
(2009) 08 KL CK 0094

In the High Court Of Kerala

Case No : Writ Petition (C) No. 27925 of 2007

Thiruvalla East Co-operative Bank Ltd.

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 27-08-2009

Acts Referred:

Kerala Co-operative Societies Rules, 1969 — Rule 66, 66(5)

Citation : (2009) 4 ILR (Ker) 41 : (2009) 4 KLT 378

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : P. Ravindran, for the Appellant; M.K. Damodaran and A.G. Aneetha, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Antony Dominic, J.—The President of Thiruvalla East Co-operative Bank Ltd., (hereinafter referred to as "the Bank" for short) has filed this Writ Petition praying to quash ExtP11 order passed by the 1st respondent, in exercise of his powers u/s 32 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as "the Act" for short).

2. Facts of the case are that election to the Board of Directors of the Bank was held in November 2004 and the Board of Directors, of which the petitioner is the President, assumed office on 06.11.2004. According to the petitioner, soon after they assumed office, the 3rd respondent filed complaint, (produced as Annexure I to I.A. No. 12926/07) to the 1st respondent making allegations against the Board of Directors. On the basis of the said complaint, the 1st respondent ordered an enquiry u/s 65 of the Act. Accordingly, the 2nd respondent conducted an enquiry and submitted Ext.P4 report, recommending a detailed enquiry u/s 65 of the Act. In pursuance to the recommendation in Ext.P4 report, the 1st respondent issued Ext.P1 order, appointing the 2nd respondent to conduct an enquiry u/s 65 of the Act.

3. Challenging Ext.P1 order, the Board of Directors of the Bank filed W.P.(C) No. 15094 of 2007 before this Court, which was disposed of by Ext.P2 judgment, recording the submission of the learned Government Pleader that in case there is any proposal to supersede the Committee, the procedure contemplated u/s 32 of the Act will be followed. It is stated that accordingly an enquiry was conducted and a report was submitted by the 2nd respondent, copy of which was not served on the petitioner. However, along with the counter affidavit filed by the 1st respondent, a copy of the report has been produced in this Writ Petition as Ext.R1 (a). Based on Ext.R1 (a) report, the 1st respondent issued Ext.P5 show cause notice u/s 32(1) of the Act calling upon the petitioner to show cause why the committee shall not be superseded u/s 32 of the Act for the nine charges which have been levelled to justify the proposed action. On receipt of Ext.P5, Ext.P8 reply was submitted by the petitioner.

4. At that stage, the petitioner filed W.P.(C)No. 19514 of 2007 challenging Ext.P5 show cause notice. That Writ Petition was disposed of by Ext.P7 judgment, directing that it will be open to the petitioner to appear before the 1st respondent, raise his objections to the notice and that he will also be heard in person. It was further directed that a copy of the final order will be served on the petitioner and that if the final order is adverse to the petitioner, the same shall not be implemented for two weeks from the date of service of a copy thereof. Against the directions in Ext.P7 judgment, the 1st respondent filed W.A. No. 1967 of 2007, which was dismissed as per Ext.P9 judgment. It would appear that, in the meanwhile, in compliance with Section 32(2) of the Act, the 1st respondent consulted with the Circle Co-operative Union, Thiruvalla, which by Ext.P10 dated 06.07.2007, recommended against any proceedings u/s 32 of the Act against the petitioner. However, rejecting Ext.P10, the 1st respondent passed Ext.P11 order dated 14.09.2007, superseding the committee and it is seeking to quash Ext.P11 order, this Writ Petition is filed.

5. The main contentions raised by the petitioner are that while passing Ext.P11 order, the 1st respondent has not complied with the provisions of the Act and the Kerala Cooperative Societies Rules, 1969 (hereinafter referred to as "the Rules" for short). It was also contended that the order was passed in violation of the principles of natural justice. Yet another contention raised was that the grounds on which the committee is ordered to be superseded, are acts/omissions which were committed by the previous committee in office and that the committee presently in office, cannot be superseded for that reason.

6. Among the contentions that are urged, I feel I should first deal with the contention that while passing Ext.P11 order, the 1st respondent did not comply with the provisions of the Act and the Rules. This is for the reason that in case my finding is that statutory provisions have not been complied with, necessarily, the impugned order will have to be invalidated and the proceedings will have to be completed afresh in accordance with law.

