

**(2013) 03 KL CK 0118**

**In the High Court Of Kerala**

**Case No : Writ Petition (C) . No. 18016 of 2012 (B)**

Siddhikul Akbar and Others

APPELLANT

Vs

Smt. Nirmala. P.K. and Others

RESPONDENT

**Date of Decision : 23-03-2013**

**Acts Referred:**

Kerala Co-operative Societies Act, 1969 — Section 32, 32(1), 32(1)(b), 32(2), 66(1)

**Citation : (2013) 03 KL CK 0118**

**Hon'ble Judges : A.M. Shaffique, J**

**Bench : Single Bench**

**Advocate :** K. Ramakumar, Sri. M. Paul Varghese, Sri. S.M. Prasanth and Smt. Smitha George, for the Appellant; V.G. Arun, for R3, R4 and Addl. 6, Sri. T.R. Harikumar Advocate for R3, R4 and Addl. 6, Government Pleader for R1 and Sri. P.P. Jacob, for R5, for the Respondent

## **Judgement**

A.M. Shaffique, J.—The writ petition is filed by the elected members of Kuttulanji Service Co-operative Bank Limited, challenging Ext. P14 order passed by the Joint Registrar, Co-operative Societies superseding the Managing Committee, in exercise of the power vested in it under S. 32 of the Kerala Co-operative Societies Act (hereinafter referred to as the Act). The factual circumstances involved in the case would disclose that the 4th respondent Society was elected in June, 2008. The term of office of the Board of Directors was to expire only by June 2013. Alleging that certain irregular appointments were being made, the Assistant Registrar issued instructions to the Board of Directors not to effect the appointments. It is alleged that despite serving the said order, the candidates who were selected were appointed by the Board of Directors. This action of the Board of Directors was taken as an act in violation of the directions issued by the Department. Hence the Joint Registrar issued Ext. P6 show cause notice dated 25.5.2012 to the Board of Directors under S. 32 of the Co-operative Societies Act.

2. Petitioners challenged the said notice by filing W.P.(C) No. 12395/2012. The writ petition was disposed of directing the petitioners to submit an explanation to

the show cause notice and the first respondent was directed to consider the matter. Ext. P9 explanation was submitted on 6.6.2012. But the Joint Registrar again passed Ext. P11 order superseding the Society, without considering the objection. Petitioners filed W.P.(C) No. 13386/2012 and by Ext. P11 judgment, Ext. 10 order was set aside and the first respondent was directed to consider the matter afresh, which resulted in Ext. P14 order.

3. The petitioners have raised three specific contentions challenging Ext. P14 order. One is that there is no wilful disobedience or failure on the part of the Board of directors in complying with any lawful order or direction issued by the authorities under the Act, as provided under S. 32(1)(b) of the Act to invoke S. 32. Second is non-compliance of section 32(2) of the Act. The third contention is that the first respondent's action was actuated by bias in so far as the first respondent had already taken a decision that the action of the petitioners warranted supersession u/s 32 of the Act, and the same officer had passed the impugned order. On these main allegations the contention urged is that the petitioners being members of the elected body cannot be superseded on raising flimsy grounds and at any rate gross illegality has been committed by the first respondent in invoking S. 32 of the Act, and hence the same is liable to be set aside.

4. Counter affidavit is filed by 1st and 5th respondents. First respondent is the Joint Registrar who passed Ext. P14 order. The 5th respondent is one of the members of the Board of Directors.

5. The first respondent inter alia contended that she is personally made a party to the proceeding and she is not impleaded in her official capacity. Further it is contended that the writ petition is not maintainable as the petitioner has an alternate remedy by of an appeal u/s 83(j) of the Act. In relation to the allegations made in the writ petition, it is contended that the Board of Directors of the Society had committed wilful default by not complying with a valid order issued by the Assistant Registrar not to make appointments in the Society. The order was well within the knowledge of the Board of Directors of the Society as it was served in time. But overlooking the said direction, they have proceeded to make the appointments. This is treated as a clear case of wilful disobedience for which the authorities have rightly passed Ext. P14 order. The 5th respondent is one of the committee members of the 4th respondent Society. It is contended by him that though a meeting was scheduled and held on 18.4.2012, 9.5.2012 and 11.5.2012, there was no notice issued to him and he was not informed about the interview as well. According to him, the appointment of the newly selected candidate was not in order. He supported the view taken by the Joint Registrar in the matter.

