(2017) 03 KL CK 0001

In the High Court Of Kerala

Case No : WA.No. 1765 of 2016 and WP(C).24122 of 2016

State of Kerala APPELLANT

Vs

Sunil C. Kurien RESPONDENT

Date of Decision : 28-03-2017

Acts Referred:

Citation : (2017) 2 KLT 206

Hon'ble Judges : Mr. Antony Dominic and Mr. Dama Seshadri Naidu, JJ.

Bench : Division Bench

Advocate : C.P. Sudhakara Prasad, Advocate General and N. Manoj Kumar, Spl. Government Pleader, for the Appellants; Sri. George Poonthottam, Advocate, for the Respondents No. 1 to 6; Sri. N. Nagaresh, Assistant Solicitor General, for the Respondents No. 7 and 8; Sri. G. Shrikumar, Senior Advocate, Sri. Saijo Hassan, Sri. A.G. Girish Kumar, Sri. Benoj C Augustin, Sri. Vishnu Bhuvanendran, Sri. U.M. Hassan, Advocates, for the Respondent No. 9; Sri. K. Ramakumar, Senior Advocate, Sri. T. Ramprasad Unni, Sri. S.M. Prasanth, Smt. Asha Babu, Smt. R.S. Aswini Sankar, Sri. Sabin Babu, Advocates, for the Respondents No. 8

Final Decision : Dismissed

Judgement

Dama Seshadri Naidu, J. - The Parties:

The State and its officials are the appellants. Respondents 1 to 6 were the office bearers of Indian Red Cross Society, Kerala State Branch ("the office bearers"). The seventh and eighth respondents are Union of India and Indian Red Cross Society ("the Society") respectively. The ninth respondent claims himself to be the whistle blower ("the Complainant"), though he too was an office bearer of the Red Cross Society.

Procedural History:

2. Initially, the office bearers filed WPC No.24122 of 2016 against the State, its officials, and the Red Cross, questioning the Ext.P1 order of supersession passed by the Government, here, the first appellant. A learned Single Judge of this

Court, through judgment, dated 25.08.2016, allowed the writ petition-quashed the order of supersession. Assailing that judgment, the State and its officials have filed this appeal.

Appellation - A Limitation:

3. Before proceeding further, we serve a caveat on ourselves: Two exalted constitutional functionaries of the federal Government-the President of India and the Governor of the State of Kerala-are the principal administrators of the Red Cross Society: one at the Apex or Headquarters level and the other at the State level. They act ex-officio, however. As those constitutional functionaries discharge only their statutory obligations-ex officio, at that-we have referred to them throughout the judgment as the statutory authorities-the Presidents at the respective levels. So, we have dispensed with employing any deferential terms of reference.

Brief Facts:

4. The facts in brief are that while the office bearers were administering the Society''s State Branch, the complainant-one of the office bearers-petitioned (Ext.R2(a)) to the President of the apex body: that the State Branch''s Chairman had been misusing his office and indulging in maladministration. In response, the President through Ext.R2(b) communication forwarded the complaint to the Ministry of Welfare & Family Planning, Government of India, which in turn, through Ext.R2(c), sent it to the Secretary-General of the Society. The communication calls on the Society to act. The Secretary General, through Ext.R2(d), requested the President of the State branch to investigate and to act. Eventually, the President of the State Branch required the Government of Kerala to inquire into the complaint and submit a report.

5. After waiting a while, the President wrote (Ext.R2(d)) to the Hon''ble Chief Minister that the issue be looked into. Enquiry completed, the Government submitted Ext.R2(g) report. Ratified by the State Branch''s President, as seen from the record, the Government issued Ext.P1 orders dated 15.7.2016, superceding the entire Managing Committee. Aggrieved, six members of the Managing Committee-the Chairman, the General Secretary, and four Secretaries-filed the writ petition.

