. The alternate remedy of appeal to the Government was not expeditious, especially taking notice of the circumstance that there was an ulterior attempt for arranging for sending a nominee of the choice of the Government to the ensuing election to the Kerala State Co-operative Agricultural and Rural Development Bank. The surreptitious attempt was to see that the nominee of the ruling party was enabled to go over

as the representative of the institution. This Court had not granted any interlocutory orders, but had held that the voting and contest of the additional 4th respondent and also the declaration of the results of the election will be subject to further orders to be passed in these proceedings.

3. The principal submission of the learned counsel for the petitioner Sri. P.C. Sasidharan was that the circumstances indicated of mala fides and the attempt was to supersede a newly elected committee in respect of the alleged lapses committed by the erstwhile Committee. It is stated that the petitioner, who represents the new Committee, had assumed office on 18.5.2003 and every one of the faults and lapses pointed out were those pertaining to the period during which the past Committee was in office. The previous committee had assumed office on 27.6.1998 and had held office for a period of five years up to 17.5.2003. It is also submitted that there was no consultation, as required u/s 32(2) of the Act, with the Financing Bank and the Circle Co-operative Union and this too vitiated the orders.

4. We may look into the allegations as above and the background in which the supersession orders came and also whether the petitioner is entitled to the reliefs claimed.

5. The new committee had assumed office only on 18.5.2003. The petitioner submits that the show cause notice (Ext.P1) positively indicated that none of the allegations could be connected with the new managing committee. When show cause notice had been received, the Committee was almost certain that there was an attempt for supersession and a Writ Petition had been filed as W.P.(C).No. 3428 of 2004 and this Court had observed that there could have been any justification for the apprehension, shown. But the worst fears had come true. It is pointed out that orders had come overlooking such observations.

6. At this juncture, we may examine the question as to whether the preliminary objection raised by the petitioner, that the members of the new committee could not have been proceeded against for the misdeeds of the past committee, is acceptable. If that be so, there could be an end of the matter.

7. At the outset, I may observe that this point cannot be answered in the abstract, as it will be thoroughly unsafe. There cannot be any general declaration divorced from the specific circumstances of each case. There may be a case where the Director Board is constituted by persons in diverse patterns. For example, if the strength is 12, there can be one new member, and eleven old members, and in extreme cases there could be eleven new members and one old member. The texture of the Board as above therefore may not be a safe criterion to be followed, as definitely some other principle has to govern the situation.

8. Mr. Sasidharan refers to a Division Bench decision of this Court in Sivadasan Nair v. Registrar of Co-operative Societies 1997 (2) KLT 71. It was a case where a few of the members of the new Director Board were found as parties to indiscretion in the discharge of their duties while functioning as Board members

in the preceding committee. They were consequently directed to show cause as to why action u/s 32(1) of the Act could be taken against them. The total elected directors were 15. The Registrar, after hearing their objections, had removed them. As a consequence, the Board had no quorum, and the committee was superseded.

9. This was challenged, and the Court posed a question, as to whether the proceedings u/s 32(1) envisaged removal of individual members from the Board. This was answered in the negative, the Court interpreting the Section as it appeared in the statute book. However, this does not appear to be the case of the petitioner here. It is urged that the committee is not answerable to the default of the previous committee the two are independent of one another, though by chance they happened to assume control of the administration of the Bank, for successive terms. Therefore, we have to examine the scope and purport of the other provisions as well.

10. The learned Special Government Pleader submits that this was a case where the steps had been initiated as early as in the year 2002. The first notice had been issued in January, 2002 finding presence of inefficient administration. Section 65 enquiry had been going on and a report came to be filed on 17.5.2003 by the Registrar of Co-operative Societies, that is, before the new committee took charge. It may also be relevant, according to him, that 7 members of the present Director Board had been members of the past Board as well. According to him, larger issue viz., the existence itself and the strength of the Co-operative institution, was at the stake and the change of Director Board from time to time did not matter for the Department to prescribe medicine. He also concedes that it may appear to be unrealistic at the first blush to suggest that a new Board is superseded for the drawbacks and inefficiency of a past Board. But according to him, on deeper examination, that question does not arise at all. The President and 6 other members were President and Director Board members of the past Board. Only because of the induction of 4 additional persons the remedial measures are not to be kept in cold storage. The ultimate aim of the proceedings is rectification of the restrictive practices, removing the Institution from struggle holds. It is to be presided over by a Departmental Officer, and a change of guard in the course of such activities did not have the effect of nullifying the steps as above.

