
(1997) 08 KL CK 0017
In the High Court Of Kerala
Case No : W.A. No's. 17 and 18 of 1997

State of Kerala

APPELLANT

Vs

Sudarsanan, N. and Others

RESPONDENT

Date of Decision : 28-08-1997

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 29, 32 , 32(1) , 63 , 64

Citation : (1997) 08 KL CK 0017

Hon'ble Judges : U.P. Singh, C.J.;S. Sankarasubban, J

Bench : Division Bench

Advocate : M.K. Damodaran, General, for the Appellant; George Poonthottam, for Respondents 1 to 8, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—We heard the above writ appeals on 17th June 1997 and by an order on that day, we allowed the appeals and set aside the judgment of the learned Single Judge. We are giving the reasons for the above order now.

2. The above two appeals are filed against two Original Petitions - O.P. Nos. 13900 of 1996 and 13792 of 1996. In both these Original Petitions, the supersession of the Managing Committee of Pazhayakunnummel Service Co-operative Bank was under challenge. We shall refer to the facts as stated in O.P. No. 13900 of 1996.

3. The Pazhayakunnummel Service Co-operative Bank is a Co-operative Society Registered under the Kerala Co-operative Societies Act, hereinafter referred to as the Act. Serious irregularities were pointed out in the appointments of staff made by the Managing Committee on 21st May 1996. When these complaints were received by the Joint Registrar, he appointed the Assistant Registrar of Co-operative Societies (Planning), Chirayinkeezhu, to enquire into the irregularities and submit a report u/s 66 of the Act. The Assistant Registrar submitted a report on 21st June 1996 stating that large scale irregularities had taken place in the

appointments. He further reported that there were irregularities in cash transactions, maintenance of registers, appointment of temporary employees and failure in prosecuting bad debts etc. As the Joint Registrar found a detailed enquiry into the irregularities pointed out in the report was necessary, he authorised the Assistant Registrar (General) to conduct another enquiry u/s 66 of the Act. The Assistant Registrar (General) submitted a report on 16th July 1996 pointing out the irregularities in the affairs of the Bank. Among other things, the report stated that memberships were issued to persons who were residing outside the area of operation of the Bank and loans were made available in contravention of the bye-laws of the Bank. Further, it was reported that the loan ledger was not properly maintained and loans were sanctioned in excess of the maximum limit prescribed. Misappropriation of fund was pointed out in the printing of calendar and irregularities were pointed out in the issuance of gold loan. It was also found that annual general body meetings were not held from 1991 and that financial loss was caused to the Bank by way of temporary appointments and unauthorised payment of contributions. After getting these two reports, the Joint Registrar issued a notice to the President of the Bank as to why action u/s 32(1) of the Act should not be taken. Ext. P-4 is the notice. A perusal of Ext. P-4 notice would show that a number of irregularities had been pointed out. These include irregularities in the appointment of staff, granting membership to persons not eligible, loan application register not maintained, no entries were made to loans given on security of gold, loans were given on personal security when such persons had fixed deposit in the Bank, fraud in the printing of calendar, goods purchased for the members of the executive committee, contributions given without getting receipts and general body meeting was not held since 13th January 1991. To this, the President gave the reply, Ext. P-7. The Joint Registrar considered the reply and by Ext. P-8 order, he ordered supersession of the committee and appointed an Administrator to conduct the administration of the society for six months. Both the Original Petitions were filed challenging Ext. P-8 order.

4. A counter-affidavit was filed by the Joint Registrar stating the circumstances under which he issued Ext. P-4 notice. He further submitted that he was fully satisfied that in the circumstances, it was necessary to take action u/s 32 of the Act. The learned Single Judge who heard the matter, by a common judgment, quashed Ext. P-8 order. It is against the said common judgment, that the present appeals have been filed.

5. The learned Single Judge allowed the Original Petitions and set aside Ext. P-8 order on three grounds. They are:

- (1) without completing the procedure u/s 66, the show cause notice u/s 32 should not have been issued;
- (2) copies of the report of the Assistant Registrar were not given to the President; and

(3) there has been no independent consideration by the Joint Registrar regarding the complaint made against and the explanation submitted by the Petitioner.