6. The office bearers did not, initially, array the whistleblower, so called, in the proceedings. Later, pending the writ petition, they brought him on record as the additional ninth respondent. A learned Single Judge allowed the writ petition through the judgment dated 25th August 2016: The order of supersession was set aside. The impugned judgment, in fact, declares that Ext.P1 order is ultra vires of the State Government. The officials were directed to hand over the reins of administration to the petitioners. It was, then, the Government''s turn to assail the judgment. Thus, this appeal.

Contentions:

Appellants:

7. The learned Advocate General has submitted that the State and its officers could not remain "mute spectators" to the grave allegations of corruption and nepotism against the office-bearers of the Society, which functions under the patronage of its President, the Governor.

8. According to the learned Advocate General, the State, first, acted only on the State-Branch President''s direction; second, it followed the due procedure, enquired into the allegations, submitted a report to the president of the State Branch; finally, it passed the Ext.P1 order only with the President''s full concurrence. In the alternative, he has also submitted that the corrective mechanism prescribed under the Act or under the Rules applies only to the Managing Body at the headquarters level, but not the Managing Committee at the state level. Given the statutory silence, the Government, contends the learned Advocate General, has acted in public interest. To justify Ext.P1, the learned Advocate General has invoked the Doctrine of Necessity, too.

9. Eventually, the learned Advocate General has submitted that, acting on the investigating report, Ext.R2(g), the Government already registered a crime against the Chairman. In this context, he has urged this Court to set aside the impugned judgment and let the Society be run by the administrators, who are none other than responsible civil servants, till the trial against the Chairman is concluded.

The Red Cross Society:

10. Sri Ramkumar, the learned Senior Counsel, representing the Red Cross Society, has submitted that because of the efflux of time and later events, the very writ appeal has become fruitless. According to him, any adjudication at the appellate stage is a futile exercise: The previous Committee''s term ended, the supersession notwithstanding. The new Managing Committee is all set to take charge but for the Court''s interim directions; the appellants, according to him, would achieve precious little by prosecuting this appeal. The Court may as well shun adjudicating hypotheticals. To support his submissions, the learned Senior Counsel has relied on Sanjeev Coke Manufacturing Co. v. M/s Bharat Cocking Coal Ltd. 1983(1) SCC 147, and Kripa Shankar Chatterji v. Gurudas Chatterjee 1995(5) SCC 1.

Respondents 1 to 6:

11. Sri George Poonthottam, the learned counsel for the respondents 1 to 6, has strenuously contended that Ext.P1 was issued by the Health & Family Welfare Department of the State of Kerala, but not by the President of the State branch. According to him, mere ritualistic repetition of the expression "with the approval of the Governor" does not cure the defect. He has further contended that only the Chairman faced allegations, but the entire Managing Committee was made to suffer. He has drawn our attention to Ext.R2 (g) report to hammer home his

contention that the report does not even whisper that the Managing Committee indulged in any maladministration. The action, according to him, was politically motivated. With surmises and conjectures-and unfounded allegations-a democratically elected managing committee of an autonomous institution cannot be dethroned, asserts Mr. Poonthottam.

12. To support his submissions, Mr. Poonthottam has drawn our attention to Rule 12 of the Rules, as well as sections 4A and 4E of the Act. Taking us through Chapter III of the Rules, he has pointed out that, even if the allegations levelled by the complainant had an element of truth, the authority to act must be the Managing Committee, which in its entirety had not been accused of any misconduct. He has also submitted that Ext.P1 is an executive order issued by the State with no source of power. Eventually, Sri Poonthottam has submitted that the State''s alternative plea of invoking the Doctrine of Necessity is misplaced, for it is only a camouflage to cover up the State''s gross abuse of power.

9th Respondent:

13. The learned counsel for the complainant, on whose complaint the whole saga has unravelled, adopted the learned Advocate General''s submissions in their entirety.

14. Heard Sri C.P.Sudhakara Prasad, the learned Advocate General, Sri N.Manoj Kumar, the learned Special Government Pleader appearing for the appellants, and Sri George Poonthottam, the learned counsel appearing for the respondents, besides perusing the record.

