(2023) 05 KL CK 0168

In the High Court Of Kerala

Case No : Writ Petition (C) No.14090 Of 2022

P.N.Damodaran Pillai APPELLANT

Vs

Joint Registrar (General) RESPONDENT

Date of Decision : 24-05-2023

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Co operative Societies Act, 1969 — Section 65, 65(6), 66
Kerala Co Operative Societies Rules, 1969 — Rule 66(1), 198(8)

Citation : (2023) 05 KL CK 0168

Hon'ble Judges : T.R. Ravi, J

Bench : Single Bench

Advocate : S.Sreekumar, Manoj Ramaswamy, Bimal K.Nath

Final Decision : Dismissed

Judgement

T.R. Ravi, J.

1. The President of the 4th respondent Bank has filed this writ petition praying to quash Exts.P15 and P16. The present Committee was elected in 2018 and assumed charge on 23.5.2018. The 2nd respondent conducted an inspection of the accounts of the 4th respondent on 25.2.2021 and 26.2.2021. The inspection included accounts relating to 2015 from the system data. According to the petitioner, during the inspection, it was informed that the earlier Secretary of the Bank Sri C.P.Najeeb had committed financial misappropriation during the said period. On 27.2.2021 the Committee of the 4th respondent decided to appoint a Computer Expert to verify the above aspect. On 1.3.2021, an Arbitration Case was initiated against Sri C.P.Najeeb, who had already retired from service on superannuation on 31.3.2019. The immovable properties of Najeeb were attached to secure the amounts that are alleged to have been misappropriated and to protect the interest of the Bank. The order issued by the Joint Registrar has been produced as Ext.P1.

2. The 1st respondent thereafter issued Ext.P2 order directing an enquiry under

Section 65 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the Act). This was followed by a notice Ext.P3 directing the petitioner to appear for the purpose of the enquiry. The case of the petitioner is that such an enquiry regarding the alleged misappropriation which had happened in 2015 cannot be initiated against the present Committee which entered Office only on 23.5.2018. It is further submitted that Exts.P5 to P9 which are reports of the statutory audit conducted by the 3rd respondent for the years 2015-16 to 2019-20 do not indicate any such misappropriation. It is hence contended that when the auditors could not find out about the misappropriation during the statutory audit, the petitioner could not be expected to unearth such a misappropriation. According to the petitioner, instead of ordering an enquiry under Section 65 of the Act, the 1st respondent ought to have invoked Section 66 of the Act and ordered an inspection and called for a report.

3. The Managing Committee and the 4th respondent filed W.P.(C)No.6706/2021. Pending the writ petition, the 1st respondent issued Ext.P10 order on 24.3.2021 suspending the Managing Committee for three months. Since the Committee was suspended and a Part Time Administrator took charge, W.P. (C)No.6706/2021 was dismissed by Ext.P11 judgment. The petitioner challenged Ext.P10 order in W.P.(C)No.8081/2021. Pending the writ petition, the period of suspension was extended. By Ext.P12 judgment dated 15.11.2021, W.P.(C)No.8081/2021 was allowed. The respondents challenged Ext.P12 in W.A.No.1542/2021. The appeal was dismissed by Ext.P13 judgment. Thereafter, by Ext.P14 order dated 4.12.2021, the Managing Committee was reinstated in Office.

4. On 18.3.2022, the 1st respondent issued Ext.P15 notice to the petitioner intimating about the hearing to be conducted, based on a report submitted by the 2nd respondent. The report dated 22.1.2022 has been produced as Ext.P16. Ext.P16 contains the findings regarding the transactions that took place in 2016. It is reported that the then Secretary had transferred amounts to fictitious accounts and misappropriated the same by manipulating the software. The only allegation against the petitioner is that after coming to know of an unauthorised withdrawal of Rs.1,80,000/- on 23.2.2019 by Sri C.P.Najeeb and re-depositing of the amount on 27.3.2019, he did not take any action against Sri C.P.Najeeb. As per the report, a sum of Rs.81,18,016/- along with 14% interest was to be realised from Sri C.P.Najeeb. It is also alleged that the petitioner who knew about the unauthorised withdrawal of Rs.1,80,000/-should not have released the pensionary benefits to Sri C.P.Najeeb when he retired. Exts.P15 and P16 are hence challenged.

