

(2003) 10 KL CK 0016

In the High Court Of Kerala

Case No : O.P. No"s. 4699 and 17330 of 2001

Porinchu

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 21-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2004 Ker 117 : (2004) 1 ILR (Ker) 245 : (2004) 1 KLT 281

Hon'ble Judges : Jawahar Lal Gupta, C.J.;J.B. Koshy, J

Bench : Division Bench

Advocate : T.R. Ramachandran Nair and George Poonthottam, for the Appellant; T.P. Kelu Nambiar M.K. Damodaran, P.G. Rajagopalan, M. Gopikrishnan Nambiar, T. Reshmi Damodaran, D. Somasundaram, P.K. Vijayamohanan, Pirappancode V. Sreedharan Nair, S.P. Aravindakshan Pillai, Pirappanncode V.S. Sudhir and P.C. Sasidharan and Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

J.B. Koshy, J.—Can the Administrator appointed u/s 33 of the Kerala Co-operative Societies Act, 1969 enrol new members? This question was answered in the negative by a Full Bench of this Court in Hassan v. Joint Registrar of Co-operative Societies (1998 (2) KLT 746 FB), it was held that the Administrator appointed u/s 33 of the Kerala Co-operative Societies Act, 1969 has no power to enrol new members. This decision was affirmed by the Supreme Court in Joint Registrar of Co-operative Societies v. T.A. Kuttappan and Ors. (2000 (6) SCC 1271). In the meantime, another Full Bench of this Court considered the matter in Cherthala Agricultural Rural Development Bank v. Joint Registrar (2000 (1) KLT 730 FB) and took the view that the decision in Hassan's case will operate prospectively from the date of the decision and not retrospectively. Does the later decision lay down a rule of universal application or was it confined to the facts of that case? This is the issue that arises for consideration in these two cases.

2. The facts may be briefly noticed. The petitioner in O.P. No. 4699 of 2001 is a

member of the Trichur District Co-operative Hospital Ltd. It is a society registered under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act"). The Managing Committee of the society was superseded by the Joint Registrar before the expiry of the term on 11.11.1996. It was challenged. In the meantime, the election was notified. On 4.12.1996 the Returning Officer appointed by the Joint Registrar removed 1700 members from the voters list. This Court in O.P. No. 19104 of 1996 allowed those members to vote. Accordingly, election was conducted to the Managing Committee of the society on 29.12.1996. Since results were not declared before the expiry of the term of the then managing committee, a part-time Administrator was appointed u/s 33 of the Act on 1.1.1997 and he was managing the society. This Court by order in C.M.P. No. 1991 of 1997 directed to declare the results before 22.1.1997. Results were declared on 22.1.1997 and the newly elected committee took charge on 28.1.1997. The part-time Administrator who was managing the society had enrolled 859 new members after election was declared and before the newly elected committee had taken charge. Even though the new committee had taken over on 28.1.1997, the Joint Registrar set aside the election by order dated 14.8.1997. An administrator was appointed. On 16.12.1997, the State Co-operative Tribunal set aside the above order. Still, the Joint Registrar did not give the charge to the elected committee and the Society continued to be administered by the Administrator. Aggrieved members filed Writ Petition before this Court and this Court directed the Joint Registrar to hand over charge to the elected committee by judgment dated 18.3.1998. On 24.3.1998, the Administrator handed over the charge to the elected committee. But during the interval from 14.8.1997 to 24.3.1998, the Administrator enrolled 3781 members. Thus, the total number of members enrolled by the Administrator was 4,633. The number of Original members was only 7426. According to the petitioner, 4,633 members were enrolled to tilt the balance so that the political party in power will get control of the society in the next election and the Administrator had enrolled those members en masse without examining the eligibility of the persons or any proper verification of facts. On 25.4.1998, the managing committee appointed a sub-committee to verify the admission of members by the Administrator. After considering the report of the sub-committee, the managing committee on 16.5.1998 decided to issue notice to the members enrolled by the Administrator for removing them from the membership. After consideration of the matter, the Committee resolved to remove the members enrolled by the Interim Administrator. Again, the Committee was superseded u/s 33 of the Act on the ground of lack of quorum and the Administrator assumed charge. Immediately after assuming charge, on 1.10.1999, the Administrator readmitted all the removed members with retrospective effect. The Petitioner herein filed a petition before the Joint Registrar under S, 176 of the Act to rescind the resolution adopted by the Part-time Administrator readmitting the 4,633 members. That was dismissed by Ext. P4 order in O.P. No. 4699/2001. The administrator readmitted the members on the basis of an order (Ext. P5) obtained by one of the removed members questioning the resolution to cancel his membership and

others. The petitioner challenges the order at Exts. P4 and P5. He also questions the readmission of the members by the Administrator.