6. The learned Advocate General argued that the grounds relied on by the learned Single Judge were not legal and Ext. P-8 order was passed after complying with the provisions of the Act. Learned Counsel for the Respondents reiterated the same contentions as were raised before the learned Single Judge. As already stated, the Joint Registrar obtained two reports from the Assistant Registrar (Planning) and Assistant Registrar (General) u/s 66 of the Act. It is on the basis of the findings recorded in the report that the show cause notice was issued.

7. The first ground which weighed with the learned Single Judge was that once the proceedings u/s 66 are initiated, without completing the procedure under the provisions of Section 66 of the Act, no action can be taken by the Joint Registrar u/s 32 of the Act. The learned Judge relied on the decision reported in *Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others*, and observed in paragraph 12 of the judgment as follows:

In *Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others*, the Supreme Court held that the Registrar must as a condition precedent give a direction under Sections 64, 65 and 66 of the Act, viz., the power of audit, enquiry and inspection for the defects or the irregularities to be remedied and should take action only if there is a wilful disobedience or wilful failure to comply with the orders or directions. There cannot be an order straightaway recommending supersession by the Assistant Registrar.

The learned Judge also referred to Section 66(5) of the Act. We cannot agree with the finding of the learned Judge on this matter. The power given to the Registrar to supersede is u/s 32(1) of the Act. It reads as follows:

If the Registrar is satisfied that the committee of any society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or by-laws or commits any act which is prejudicial to the interests of the society or wilfully disobeys or wilfully fails to comply with any lawful order or direction issued under this Act or the rules, the Registrar may, after giving the committee an opportunity to state its objections, if any, by order in writing remove the committee.

The condition precedent for exercising the power u/s 32 is that the Registrar on materials placed before him should be satisfied that the grounds mentioned in Section 32 exist for supersession of the committee. It is not necessary for this purpose that the Registrar or the Assistant Registrar should exercise the powers under Sections 63, 64, 65 and 66 of the Act. No doubt, in the present case, enquiry was made u/s 66 of the Act. u/s 66(5) of the Act, the Registrar can direct the Society or its officers to take such action as may be specified in such order within the time that may be mentioned in such order. But, on inspection, if it is found that the committee has committed such irregularities or that there has

been neglect of the orders issued by the Registrar or that huge losses have been occurred due to the negligence of the committee, it cannot be said that the Assistant Registrar, should u/s 65 of the Act, direct the Society to cure the defects. If the circumstances are so serious, the Assistant Registrar can report the matter to the Registrar to take suitable action individually u/s 32 of the Act.

8. A similar question came up before the Supreme Court in *Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others*, . Their Lordships were considering the provisions of Section 72 of the Madras Co-operative Societies Act, which is akin to Section 32 of the Kerala Act. Sections 64 to 67 of the Madras Act relate to audit, inspection, etc., similar to Sections 63 to 67 of the Act. The contention before the Supreme Court was that before conducting enquiries under Sections 64 to 67, the Registrar cannot take action u/s 72 of the Act. Dealing with the above contention, the Supreme Court held as follows:

It is significant that Section 72(1) does not contain any mention of Sections 64 to 67 which appear in Section 70(1) and of Sections 65, 66 and 67 which are expressly mentioned in Section 85(1). If the intention of the Legislature was that the supersession of the Committee u/s 72 can be ordered by the Registrar only after recourse to Sections 64, 65, 66 and 67, there is no reason why language analogous to Section 70(1) or Section 85(1) containing an express mention of the aforesaid sections, should not have been employed. An audit u/s 64 has to be done every year in view of the mandatory form of the language of that Section 64. But as regards Sections 65 and 66 the Registrar has been given the discretionary powers to make an inquiry or an inspection in accordance with those sections, there is no duty or obligation cast on him for doing so before he proceeds to take action u/s 72. All that is required by Section 72(1)(a) is that the Registrar should form an opinion that the Committee of any Registered society is not functioning properly or has wilfully disobeyed or failed to comply with any lawful order or direction issued by him. So far as the question of the society not functioning properly is concerned, that may depend on what the Registrar discovers after a proper audit, enquiry and inspection. But he can form that opinion even on material aliunde and the language of the section does not warrant by necessary implication the taking of the view that he is bound to form that opinion after following the the entire procedure prescribed by the other sections under discussion.

