
(2015) 07 KL CK 0049

In the High Court Of Kerala

Case No : Writ Petition (C). No. 18752 of 2015 (T)

Trivandrum District Mini Industrial Estate Co-operative
Society Ltd.

APPELLANT

Vs

The General Manager, District Industries Centre and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 63, 65, 66, 66(2)

Citation : (2015) 07 KL CK 0049

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : K.M. Firoz, M. Shajna, S. Kannan and Ummul Fida, for the Appellant;
K.C. Vincent, Sr. Government Pleader, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dama Seshadri Naidu, J.—The petitioner, a Co-operative Society registered under the provisions of the Kerala Co-operative Societies Act, has a grievance that Exhibit P1 order, dated 10.06.2015, issued by the first respondent authorizing the second respondent, the Manager of District Industries Centre, to conduct enquiry under Section 66 of the Kerala Co-operative Societies Act is ultra vires of the first respondent and also is vitiated by mala fides.

2. The learned counsel for the petitioner has strenuously contended that law has been very much well settled that no enquiry or even inspection could be ordered based on an anonymous complaint. In support of his submissions, the learned counsel has placed reliance on Thiruvalla East Co-op. Bank Ltd. No. 3260 Vs. The Joint Registrar and Another, (2006) 4 ILR (Ker) 822 : (2006) 3 KLJ 897 : (2006) 4 KLT 959 . According to him, the very Exhibit P1 amply shows that the enquiry was ordered based on an anonymous complaint.

3. The learned counsel has submitted that though Exhibit P1 is said to have been issued under Section 66 of the Kerala Co-operative Societies Act (the "Act" for

brevity), the scope of alleged inspection is beyond the said provision. According to him, the first respondent is clothed with the power to order an enquiry only under Section 65 of the Act, but to exercise the said power, no proper grounds have been shown by the first respondent.

4. It is the further contention of the learned counsel that the action of the first respondent, who has also been arrayed eo nomine as fifth respondent, has been vitiated by mala fides, because, all along, he has been threatening that he would dislodge the Chairman of the petitioner society. As the Chairman of the petitioner society had not been amenable to the illegal demands of the first respondent, Ext.P1 order, contends the learned counsel, was issued in a vindictive manner.

5. In the alternative, the learned counsel would submit that, assuming there were to be any preliminary enquiry before issuing Exhibit P1, at no point of time prior to or during the course of enquiry, had the petitioner Society been put on notice.

6. Summing up his submissions, the learned counsel has urged this Court to interdict Exhibit P1 and issue further consequential directions.

7. Per contra, the learned Government Pleader has strenuously opposed the claims and contentions of the petitioner. To begin with, the learned Government Pleader would contend that the pleadings as contained in paragraphs 9 and 10 of the writ petition are not sufficient to establish that the action of the first respondent, arrayed eo nomine as fifth respondent, has been vitiated by any mala fides.

8. On the issue of suo motu action the learned Government Pleader, placing reliance on Sadasivan, K.G Vs. Joint Registrar and Others , has contended that once the first respondent receives information from whichever source, he may form his own opinion in that regard and later act further on his own satisfaction. According to him, instead of straight away acting on the basis of a complaint, the first respondent has gathered further information, formed prima facie opinion and proceeded further to issue Ext.P1; it does not amount to acting on an anonymous complaint.

9. Eventually, the learned Government Pleader has submitted that it is always open for the petitioner Society to defend itself in an enquiry, during course of which it will be given ample opportunity. In sum and substance, it is the contention of the learned Government Pleader that no prejudice is caused to the petitioner Society in terms of Exhibit P1 order.

10. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing the record.

ISSUES:

1. Does either Section 65 or Section 66 of the Kerala Co-operative Act, 1969 exclude any complaint from any other sources than those that have been

enumerated in the said Sections?

