
(1990) 02 KL CK 0061
In the High Court Of Kerala
Case No : O.P. No. 1366 of 1990

P. Govindankutty and others	Vs	APPELLANT
State and Others		RESPONDENT

Date of Decision : 16-02-1990

Acts Referred:

Co-operative Societies Act, 1912 — Section 32

Citation : (1990) 1 KLJ 474

Hon'ble Judges : K. Sreedharan, J

Bench : Single Bench

Advocate : M.N. Sukumaran Nayar, for the Appellant; N. Sankara Menon, for the Respondent

Judgement

K. Sreedharan, J.—When C.M.P. No. 2466/90 came up for orders learned counsel representing the petitioners and the learned Government Pleader wanted to have the Original Petition itself disposed of. Accordingly, I heard them in detail. I am disposing of the Original Petition. Petitioners, five in number, are elected members of the board of directors of first respondent society. They were elected to the board in the election held on 2-11-1986. The total number of members elected was seven. Respondents 5 and 6 are the remaining two elected members. The board so elected assumed office on 14-11-1986. The term of office of the board is five years. By Ext. P3 order passed by the third respondent the board has been superseded and 4th respondent has been appointed Administrator. Petitioner challenges the above action of third respondent.

2. Certain complaints were made against the activities of the board of directors of the societies. The Joint Registrar who was then in office called for the explanations of the petitioners regarding those complaints. Petitioners submitted their explanations. Advocate representing the petitioners was heard by the then Joint Registrar on 22-2-1989. There after nothing transpired. She did not pass any order during the period while she was in office. According to the petitioners the complaints were found to be untenable and so the then officer did not think it

proper to take any action u/s. 32 of the Co-operative societies Act, hereinafter referred to as "the Act". After the retirement" of the then Joint Registrar the present incumbent assumed office. It is alleged by the petitioners that the present officer without adverting to any of the aspects, on account of the extraneous considerations, issued Ext. P3 order superseding the elected board of directors.

3. When this Original Petition came up for admission notice to the respondents were directed to be served by special messenger. Third respondent was also directed to produce the entire file which led to the passing of Ext. P3 order. Notices were accordingly served on all the respondents. The file leading to Ext. P3 was made available to court by the learned Government Pleader. Respondents 5 and 6 have not chosen to enter appearance.

4. Ext. P3 enumerates seven grounds for superseding the elected board of directors. Of them, 2nd ground viz., promotion given to three members of the staff is not a misconduct that can be attributed to the board of directors. The board was giving effect to the law declared by this court in the decision in P. Bhaskaran & Others v. Addl Secretary & Ors (1987(2) KLT 903) (F.B.). It is alleged by the petitioners that the previous board had engaged certain people to work in the society. When their services were sought to be terminated the Labour Department intervened and the dispute had to be settled. In terms of the settlement arrived at, at the instance of the officers of the Labour Department, they are to be re-admitted to the service. The action taken by them in this regard, it is urged, cannot amount to a ground for superseding the petitioners. As, regards the allegation that the Secretary of the society was wrongly given allowance and that they deposited funds in the South Indian Bank, it is averred that the present Board was not responsible for any of those acts. They were only continuing the practice resorted to by the earlier board and that they discontinued the same on coming to know of the impropriety. Regarding the last allegation in allowing the gold ornaments belonging to the Devaswom being kept in the strong room, it is averred that, that act by no stretch of imagination can amount to a misconduct warranting their supersession. It is their further case that disqualification of Shri N. K. Parameswaran was one on which the Registrar had to take action. The delay in the Registrar disqualifying the said Parameswaran cannot in any way go to establish a situation warranting supersession of the elected board of directors. Learned counsel representing the petitioners submitted that these aspects were not considered by the officer who passed Ext. P3 order. The previous incumbent who was in office was convinced of the lack of circumstance for superseding the elected board. According to counsel, this fact is crystal clear from the delay in passing the order. The then officer who heard the matter on 22-2-1989, did not pass any order superseding the board till she retired from service. The present officer who passed Ext. P3 order did not hear the petitioners. He mechanically issued Ext. P3 order. I find much force in the argument advanced by the learned counsel. According to me, third respondent did not apply his mind to the circumstances which are mentioned in

Ext. P3 before issuing that order. The power u/s. 32 of the Act is not to be exercised in a causal manner. Co-operative societies should have greater autonomy in their functioning. Registrar's control over the societies should not culminate in virtually depriving them of their democratic and autonomous character Progressive officialisation and politicisation is causing damage to the co-operative movement. A growing tendency is now seen to supersede the elected boards of societies on flimsy grounds. This move should be curbed if the co-operative movement is to thrive in this country.

5. From the scheme of the Act and the Rules framed there-under, it is evident that the affairs of a co-operative society are to be controlled and managed by elected board of directors. It is only in the rarest of rare cases can the board be superseded and an Administrator appointed. The Registrar is invested with wide powers to circumscribe the field of activities of the board of directors. The Registrar is to exercise that power and to control the affairs of the society in the best interest of the society. Registrar's attempt must be to get the activities of the society carried on by the elected board and not to remove it from office. Registrar must exercised power under the Act for strengthening the co-operative institutions by maintaining its democratic set up. On flimsy grounds elected Boards of directors of societies are not to be superseded by invoking the provisions contained in Section 32 of the Act. On going through the records, I am convinced that third respondent passed Ext. P3 order in a mechanical manner without applying his mind to the circumstances which are enumerated therein. Accordingly, I quash Ext. P3 order and direct third respondent to take urgent steps to put the board of directors back in power. Fourth respondent, Administrator, must immediately hand-over charge back to the elected board consisting of the petitioners. I make it clear that this direction will not prevent third respondent from examining the case afresh with due notice to the petitioners. If on such re-examination, after affording an opportunity of being heard to the petitioners, it is found that the circumstances envisaged by Section 32 of the Acts exists appropriate orders may be issued.

The Original Petition is disposed of in the above terms.