6. The learned Government Pleader supporting the stand taken by the Joint Registrar relied upon the following judgments:

(i) Joint Registrar, Jt. Registrar of Co-operative Societies Madras and Others Vs.

P.S. Rajagopal Naidu and Others, is relied upon to contend that the High Court cannot re-appraise and re-examine the relevant facts and circumstances which led to the making of the order of super-session.

(ii) Kurian v. Joint Registrar (1990 (1) KLT 618) is relied upon for the proposition that the Registrar can exercise the power u/s 66(1) of the Co-operative Societies Act to cancel appointment to the Society. The argument is that if such an order is passed, the Society is under obligation to comply with such orders.

(iii) State of Kerala Vs. Sudarsanan, N. and Others is relied upon to contend for the position that it is not necessary for the Joint Registrar to give detailed reasons. It depends upon the facts and circumstances of each case. If the Joint Registrar had considered the allegations against the committee and the reply submitted by them and the grounds mentioned are clearly proved, then the circumstances would exist for superseding the committee.

(v) Rev. Rev. Dr. George Njarakunnel Vs. State of Kerala, is relied upon to highlight the scope of interference by this court in exercising the power of judicial review in administrative actions.

7. On a conjoint consideration of the above judgments along with the factual circumstances, I am of the view that when an order of supersession is passed u/s 32 what is to be looked into is whether there is any illegality or arbitrariness in the action taken by the authority concerned. If it is purely a question of factual consideration of the matter and there is no illegality in passing the impugned order u/s 32, this Court may not interfere in the matter exercising the power of judicial review. However if it is a case where there is a patent illegality, or non compliance of statutory requirements, which goes to the root of the matter, definitely this court will have to interfere and set right the wrong done. Whether the factual situation in the above case leads to the such a conclusion is the question to be considered in this writ petition.

8. Heard the learned Senior Counsel Sri. K. Ramkumar appearing on behalf of the petitioners, the Special Government Pleader, Sri. D. Somasundaram, Sri. P.P. Jacob and Sri. V.G. Arun appearing for respondents 5 and 6 respectively.

9. The Joint Registrar who passed the impugned order is personally made a party. This apparently is based on the allegation of bias. When there is substantial representation for the department, I am of the view that the 1st respondent is competent to represent the authority who had passed Ext. P14 order.

10. In regard to the question relating to availability of alternate remedy, this Court's jurisdiction to interfere with the affairs relating to a Co-operative Society is well-settled in a Full Bench judgment of this Court in John Vs. Liquidator, wherein this court has held that if there is a statutory violation, this Court will be justified in interfering with the matter in a writ petition despite the existence of an alternate remedy.

11. Therefore, the question to be considered whether the impugned order is passed in violation of any of the provisions of the Co-operative Societies Act or the Rules framed thereunder or is it in any way actuated by bias as contended by the petitioner which would invalidate the entire proceedings.

Sections 32(1), (2) and (3) of the Act reads as under:

32. Supersession of Committee-(1) If the Registrar, after an inquiry by himself or through his subordinates or on a report of the financing bank, or the Vigilance and Anticorruption Bureau of the Government or the Vigilance Officer or otherwise is satisfied that the Committee of any society -

(a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or bye-laws or does anything which is prejudicial to the interests of the society; or

(b) wilfully disobeys or fails to comply with any lawful order or direction issued under this Act or the rules; or

(c) makes any payment contrary to this Act or the rules or the bye-laws or causes any loss or damage to the assets of the society by breach of trust or wilful negligence; or

(d) misappropriates or destroys or tampers with the records or causes the destruction of records to cover up any misconduct or malpractice, he may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee and, appoint a new committee consisting of not more than three members of the society in its place or, appoint not more than three administrators, who need not be members of the society, to manage the affairs of the society for a period not exceeding six months, as may be specified in the order, which period may, at the discretion of the Registrar, be extended from time to time, so however that the aggregate period does not exceed one year.

(2) The Registrar shall consult the financing bank and Circle Co-operative Union or State Cooperative Union as the case may be before passing an order under sub-section (1)

(3) Notwithstanding anything contained in subsection (1) or sub-section (2) it shall not be necessary to give an opportunity to the committee to state its objections and to consult the Unions and financing banks, in cases where the Registrar is of the opinion that it is not reasonably practicable to do so, subject however to the condition that in such cases the period of supersession shall generally be for six months and in case a new committee, cannot be constituted or enter upon office in accordance with the bye-laws of the society within the period of supersession the period may be extended for a further period not exceeding six months-

(a) in the case of a co-operative society only after consulting the Circle Co-

operative Union concerned; and

(b) in the case of an Apex Society or a Central Society only after consulting the State Cooperative Union.

