
(2002) 03 KL CK 0063

In the High Court Of Kerala

Case No : OP 165 of 2002 confirmed in WA 1297 of 2002

President, Kolkalam Service

APPELLANT

Vs

Meenakshikutty V.M

RESPONDENT

Date of Decision : 25-03-2002

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 176, 198

Citation : (2002) 2 KLJ 576

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : P. Ravindran, for the Appellant; T.R. Ramachandran Nair, V.G. Arun and T.R. Harikumar, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Justice Kurian Joseph

1. The grievance of the petitioner, the President of a Co-operative Society registered under the Kerala Co-operative Societies Act, ft? against Ext.P4 order passed by the second respondent. By the said order the second respondent held that it was open to him to exercise his powers under Rule 176 of the Kerala Cooperative Societies Rules in the matter of disciplinary action taken against the first respondent and therefore, decided to consider the petition fixed by the first respondent under Rule 176 of the Kerala Co-operative Societies Rules on merits. The petitioner has also made a prayer for a declaration that Rule 176 cannot be invoked to rescind the decision of the Sub Committee under Rule 198 and the decision of the appellate authority under Rule 198 (4) of the Kerala Co-operative Societies Rules. Yet another contention is that there cannot be a composit petition to rescind three resolutions. Shri. P. Ravindran, learned counsel for the petitioner vehemently contends for the position that once the statute provides for a mode of disciplinary action providing also for an appeal before the appellate authority further interference by the Registrar under Rule 176 is not contemplated under the statute. In other words, after the statutory appeal Rule

176 cannot be invoked in disciplinary proceedings. It is necessary to extract Rule 176 in order to understand the scope of the arguments:

176. Registrar's power to rescind resolution:- Notwithstanding anything contained in the bye-laws of a registered society, it shall be competent for a Registrar to rescind any resolution of any meeting of any society or the committee of any society, if it appears to him that such resolution is ultra vires of the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department or calculated to disturb the peaceful and orderly working of the society or is contrary too the better interest of the society.

Regarding the scope of Rule 176 of the Kerala Co-operative Societies Rules in disciplinary proceedings I do not think the matter is any more res integra. A catena of decisions have dealt with the issue. In *RS. Co.op. Society v. Rugmini Amma*, 1996 1 KLT 100 a Division Bench of this court held as follows:-

There is nothing in Rule 176 to suggest that power under the Rule cannot be invoked if resolution relates to disciplinary actions against any employee. Nor is there any need to read such a rider into the rule. Even if the decision relates to disciplinary sphere of its employees the Registrar can nevertheless invoke powers under Rule 176 provided the resolution offends any provision of law or is against any direction issued by the department or is contrary to society's interest.

In *Chithambaran v. Registrar of Co-op. Societies*, 1996 2 KLT 66 another Division Bench relying on the above mentioned decision held that "R. 176 shows that if the resolution passed by the registered society is violative of any of the provisions of the Act or Rules, the Registrar has got the power to rescind that resolution". Referring to the specific contention regarding the lack of scope after appellate remedy under Rule 198, it was held as follows at paragraph 5:

5. The learned Government pleader submitted that in the matter of disciplinary proceedings, the employees have been given the right of appeal under R. 198 and as specific provisions have been made in the rule itself, the employees shall not be allowed to invoke the general powers of the Registrar contained in R. 176, Normally, the power of the Registrar under R. 176 should be invoked to tone up the administration of Co-operative Societies and if there is any serious infraction of any act or rules, the Registrar is given authority to intervene and correct such mistakes. This is a general power given to the Registrar for a smooth and effective functioning of the Co-operative Societies. In the matter of disciplinary proceedings, if the employees have got right of appeal, the proper remedy of the employee is to file appeal against such orders. It is quite possible that even in the disciplinary proceedings, there may be violation of certain rules. But when the employees have got a right of appeal it is for them to challenge the order before the appellate authority and they can contend before the appellate authority that there was violation of the rules.

It is significant to note that though the Bench though observed that when once

there is an appeal, even in a situation of infraction of rules by the disciplinary authority the appellate remedy should be invoked, it was not held that the Registrar under Rule 176 cannot thereafter look into the matter in exercise of power under Rule 176. In the case of serious infraction of the provisions of Act or Rules, the general power under R. 176 was still held to be available at any stage. The third Bench decision is one reported in *Christian College Co-op. Society v. Annama John*, 1998 2 KLT 435. In unmistakable terms it was held as follows:-

The contention of the petitioner that the Joint Registrar is incompetent to interfere in disciplinary matters by way of rescinding the resolution of the Board of Directors under R. 176 of the Kerala Co-operative Societies Rules cannot at all be countenanced. The Joint Registrar is competent to interfere in such matters and rescind the resolution by invoking his powers under R.176 of the Co-operative Societies Rules, if it appears to him that such resolution is *ultra vires* of the objects of the society or is against the provisions of the Act, Rules or bye-laws of any direction or instruction issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society.

