

(1991) 09 KL CK 0033
In the High Court Of Kerala
Case No : Writ Appeal No. 167 of 1991

P.V. John

APPELLANT

Vs

Nalumakkal Service Co-operative Bank Ltd. and Others

RESPONDENT

Date of Decision : 13-09-1991

Acts Referred:

Citation : (1992) 75 CompCas 254 : (1992) 1 ILR (Ker) 261

Hon'ble Judges : K.S. Paripoornan, J;K.A. Nayar, J

Bench : Division Bench

Advocate : P. Bhavadasan, for the Appellant;

Final Decision : Dismissed

Judgement

K.A. Nayar, J.—This writ appeal is against the judgment in O. P. No. 883 of 1989 by which the learned single judge held that the provision of Rule 67(1) of the Kerala Co operative Societies Rules, 1969, in so far as it requires the production of a certified copy of the resolution of the board of directors of the co-operative society along with the application for reference of the dispute for arbitration is only directory and, therefore, the Tribunal went wrong in dismissing the application on the ground of non-production of a certified copy of the resolution. The appellant who was an attender under the first respondent society was sought to be made liable by the society for misappropriation of certain amounts and hence the first respondent filed A. R. C. No. 100 of 1984 seeking relief against the appellant and respondents Nos. 2 and 3. Along with the application for reference of the dispute to the Joint Registrar, the first respondent society did not produce the certified copy of the resolution adopted by the committee resolving to file the arbitration petition. The appellant contended that, in the absence of a certified copy of the resolution mentioned in Rule 67 of the Co-operative Societies Rules, the arbitrator had no jurisdiction to try the dispute. The arbitrator, in spite of the objection, on the basis of oral and documentary evidence, passed an award dated March 18, 1986, imposing joint and several liability on the appellant and respondents Nos. 2 and 3. Aggrieved by the award,

the appellant, along with respondents Nos. 2 and 3, filed R. P. 6 of 1987 before the Cooperative Tribunal, the fourth respondent. The Tribunal found that the failure to produce the certified copy of the resolution as required by Rule 67 of the Co-operative Societies Rules is fatal to the arbitration case and, therefore, the Tribunal set aside the award of the arbitrator dated November 1, 1988. In view of this, the Tribunal did not examine the merits of the case. The society filed O. P. No. 883 of 1989 challenging the appellate order of the Tribunal which was allowed by judgment dated November 8, 1990. It is against the said judgment that this writ appeal has been filed.

2. The contention raised on behalf of the appellant before us is that non-production of the copy of the resolution of the committee of the society is fatal to the maintainability of the claim. It is in evidence that the arbitrator who perused the records has made a mention in the award that he came across a resolution passed by the board to file a suit against the respondents. Thus, the resolution was there before the arbitrator, though a certified copy of the resolution was not produced along with the application filed u/s 69 of the Act. The rule, of course, says that the application shall be accompanied by a list of relevant records on which the dispute is based and a receipted challan evidencing payment of the fees fixed for deciding the dispute. The rule further provides that "in the case of an application filed for and/or on behalf of a society, a certified copy of the resolution adopted by the committee resolving to file the application, shall also be filed". Because the word "shall" has been used in the rule, it is contended that the rule requiring the production of a certified copy of the resolution is a mandatory provision. After referring to the Supreme Court decisions in *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, *State of U.P. Vs. Manbodhan Lal Srivastava*, and *Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others*, the learned single judge held that the use of the word "shall" or "may" is not conclusive on the question whether a particular requirement of law is mandatory or directory. It will depend upon the provisions of a particular Act, the setting in which the expression appears, the object for which the direction is given, the consequences that would flow from the infringement of the direction, etc. Reference was made to the decision in *Khub Chand and Others Vs. State of Rajasthan and Others*, and *Haridwar Singh Vs. Bagun Sumbrui and Others*. The learned single judge observed that the requirement of production of the document was intended only to ensure that no individual officer of the society files any such application for and on behalf of the society without obtaining sanction. It is only a safeguard against filing an arbitration application on behalf of the society without adverting to the relevant facts. If there is a dispute as to whether the committee has passed a resolution, it is open to the Registrar to require the parties or the society to produce a certified copy of the resolution. On a careful consideration of the rule and especially the circumstances that no provision is made in the rule relating to consequence for non-production of a certified copy of the resolution, the learned single judge came to the conclusion that the provision relating to

production of a certified copy of the resolution authorising the society to file an application u/s 69 of the Act is only a directory provision. Hence, it was held that the Tribunal went wrong in not examining the revision petition. The arbitrator was satisfied that there was a resolution and, in that view of the matter, the learned single judge directed disposal of the revision petition, in so far as it concerned the appellant, afresh on merits.