7. The contention raised by the Sr. Counsel for the petitioner was mainly that

after receipt of Ext.R1(a) report of enquiry conducted u/s 65 of the Act, the 1st respondent did not comply with the procedural formalities laid down under Rule 66 of the Rules, which prescribes the procedure for the conduct of inquiry and inspection, as provided under Sections 65 and 66 of the Act. According to the learned Sr. Counsel, once a report of enquiry u/s 65 of the Act is received, the 1st respondent is bound to pass orders thereon, as may be considered just after giving a reasonable opportunity of being heard to the society, person or persons concerned. It is stated that, in this case, neither did the 1st respondent furnish a copy of Ext.R1(a) report, nor did he give any opportunity of being heard to the society or the members of the Board of Directors and pass orders on the report as required under Rule 66(5) of the Rules. In support of this contention, the Counsel for the petitioner placed reliance on the judgments of this Court in *Ellakkal Service Co-operative Bank v. State of Kerala* 1997 (2) KLT 85 and *Selvi v. District Industries Centre* 2001 (3) KLT 26 (C. No. 37) : 2001 (2) Kar LJ 429.

8. On the other hand, the learned Special Government Pleader, who was fully supported by the learned Counsel for the 3rd respondent, at whose instance the enquiry was ordered, contended that the Act or the Rules did not contemplate a notice or hearing by the 1st respondent, before he takes further action on the report. The learned Counsel for the respondents relied on the Division Bench judgment of this Court in *State of Kerala v. Sudarsanan* 1997 (2) KLT 522.

9. Section 65 of the Act provides that the Registrar may hold an enquiry by himself or by a person authorised by order in writing, into the Constitution, working and financial condition of the society, if he is satisfied that it is necessary so to do. Section 65(6) also provides that; If the Registrar, on completion of the enquiry finds that, there is major defect in the constitution or working or financial condition of the society, he may initiate action in accordance with the provisions of Section 32. Rule 66 of the Rules provides the procedure for the conduct of inquiry and inspection. Rule 66(5), being relevant, is extracted below for reference:

The person authorised to conduct the inquiry or inspection shall submit his report to the Registrar on all points mentioned in the order referred to in Clause (c) to Sub-rule (1). The report shall invariably contain a latest balance sheet of the society and the last known addresses of the members of the Committee and of the Secretary. The report shall also contain his findings and the reason therefore; supported by such documentary or other evidence as recorded by him during the course of the inquiry or inspection. He shall also specify in his report the costs of the inquiry or inspection together with reasons and recommend to the Registrar the manner in which the entire cost or a part thereof maybe apportioned amongst the parties specified in Section 67. The Registrar shall pass such orders thereon as may be considered just after giving a reasonable opportunity of being heard to the society, person or persons-concerned.

(emphasis supplied)

A reading of the above Sub-rule would show that the report shall contain (1) findings of the enquiry officer on all points on which enquiry is ordered and the reasons therefore, supported by documentary and other evidences recorded during the course of the enquiry, (2) the enquiry officer shall also specify the cost of the enquiry and recommend the manner in which the entire cost or a part thereof may be apportioned amongst the parties specified in Section 67 and (3) The Registrar shall pass such orders as may be considered just after giving a reasonable opportunity of being heard to the society, person or persons concerned. Interpreting Rule 66, this Court in the judgment in Ellakkal Service Co-operative Bank v. State of Kerala 1997 (2) KLT 85, held that the Rule is a mandatory provision and that the Joint Registrar, who is a creature of the statute, should comply with the Rule.