Statutory Scheme:

15. The Indian Red Cross Society Act, 1920, provides for the administration of "the various monies and gifts received from the public for medical and other aid to the sick and wounded and other purpose of like nature". The Act envisaged a committee at the helm of the Society''s affairs-the Managing Body of the Society. The number of members of the Managing Body shall not be less than ten or more than thirty. The society, in fact, is a body corporate.

16. The President of India, as seen from Section 4A of the Act, shall be the President of the Society, ex-officio. As mandated by Section 4B, the Managing Body shall comprise the Chairman, six members nominated by the President, and 12 members elected by the State Managing Committees for a term of two years. Under Section 4C, the Managing Body will appoint a secretary general and a treasurer for the Society, of course, with the President''s approval. Section 4D enumerates the powers and functions of the Chairman and Vice-Chairman: instituting disciplinary proceedings against the officers of the Society is one of the Chairman''s powers. The disciplinary proceedings can be instituted against the Secretary General, however, with the President''s previous approval. In other cases, it must be with the Managing Body''s prior approval.

17. Besides exercising the enumerated powers, the Chairman and the Vice-Chairman can exercise other powers-financial and administrative-as the Managing Body may delegate to them.

18. Section 4E, an important provision, reads as follows:

4E. (1) If, at any time, the President is of the opinion-

(a) that there has been a gross failure in the management of the affairs of the Society by the Managing Body; or

(b) that the Managing Body is acting in a manner which is prejudicial to carrying out the objectives of the Society,

the President may, by order in writing supersede the Managing Body for such period, not exceeding six months, as may be specified in the order:

Provided that before issuing an order under this sub-section, the President shall give a reasonable opportunity to the Managing Body to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Managing Body.

(2) Upon the issue of an order under sub-section (1) superceding the Managing Body:-

(a) all the members of the Managing Body shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, under the provision of this Act or the Rules made thereunder, be exercised or discharged by or on behalf of the Managing Body shall, until the Managing Body is reconstituted, be exercised and discharged by such person or body or persons as the President may appoint in this behalf.

(3) On the expiration of the period of supersession specified in the order issued under sub-section (1) the President may extend the period of supersession for a further period not exceeding six months as may be recommended by the person or body of persons appointed under clause (b) of sub-section (2);

Provided that the President may, at any time before the expiration of the period of supersession, whether as originally specified under sub-section (1) or extended under this sub-section, take such steps as are necessary to reconstitute the Managing Body in accordance with the provisions of Section 4B.

19. Examined further, Section 5 of the Act confers rule-making power on the Managing Body, which can make rules for managing and controlling the Society as approved by the President. Crucial is Section 5(1)(f), which permits the Managing Body to make rules concerning its powers in supervising the activities of the State Branch Committees.

20. Section 12 of the Act mandates that each Branch Committee will have all the

powers to receive gifts and expend all the monies received by it either directly or through other societies or bodies. Two conditions constrict this power: the Branch Committee should act within the confines of the Rules made under Section 5; it is amenable to the supervisory powers exercised by the Managing Body.

The Rules:

21. The Indian Red Cross Society Rules, 1994, aim at regulating the management, function, control, and procedure of the Society. Rule 5 prescribes the procedure to be followed by the Managing Body while administering the Society. The Managing Body may as well constitute various committees under Rules 6, 7 and 8. Under Rule 9 the Managing Body may also appoint such other committees with a specific direction as the necessity demands.

22. Before proceeding further, we may observe that the entire Act and the Rules focus only on the Managing Body. They do cover disciplinary proceedings and corrective steps to be taken in the Society-but at the apex level. As to the Managing Committees of the State branches, the Act and the Rules, too, are reticent. Perhaps, treating this as a legislative lacuna, the State has tried to invoke the Doctrine of Necessity. More about it later.

The Regulations:

23. The Managing Body, exercising its powers under Section 5 of the Act, framed "Rules for State/UT/District Branches." To avoid conflation of these rules with "the Indian Red Cross Society Rules, 1994," we referred to them as the Regulations.