3. In *S. Surjit Singh Kalra v. Union of India* [1991] 1 JT 417, the Supreme Court held that a purposive interpretation has to be given to the words occurring in the section and a wooden interpretation should be avoided. Interpretation must be contextual to advance the purpose of the Act and the rule and should not be rigid. In *Smt. Pushpa Devi and others Vs. Milkhi Ram (Dead) by his L.Rs.*, the Supreme Court held that (page 141) :

"Great artistry on the Bench as elsewhere is, therefore, needed before we accept, reject or modify any theory or principle. Law as creative response should be so interpreted to meet the different fact situations coming before the court. For, Acts of Parliament were not drafted with divine prescience and perfect clarity. It is not possible for the Legislators to foresee the manifold sets of facts and controversies which may arise while giving effect to a particular provision. Indeed, the Legislators do not deal with the specific controversies. When conflicting interests arise or defect appears from the language of the statute, the court by consideration of the legislative intent must supplement the written word with "force and life". See the observations of Lord Denning in *Seaford Court Estate Ltd. v. Asher* [1949] 2 KB 481."

4. Counsel, on behalf of the petitioner, referred to a decision in *M.N. Gopalakrishna Panicker v. State of Kerala* 1991 1 KLJ 75 :[1990] 2 KLT 495, to show that the word "shall" in the rule should be interpreted as mandatory. In that case, the learned single judge was considering the question of the validity of an election petition. The proper fee payable under Rule 67(7)(a) II(ii) was not paid by the applicant. The application also was not affixed with a court fee stamp of Rs. 2. The election petition, therefore, did not conform to the requirement of Rule 67(7)(a)II (ii) and the note appended thereto. In that context the learned single judge observed [1990] 2 KLT 500 :

"It has been the settled law that formalities relating to election petitions have to be complied with strictly, and that any deviation therefrom will prove fatal to the very maintainability of the petition itself. This is because the right to challenge an election is not a common law right, but a special right which has to be specifically conferred by statute and, therefore, the terms of the statute conferring the right have to be complied with before the petition can be maintained and entertained. See *Charan Lal Sahu Vs. Nandkishore Bhatt and Others*, . Public interest requires an expeditious culmination of the election process (*Satya Narain Vs. Dhuja Ram and Others*, . Rule 154(3) provides only for a short period of thirty days for the filing of an election petition regarding the State Union. Expeditious finality to the election process is thus sought to be achieved by the fixation of such a short

period of time for raising the dispute. The delay, if any, in the disposal of an election petition should be minimal, once it is filed. It is an equally important facet of the election law that frivolous challenges to elections are discouraged and discountenanced. The process by which the verdict of the electorate has been given is a sacrosanct one, liable to be honoured and not lightly to be set at naught."

5. It is in the light of the object, scheme and the provision of Rule 154 that the learned judge held that the condition prescribed in Rule 67(7) is mandatory.

6. The arbitration in the present case was concerned with whether the petitioner is liable to make good the deficit of Rs. 83,293.87 found out in the audit report and whether the appellant could be fastened with liability. It is to realise the said amount that the arbitration petition was filed by the society and the society resolved to file the arbitration petition. The entire resolution was there before the arbitrator. In such a case, the mere fact that a certified copy of the resolution was not produced will not vitiate the arbitration proceedings.

7. Section 69 of the Co-operative Societies Act, among others, states that, if a dispute arises between the society and a surety of a member, past member, deceased member, or employee or a person other than a member who has been granted a loan by the society, whether such a society is or is not a member of the society, or between the society and a creditor of the society, such dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. Though the section says that the dispute shall be referred, there is no duty to refer without an application. Rule 67 of the Co-operative Societies Rules provides for the procedure to be complied with. We are concerned in this case with Rule 67(1) which reads as under :

"(1) The reference of any dispute to the Registrar u/s 69 of the Act shall be in writing. The application shall be accompanied by a list of relevant records on which the dispute is based and a receipted challan to evidence payment of the fees fixed under Clause (a) of Sub-rule (7) for deciding the dispute. In the case of an application filed for and on behalf of a society a certified copy of the resolution adopted by the committee, resolving to file the application, shall also be filed. Sufficient copies of the application for service on the defendant or defendants shall also be filed. Whenever necessary, the Registrar may require the party referring the dispute to him to produce a certified copy of the records on which the dispute is based and such other statements or records as may be required by him before proceeding with the consideration of such reference."

