

(1998) 03 KL CK 0063
In the High Court Of Kerala
Case No : O.P. No. 3787 of 1998

Mukkom Service Co-op. Bank

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 24-03-1998

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 66
Kerala Co-operative Societies Rules, 1969 — Rule 24

Citation : (1998) 1 KLJ 735

Hon'ble Judges : K.A. Abdul Gafoor, J

Bench : Single Bench

Advocate : P.P. Jacob, for the Appellant; N. Reghuraj), for the Respondent

Judgement

K.A. Abdul Gafoor, J.—The Board of Directors of a Co-operative Society has approached this court with this Writ Petition challenging Ext.P3. By Ext.P3, the respondent declined the request made by the President of the petitioner Board of Directors to send a copy of the enquiry report under Sec.66 of the Co-operative Societies Act. During 1995 certain appointments were made in the Co-operative Society managed by the petitioner. On the basis of a letter, an enquiry under Sec.66 had been conducted and based on the findings in the enquiry a notice was issued to the petitioner to cancel all the appointments made and to make an explanation within 15 days of the receipt of Ext.P1. Ext.P1 is based on certain findings in the report, Therefore, the petitioner made Ext.P2 application in terms of Rule 24 of the Kerala Co-operative Societies Rules, 1969 to furnish a copy of the report, expressing his readiness to pay the necessary fees. That application is rejected in Ext.P3 stating that a report under Sec.66 of the Kerala Co-operative Societies Act cannot be given. The petitioner submits that when a report is relied on against the petitioner, necessarily, in order to submit an explanation, such report shall be furnished to the petitioner. Otherwise, he will not get full and fair opportunity to explain the alleged irregularities in Ext.P1. Therefore, Ext.P3 is illegal.

2. It is contended by the Government Pleader citing the decision reported in *State of Kerala v. Sudarsanan* (1997 (2) KLT 522) that furnishing of the report is not a part of the principles of natural justice and therefore there is no reason at all to furnish the report as requested in Ext.P2 and therefore Ext.P3 is fair and reasonable. It is further contended that the finding contained in the said report relied on to initiate action against the petitioner has been stated in detail in Ext.P1 show cause notice itself. Therefore, Ext.P1 contains the necessary details and on that reason also no copy of the report need be given to the petitioner. He also cited the decision reported in *State of Kerala v. Sudarsanan*, 1997 (2) KLT 522.

3. On the other hand, the petitioner contends that as per Rule 24 of the Kerala Co-operative Societies Rules, he has entitlement to the copy of the report. The said rule provides that any person applying to the Registrar with necessary prescribed fee shall be entitled to supply of such copy if he has satisfied the Registrar that he requires to seek redress in any matter in which he is aggrieved or for any other lawful purpose. The documents include a report as is seen from the note under sub-rule (3) of Rule 24. Therefore, the petitioner cannot be denied a copy of the report, the petitioner submits.

4. The decision reported in *M.M. Abdul Rahiman and others Vs. Joint Registrar and others*, is with regard to a show cause notice regarding supersession of the Board of Directors of a Co-operative Society and not to one directing to cancel the appointment made by the Board of Directors as in this case. The decision reported in *State of Kerala v. Sudarsanan* (1997 (2) KLT 522) is one relating to a show cause notice as a prelude to supersession of the Board of Directors. Of course, that was based on a report under Sec.66 of the Co-operative Societies Act. But, it has to be noticed that in neither of these decisions the impact of Rule 24 is considered. Rule 24 had not been noticed when the said decisions were rendered. Rule 24 provides for a procedure for applying for copies and furnishing of such copies in case the applicant is able to satisfy the Registrar that he requires such documents to seek redress in any matter in which he is aggrieved or for any other lawful purpose. Ext.P2 application was made citing the said rule. Therefore, it was incumbent on the Joint Registrar to apply his mind as to whether he has satisfied to grant the document supplied for. Such a consideration is not borne out by Ext.P3 order. What Ext.P3 order contains is that the report cannot be given and no other reason is stated. When Rule 24 make a person entitled for a copy when the Registrar is satisfied that it is essential for him to redress his grievance, the Registrar has no other go but to furnish the report if the applicant remits necessary fees, and produces copying sheets. Therefore, in the light of Rule 24, the petitioner is entitled to copy of the report. Ext.P3 rejecting the copy is irrational. If the matter is viewed in another angle also, it can easily found out that Ext.P3 is arbitrary. Admittedly, Ext.P1 is based on the findings contained in the report under Sec.66. On the basis of such findings, five conclusions are made by the Joint Registrar in Ext.P1. Whether there is supporting findings in the report is a matter in issue. The petitioner is

only told in Ext.P1 that there are adverse findings against the petitioner in the report. But, the report is not disclosed to him. When action is taken on the basis of such findings pointing out the understanding of the findings by the Joint Registrar, it is equally possible for the petitioner to challenge that understanding and to canvass that the findings are in his favour, before any action is finalised in terms of Ext.P1. In such circumstances also, when an action is taken and the Board of Directors is directed to cancel the appointments made by them, they should have been given an opportunity to substantiate that there is no such finding in such report warranting such cancellation, unlike in the proceedings under Sec.32 as dealt with in the two decision cited by the Government Pleader. On that basis also, in order to have a fair opportunity to the petitioner, the petitioner is entitled to get a copy of the report. On this reason also, the challenge against Ext.P3 shall succeed.

O.P. is thus allowed. No costs.