24. Chapter III of the Regulations deals with the Society''s governance. It specifies that the Governor of the State concerned must be the President of the State Branch. The President nominates the Vice-President. The Managing Committee will elect the State Branch''s Chairman, who will have a three-year tenure. As to the President''s powers, he will preside over the annual General-Body Meetings, approve the minutes of the General-Body Meetings, and also will exercise other powers as provided under the Rules. The Managing Committee comprises the following: (a) Chairman; (b) Treasurer; (c) Vice-Chairman; (d) four members of the State branch from amongst the patrons, vice-patrons, and life members of the branch, as decided by the Managing Committee; (e) one representative elected by each District Branch Committee; (f) General Secretary of the State-non-voting though; (g) a representative of St.John Ambulance State Council; and (h) members, up to five, to be co-opted by the Managing Committee from, for example, Ministry of Health, Education, Social Welfare.

Powers and functions of the Managing Committee

25. Clause G of Chapter III enumerates the powers and functions of the Managing Committee of a State Branch. It has powers

a) To grant recognition to the newly formed District Branches/sub District

Branches, to exercise supervision and control over them and to withdraw recognition of Branches on the recommendation by the District Branch Committee or the State Managing Committee.

b) To appoint General Secretary of the State/UT branch on such terms and conditions of service as it may deem fit.

c) To constitute an Execute Committee, Finance Committee, Junior Red Cross and Youth Red Cross Committee, Disaster Mitigation Committee and other Committees, their functions, powers and duration as it may consider fit from time to time. The proceedings of all the above Committees shall be placed before the Managing Committee at its next meeting for approval.

d) In case of grave misconduct, the Managing Committee shall have the powers to remove the Chairman or Treasurer as the case may be. Grave misconduct for the purpose of removal is defined as the display of character or morality incompatible with the seven Fundamental Principles or engagement in activities which are detrimental to the reputation or the activities of the National Society.

e) To make rules for the management, functions, control and procedure of the State/UT/District Branch (including the Service Rules for the staff).

....

(emphasis supplied)

Raison d''etre - the Justification for the Appellant''s Action:

26. A member of the Red Cross Society''s Kerala Branch complains to the President at the Headquarters against the Chairman. The complaint passed down, the President of the State Branch asks the Government to enquire into the allegations. It did. It also issued proceedings (Ext.P1) superceding the Managing Committee, ratified by the President. The Red Cross Society Act does not assign any role to the State Government.

27. The Government, first, contended that it is the President of the State Branch that had acted; it pleaded in the alternative that the State acted at the behest of the President; and it still contended, as another line of defence, that, absent rules to discipline the Managing Committee, the State acted under the doctrine of necessity. So, we need to examine these issues.

The Issues:

(1) Has the State acted for the President of the State Branch because its action is said to have been approved by the President?

(2) In the alternative, has the State acted, absent express provisions to discipline the Managing Committee, in the public interest, invoking the doctrine of necessity?

(3) Has the appeal become fruitless with the efflux of time and later

developments or does the appeal-adjudication become an academic exercise in futility?

Discussion:

28. Once we accept that there was a complaint and that the Society''s highest authority, the President at the Apex level, wanted the allegation to be probed, who acted and how acted alone remain to be considered. The President of the State Branch wanted the State to probe the issue. The State did. Later, the State issued proceedings superceding the Managing Committee, besides launching a criminal investigation into the affairs of the Society.

Is the Appeal-Adjudication a Futile Exercise?

29. Sri Ramkumar, the learned Senior Counsel appearing for the Society, has submitted that the Managing Committee was superseded earlier. And before the writ proceedings could be concluded, even its term came to an end; a new committee has already been elected, and it would have by now taken charge of the Society, but for the interim direction given by this Court. Any adjudication, according to the learned Senior Counsel, is a futile exercise or at best an academic adjudication of a non-existing issue.