2. Under which provision--either Section 65 or Section 66 of the Act has the first respondent issued Ext.P1 Order?

3. Whether the first respondent acted suo motu or on an anonymous complaint?

4. Does the ratio laid down in either Thiruvalla East Co-operative Bank Limited or Sadasivan K.G., (supra) have any impact on the issue raised in the present writ petition?

5. Is there any infraction of the principles of natural justice?

6. Does the action of the first respondent, arrayed eo nomine as fifth respondent too, is actuated by any mala fides?

In re, Issue No. 1:

11. At the outset, I may have to observe that there is not much factual controversy in the present lis. The singular grievance of the petitioner is that the first respondent has issued Exhibit P1 proceedings ordering an enquiry or inspection by the second respondent, essentially based on an alleged anonymous complaint, however.

12. There is no gain saying the fact that this Court in Thiruvalla East Co-operative Bank Ltd. (supra) has held that the first respondent could not initiate any enquiry under Section 65 of the Act on the basis of a complaint made by a stranger. On the other hand, this Court in Sadasivan K.G. (supra) has held that once the Registrar forms a prima facie opinion concerning an allegation made even by a stranger, the further action on his part does not amount to acting on the complaint of a stranger. Going by the doctrine of binding precedent, I am required to examine both the precedents to see whether there is any conflict or cleavage of judicial opinion as both have been rendered by benches of co-ordinate jurisdiction. But before undertaking the said exercise, we shall examine the statutory significance of Sections 65 and 66 of the Act.

13. Part B of the Act deals with inquiry, suspension, investigation and surcharge. Under Section 65 of the Act the Registrar may on his own motion; or on an inquiry report of the Vigilance Officer appointed under section 68A; or on a report of the Director of Co-operative Audit appointed under section 63; or on an application by the majority of the members of the committee of the society, or by not less than one third of the quorum for the general body meeting, whichever is less; or on an application by the apex society or financing bank of which such society is a member; or on an application of a society to which the society concerned is affiliated hold an enquiry by himself or by a person authorized 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.

14. Similarly Section 66 of the Act, dealing with supervision and inspection, mandates that the Registrar shall supervise or cause to be supervised by a

person authorized by him by general or special order in writing in this behalf, the working of every society as frequently, as he may consider necessary. The said supervision may include an inspection of the books of the society. Sub-sections (2) and (3) thereof, under which purportedly Ext.P1 is issued, are material for our purpose, and they read as follows:

"(2) The Registrar may, on his own motion, or on the application of a creditor of a society, inspect or direct any person authorized by him, by order in writing in this behalf, to inspect the books of the society:

Provided that no such inspection shall be made on the application of a creditor unless the applicant,-

(a) satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) deposits with the Registrar such a sum as security for the costs of the proposed inspection as the Registrar may require.

(3) Where the inspection under sub-section (2) is made on the application of a creditor, the Registrar shall communicate the result of such inspection to such creditor.

15. If both Sections 65 and 66(2) are read in conjunction, it is evident that Section 65 contemplates an enquiry into the constitution, working and financial condition of the society, whereas Section 66(2) of the Act contemplates the inspection of the books of the society. For the said purpose the precondition is that the applicant shall satisfy the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time. Further, where the inspection under sub-section (2) is made on the application of a creditor, the Registrar shall communicate the result of such inspection to such creditor.

16. Evidently, the scope of Section 66(2) is very much limited: it is essentially concerning the financial condition of the Society which may have failed to honour the payment commitments towards a creditor. Under Section 66 of the Act, a roving enquiry into the affairs of the Society may not be possible. On the other hand, under Section 65 the sources of complaint are manifold and the scope of enquiry is vast.

17. It is further pertinent to observe that under Section 66(2) of the Act what is ventilated is a personal grievance of a creditor. For the creditor to set in motion the inspection of books of the society, he needs to satisfy the Registrar that he has not received the deposit amount on time despite demand. The creditor is also required to deposit with the Registrar a sum of money as security for the costs of the proposed inspection.

