(2014) 11 KL CK 0158

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 24414 of 2013 (B)

P.M. Mathew APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 10-11-2014

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 66, 83(1)(j)

Citation : (2014) 11 KL CK 0158

Hon'ble Judges : K. Vinod Chandran, J

Bench : Single Bench

Advocate : K.C. Santhoshkumar, K.K. Chandralekha and Anupama Johny, Advocate for the Appellant; R. Ranjith, Govt. Pleader, K.S. Mohamed Hashim, Carolin Sindhu, P. Shanes Methar and P.P. Jacob, Advocate for the Respondent

Judgement

K. Vinod Chandran, J.—The petitioner, who is the President of the Managing Committee of the 4th respondent-Society, is aggrieved with the proceedings initiated under Section 66 of the Kerala Co-operative Societies Act, 1969 [for brevity "the Act"], as per Exhibit P9.

2. The petitioner has two contentions in challenge of Exhibit P9. The first contention is that Exhibit P9 relates to the very same issue that was asked to be explained by Exhibit P1 notice. The petitioner has filed detailed objections to Exhibit P1 and there could be no separate proceedings initiated, at Exhibit P9, under Section 66 without consideration of the explanation of the petitioner to the identical allegations in the earlier notice. It is also contended that Section 66 mandates satisfaction of the officer initiating an inspection under Section 66 and it cannot be on the dictate of the superior officer. There is no satisfaction of the Joint Registrar (General) evident from Exhibit P9 and the proceedings are purportedly issued only on the directions of the Registrar, evident from the communication dated 03.04.2013 referred to in Exhibit P9 as item No. (5). It is also contended that the allegations in Exhibits P1 and P9 are with respect to a quarrying work undertaken by the Society, the accounts of which have been

found fault with in a special audit report. The inspection contemplated under Section 66 being based on the special audit report, it cannot be proceeded with unless the appeal before the Government is disposed of.

3. The records produced would indicate that Exhibit P1 was an intimation regarding the improper maintenance of accounts of a quarrying activity carried on by the respondent-Society. It is also evident that improper maintenance was found in a special audit conducted. Exhibit P1 merely directed the society to place the issue before the Managing Committee and reply suitably to the objections raised on audit. The President of the Society, the petitioner herein, on receiving the same has filed Exhibit P2 before the Joint Registrar (General), Kottayam seeking a copy of the special audit report. The petitioner also objected to the special audit report having been submitted without taking the comments of the Managing Committee.

4. Exhibit P3 was issued by the Joint Registrar (General) in reply to Exhibit P2, enclosing the special audit report. It was also notified that the special audit report cannot be interfered with by the Joint Registrar (General), since the report is in pursuance of an audit conducted by the Audit Department under the Joint Director (Audit). Exhibit P3 also informed the petitioner that against the special audit report, an appeal alone would lie under Section 83(1)(j) of the Act. It was also informed that though sixty days is the time provided for a proper appeal to be maintained, the petitioner could file an appeal with a delay condonation application.

5. The contention with respect to an appeal is sought to be pressed on the basis of Exhibit P6 communication, issued by the Government. The learned counsel for the petitioner would insist that the said communication is issued pursuant to an appeal filed by the respondent-Society. However, the said contention is belied by the dates in Exhibits P3 and P6. Obviously the appeal is said to have been filed in compliance of Exhibit P3 directions. Exhibit P3 is dated 18.04.2012, while the communication at Exhibit P6, issued by the Government, is in reply to the petitioner''s letter dated 21.03.2012, prior to Exhibit P3 communication.

6. Exhibit P6 communication dated 11.04.2013 did not refer to any appeal filed by the respondent-Society; but only replied to the allegation of the petitioner that the audit report was prepared without intimating the defects noticed, to the Managing Committee. Exhibit P6 intimated that the auditor had in fact communicated the defects to the Managing committee and the President of the Society. Exhibit P6 also noticed a direction issued to the Audit Director to issue a circular, making consultation with the Managing Committee mandatory before an audit report is finalised. Hence, Exhibit P6 cannot be taken as a communication in an appeal filed by the petitioner. The petitioner also does not speak specifically of an appeal having been filed under Section 83(1)(j) of the Act.

7. With respect to Exhibits P1 and P9 being identical, it is to be noticed that Exhibit P1 was the initial notice issued, where the petitioner was directed to place

the issue of the special audit report before the Committee and offer explanations thereon. It was pursuant to that the Joint Registrar (General) issued Exhibit P9 communication, ordering an inspection under Section 66 of the Act. Exhibit P1 was the initial notice, which culminated in Exhibit P9, ordering inspection of the accounts of the Bank with respect to improper maintenance of accounts as noticed in Exhibit P1. The contention that Exhibits P1 and P9 raised identical issues, hence, is of no consequence.

8. The next contention is with respect to the satisfaction which the Registrar has to arrive at, before ordering an inspection under Section 66. The contention based on sub-section (2) of Section 66 is that the Registrar could initiate such inspection invoking the supervisory jurisdiction only if the same is on his own motion or on an application of a creditor of the society. Admittedly here, there is no application from any creditor. Herein, the Registrar, by a letter dated 03.04.2013, directed an inspection of the books of the society to be carried out based on a complaint of one Sri K.A. Appachan, pursuant to which an enquiry was conducted by the Assistant Registrar and report submitted thereon. In fact, the report considered by the Registrar is the special audit report enclosed along with Exhibit P3 covering letter, which was the basis of Exhibit P1 communication also. In such circumstance, there can be no infirmity found in Exhibit P9.

9. But, the time granted in Exhibit P9 has expired and it was stayed by this Court. The Joint Registrar (General), hence, shall issue a fresh order indicating the satisfaction arrived at by the Registrar in the communication dated 03.04.2013 or one arrived at by himself in ordering inspection under Section 66. The petitioner shall appear before the Joint Registrar (General) within two weeks from the date of receipt of the certified copy of the judgment and intimate the Joint Registrar as to any appeal filed before the Government under Section 83(1)(j) of the Act. If an appeal has been so instituted in accordance with law and a stay has been obtained, then necessarily the Joint Registrar shall await the orders in that appeal. However, if the special audit report has not been stayed, the Registrar or the Joint Registrar would be competent to proceed under Section 66 of the Act.

With the above observation, the writ petition is disposed of.