In *Parappuram Milk Producer's Co-op. Society v. Deputy Director, Dept. of Dairy Development*, 1999 1 KLT 121. which again is another Bench decision the view is that notwithstanding Rule 198 it was open to the Registrar to look into the disciplinary proceedings, in case the resolution is against the provisions of the Act or Rules or the byelaws. At paragraph 4 it was held as follows:-

In a proceeding under R.176, Joint Registrar can certainly examine whether R.198 or any other provisions of the Act or rules or Bye-laws were violated or not, While taking disciplinary action notwithstanding the right of appeal or any other alternative remedy. In fact, it is a statutory duty of the Joint Registrar.

(emphasis supplied)

The supervisory duty referred to by the Bench is the power of the Registrar u/s 65 and 66 of the Kerala Co-operative Societies Act referred to by the Full Bench in *Aji v. State of Kerala*, 1995 1 KLT 363. It is fruitful to refer to certain observations therein:

It is not possible to hold that Registrar's power is limited to the supervision of the financial dealings of the society. Rule 176 clothes the Registrar with the power to rescind any resolution of any meeting of any society or of the committee of any society, if it appears to him that such resolution is *ultra vires* of the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society. Thus the position is abundantly clear that the Registrar is not a mere passive spectator against an erring society. Registrar is vested with adequate power to rescind resolutions whenever situations demand. Contention that Registrar's power is limited only to supervise the

financial dealings of the society is not tenable. Merely on account of the fact that Chapter VIII is captioned with Audit, Inquiry, inspection and Surcharge it would not be possible to hold that S. 66(l) (a) containing specific provision of supervision by the Registrar cannot be given effect to. Title of a chapter cannot be given undue importance to efface the scheme of the Act. When a statute is construed it is really improper to omit any word which has a reasonable and proper place in it or to refrain from giving effect to its meaning.

The recent Division Bench in Trivandrum Co-op. Urban Bank Ltd. v. Jt. Registrar of Co-op. Societies, 2001 1 KLT 99 also took the view that power under Rule 176 can be exercised when a resolution passed by the committee is against the object of the society or the provisions of the Act or Rules, bye-laws or directions or instructions issued by the Department.

2. On the face of those well settled positions, I do not think there is any scope to consider the contention of the petitioner that beyond the statutory remedy of appeal under Rule 198, since there is no specific provision enabling the Registrar under the statute conferring a power to interfere with an appellate order, the Registrar cannot interfere.

3. Yet another contention is that more than one resolution cannot be looked into by the Registrar in one proceedings. As a matter of fact that aspect also is covered against the petitioner by the Full Bench decision referred to above. At paragraph 11 of the judgment it was held that "Registrar is vested with adequate power to rescind resolutions whenever situations demand." "Even otherwise it is a question of only substance and not form, particularly since no form as such is prescribed for invoking Rule 176. In a situation where a resolution of the appellate authority is interfered, necessarily many other resolutions would also have to be looked into for the proper and effective exercise of jurisdiction under Rule 176.

4. Yet another contention of the learned counsel for the petitioner is that the non obstante clause in Rule 176 pertains only to the bye-laws of a society and hence after exhausting the appellate remedy, the Registrar cannot interfere in disciplinary proceedings. I am afraid these contentions also cannot be countenanced. The Rule only says in spite of any restriction or in spite of any provisions in the bye-laws regarding the jurisdiction, it will be open to the Registrar to look into the resolutions of the society or the committee of a society in respect of matters referred to in the Rule. In other words, the Rule only makes clear that the jurisdiction of the Registrar under Rule 176 cannot be circumspect by any provision in the bye-laws. All that apart, it has also to be seen that in Ext.P4 the second respondent has only found that a petition at the instance of the employee under Rule 176 is maintainable. Therefore, it is clear it will be open to the petitioner to contest the matter on merits and convince the Registrar that interference under Rule 176 is not warranted: on merits. I do not find any merit in the original petition. It is accordingly dismissed subject to the above observations.