18. Firstly, in neither of the provisions - Section 65 or Section 66 - there is an

express exclusion of any others from making an application or complaining. All that, that has been stated therein is that no inspection shall take place unless the creditor satisfies certain preconditions. The Section per se does not mandate that no other person shall complain. It is, however, incongruous to expect any outsider to invoke Section 66(2) of the Act, because it confines itself to the aspect of repayment of deposits to the creditors.

19. On the other hand, under Section 65 of the Act, the inquiry is into the affairs of the Society; further, there can be no inference from the enumerated sources of complaint that no other person than those who have been referred to under Section 65 of the Act could complain. The enumeration, in my view, is illustrative, but not exhaustive. Any restrictive interpretation of Section 65 of the Act may affect the public interest, for a Society, though caters to its members, substantially serves the economic interests of the people at the grassroots level, which is, to me, nothing but serving the public interest.

In re, Issue No. 2:

20. Examined from another angle, we may still see whether the first respondent has acted suo motu, and under which provision the said authority has acted.

21. First, I may answer the latter. Through Ext.P1 what has been ordered by the first respondent is "a detailed inquiry", but not an inspection. Further, a comprehensive reading of Ext.P1 does not lead to a conclusion that it has ever intended to invoke Section 66 of the Act. Indeed, the first respondent has ordered an inquiry in to the issues of appointment of employees in and financial management of the petitioner society, which aspects squarely fall within Section 65 of the Act. It is trite to observe that once an authority has the necessary powers, merely because the power has been exercised by invoking a wrong provision, the proceedings cannot be nullified. In other words, invocation of a wrong provision is not fatal, so long as the very power is vested in the authority, albeit, under some other provision.

In re, Issue No. 3:

22. Addressing the second issue, I may observe that, apart from defining suo motu to mean "on its own motion, Collins English Dictionary provides additional information on the Latin legal expression thus: [It is] approximately equivalent to the term sua sponte. For example, it is used where a government agency acts on its own cognizance, as in "the Commission took suo motu control over the matter." Ramanath Aiyar's Law Lax Lexicon, which is a medley of many lexicons, defining it to mean "of one's own motion", opines that the expression implies a considerable discretion and option. This Latin legalese has not been listed by most of the dictionaries, including the multi-volume Oxford English Dictionary and the Webster's Encyclopedic Unabridged Dictionary. Even noted law lexicons, including Black's Law Dictionary, have not treated this expression.

23. If we examine Ext.P1, the order issued by the first respondent purportedly

under Section 66 of the Act, Ext.P2 complaint submitted by the Industrialists of Trivandrum Mini Industrial Estate seems to be its *raison d'être*. The complaint can hardly be termed anonymous. But, has the first respondent straight away acted on Ext.P2? As could be seen from Ext.P1, the first respondent, treating Ext.P2, perhaps, as a source of information, caused a preliminary inquiry through the Senior Co-operative Inspector, who having conducted an inquiry submitted a report recommending for a statutory inquiry. Then came into existence Ext.P1 Order.

24. Acting *suo motu* or on one's own is to mean someone acting on his or her own accord, not having been influenced or compelled by someone else. To act, the Registrar needs to have knowledge about the state of affairs of the Society; this knowledge is acquired through the information the authority receives during the course of his office. If one is to hold that mere source of knowledge necessarily amounts to the authority acting based on the very source, *suo motu* action could only be possible based on the divination or clairvoyance of a person, for that alone is devoid of external source.

25. In my considered view, someone acting on certain information means acting without his application of mind as to the veracity of the information. On the other hand, someone acting *suo motu* means a person, who may have received certain information, acting on his own accord after application of mind concerning the information received. To dilate, I may observe that the person could have as well rejected the information or could have subjected it to verification and then formed his own opinion. Once a person acts on information; the information is the springboard for action, and the person who acts is almost an automaton; in acting *suo motu*, the information is only a catalyst, so to say. The person acts essentially on his own accord and satisfaction, albeit the information being a motivator. I am, therefore, to conclude that the first respondent has acted on his own.

