
(1994) 08 KL CK 0004

In the High Court Of Kerala

Case No : O. P. No. 10669 of 1994

Paniker Kadavu Con. Co-op, Society

APPELLANT

Vs

Registrar and Others

RESPONDENT

Date of Decision : 10-08-1994

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 65

Citation : (1994) 2 KLJ 582

Hon'ble Judges : K. Narayana Kurup, J

Bench : Single Bench

Advocate : Thomas Kunnathoor and N. Vimalan, for the Appellant; E.S. Mohammed Kabir, Govt. Pleader, for the Respondent

Judgement

K. Narayana Kurup, J.—Heard learned Govt. Pleader also. The petitioner is a co-operative society represented by its Secretary. The prayer in the original petition is for the issuance of a writ of certiorari to quash Ext. P3 and for other incidental reliefs.

Ext. P3 is an order of the second respondent Joint Registrar of Co-operative Societies, Kollam proposing to conduct an enquiry against the petitioner society u/s 65 of the Kerala Co-operative Societies Act (hereinafter referred to as "the Act") and authorising the Asst. Registrar (Arbitration & Execution I) as an authorised officer to conduct the enquiry in that regard, The Asst. Registrar is directed to submit enquiry report within one month from the date of. Ext. P3.

2. The grievance of the petitioner against Ext. P3 is that it has been issued pursuant to the direction issued by the Minister for Co-operation which is referred to as item No. 1 in Ext. P3. According to the learned counsel for the petitioner, the enquiry u/s 65 of the Act can be conducted by the Registrar either by his own motion or on the application of 1/3rd members of the society concerned. The Registrar has no jurisdiction to order an enquiry under-Section 65 based on instructions issued by the Minister. In this connection, it has to be remembered that a statutory authority vested with discretion shall exercise the

same uninfluenced by any extraneous consideration or dictation from any higher authority. Even a request from a higher authority to a subordinate authority will tantamount to positive command. Viewed in the above perspective, even the indas (endorsement) of the Minister for Co-operation contained in Ext. P3 is to be treated as an order to the Joint Registrar to initiate action u/s 65 of the Act. In the above view, Ext. P3 cannot be sustained because the Joint Registrar does not appear to have exercised his statutory power independently uninfluenced by extraneous considerations.

In the above view of the matter, Ext. P3 cannot be sustained. I therefore quash Ext. P3 and make it clear that the second respondent will be at liberty to pass fresh orders independently and uninfluenced by any extraneous consideration and in accordance with law.

Original Petition is disposed of.