Going by Section 32(2) it is clear that the registrar has to consult the Financing Bank and Circle Cooperative Union or the State Cooperative Union as the case may be before passing an order under sub-section (1) of section 32. It is clear from subsection (3) that unless it was not reasonably practicable to make such a consultation with the Financing Bank and the Unions, the provision is mandatory. The learned counsel for petitioner relied upon the judgment of the Supreme court in Andhra Bank Vs. Andhra Bank Officers and Another, , wherein the Supreme Court was considering the question as to what was the meaning of the word consultation in the light of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980. It is held that the consultation should be meaningful. It must mean conscious and effective consultation but the same would apply where consultation is necessary. On a reading of the impugned order, no reason is stated to dispense with consultation as provided u/s 32(2) of the Act. Despite the petitioner having taken such a specific contention, no mention is made in the counter affidavit regarding the reason for not adopting the procedure prescribed under S. 32(2) of the Act. The learned Government Pleader however, tried to convince this Court that the Financing Bank is also under the Administrator and therefore there was no reason for a consultation as the officer is the same as the Joint Registrar herself who was appointed as the Administrator for that institution as well. It might be true that the officer would be the same. But the fact remains that when a statute prescribes a method of consultation before proceeding u/s 32(1) of the Act, it is all the more necessary that the consultation has to be made despite the fact that the officer is the same and it should be borne out from the impugned order. The explanation offered by the learned Government Pleader is not reflected in the impugned order or in the counter affidavit. No reason is stated in the impugned order that it not reasonably practicable to issue such a notice. That being the situation, I am of the view that Ext. P14 order is liable to be set aside on that ground itself.

12. In regard to the allegation of bias, the factual situation relied upon by the petitioner is that the first respondent had entertained an ill will against the Board and wanted to supersede the Board of Directors some or how which is evident from the counter affidavit which she had filed in the earlier writ petition. It is also contended that when the order to stay all further proceedings relating to the appointments was not served on the petitioners, an attempt was made to falsify the official records by pre-dating the order which also shows manifest injustice done by the first respondent. Though certain allegations have been raised against the first respondent in her personal capacity, on going through various averments mentioned in the writ petition as well as the counter affidavit filed by the first respondent, I do not think that the allegation of bias is made out. The first respondent had acted only in her official capacity while filing a counter

affidavit justifying the action of issuing notice. That apart, as to whether there was actual service of order to the members of the Board or not are matters which cannot be considered in this writ petition. Reference is made by the counsel for petitioner to the judgment of the Supreme Court in Andhra Bank Vs. Andhra Bank Officers and Another, The principle of bias as held in the judgment is well settled, but as already indicated the facts available in the case does not persuade me to think that the 1st respondent had acted with bias.

13. It is contended that the act complained of is not wilful. Whether the action of the Board of Directors in appointing certain persons overlooking the directions of the department was wilful or not is purely a question of fact. Apparently there is a finding by the Joint Registrar regarding the said fact. If there is any factual difference, it is all the more better for the petitioners to get an adjudication before the proper appellate forum, it may not be possible for this Court sitting in writ jurisdiction to consider the factual materials on record and come to such a conclusion. That apart this Court had held in The Managing Committee of Vallapuzha Service Co-op. Bank Ltd. Vs. The Joint Registrar of Co-op. Societies, , that even a single instance of default would be sufficient to invoke Section 32 of the Act. Therefore, the question whether the petitioners were actually involved in the wilful default or not, cannot be adjudicated by this Court since it involves consideration of substantial factual circumstances. To that extent the remedy of the petitioners was to approach the appellate authority. However in view of my finding that the impugned order is bad for non-compliance of S. 32(2) of the Act, I am of the opinion that Ext. P14 is liable to be set aside.

Accordingly I do so. Ext. P14 is quashed. Additional 6th respondent shall handover the charge of the Society to the petitioners within a period of 15 days from today. However, disposal of this writ petition shall not preclude the Registrar to take appropriate action in the matter after following the prescribed procedure.