5. Heard Sri S.Sreekumar, Senior Advocate, instructed by Sri Manoj Ramaswamy on behalf of the petitioner and Sri Bimal K.Nath, Senior Government Pleader.

6. The primary contention raised by the counsel for the petitioner is that Exts.P15 and P16 are misconceived and that Ext.P16 report contains only allegations against the then Secretary Sri C.P.Najeeb. Another contention is that when the statutory auditors could not detect the alleged misappropriation, it is

harsh to blame the petitioners for not detecting the misappropriation. It is submitted that prompt legal action had been taken on coming to know of the misappropriation and the properties of Sri Najeeb have already been attached, thus preventing any loss to the Society. It is also submitted that there is no allegation of any complicity on the part of the petitioner regarding the misappropriation by the Secretary. It is pointed out that neither the release of pensionary benefits to Sri C.P.Najeeb nor the constitution, working, and financial condition of the Bank are made subject matter of the proposed enquiry. It is submitted that matters referred to in the notice come within the purview of Rule 66(1) of the Kerala Co-operative Societies Rules (hereinafter referred to as the Rules), and the present enquiry under Section 65 of the Act is uncalled for. Even going by the report, an amount of Rs.81,18,016/- with interest is to be realised from Sri C.P.Najeeb and not from the petitioner or the Committee.

7. The learned Senior Government Pleader submits that under Rule 198(8) of the Rules, the retirement benefits ought to have been disbursed only after a No Liability certificate is drawn up. It is submitted that Sri Najeeb was paid the retirement benefits even without a No Liability certificate. The report Ext.P16 is referred to, and it is submitted that in the report, it is specifically stated that amounts were disbursed to Sri Najeeb knowing fully well about the misappropriation made and if the amount of Rs.28,44,248/- cannot be realised from Sri Najeeb, the same should be realised from the petitioner and Smt. Mercy John, who was the Secretary. It is further submitted that the writ petition itself is premature, and the petitioner can challenge the proceedings after the respondent decides on the course of action based on the report Ext.P16. Reliance is placed on the judgment of the Full Bench of this Court in Riji G.Nair v. State of Kerala & Ors. [2020 (6) KHC 633] wherein it is held that the enquiry by the Registrar does not create any vested right on any member of the Managing Committee and that a right to defend will be available to an individual only if the Registrar initiates further action as contemplated under Section 65(6) of the Act, on finding any major defect on the completion of the enquiry. It is submitted that in the light of the law laid down in the aforesaid decisions, the petitioner is not entitled to challenge the proceedings initiated under Section 65 of the Act at the notice stage. Reference is also made to the judgment of another Full Bench of this Court in Reji K.Joshi & Ors. v. Joint Registrar of Co-operative Societies (General), Kollam & Ors. reported in [2022 (3) KHC 317] to submit that at the stage of initiating an enquiry, there is no necessity of granting an opportunity of hearing.

8. I have considered the contentions on either side.

9. The contentions raised by the petitioner are contentions that will be available during the enquiry under Section 65 of the Act and also later if any further action is proposed. There is no necessity to go into those contentions at the stage of notice for hearing on Ext.P16 report, in proceedings under Article 226 of the Constitution of India. The law is well settled in that regard. The rights of the

petitioner are not in any manner affected.

10. Resultantly, the writ petition is dismissed without prejudice to the right of the petitioner regarding the contentions raised in this writ petition on the merits of the enquiry and the facts leading to the enquiry and with liberty to the petitioner to raise all these contentions at the appropriate stage.