
(2007) 11 KL CK 0018

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33831 of 2007

Sadasivan, K.G

APPELLANT

Vs

Joint Registrar and Others

RESPONDENT

Date of Decision : 16-11-2007

Acts Referred:

Citation : (2007) 11 KL CK 0018

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : George Poonthottam, for the Appellant; A.G. Aneetha, Spl. Govt. Pleader, for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Petitioner is the President of a co-operative bank. He challenges Ext. P-7, whereby, proceedings have been initiated for inspection in terms of Section 66(2) of the Kerala Co-operative Societies Act, 1969, hereinafter, the "Act", for short, touching matters which are enumerated therein.

2. Ext. P-7 shows that one P.M. Joseph, a member of the society, made a complaint to the Joint Registrar exercising powers of the Registrar of Co-operative Societies. Reports were called for from the Assistant Registrar and on the basis of such materials, an inspection is ordered.

3. It is argued on behalf of the Petitioner that the whole exercise is politically motivated and is wholly without any basis. Secondly, it is argued that having regard to the provisions u/s 65, it is impermissible to have an inspection u/s 66(2) at this point of time. It is also urged that on the basis of a complaint of a member, there could be no enquiry u/s 66(2), because, that provision provides only for proceedings on the application of a creditor of a society or the Registrar acting on his own motion.

4. On facts, it is attempted to be pointed out that one of the crucial issues in question is as to whether maintenance of a building was done with the prior

permission and though it were there, the sanctioned limit is exceeded. It is also pointed out that audit has already been completed in relation to the relevant period and therefore, the inspection is baseless.

5. The plea of political motive does not deserves to be gone into since no specific issue of mala fides has been pleaded to hold that the Joint Registrar of Co-operative Societies, who is a statutory functionary, has acted mala fide, under political influence. But, I may hasten to add that I am not concluding that issue once for all.

6. On to the question of jurisdiction, when the Joint Registrar or Registrar of Co-operative Societies has the power to act on his own motion, i.e., suo motu, it is not within the province of judicial review to search for the source of the material which triggered a suo motu action. The plethora of instances which have been considered by this Court would show that material information may reach the Registrar of Co-operative Societies or the Joint Registrar, including from non-traceable sources. If a member of a society makes a complaint and if by that complaint, the Registrar is notified of certain fact situation which triggers action u/s 66(2), that procedure is only one which could be treated as suo motu, the Registrar or Joint Registrar acting on his own motion. The provision that such an inspection u/s 66(2) can be commenced on an application of a creditor of a society does not place any embargo on the power of the Joint Registrar or Registrar to act as aforesaid.

7. Now, in so far as the contention of the Petitioner that audit in relation to the period in question is already over and the expenditure was one that is not only authorised but was below the sanctioned limit is concerned, they are factual matters which may be placed during the course of inspection, to satisfy the authority that no further steps are required following the inspection. On the whole, it is inappropriate to exclude any inspection u/s 66(2) on the mere ground that an audit is over. This is more so, because, the imposition of Section 65 as envisaged in that provision intends always to be the same as that could follow proceedings u/s 66, which provision is primarily intended as a rectification procedure rather than a procedure to end up in action u/s 32 or otherwise, unless of course the society and the office bearers do not carry out the directions issued by the Registrar of Co-operative Societies, after inspection u/s 66(2).

In the aforesaid circumstances, I do not find any jurisdictional error or legal infirmity in the impugned action. Hence, while dismissing this writ petition, it is clarified that no action shall be taken against the committee of the society without prior notice of hearing and without following appropriate procedure in accordance with the relevant rules.