30. If we turn to the precedents cited at the Bar, in Sanjeev Coke Manufacturing Company, the parties persuaded the Court to examine the constitutional validity of section 4 of the Constitution (42nd Amendment) Act, 1976. The State objected to it. The Supreme Court has, on facts, expressed "serious reservations" on the question "whether it is open to a Court to answer academic or hypothetical questions on such considerations, particularly so when serious constitutional issues are involved." Justifying its reservation on, pithily put, academic adjudication, the Court has eloquently observed that judges are "not authorised to make disembodied pronouncement on serious and cloudy issues of constitutional policy without battle lines being properly drawn. Judicial pronouncements cannot be immaculate legal conceptions. It is, but, right that no important point of law should be decided without a proper lis between parties properly ranged on either side and a crossing of the swords." Their Lordships have thought it inexpedient to dwell on the problems that do not arise in a lis and, a fortiori, express its opinion on the issues.

31. In Kripa Shankar Chatterjee, successful candidate''s election to a legislative assembly was challenged. He had held an office of profit when he was elected. The High Court, first, held that the successful candidate could not establish that his resignation had been accepted at the relevant point in time. Second, on the issue whether he had held an office of profit, however, the High Court declared that he had not.

32. In the appeal, the Supreme Court, on facts, held that the candidate did resign, and his resignation was accepted, too. It further noted that, by the time the Court heard the appeal, even the next general elections were held. So the

Court refused to go into the question whether the office held by the successful candidate was an office of profit, by definition. In that context, the Court has observed that "the appeal for all practical purposes has no such importance and has become infructuous."

33. As seen from the judgment, the High Court had been called upon to decide two issues: (1) Had the successful candidate''s resignation been accepted before he contested the election; and (2) Was the office he held an office of profit? On the first issue, the High Court disbelieved the successful candidate, but ruled in his favour on the second. In the appeal, the Supreme Court reversed the High Court''s findings on the first issue. As to the second issue, because of the Court''s finding on the first issue, an answer is obviated. Indeed, the later development-the holding of the next general elections-too, may have contributed to the Court''s concluding that any adjudication on "the office of profit" is a futile exercise. But it is not the singular, prime factor for the Court''s disinclination to decide the issue, we reckon.

34. We may, with due regard to the facts in and the findings of the above two precedents, observe that the Supreme Court has not laid down any invariable principle that in every instance with the mere efflux of time, the issues-especially at the appellate stage-become academic or unavailable for adjudication.

35. Here, in the writ petition, the Court returned a definite finding that the Government has no jurisdiction to interfere in the Society''s affairs. The Government is aggrieved. Dismissal of the appeal at this stage, even because of the later developments, renders the findings final and binding on the Government. On the other hand, if the Division Bench denudes the impugned judgment of its precedential value with an observation and closes the appeal, say, on account of later developments, years of judicial efforts go in vain. When an issue is ripe, the courts may prefer to adjudicate, lest the issue gets infected with worms of legal ambiguity and uncertainty, and pesters like a festering would until it finds a curial cure.

Who is the Punishing Authority?

36. The dispute was concerning the alleged mal-administration by the Chairman of the Society. The 9th respondent, one of the office bearers, complained to the President at the Headquarters, New Delhi. The President forwarded the complaint to the Ministry of Welfare and Family Planning, Government of India, which sent it to the Secretary-General of the Society. The Secretary General, in turn, requested the President of the State Branch to investigate and take appropriate action. The President of the State Branch asked the Government of Kerala to enquire into the complaint and submit a report. Finally, acting on the report, the Government issued Ext.P1 proceedings with "the concurrence of the President". Ext.P1 amply reveals that Ext.P1 was issued by the Health and Family Welfare Department of the Government of Kerala. The order further reveals that the decision was taken by the Government to remove the Chairman of the State

Branch from the post and also to dissolve the Executive Committee and the District Committee of the Society. In the end, the Additional Chief Secretary signs the order indicating that "by order of the Governor".

