(2003) 03 KL CK 0056

In the High Court Of Kerala

Case No : W.A. No. 544 of 2003

Narayanan Nair APPELLANT

Vs

Vaikom Palliprathusserry Service Co-operative Bank RESPONDENT

Date of Decision : 25-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 KLT 44

Hon'ble Judges : Cyriac Joseph, J;A.K. Basheer, J

Bench : Division Bench

Advocate : George Poonthottam, for the Appellant; B.S. Swathy Kumar, Spl. Government Pleader, M.K. Damodaran and P.K. Vijaymohan, for the Respondent

Judgement

Cyriac Joseph, J.—This appeal is against the judgment in O.P. No. 2638 of 2003. The challenge in the Original Petition was against Ext.P7 notice proposing to supersede the Board of Directors of the Vaikom Palliprathusserry Service Co-operative Bank Limited No. 923. Ext.P7 being a show cause notice the learned single Judge did not think it proper or fair to interfere with the said notice. The learned single Judge observed that it was for the petitioners in the Original Petition to show cause and to contest the matter before the Joint Registrar. However, learned counsel for the petitioners submitted that there was every likelihood of an order being passed against the petitioners and an administrator being appointed so as to take over the administration of the society without affording effective opportunity to the petitioners for challenging the order in appropriate proceedings. In view of the said submission of the learned counsel for the petitioners the learned single Judge thought it just and proper as it was seen done in a number of other cases to direct that the order to be passed by the Joint Registrar u/s 32 of the Kerala Co-operative Societies Act shall be kept in abeyance for a short span of time if the order was against the interests of the petitioners so that the petitioners could challenge the order before appropriate forum. Accordingly the learned Judge directed that if the order passed by the Joint Registrar pursuant to Ext.P7 notice happens to be against the interests of the petitioners, implementation of the said order shall stand deferred for a period of three weeks from the date of communication of the order to the petitioners.

2. Against the judgment of the learned single Judge a member of the Co-operative Bank has filed this appeal with the leave of the Court.

3. Learned counsel for the appellant submits that merely because learned counsel for the petitioners submitted that there was every likelyhood of an order being passed against the petitioners and an administrator being appointed so as to take over the administration of the society without affording an effective opportunity to the petitioners for challenging the order in appropriate proceedings the learned single Judge should not have directed the Joint Registrar to keep his order in abeyance for a period of -three weeks from the date of communication of the order to the petitioners. Learned counsel further submits that the fact that similar direction was given in other cases was also no justification or ground for giving such a direction in the Original Petition. According to the learned counsel, against an order passed by the Joint Registrar under , Section 32 of the Kerala Co-operative Societies Act a statutory appeal is provided u/s 83(1)(j) of the said Act before the Government. The Government as appellate authority has power to stay the order impugned in the appeal. Hence, in the normal course the parties should be left to avail of the statutory remedies available to them and the High Court should not derail the procedure contemplated under the statute by directing the statutory authority not to implement the order passed by it. We find force in the above submissions of the learned counsel for the appellant. We are of the view that, unless there are special circumstances which would indicate that the authorities will not act bona fide and fairly and will deliberately delay the communication of the order of supersession so that the members of the committee will not get an opportunity to file appeal and seek stay of the order before the Administrator takes charge, this Court will not be justified in exercising the power under Article 226 of the Constitution to direct the statutory authority not to implement its order even for a limited period. In the absence of such special circumstances, the court should leave the matter to be dealt with by the statutory authorities in accordance with the provisions of the statute. Even if such special circumstances exist the court should refer to such special circumstances and record its satisfaction about the need for issuing a direction not to implement the order of the statutory authority passed u/s 32 of the Act. A mere apprehension of the members of the committee that the order of the Joint Registrar is likely to be against the committee or that the Administrator may take charge of the management of the society before the superceded committee files appeal and seeks stay, is not a sufficient or valid ground or justification for directing the Joint Registrar not to implement his order u/s 32 of the Act.

4. However, in this case we are informed that the Joint Registrar had passed the order u/s 32 of the Act on 28.2.2003 and the said order has been stayed by this Court in O.P.No.9276 of 2003 filed by the Board of Directors of the Bank. In view

of this development, it has become unnecessary for this Court to consider the legality or validity of the impugned judgment. Hence the Writ Appeal is disposed of as one which has become infructuous.