3. The Administrator after readmitting the members, started steps for conducting election. It was notified on 9.2.2001. O.P. No. 17330 of 2001 was filed questioning the inclusion of those persons appointed by the Administrator in the voters list and questioning the election conducted by the Returning Officer as objections filed were overruled by the Returning Officer. Interim petitions were also filed in O.P. No. 4699 of 2001 questioning the conduct of the election immediately when draft voters list was published on 17.2.2001. In CMP No. 10707 of 2001, a learned Single Judge of this Court ordered as follows:

"In the circumstances, I direct that the election proceedings may go on, but the counting of votes and declaration of results are not to be attempted or done until further orders are obtained from this Court".

Therefore, even though elections were held on 10.3.2001, the votes were not counted.

4. The first question to be decided is- Were the members admitted by, the Administrator during the interim period when the managing committee was not in office entitled to vote? This matter is now finally settled by the decision of the Full Bench in Hassan's case (supra), which was affirmed by the Hon'ble Supreme Court in Kuttappan's case (supra). We are not concerned with the question whether amendment of Section 33(2) made by Act No. 1 of 2000 with effect from 1.1.2000 has changed the position or not in this case. Then, the only question left to be decided is whether the decision in Hassan's case is only prospective in view of the observations in Cherthala Agricultural Rural Development Bank's case. In other words, Hassan's case was decided on 8.8.1998. The Administrator had enrolled new members before his date. He had readmitted all the removed members only on 1.10.1999, after the above Full Bench decision, but, before the second Full Bench decision.

5. According to the contesting respondents, a Division Bench of this Court in George v. Joint Registrar, (1985 KLT 836) held that the Administrator can enrol new members to the society and, therefore, till the Full Bench overruled the above case in Hassan's case on 28.8.1998, the members admitted by the Administrator should be allowed to continue as that was the law declared by the Court till the Full Bench decided the matter. But, according to the petitioner, in Gopalan v. Joint Registrar of Co-operative Societies (1985 KLT 446), a Single Bench of this Court held that the Administrator appointed under the provisions of the Act is only a stopgap arrangement and he cannot tinker with the Constitution and the membership of the society. This was overruled by the Division Bench in George v. Joint Registrar (1985 KLT 836). Thereafter, the Supreme Court in K. Shantharaj and another Vs. M.L. Nagaraja and others, on 9.5.1997 held that an Administrator appointed under the Karnataka Co-operative Societies Act, 1959 has no power to admit new members. In this case, Administrator had admitted

3781 members after 9.5.1997 (between 14.8.1997 and 24.3.1998) after the Apex Court decision and those members had also voted in the election. The Full Bench in Hassan's case noticed that there is virtually no difference between the wordings in "Karnataka Co-operative Societies Act" and "Kerala Cooperative Societies Act". Following the decision of the Supreme Court in Karnataka case, the Full Bench declared that the Administrator has no power to admit new members and he had to only manage the day-to-day affairs of the society till elected committee assumed charge. But in Cherthala Agricultural Rural Development Bank's case, on 28.9.1999 another Full Bench held that the judgment in Hassan's case will be prospective. It is the contention of the respondent that in this case since the Administrator had enrolled new members originally before October, 1998, the date of the Full Bench decision. The members were enrolled correctly notwithstanding the fact that they were readmitted by the administrator after the Full Bench decision. Exts. P4 and P5 decisions were also taken by the Joint Registrar on 31.1.2001 and 5.11.1999 after the date of the first Full Bench decision. The Hon'ble Supreme Court affirmed the decision in Hassan's case in Kuttappan 's case following its earlier decision under the Karnataka Co-operative Societies Act. It was further held by the Apex Court as follows:

that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. We may add that a co-operative society is expected to function in a domestic manner through an elected committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected committee rather than by an Administrator or a Committee appointed by the Registrar while the Committee of Management is under superannuation. This Court has taken the view, it did, bearing in mind these aspects, though not spelt out in the course of the judgment. Even where the language of Section 30-A of the Karnataka Act empowering a Special Officer to exercise and perform all the powers and functions of the Committee of Management of a co-operative society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the committee" in the Act and "exercise all or any of the functions of the committee" in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance. What is of significance is that when the Committee of Management of the co-operative society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a committee is imposed thereon. The duty of such a committee or an administrator is to set right the default, if any, and to

enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring On an even keel a ship which was in doldrums."

In view of the categorical pronouncement of the Supreme Court that the Administrator has no power to admit new members, we are of the view that that position is no more open to challenge. Therefore, the persons enrolled by the Administrator as members will not get any membership rights and Exts. P4 and P5 are liable to be set aside.

