
(2021) 12 KL CK 0128
In the High Court Of Kerala
Case No : Writ Appeal No. 638 Of 2020

Thuruthippuram Service Co-Operative Bank Ltd	APPELLANT
Vs	
Joint Registrar Of Co Operative Societies (General)	RESPONDENT

Date of Decision : 16-12-2021

Acts Referred:

Constitution of India, 1950 — Article 226
Kerala Cooperative Societies Act, 1969 — Section 65, 65(1)

Citation : (2021) 12 KL CK 0128

Hon'ble Judges : P.B.Suresh Kumar, J;C.S.Sudha, J

Bench : Division Bench

Advocate : George Poonthottam, Nisha George, M.Sasindran, V.K.Sunil S

Final Decision : Dismissed

Judgement

P.B.Suresh Kumar, J.

1. This appeal is directed against the judgment dated 06.03.2020 in W.P.(C) No.38050 of 2018. The appellants are the petitioners in the writ petition.

2. The first petitioner is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 (the Act) and the second petitioner is the Managing Committee of the first petitioner Society. In terms of Ext.P1 order, the first respondent, the jurisdictional Joint Registrar exercising the powers of the Registrar under the Act in respect of the Society has ordered an inquiry into the constitution, working and financial condition of the Society under Section 65 of the Act. The petitioners challenged Ext.P1 order in the writ petition on various grounds. The learned Single Judge took the view that the subjective satisfaction arrived at by the Joint Registrar for the purpose of ordering inquiry under Section 65 cannot be challenged in a proceedings under Article 226 of the Constitution and consequently, dismissed the writ petition without prejudice to the right of the petitioners to challenge the action, if any, taken based on the report of inquiry. The petitioners are aggrieved by the said decision of the learned Single Judge

and hence, this appeal.

3. Heard the learned Senior Counsel for the appellants as also the learned Government Pleader.

4. The learned Senior Counsel for the appellants pointed out that Ext.P1 order is one issued by the Joint Registrar on a complaint lodged by a member of the Society. According to the learned counsel, an inquiry under Section 65 of the Act being a serious one contemplated by the statute to be made either suo motu or on reports or applications specifically made mention of in sub-section (1) of Section 65, it cannot be ordered on a complaint at all. It was argued by the learned counsel that if in a given case, the competent authority wants to order an inquiry suo motu on a complaint having regard to the gravity of the allegations levelled against the Society therein, it is obligatory for him to satisfy before ordering such an inquiry that it is necessary and essential to order an inquiry under the said statutory provision after due application of mind into the records of the Society. It was also argued by the learned counsel that Ext.P1 order does not indicate that the Joint Registrar is satisfied, based on the materials on record, that an inquiry under Section 65 of the Act is necessary and essential in the Society. The learned counsel has relied on the decisions of this Court in *Ellakkal Service Co-operative Bank v. State of Kerala*, 1997 (2) KLT 85 and *Melukkara Service Co-operative Bank Ltd. v. Joint Registrar (General), District Co-operative Society*, 2018 (2) KHC 143, in support of his contentions.

5. Per contra, the learned Senior Government Pleader argued that a reading of Ext.P1 order would indicate beyond doubt that the same satisfies the requirements under Section 65.

6. In terms of Section 65, an inquiry thereunder can be ordered by the competent authority on his own motion or on reports or applications made mention of in sub-section (1) therein. In other words, an inquiry under the said provision cannot be ordered solely on a complaint. But that does not mean that a complaint cannot be the basis of an inquiry ordered by the competent authority under that provision on his own motion. No doubt, before ordering an inquiry under Section 65 on his own motion, it is obligatory for the competent authority to satisfy that it is necessary and essential to conduct such an inquiry in the Society. In other words, an inquiry under Section 65 cannot be ordered on the dictation of a superior authority or on the recommendation of an inferior authority, for the subjective satisfaction to order an inquiry under Section 65 shall be the subjective satisfaction of the competent authority himself. The question whether Ext.P1 order would satisfy the requirements of Section 65 needs to be considered in the light of the propositions aforesaid.

7. Ext.P1 order would show that a complaint disclosing serious irregularities and financial frauds has been received by the Joint Registrar and he has called for a report on the said complaint from the concerned Assistant Registrar of Co-operative Societies. Ext.P1 order would also show that the Assistant Registrar of

it is established that the Joint Registrar has rendered the subjective satisfaction as to the essentiality and necessity to order such an inquiry in the Society based on the records made available to him along with the report by a subordinate officer, according to us, this Court would not interfere with the said discretion exercised by the Joint Registrar.

In the said view of the matter, we do not find any merit in the writ appeal and the same is, accordingly, dismissed.