(emphasis added)

Further, the Supreme Court observed as follows:

It may be that when the Registrar acts under the second limb of Section 72(1)(a) and proposes to supersede the committee for wilful disobedience or wilful lailure to comply with any lawful order or direction issued by the Registrar under the Act or the rule that the provisions contained in Sections 64, 65 and 66 may become relevant. But that does not and cannot mean that the Registrar must as a

condition precedent give a direction under these sections for the defects or the irregularities to be remedied and should take action only, under the second limb, i.e., when there is a wilful disobedience or wilful failure to comply with these orders or directions.

(emphasis added)

Thus it has been clearly laid down that it is not necessary to complete the exercise under Sections 63 to 66 to enable the Registrar to take action u/s 32 of the Act.

9. The next ground which was considered by the learned Single Judge was that copies of the enquiry report for the enquiry conducted u/s 66 were not given to the committee and hence there was a violation of the principles of natural justice. The learned Single Judge relied on the decision of the Supreme Court reported in *S.L. Kapoor Vs. Jagmohan and Others*, . That case was concerning the supersession of the New Delhi Municipal Committee. The relevant point is discussed in paragraph 16 of the judgment:

In our view, the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very persons proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a "double opportunity", that is, one opportunity on the factual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met.

Thus what is important is that the person to whom the notice is issued, should know the allegations on the basis of which the proposed action is taken. A reading of Ext. P-4 definitely shows the allegations made against the committee and we do not find any reason to hold that the committee was not informed of any details regarding the allegations. Further, in their reply, the committee has given detailed facts with regard to each allegations.

Hence, according to us, in the facts and circumstances of the present case, there has been no denial of natural justice.

10. The next reasoning which weighed with the learned Single Judge was that the Registrar has not given reasons for the order as to why supersession was being imposed on the committee. Ext. P-8 order of supersession will show that the Registrar has discussed the allegations made against the committee and the reply given by the Committee. Further, it also reveals that he had perused the records. Thereafter, the Registrar has taken the view that the facts and circumstances necessitated the taking of action u/s 32 of the Act.

11. It is true that one of the essential features of natural justice is that the

orders should give reasons for their conclusions. After all, the person who is affected by the order should know on that basis the authority has passed the order against him. It is also true that an administrative body or a quasi judicial one cannot be expected to give reasoning as is expected from a regular court. There is no prescribed form and the reasons prescribed by the adjudicating authority need not be detailed and elaborate and the requirement of reasons will be satisfied only if relevant reasons are recorded. In *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, Subba Rao, J. as he then was, speaking for the Bench observed as follows:

There is an essential distinction between a Court and an administrative tribunal. A Judge is trained to look at things objectively, uninfluenced by considerations of policy or expediency, but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. So it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties, and the least they should do is to give reasons for their orders. Even in the case of appellate Courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional Court agrees with the reasoned judgment of the subordinate court or there are no legally permissible grounds to interfere with it. But the same reasoning cannot apply to an appellate tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons. No particular form or scale of the reasons can be prescribed and the extent and the nature of the reasons depend upon each case.

(emphasis added)

In *S.N. Mukherjee v. Union of India* (1990) 4 S.C.C. 595 the Supreme Court held as follows:

However it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clear and explicit so as to indicate that the authority has given due consideration to the points in controversy.

(emphasis added)

Thus it is not necessary to give detailed reasons. It depends upon the facts and circumstances of each case. From Ext. P-8 it is clear that the Registrar has considered the allegations against the committee and the reply submitted by the committee. He also considered the two reports of the Assistant Registrar u/s 66 of the Act. According to the Registrar, the grounds mentioned therein clearly proved the circumstances which existed for superseding the committee. Hence it cannot be said that the Registrar did not apply his mind and he did not state any reasons for superseding the committee.

12. Besides, one of the grounds stated in the notice for supersession is that the Managing Committee failed to conduct the annual general body meetings from 1991 onwards. In the reply notice, it is not stated that such meetings were conducted. On the other hand, what is contended is that subsequent to the receipt of the notice, arrangements have been made to conduct meetings. u/s 29 of the Act, it is mandatory that a general body meeting of a society shall be held once in a year. It is, inter alia, for the purpose of approval of the budget and for consideration of the audit report and the annual report. From the reply of the Managing Committee, it is clear that no such meetings had been conducted. This means that neither the budget nor the audit report was placed before the annual general body meeting for the last three years. According to us, this itself is sufficient, for superseding a committee, since it is the duty of the Managing Committee to place the budget and the audit report before the annual general body meeting.

In the result, we set aside the judgment of the learned Single Judge, allow the appeals and dismiss the Original Petitions.