37. A comprehensive reading of Ext.P1 leaves no manner of doubt that the Government applied its mind, arrived at a conclusion, and acted with promptitude. But the question is, has it been empowered to do so? We are afraid the answer is ''no.''

38. The scheme of the Act and the Regulations does not even remotely suggest that the State Government has any role to play. True, the President of the State Branch asked the Government to enquire into the allegations. Absent the necessary wherewithal, the President, perhaps, has availed himself of the State investigative machinery. Nothing more.

39. It is also pertinent to note that the President has asked the Government only to enquire and submit a report. Instead, the Government acted on its own-albeit, having its action approved by the President. But that does not suffice. If we assume that the entire Managing Committee had been found guilty of the maladministration, it might have provided some ammunition for the authorities at the higher echelons to act, subject to their action passing the statutory muster. True, the Act did not provide for any remedial mechanism vis-a-vis the Managing Committee''s maladministration. Both the Act and the Rules entirely focus on the Apex body.

40. Here the allegation is singularly against the Chairman of the Managing Committee and none else. So, perhaps, adopting Sri Ram Kumar''s argument, though with modification, we may hold that this Court need not go into the issue as to who should act against the entire Managing Committee because the allegation is against the Chairman.

41. We will confine our discussion on the issue whether there is any disciplinary procedure provided for in the regulations vis-a-vis the Chairman. Clause G, Chapter III, of the Regulations is loud and clear. It confers disciplinary powers on the Managing Committee, which can punish the Chairman, even, with removal, if he has contravened any provision of law or the regulations. It is equally true that the President at the Apex level, as a repository of all powers flowing down, may as well have acted, if he has concluded that the Managing Committee''s continuation at the helm of the affairs is not in the Society''s interest. Even the Managing Body under Section 5 empowered to frame regulations to govern the Managing Committee.

It does not seem to have framed any regulations to discipline the Managing Committee.

42. The upshot of the statutory regime is that neither the State Government nor the President of the State Branch has any role in disciplining either the Managing Committee or its Chairman. Neither the concurrence of nor the ratification by the

President of the State Branch saves Ext.P1, which is ultra vires. We, therefore, fully concur with the learned single Judge in concluding that Ext.P1 cannot be sustained.

The Doctrine of Necessity:

43. The appellants sought to defend their action based on necessity. The doctrine of necessity is a common-law doctrine, and an obscure doctrine at that. It holds its limited sway in criminal and tort laws. In the past few decades, internationally Common-Law Courts have been called upon to decide the medical dilemmas in which the patient consciously refuses to consent to a medical procedure without which he might imperil his life. Sometimes the patient may have been incapable of consenting. In some other instances, the family-especially the parents-may refuse to allow the doctors to perform life-saving, say, surgeries on the terminally-ill patients, including children-for example, given their religious convictions. By extension, the doctrine of necessity is employed in administrative jurisprudence, as an adjunct to the principle of Natural Justice: Nemo judex in causa suva or bias.

44. In re F (Mental Patient: Sterilisation) (1990)2 AC 1, p 74 A-C, Lord Goff put the doctrine in context:

"That there exists in the common law a principle of necessity which may justify action which would otherwise be unlawful is not in doubt. But historically the principle has been seen to be restricted to two groups of cases, which have been called cases of public necessity and cases of private necessity. The former occurred when a man interfered with another man''s property in the public interest - for example (in the days before we would dial 999 for the fire brigade) the destruction of another man''s house to prevent the spread of catastrophic fire, as indeed occurred in the Great Fire of London in 1666. The latter cases occurred when a man interfered with another''s property to save his own person or property from imminent danger - for example, when he entered upon his neighbour''s land without his consent, in order to prevent the spread of fire onto his own land."

45. The concept of necessity has its role to play in all branches of our law of obligations-in contract (for example, agency of necessity), in tort (as seen In re F (Mental Patient: Sterilisation)), in restitution, and in criminal law. It is therefore a concept of great importance, though, the Court of Appeal of England and Wales has not touched upon the doctrine''s use in administrative law, we can say that it is invoked most in that branch of law.