11. A further submission is also put forward, viz., that even after the new committee assumed office, the restrictive practices were not rectified and such inaction had contributed to the ill-health of the institution and it was a circumstance where remedial action and close departmental surveillance is essential. Notices were issued in the above context. Such notices have none of the infirmities or short comings as attempted to be suggested by the petitioner. The circumstances of mala fides pointed out, according to the Government Pleader, could not have been given any credence, as there could not have been any dispute about the position that malfunctioning had come to be noticed more

than a year back and Section 65 enquiry was going on. The presence of mismanagement and the ill-health experienced by the institution effectively exposed the emptiness of the contention.

12. A Co-operative Society u/s 9 of the Act, after it gets registered, is to have perpetual succession with a common seal; power to hold property and with right to enter into contracts, including institution and defence of suits and other legal proceedings. It is a legal person. The law envisages that a Director Board is elected to supervise the affairs of the institution and by a process of election of members such Board changes, at regular intervals. The Registrar is empowered to supervise the functioning of the institution, as frequently as he deems fit, it is his duty as well. u/s 65 of the Act, the Registrar may on his own motion, or in any other specified circumstance, could enquire into the working and financial condition of the society, if he "is satisfied that it is necessary to do so. Under Sub-section (3), the Registrar may communicate the result of the enquiry to the Financing Bank and the Circle Co-operative Union.

13. When the enquiry u/s 65 reveals only minor defects, which can be remedied by the Society, he is to communicate the result to the Society and the Institution and its officers are to take action as might be advised. If the Registrar finds that there are major defects in the constitution, working or financial condition of the Society, he may initiate action as envisaged u/s 32 of the Act, in exercise of his powers u/s 65(6). Thus Section 65 enquiry is a prelude for the supersession u/s 32 of the Act, in appropriate cases. Since the elected Board normally will be in charge, they could be held responsible for the defects, which come to be surfaced. It may happen in a given circumstance, that the members of the Director Board, who were in office when the mismanagement was committed, might have changed during the midst of such proceedings as has happened in the present case. But that does not necessarily mean that the action initiated gets evaporated. The proceedings do not end there.

14. The supersession is normally for a period of six months and this could be extended by another six months, in appropriate cases. The administrative committee appointed or the Administrator, as the case may be, are to function under the control of the Registrar and are to receive instructions, as may be issued from time to time, and are expected to function, in the interests of the Society. Thus, the position is that the institution is compulsorily to be brought under the active administrative control of the Departmental Officer. In a slightly different context, while examining the powers of the Administrative Committee, the Supreme Court had occasion to observe that the attempt at such time was "to bring on an even keel a ship which was in doldrums." [see Joint Registrar of Co-operative Societies v. T.A. Kuttappan (2000) 6 SCC 1271. The judgment in Sivadasan Nair's case (cited supra) has dealt with a different circumstance. As referred to by me earlier, there cannot be a hard-and-fast or absolute rule or procedure operating in this area. In any case, the said decision may not be applicable to the facts of this case for two reasons (i) the President and members

of the Director Board were re-elected and continuing and practically the majority of the Director Board had opportunity to continue in office and the presence of four additional members cannot be a protective coating for them, (ii) the allegation, according to the Government Pleader, is that in spite of the irregularities as subsisting being brought to the notice of the committee, there were no effective steps taken to set right the position and the defaults were persistent and continued. These are exceptional circumstances which successfully prevent interference under Article 226 of the Constitution of India.

15. We may examine the issue from a different perspective as well. Since the attempt of the Department was to restore the glory of the establishment and curb the restrictive practices followed by an institution, the question is whether the circumstance that there was a change in the committee would bound the hands of the Department. The avowed objective was to bring discipline in the functioning of the institution. I do not think that an election, followed by installation of new board members, whether old or new, by itself had any untouchable sanctity, required to be preserved at all costs. The basic attempt was for preserving the intrinsic health of the institution, even by resorting to drastic steps. Only if the establishment was in existence there was necessity for a Director Board to administer it. For governing a co-operative institution, a democratic set up is envisaged, but simultaneously there are inbuilt safeguards for taking over of administration. In extreme cases, a Director Board elected for a specific term will have to bow out prematurely, in the interest of the organisation, and the statute has envisaged it with foresight.