In re, Issue No. 4:

26. Visiting the precedential precincts, first we may examine the ratio laid down in Thiruvalla East Co-operative Bank Limited case, which was rendered prior in point of time. The issue is concerning the proposal of the bank to purchase a car for its official purpose; it was negatived by the Registrar. In that connection, the second respondent therein, who was described as a stranger in the judgment and about whom no further details are available, complained to the Register. Acting on the said complaint, the Registrar ordered an enquiry under Section 65 of the Act. In that context, a learned Single Judge of this Court has held thus:

"7. It is seen that the inquiry was ordered by the 1st respondent is on the basis of a complaint filed by the 2nd respondent. Under Section 65 of the Kerala Co-operative Societies Act, 1969, Registrar may hold an enquiry on his own motion or on an inquiry report of the Vigilance Officer or on a report of the Director of Co-operative Audit or on an application by the majority of the members of the

committee of the society or on an application of a society. Hence, the inquiry ordered by the 1st respondent is irregular..."

27. In Sadasivan K.G., (supra) the petitioner, the president of a co-operative bank, challenged inspection initiated in terms of Section 66(2) of the Act. It is, inter alia, contended that on the basis of a complaint of a member, there could be no enquiry under Section 66(2) of the Act, because, that provision provides only for proceedings on the application of a creditor of a society or the Registrar acting on his own motion. Repelling the contentions of the petitioner, this Court has held thus:

"6. On to the question of jurisdiction, when the Joint Registrar or Registrar of Co-operative Societies has the power to act on his own motion, i.e., suo motu, it is not within the province of judicial review to search for the source of the material which triggered a suo motu action. The plethora of instances which have been considered by this Court would show that material information may reach the Registrar of Co-operative Societies or the Joint Registrar, including from non-traceable sources. If a member of a society makes a complaint and if by that complaint, the Registrar is notified of certain fact situation which triggers action under Section 66(2), that procedure is only one which could be treated as suo motu, the Registrar or Joint Registrar acting on his own motion. The provision that such an inspection under Section 66(2) can be commenced on an application of a creditor of a society does not place any embargo on the power of the Joint Registrar or Registrar to act as aforesaid."

28. In the light of the foregoing discussion and my conclusion that Ext.P1 has not been issued under Section 66 of the Act, and that the quoting of the said provision in Ext.P1 is only an error, I am of the considered opinion that the ratio of neither Thiruvalla East Co-operative Bank Limited nor Sadasivan K.G., (supra) has application to the issue on hand. It is, however, to be mentioned that I am in respectful agreement with the ratiocination in Sadasivan K.G., on the issue of semantic import of "acting suo motu".

In re, Issue No. 5:

29. At this juncture, I may have to address the contention of the learned counsel for the petitioner that if at all there were to be any preliminary enquiry before issuing Exhibit P1 proceedings by the first respondent, the petitioner Society ought to have been put on notice. It is too well established a principle of law to be contradicted that a preliminary enquiry is always in the nature of prima facie fact finding, which will not cause any prejudice to the person against whom a subsequent statutory enquiry may be ordered. It is further well established that the material thus gathered in the preliminary enquiry cannot be used against the person affected, but it can only form a basis for further action.

