

(1994) 03 KL CK 0035

In the High Court Of Kerala

Case No : O.P. No. 3544 of 1994-V

R. Thulaseedharan and Another

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-03-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1995 Ker 202

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : M.K. Damodaran, for the Appellant; D. Somasundaram, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—The General Manager, District Industries Centre, Thiruvananthapuram (the Respondent No. 2) in his capacity as Arbitrator exercising the powers u/s 69 of the Kerala Co-operative Societies Act decided the dispute in regard to the election to the Managing Committee of the Kalamachal Handloom Weavers Co-operative Society, (the Respondent No. 4). By his award dated 30-1-1993, he set aside the election to the Managing Committee of the aforesaid Society. Since the Committee in office ceased to exist, the Registrar of Cooperative Societies by order No. CS9/1001/ 93 dated 5-2-1993 (Ext. P2) appointed G. Chandrasekharan Pillai, the Respondent No. 3, as the Administrator for a period of six months. The term of six months has since been extended up to 5-8-1994. The order purports to have been made u/s 32 of the Kerala Co-operative Societies Act (hereinafter referred to as "the Act"). According to the Petitioners, the Order No. CS9/1001/93 dated 5-2-1993 (Ext. P2) appointing the Administrator and the subsequent orders extending the terms of office of the Administrator are in reality orders appointing Administrator u/s 33 of the Act. Section 33 of the Act enables appointment of Administrator for a period of six months which may be extended up to a maximum period of one year. The

extension of the term of the Administrator, beyond one year which expired on 5-2-1994 is beyond the authority granted by Section 33 of the Act. The petitioners impugn the continued appointment of the Administrator.

2. The first question is whether, as urged by the learned Government Pleader, the Order dated 5-2-1993 (Ext. P2) and the orders extending the term of office of the Administrator are made u/s 32 of the Act. In order to attract Section 32 of the Act, the circumstances set out in Sub-section (1) of Section 32 must exist. One or more of the following facts must exist before the action under Sub-section (1) of Section 32 can be resorted to:

(a) Persistent default or neglect by the Committee in the performance of the duties imposed by the Act, Rules or the bye-laws.

(b) Commission by the Committee of any act which is prejudicial to the interests of the Society.

(c) Wilful disobedience or failure to comply with any lawful order or direction issued under the Act or the Rules.

It is of the essence of Sub-section (1) of Section 32 that the Society is guilty of one or more of the acts mentioned therein. The supersession of the Committee and the appointment of the Administrator under subsection (1) of Section 32 is a result which may follow only upon commission of the acts of misconduct by the Committee. Where there is a vacuum in the administration as a result of the Committee ceasing to exist, Section 32 has no application. In other words, the power u/s 32 does not come into play where there is a deadlock or vacuum arising out of situations unrelated to the conduct of the members of the Committee.

3. There may be situations where the Committee ceases to exist in circumstances which may be characterised as innocent. These circumstances have been enumerated in Sub-section (1) of Section 33 of the Act which also empowers the Registrar to appoint an Administrator. The expiry of the term of a Committee and the omission to constitute a new one, the Committee losing confidence of the members or resignation by the members of the Committee, are some of the circumstances which create vacuum and call for appointment of Administrator u/s 33 of the Act. These circumstances are not exhaustive. Vacancies may occur in the Committee either by resignation or as in this case, "otherwise". The word "otherwise" following the various situations creating a vacuum in administration used in Sub-section (1) of Section 33 is all embracing and includes a situation in which the election to the Committee is set aside.

In this case, the Committee ceased to exist not because of the acts of the Committee set out in Sub-section (1) of Section 32 but because the members of the Committee ceased to be such members. Thus vacancies occurred "otherwise" and quorum for meetings become Impossible. The impugned order refers to Section 32 of the Act as the source of authority. The use of the words "under

Section 32 of the KCS Act, 1969" is only a label. The applicability of the appropriate section is determined not by reference to the number of the Section of the Act but by the facts which attract application of the relevant section. In my opinion, the impugned order is an order u/s 33 and not u/s 32 of the Act.

4. The petitioners are right in their submissions that Section 33 does not empowers the Registrar to appoint an Administrator beyond the period of one year. Sub-clause (ii) of Clause (b) of Sub-section (1) of Section 33 uses the words "for a period not exceeding six months as may be specified in the order". The Registrar is empowered to extend the term of the Administrator but such extension "shall not in any case, exceed one year". In this case, the period of one year expired on 5-2-1994. In contrast, Section 32 empowers the Registrar to extend the term of the Administrator for a period "does not exceed two years". Therefore, the extension of the term of the Administrator beyond 5-2-1994 is clearly without jurisdiction. The Registrar whose authority is limited to extend the term of the Administrator up to 5-2-1994 has exceeded the legislative authority granted to him. The extension of the term of the Administrator beyond 5-2-1994 is ultra vires of the Registrar's authority and therefore absolutely void.

5. The Kerala Co-operative Societies (Amendment) Ordinance 1993 (Ordinance No. 6 of 1993) has introduced an amendment to Section 33 of the Act. The amendment introduced Sub-section (1A). By virtue of this amendment it is now permissible to appoint an Administrator or Administrators for a further period of one year. The introduction of Sub-section (1 A) in Section 33 means that without the amendment, the Registrar did not possess the authority to extend the term of the Administrator beyond one year. The amendment does not assist the respondents.

6. The Kerala Co-operative Societies (Amendment) Ordinance 1993 has twelve sections. Sub-section (2) of Section 1 enacts that Sections 3 and 4 shall be deemed to have come into force on the 6th day of February 1993. Sub-section (1A) was introduced in Section 33 of the Act by Section 4 of the amendment. Section 4 of the amendment came into force on 6-2-1993. This means that the Government's power to permit the Registrar to extend the term of the Committee of the Administrator or Administrators "for a further period but not exceeding one year" was created with effect from 6-2-1993. On and after 6-2-1993 if the Government has permitted the Registrar to extend the term of the Administrator for a further term of one year, the Registrar would be within his authority in extending the term of the Administrator under Sub-section (1A) of Section 33 of the Act. However, no such permission by the Government or the notification under Sub-section (1A) of Section 33 of the Act has been brought to my notice.

7. The exercise of the jurisdiction under Article 226 of the Constitution of India is discretionary. Every illegal order or act of the public authority need not be quashed. Nor, should the power possessed by the court be exercised in every case. The court has to consider whether it is just to interfere in exercise of this

extraordinary jurisdiction. No doubt, the Registrar in making the impugned orders has acted without authority. Ordinarily, this court should not countenance excess of jurisdiction by public authorities. While the unauthorised act is one form of evil which this court ought to strike down, it should also be considered whether interference by this court by striking down the impugned order, is likely to cause failure of administration, or to serve the cause of disorder. The remedy should not be worse than the disease.

8. If, in the circumstances of this case, the Administrator is removed, there will be a Cooperative Society without a Committee or an Administrator to carry on the affairs of the Society. On the one hand this court is called upon to tolerate the ultra vires act of the Registrar. On the other hand, striking down the ultra vires act, is likely to aid the cause of chaos and disorder.

Faced with similar situation, this court in *Koya v. State of Kerala* (1992) 2 KLT 194 held that an illegal order need not be quashed if the court's action would result in the restoration or revival of another illegal order. I do not see why the same principle should not be extended to a case where the court's action is likely to serve the cause of administrative failure or disorder. In this case, quashing the Registrar's order would result in disorder and failure of administration. This is not desirable consequence. The interest of justice will not be served by quashing the impugned order.

9. For all these reasons, the original petition is dismissed.