16. But an apparent difficulty arises when I take this stand. Mr. Sasidharan points out that Section 32 is couched in language, all in the present tense. The committee should persistently make default; it wilfully fails and disobeys in carrying out instructions, it makes payments contrary to the Act etc. This, according to him is sufficient to show that the erring committee alone should have been targeted. But I believe, I have to resort to a purposive interpretation, even if the legislature had not applied itself clearly while making prescriptions, vis-a-vis the erring conduct, that may be there requiring intervention, as envisaged. Section 32 of the statute has used the expression "committee". But, advisedly perhaps, in the provisions later appearing in the statute, viz., Section 65, the Institution, rather than the committee has been given predominance. It concerns the "society" and there is no reference to the "committee" at all. The attempt is to salvage the Institution, by bringing it under his direct control. Therefore, the change in the texture of the committee, whether it is A or B does not really matter. The election and change might have become inconsequential. There may of course be causalities, as Rule 44(k) prescribes a disqualification for a superseded committee member to contest election for one year. Even it may happen that a member of the erstwhile committee, who had demitted the office, and escaped at the nick of the moment a supersession, may be able to participate in the election. But such stray side effects need not deter us from understanding the scope and purport of the inbuilt safety clauses of the Act and

workability of the prescription. Otherwise, the provision and effort may become otiose.

17. So viewed, I do not think that there has been any error committed by the respondents in bringing about a supersession. The technical ground urged may not be available to the petitioner.

18. In this context, we may also examine the merits of the contentions, as to whether Ext.P3 proceeded on erroneous assumptions and there was no justification to hold of any maladministration necessitating interference.

19. The first allegation was that the deficiencies pointed out in the audit report for the years 1997-98, 1998-99, 1999-2000, and 2000-2001 were not set right and no steps were taken by the committee in this regard. In Ext. P2 reply, a stand is taken that the defects pointed out had been rectified. After examining the above, the Registrar has found that the claim as above may not be correct. It is pointed out that the Bank had obtained in auction large extent of properties by sale proceedings (more than about 600 acres), but not even one cent had been taken possession of or the usufructs taken. In respect of certain such properties, irregularly they were released and such conduct was unwarranted. Another major lapse pointed out was that in respect of sanctioning of loans, the registers did not disclose the full details. It had been pointed out that the explanation submitted was totally unsatisfactory and the only attempt was to mislead by referring to irrelevant circumstances. Reference had been made to large amount of money, given as loans to the Board members as well as the employees by way of dozens of loans, running to lakhs of rupees. Though this had been pointed out, the irregularities were not found as rectified. The position was continuing even after the new committee took charge.

20. It had also been pointed out that 80% of the loans disbursed had become irregular and there was total default affecting the workability of the Institution. The explanation was that Wayanad was declared as a drought area and in spite of that it has been possible to recover a sum of Rs. Four crores. But the financial position, as was available from the balance sheet was that Rs, 45.32 crores of the loan were outstanding and Rs. 18.26 crores of interest was also repayable. The recovery of Rs. 4 crores was only marginal and existence of the establishment was therefore threatened.

21. It is pointed out that the committee had assumed office on 18.5.2003, but effective steps for recovery of the dues were not being pursued. On scanning through the rest of the allegations also, it appears that the Committee, which was in office up to 17.5.2003, had taken decisions which were not in the interest of the institution and have exposed the Bank to serious risk, even threatening its existence. The audit certificate indicated that the loss sustained by the institution in the year 1998 was Rs. 211.92 lakhs, which was substantially increased from year to year and during 2002-2003 it had come to an alarming figure of Rs. 792.79 lakhs. But the Joint Registrar found that recovery steps or rectification

proceedings were not at all forthcoming.

22. Only by purposive pursuit, it may be able to gain the lost grounds. The irregularities as above and other defaults and defects pointed out in the order indicated that the administration had practically broken down. It has been observed that the Bank is on its path to liquidation. It will therefore be a disservice, if the orders are set aside and the committee put back in office. I cannot accept the case that this indeed was a monochromatic oeuvre from a joint Registrar.

23. The learned counsel had also contended that notice to Financing Bank and Circle Co-operative Union, which was a precondition to the orders was not served, or they were consulted. But this does not appear to be fully correct. Ext.P3 shows that the State Agricultural Rural Development Bank themselves had conducted an enquiry, and a report had been caused to be filed, as directed by the Registrar, in the above background. Reference is also made as item No. 7 to the letter addressed to the Circle Union. The Union has not responded thereto, but for this technical reason alone it will be illogical to upset the proceedings.

24. In these state of affairs, I find it difficult to accept the contentions of the learned counsel for the petitioner that steps u/s 32 (1) of the Act were taken without application of mind and by way of victimization.

The Writ Petition is therefore dismissed.