8. There is no dispute that Sub-rule (7) has not been complied with in this case. The only case is that the application is filed for and on behalf of the society and, therefore, a certified copy of the resolution ought to have been produced. The wording is "in the case of an application filed for and on behalf of the society, a certified copy of the resolution adopted by the committee resolving to file the

application shall also be filed." Since the word "shall" has been used, it is urged that it is a mandatory provision the non-compliance of which will vitiate the entire proceedings." In *Rubber House Vs. Excelsior Needle Industries Pvt. Ltd.*, , the Supreme Court held that even though the word "shall" in its ordinary import is obligatory, whether the word has to be interpreted as mandatory will depend upon the purpose which the Legislature intended to achieve as disclosed by the object, design, purpose and scope of the statute. In that case, the Supreme Court had to interpret the word "shall" occurring in Rule 4(c) of the Haryana Urban (Control of Rent and Eviction) Rules, 1976, which said that the application for eviction should contain "the amount of arrears due and the period of default". In so far as the amount of arrears has not been mentioned in the application, it was contended that the non-compliance with the rule would amount to violation of the mandatory provision and, therefore, the application for ejectment had to be thrown out. After examining the principle of interpretation, the Supreme Court held that Rules 4(c), 5(1) and 6 are not mandatory but only directory. The principle followed by the Supreme Court is quoted in para 31 as under (at page 1166) :

"The word "shall" in its ordinary import is obligatory. Nevertheless, the word "shall" need not be given that connotation in each and every case and the provisions can be interpreted as directory instead of mandatory depending upon the purpose which the Legislature intended to achieve as disclosed by the object, design, purpose and scope of the statute. While interpreting the concerned provisions, regard must be had to the context, subject-matter and object of the statute in question."

9. Thus, it will be seen that the use of the word "shall" in the rule by itself is not a decisive factor to come to the conclusion that the requirement is mandatory, non-compliance with which will result in invalidity. The consequence of non-compliance has not been provided in the rule and, therefore, the matter had to be decided, according to the principles aforesaid, by the court. In *Owners and Parties Interested in "M. V. Vali Pero" v. Fernando Lopez* [1990] L W 520, the Supreme Court had to interpret a rule which provided that the deposition of a witness shall be signed by the witness where the question was whether the deposition which was not signed is invalid. The word used was "shall" and the Supreme Court construed the same as directory and not as a mandatory provision. Therefore, the question is what is the purpose of Rule 67(1) providing for the production of a certified copy of the resolution "when an application for reference u/s 69 read with Rule 67 is filed by a co-operative society ? The purpose as will be seen from the object is only to see that the society is not dragged into unnecessary legal proceedings. If the society has taken a decision and the arbitrator was satisfied after going through the file that the decision has been taken by the society, it is immaterial whether a certified copy has been filed or not. Rule 4 of Chapter 22C of the Calcutta High Court Rules, 1940, providing that the deposition to be read over, signed, etc., reads as follows (p. 524) :

"After the deposition of any witness shall have been taken down and before it is signed by him, it shall be distinctly read over, and where necessary, translated to the witnesses in order that mistakes or omissions may be rectified. The deposition shall be signed by the witness and left with the Commissioner who shall subscribe his name and date of the examination."

10. The question was whether the omission of the signature of the witness renders the deposition incomplete. The Supreme Court held that (at page 525) :

"Rules of procedure are not by themselves an end but the means to achieve the ends of justice. Rules of procedure are tools forged to achieve justice and are not hurdles to obstruct the pathway to justice. Construction of a rule of procedure which promotes justice and prevents its miscarriage by enabling the court to do justice in myriad situations, all of which cannot be envisaged, acting within the limits of the permissible construction must be preferred to that which is rigid and negatives the cause of justice. The reason is obvious. Procedure is meant to subserve and not rule the cause of justice."

11. The Supreme Court also noted the fact that the consequence of failure to comply with the requirement of Rule 4 was not provided by the statute itself and, thereafter, held that (at page 526) :

"If the word 'shall' used in this expression is construed as mandatory, non-compliance with which nullifies the deposition, drastic consequence of miscarriage of justice would ensue even where omission of the witness' signature is by inadvertence and correctness of the deposition as well as its authenticity is undisputed. On the other hand, if the word 'shall' used in this expression is treated as directory, the court will have power to prevent miscarriage of justice where the omission does not cause any prejudice and the defect is only technical. The object of the provision being merely to obtain acceptance of the witness to the correctness of the deposition, that object would be advanced by taking this view and thereby empowering the court to avoid the drastic consequence of nullifying the deposition where the correctness and authenticity is undisputed. In a case where the correctness and authenticity is undisputed, it would be permissible for the court to examine the effect of omission of the witness signature and to reject the deposition only if it does not accept the correctness and authenticity thereof on the available material."

12. The Supreme Court thus interpreted the word "shall" occurring in the expression "deposition shall be signed by the witness" in Rule 4 as directory and the mere omission will not render the deposition invalid and incapable of being read as evidence.

13. We hold that the requirement of production of a certified copy is only a procedural formality to ascertain whether the arbitration petition is a frivolous one or whether it is legally authorised by the society. We further hold that the learned single judge rightly came to the conclusion that the provision relating to the production of a certified copy of the resolution is only directory and non-

production of the same will not vitiate the arbitration proceedings. We find no ground to admit this writ appeal. The Tribunal is, therefore, directed to take on file R. P. No. 6 of 1987 in so far as it concerns the appellant and dispose of the same on merit.

14. The writ appeal is, therefore, dismissed.