10. In answer to the contention of the Sr. Counsel for the petitioner, learned Counsel for the respondents contended that the rule does not contemplate a hearing as contended and according to them, the hearing contemplated is only on the recommendation of the enquiry officer about the manner in which the cost of the enquiry is to be apportioned. They also relied on the judgment of the Division Bench of this Court in State of Kerala v. Sudarsanan 1997 (2) KLT 522. That was a case where an inspection u/s 66 was ordered and a report was submitted on which the Joint Registrar ordered a detailed. enquiry u/s 66 of the Act. Accordingly enquiry was conducted and report was submitted. Acting upon the reports, notice u/s 32(1) of the Act was issued to the President of the Bank. Reply was submitted and thereafter the Joint Registrar ordered supersession of the committee and appointed an Administrator. The learned Single Judge allowed the Writ Petition and set aside the order of supersession on three grounds, which are;

(i) without completing the procedure u/s 66, show cause notice u/s 32 should not have been issued;

(ii) that copies of the reports of the Assistant Registrar were not given to the President and;

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

On the first question, whether without completing the procedure u/s 66 of the Act, " show cause notice u/s 32 could have been issued, referring to Section 32(1) of the Act as it stood then and relying on the judgment of the Apex Court in Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others, , the Division Bench held that it was not necessary to complete the exercise under Sections 63 to 66 of the Act to enable the Registrar to take action u/s 32 of the Act. On the question whether it was necessary that the enquiry report should have been given, it was held that since the show cause notice showed the allegations made and since the committee was informed of the

details of the allegations, there was no denial of natural justice.

11. In my view, this judgment is only an authority for the proposition that for initiating proceedings u/s 32 of the Act, it is not necessary for the Registrar to complete the proceedings under Sections 65 or 66 of the Act and that if the allegations on the basis of which action u/s 32 is proposed, are informed to the affected party, the fact that the enquiry report is not furnished by itself does not amount to denial of natural justice. The Apex Court judgment relied on by the Division Bench rendered in the context of Section 72 of the Madras Co-operative Societies Act, which was similar to Section 32 of the Act as it stood then, also fully supports the view taken by the Division Bench. However, the Division Bench was not concerned about the impact of Rule 66(5) or the consequences of its non-compliance. In fact, the judgment does not even refer to Rule 66. Therefore, the Division Bench judgment, was rendered in a totally different context and is not an authority for the proposition that the Registrar need not comply with the procedure under Rule 66(5) of the Rules on receipt of a report u/s 65 of the Act.

12. Counsel for the 3rd respondent contended that the hearing contemplated under Rule 66(5) of the Rules is only on the recommendation of the Registrar about the manner in which the cost of the enquiry or a part thereof is to be apportioned. In my view, there is no warrant for such a restricted reading of this provision. As is evident from the Rules, apportionment of costs can only be in respect of an enquiry held at the instance of a creditor. In such a case, Section 67 of the Act contains provision for apportionment and also for hearing, before anybody is made liable for costs. In such a situation, there is no necessity for any further provision of the Rules and this also strengthen the view that the hearing provided in Rule 66(5) of the Rules is not confined to apportionment of costs. For these reasons, I am not inclined to accept this contention of the Counsel for the respondents.

13. In my view, Rule 66(5) of the Rules is very clear and it has already been held to be mandatory in nature, and therefore, the Registrar is bound to comply with the Rules. Therefore, once an enquiry report is received, the Registrar is bound to hear the society and the members of the Board of Directors before any action affecting them is taken.

14. Now that I have upheld the contention raised by the Counsel for the petitioner that before passing Ext.Pl 1, the Registrar should have complied with Rule 66(5), for that reason itself, Ext.P11 order is liable to be set aside. Since ExtP11 order is therefore vitiated for the aforesaid reason, necessarily, further proceedings pursuant to Ext.R1 (a) enquiry report has to be completed by the 1st respondent in compliance with Rule 66(5).

15. When such proceedings are initiated, it is for the petitioner and the other members of the Board of Directors to raise their objections about the findings in Ext.R1 (a) report and also the unsustainability of any proceedings under S.32 of the Act, if such proceedings are

initiated, and it is upto the Registrar to decide on such objections. Therefore, I do not think it proper that this Court should pronounce on the other contentions raised by the petitioner. Therefore, I dispose of the Writ Petition with the following directions:

(i) Ext.P11 order issued u/s 32 of the Act is quashed.

(ii) The 1st respondent shall comply with Rule 66(5) of the Rules by issuing notice to all concerned, hear them and pass orders on Ext.R1(a) report.

(iii) Once orders are passed as above, if the 1st respondent deems it appropriate, it will be open to the 1st respondent to take action u/s 32 of the Act in accordance with law.

(iv) All other contentions raised by both sides are left open to be urged and adjudicated by the 1st respondent.

Writ Petition is allowed as above.