30. Indeed, through a profusion of precedents, Courts have held that there cannot be any compulsion on the part of the officer ordering preliminary enquiry to put the affected person on notice, nor is it required that the material is to be

supplied to the affected person, unless the authority decides to act on the material so gathered. In my considered opinion, the first respondent has ordered a preliminary enquiry only for the purpose of ascertaining whether there is sufficient material to proceed against the petitioner Society. In conclusion, I am to hold that there is no infraction of the principles of natural justice in the first respondent ordering a preliminary enquiry, discrete as it may be, only for the purpose of fact finding. Suffice it to quote the observations of the Hon"ble Supreme Court in *Narayan Dattatraya Ramteerthakhar Vs. State of Maharashtra and others*, (1996) 9 AD 305 : AIR 1997 SC 2148 : (1996) 9 SCALE 1 : (1997) 1 SCC 299 : (1997) SCC(L&S) 152 : (1996) 8 SCR 939 Supp : (1997) AIRSCW 2002 : (1997) 6 Supreme 337 , wherein it is held as follows:

"3. [T]he preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice or not, remains of no consequence."

31. Indeed, there is force in the contention of the learned Government Pleader that petitioner Society will be given every opportunity to defend itself and no prejudice would be caused to the petitioner Society merely because the first respondent has initially decided to act based on a so-called anonymous complaint.

In re, Issue No. 6:

32. Finally, addressing the issue of mala fides, I may have to add that it is a truism to say that it is always easy to make allegations concerning mala fides rather than making them out. Paragraphs 9 and 10 of the writ petition, which according to the learned counsel for the petitioner contained the necessary allegations regarding the mala fides on the part of the first respondent, in my considered view, do not pass the judicial muster as has been established through numerous precedents concerning the sweep of such allegations and the necessary proof thereof.

33. It is an established proposition of law that whenever mala fides are alleged, the details have to be specific especially by quoting particular instances with sufficient proof concerning the nature of mala fides the person has been accused of. Apart from the repetitive invocation of the expression mala fides, the petitioner, I am afraid, has not established the allegation of mala fides so as to compel this Court to declare that Exhibit P1 proceedings are vitiated. It is well to remember, as has been stated by the Hon"ble Supreme Court in *Union of India and Another Vs. Ashutosh Kumar Srivastava and Another*, (2001) 8 AD 276 : AIR 2001 SC 4004 : (2001) 91 FLR 769 : (2001) 8 JT 251 : (2002) LabIC 543 : (2001) 6 SCALE 597 : (2002) 1 SCC 188 : (2001) 4 SCT 1110 : (2002) 1 SLJ 107 : (2001) AIRSCW 3986 : (2001) 7 Supreme 289 , that there is always a presumption in favour of administration that it exercises powers in good faith and

for public benefit. The burden is on the individual to produce sufficient material to suggest of the mala fides of the authority concerned and it is not easy to discharge the same.

34. Further, it is apt to quote what the Apex Court in *Jasbir Singh Chhabra and Others Vs. State of Punjab and Others*, (2010) 2 JT 637 : (2010) 2 SCALE 754 : (2010) 4 SCC 192 : (2010) 3 UJ 1323 : (2010) AIRSCW 3398 : (2010) 4 Supreme 65 has held in this regard:

"34. It is trite to say that while exercising power of judicial review, the superior courts should not readily accept the charge of malus animus laid against the State and its functionaries. The burden to prove the charge of mala fides is always on the person who moves the court for invalidation of the action of the State and/or its agencies and instrumentalities on the ground that the same is vitiated due to mala fides and the courts should resist the temptation of drawing dubious inferences of mala fides or bad faith on the basis of vague and bald allegations or inchoate pleadings. In such cases, wisdom would demand that the court should insist upon furnishing of some tangible evidence by the petitioner in support of his/her allegations"

35. Thus, without further ado, I may wind up the discussion holding that Ext.P1 was issued by the first respondent suo motu under Section 65 of the Act; that the ratio of neither *Thiruvalla East Co-operative Bank Limited* nor *Sadasivan K.G.*, (supra) is germane to determine the issues raised in the present writ petition, and that there is no infraction of the principles of natural justice, nor has the petitioner suffered any particular prejudice in the face of Ext.P1 order.

In the facts and circumstances, I am of the considered opinion that the writ petition is meritless and requires to be, and is accordingly dismissed. No order as to costs.