5. It is the case of the contesting respondents that since in Cherthala Agricultural Rural Development Bank's case, a Full Bench of this Court held that the judgment of the Full Bench in Hassan's case (supra) will act only prospectively and not retrospectively. Even if that is so, in this case, the members enrolled by the Administrator earlier were removed by the elected committee while they were in office and they were readmitted by the Administrator only after the Full Bench decision in 1998 (2) KLT 446 and, therefore, readmission of the members even after the Full Bench decision is wrong. This removal by the elected committee was legally correct also. Therefore, Exts. P4 and P5 orders are liable to be set aside. Exts. P4 and P5 orders were passed by the Joint Registrar after the first Full Bench decision and those orders were challenged in O.P. No. 4699 of 2001. It was pointed out that in view of the observations of the Full Bench in Cherthala Agricultural Rural Development Bank's case, that the judgment of the first Full Bench in Hassan's case will act prospectively and not retrospectively, the matter should be placed before a larger Bench. Since 4633 persons were readmitted after the judgment of the Full Bench, on the facts of the case, even if that judgment has only prospective application, their readmission by the Administrator is not legally sustainable. Apart from the above, on going through the judgment in Cherthala Agricultural Rural Development Bank's case, we are of the opinion that Full Bench did not hold as general proposition that in all cases, the decision of the Full Bench in 1998 KLT 746 will operate only prospectively.

6. The Constitution Bench of the Apex Court in Islamic Academy of Education and Another Vs. State of Karnataka and Others, , we have to read the entire judgment to understand the ratio decidendi of a judgment. Apex Court held as follows:

.....The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading the line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment".

Again, it was observed by the Apex Court in *The Divisional Controller, KSRTC Vs. Mahadeva Shetty and Another*, , as follows:

"23..... A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements, which are not part of the ratio decidendi, are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expressions carry no weight at all, nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority".

Now, the Full Bench decision relied on by the contesting respondents may be examined.

The doctrine of prospective overruling was considered by the Supreme Court in *I.C. Golak Nath and Others Vs. State of Punjab and Another*, . It was held as follows in paragraph 51:

"(1) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (2) it can be applied only by the highest Court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the Courts in India".

In fact, the Hon"ble Supreme Court in *M/s. Somaiya Organics (India) Ltd. Vs. State of Uttar Pradesh and Another*, (a five-member Bench) and *Ashok Kumar Gupta and Another Vs. State of U.P. and Others*, (a three-member Bench) held that the Supreme Court was competent to adjudge the competing rights of the parties by prospective overruling in view of the powers vested in it under Articles 141 and 142 of the Constitution of India by extending the principle of prospective overruling enunciated in *Golaknath's* case. In *Sanchalakshri and Another Vs. Vijayakumar Raghuvirprasad Mehta and Another*, , the Supreme Court held that the High Courts are not possessing the same power of the Supreme Court to exercise jurisdiction under Article 142 of the Constitution of India which is vested only with the Supreme Court. In *State of Himachal Pradesh and Others Etc. Etc. Vs. Nurple Private Bus Operators Union and Others Etc. Etc.*, , the Apex Court was considering the constitutional validity of the proviso to Section 4 of the *Himachal Pradesh Passenger and Goods Taxation Act, 1955*. The High Court held that such a provision is beyond the scope of Section 3 and, therefore, it was set aside; but only prospectively. The Supreme Court held that the High Court has no power for prospective overruling. The Supreme Court held as follows:

"10. The High Court, in the judgment aforementioned, held that the levy and realisation of tax on the basis which had been held to be invalid by it "for the

period between 1st April, 1991 and 20th September, 1992 shall not stand invalidated..... We propose to direct that the declaration made by us today shall be applicable prospectively and with effect from October 1, 1992 alone". Some operators challenge the correctness of this. They are right, for the doctrine of prospective overruling cannot be utilized by the High Court. Once the High Court came to the conclusion, rightly, that the concerned provisions were invalid, it was obliged to so declare arid, consequently, the collections made thereunder stood invalidated".

7. The Full Bench in Cherthala Agricultural Rural Development Bank's case noticed that the High Court has no power to prospective overruling but moulded the relief on the facts of those cases considered by it. In the case considered by the above Full Bench, the members were enrolled in 1981. After their enrolment as members by the Administrator, when subsequent elected committee came into being, no steps were taken to expel them from the membership or remove them by the elected committee and they received benefits from the society. Therefore, the elected committee had also acquiesced to the membership and they had continued as members with active participation for more than a decade. But, their membership was questioned only in 1999 (see the facts in O.P. No. 602 of 1999 as mentioned in paragraph 2 of the judgment). In other cases considered in that judgment also, the members admitted by the Administrator had participated in the proceedings in the previous elections and their memberships were not challenged for years. On this context, the court did not set aside their membership. The Full Bench held as follows:

"It is not contended before us that this court has the power to apply the doctrine of prospective overruling in the present case. But there are several decisions of the Supreme Court where relief was so moulded not to affect past transactions in public interest".