46. The courts apply the doctrine of necessity to tide over the situations where there are difficulties. Law does not contemplate a vacuum; it needs to find a solution, rather than allowing the problem to boil over Lalit Kumar Modi v. BCCI, (2011) 10 SCC 106. In Election Commission of India and another v. Dr. Subramanyam Swamy 1996(4) S.C.C. 104, the Supreme Court explains the conceptual contours of the doctrine of necessity. It illustrates the doctrine. The

court, first, observes that "the law permits certain things to be done as a matter of necessity which it would otherwise not countenance on the touchstone of judicial propriety." It is often invoked in cases of bias where there is no other authority or Judge to decide the issue.

47. According to the Supreme Court, if the doctrine of necessity is not allowed full play in certain unavoidable situations, it would impede the course of justice itself, and the defaulting party would benefit therefrom. It illustrates: Take the case of a certain taxing statute which taxes certain perquisites allowed to Judges. If the validity of such a provision is challenged, who but the members of the judiciary must decide it. If all the Judges are disqualified on the plea that striking down of such legislation would benefit them, an impasse may ensue. In such cases the doctrine of necessity comes into play. Finally, the Court clinchingly observes that "if the choice is between allowing a biased person to act or to stifle the action altogether, the choice must fall in favour of the former."

48. In a co-operative society, under the control of an administrator, an employee faced disciplinary proceedings. After a departmental enquiry, the administrator imposed punishment. The employee questioned the punishment, asserting that the administrator had no power. True, the act empowers the administrator to run the day-to-day administration of the society. In that context, this Court in V.T. Mary v. Kuzhur Service Co-operative Bank Ltd. 2006(1) KLT 323, invoked the doctrine of necessity. S. Siri Jagan, J, has held with penetrating logic that "once the power to impose punishments on the employees is conceded to the administrator, the facts that under R.198, the Sub-Committee is the disciplinary authority and the petitioner has a right of appeal to the Managing Committee lose all relevance." The administrator becomes the President, Sub-Committee, and Managing Committee all rolled into one. Such authority cannot be denied to the administrator simply because the petitioner would lose a right of appeal.

49. A Division Bench of this Court in Elamgulam Service Co-Op. Bank Ltd v. M.Gopinathan Naik 2007(1) KLT 147 quoted V.T. Mary with approval on an administrator''s justification to invoke the doctrine of necessity.

50. In Raj Bahadur Khare v. Madhya Bharat Gramin Bank 2013(2) MPHT 28, a learned Single Judge of Madhya Pradesh High Court observes that in departmental proceedings where alternative options are available and when an ad hoc Disciplinary Authority can be appointed, the ''doctrine of necessity'' cannot be applied. "The ''doctrine of necessity'' can be made applicable only if there is no alternative available, and the constitutional authority or the authority concerned who is to take action is the only person empowered under law to proceed in the matter."

51. In Badrinath v. Government of Tamilnadu (2000) 8 SCC 305 the Supreme Court, speaking through M. Jagannadha Rao, J., has held that where a statute or a statutory rule constitutes a designated authority to take administrative or quasi-judicial decisions and where the persons concerned is disqualified from taking a

decision on the principle of likelihood of bias, then the law makes an exception in the situation, and that person is entitled to take a decision notwithstanding his disqualification. Otherwise, no decision can be taken by anybody, and public interest will suffer. Quoting from Institute of Chartered Accountants v. L.K. Ratna, Badrinath 1986(4) SCC 537 has held that absent statutory compulsion, the principle of ''necessity'' cannot be invoked. In other words, if there is nothing in the rules or regulations to suggest that a decision could not be taken by, for example, the other members of the Disciplinary Committee who are not disqualified, the doctrine has no role to play.

Conclusion:

52. We, therefore, reaffirm the findings rendered by the learned Single Judge that Ext.P1 is ultra vires the appellants, its approval by the President notwithstanding. So the appeal fails and the Writ Appeal stands dismissed.