Thereafter, the court had clearly moulded the relief on the facts of those cases and held as follows:

"21. According to us, if we have to hold that in the light of the declaration of law in 1998 (2) KLT 746 all members enrolled by the administrators from the year 1981 onwards or even earlier period are disqualified, it would certainly end up the functioning of the societies in chaos. Such an action will be totally against public interest. According to us, this Court will be fully justified in holding that the decision will have only prospective effect. We make it clear that parties to the Original Petitions which were subject matter of the Full Bench decision are bound by the judgment".

8. The observation of the second Full Bench that the decision of the Full Bench reported in 1988 (2) KLT 746 will act only prospectively is applicable on the facts of those cases considered by it while moulding the relief in those cases. After quoting from Golaknath's case that the High Court has no power for prospective overruling, the Bench moulded the relief on the facts of the cases considered by

it and did not lay down any general proposition that in all cases membership of persons enrolled by the Administrator before Hassan's case cannot be challenged. In any event, after declaration of law by the Hon'ble Apex Court in T.A. Kuttappan's case it cannot be stated that persons enrolled as members by the interim administrator before 8.8.1998 that is, the date of judgment in Hassan's case is valid. In a given case, even after the Supreme Court decision in Kuttappan's case in a Writ Petition filed to cancel the membership of persons enrolled by the Administrator a decade back, the Court may not interfere using discretionary jurisdiction under Article 226 of the Constitution of India. On the facts of each" case this Court may mould the relief under Article 226 of the Constitution of India.

9. It is pointed out by the contesting respondents that by Ext. P10 Joint Registrar in Arbitration proceedings (ARC No. 137 of 1998) held that the resolution of removal of members of the society is not correct by order dated 3.11.1999. The above arbitration case was filed only by one of the removed members in arbitration. That is applicable only to Ramakrishnan as there is no provision under the Act to file arbitration proceedings in a representative capacity. Further, it is submitted by the petitioner that it was passed by the Arbitrator (Joint Registrar General) without notice to aggrieved persons but only with notice to the Administrator representing the Society and hearing the plaintiff at a time when the Administrator was in office. The petitioner had filed amendment petition, which was allowed in CMP No. 2205 of 2002 to amend the petition questioning Ext. P10. The Writ Petition was amended thus questioning Ext. P10 also. Ext. P10 is liable to be set aside for the reasons stated above. Admission of 4,634 members by the Administrator after the election conducted on 29.12.1996 and their readmission on 1.10.1999 are without jurisdiction and beyond the powers of the Administrator and consequential orders/resolutions passed by the Administrator are set aside.

10. From the above discussions, we arrive at the following conclusions:

(i) An interim Administrator appointed u/s 33 of the Act has no power to enrol new members. The law was, thus, declared by the Apex Court in T.A. Kuttappan's case while approving the judgment of the Full Bench in Hassan's case;

(ii) The High Court has no power of prospective overruling. Once it is held that the Administrator appointed u/s 33 of the Act has no power to enrol new members, no court other than the Hon'ble Supreme Court can hold that the law declared will be applied prospectively;

(iii) The High Court can mould the relief considering the facts of the case as Article 226 Of the Constitution of India is a discretionary remedy. It can dismiss a Writ Petition for laches, delay, existence of alternate remedy, etc. without considering the serious legal questions raised. No courts can mould the relief in factual situations not placed before it. Cherthala Agricultural Rural Development Bank Ltd. 's case was decided on the facts of those cases before the Full Bench.

The Court was only moulding the relief on the facts of the cases before it.

11. Now, we have to mould the relief in these cases. The facts of this case as narrated in paragraph 2 will show that bulk admission of members by the interim administrator was illegal. The Hon''ble Supreme Court has clearly held that the Administrator has no power to enrol new members. The new members enrolled by the Administrator in this case were removed when the elected committee took charge. The persons enrolled by the Administrator were not acquiesced in by the elected committee. Those persons were readmitted only after the Full Bench decision of this Court. A large number of members were admitted in bulk to tilt the balance of voting pattern by the interim Administrator and, therefore, on the facts of this case also, admission and readmission of those members by the Administrator was clearly illegal and motivated. The petitioners had approached this Court at the earliest opportunity and there is no reason for rejecting the petitions or not applying the law as lay down by the Supreme Court.

In the result, Exts. P4, P5 and P10 are set aside. Election proceedings challenged in these original petitions and the election conducted on 10.3.2001 with the voters list including the names of the members enrolled by the Administrator are set aside. The Society should be governed by an elected body and, therefore, the Administrator is directed to conduct the election as expeditiously as possible. The proceedings of election should be completed with the voters list excluding the members admitted by the Administrator and the election should be completed within three months from today. The Original Petitions are allowed.