

(2000) 11 KL CK 0077
In the High Court Of Kerala
Case No : W.A. No. 2412 of 2000

TVM. Co-op. Urban Bank

APPELLANT

Vs

Joint Registrar

RESPONDENT

Date of Decision : 02-11-2000

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 69
Kerala Co-operative Societies Rules, 1969 — Rule 182, 198(4)

Citation : (2000) 2 KLJ 745

Hon'ble Judges : K.S. Radhakrishnan, J;G. Sasidharan, J

Bench : Division Bench

Advocate : George Poonthottam, for the Appellant; S. Gopakumaran Nair and C.K Payithran, Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

Radhakrishnan, J.—Thiruvananthapuram Co-operative Urban Bank Ltd., herein after called the "Bank", has preferred O.P. No. 19898 of 20(H), seeking a writ of certiorari to Squash the order dated 24.6.2000 passed by the Joint Registrar of Co-operative Societies (General) Trivantpuram staying all further proceedings including passing of a final order on the disciplinary action initiated by the Bank against the second-respondent, Accountant of the Bank, till the disposal of A.R.C. No. 159 of_2000. A.R.C. No. 159 of 2000 was preferred by the second respondent u/s 69 of the Kerala Co-operative Societies Act for cancelling the resolution passed by the Bank constituting Disciplinary Action Sub Committee with President of the Bank as Convenor so as to initiate disciplinary proceedings against her. A declaration was also sought for that there is no proper appellate forum under Rule 198 (4) of the Kerala Co-operative Societies Rules for hearing the appeal. A prayer was also made to rescind.the resolution/decision of the Sub Committee leading to the provisional decision to dismiss the second respondent from service¹. The Joint Registrar entertained the Arbitration case, and passed the impugned order dated 24.6.2000. Before the learned single Judge, petitioner-Bank contended that the Joint Registrar has no jurisdiction to entertain a dispute

in connection with the disciplinary proceedings u/s 69 of the Act. Counsel also contended that the action of the Joint Registrar interdicting the Bank from proceeding with the disciplinary proceedings is illegal. Second respondent contended that the Joint Registrar has got power to entertain a petition u/s 69(2) (c) read with Section 2(1) of the Act. Further it was stated that disciplinary action was taken by a SubCommittee, consisting of the President of the Bank under Rule 198 (3) of the Rules. President being a member of the Board of Directors the second respondent stated that his right of appeal under Rule 198(4) has been effectively taken away. Counsel also relying on the decision of this Court in Pudupariyaram Service Co-operative Society v. Rugmini Amma, (1996) 1 KLT 100, submitted that the Joint Registrar has got power under Rule 176 of the Rule also to interfere with the disciplinary proceedings initiated by the Bank. Learned single Judge felt that the case in hand is a special case, where the original authority to impose punishment and the appellate authority to sit in judgment over the decision of the original authority are both headed by the President of the Bank. Placing reliance on the decision of this court in Kunhammad v. Joint Registrar, (1998) 1 KLT 60, learned single Judge concluded that the principle of natural justice would be violated, if the appeal is heard by the board of directors, which is headed by the President of the Bank. Aggrieved by the above mentioned judgment, this appeal has been preferred by the Bank.

2. When the matter came up for hearing, we heard counsel for the Bank, Sri. George Poonthottam, learned Government Pleader, Sri. C.K. Pavithran, for the first respondent and counsel appearing for the second respondent Sri. S. Gopakumaran Nair.

3. Before we deal with the rival contentions, it is necessary to examine the facts. Second respondent herein was working as Accountant in the service of the Bank. She was placed under suspension by the Bank on 27.1.1998, along with another Officer on the charges, of misappropriation of funds. She was served with memo of charges, along with statement of allegations, on 4.2.1999, to show cause why disciplinary action be not initiated against her under Rule 198 of the Rules. Charges levelled against her are as follows:

1. That you, Smt. J. Shylaja, while working as Clerk and Accountant in the service of the Bank during the period from 1.1.1987 to 31.1.1998 had derived pecuniary benefit to the tune of Rs. 48, 166/20 (Forty eight thousand one hundred and sixty six and twenty paise only) by deliberately making false entries in the relevant loan ledgers under the guise of having remitted interest; but actually not remitting such interest in respect of ED. loan Nos. 2574 and 2842 and cash certificate Loan No. 52 from the main Branch of the Bank and. thereby caused corresponding pecuniary loss to the Bank. This will amount to misappropriation of the Bank's funds.

2. That you deliberately manipulated the concerned Loan Ledgers maintained by the Bank by making false entries with the dishonest intention of deriving personal pecuniary benefit and thereby cheated the Bank.

3. That you misused your powers as an employee of the Bank in committing such fraudulent acts and thereby abused the confidence reposed on you by the Bank.

4. That you remitted a total amount of Rs. 67,785/20 as directed by the Bank as per letter No. 1349/97-98 dated 14.3.1998 comprising of the illegal pecuniary gain made by you and updated interest and penal interest thereon and thereby admitted the fraudulent acts committed by you.

5. Charges (1) to (3) constitute grave misconduct on your part.

Second respondent filed her objections to the memo of charges. No action was taken on the memo of charges for quite sometime. Later, the Bank had made a request to the Joint Registrar for extension of the period of suspension of the second respondent, so as to complete the disciplinary proceedings. Bank was served with a communication dated 6.12.1999 extending the period upto 31.12.1999 for completing the disciplinary proceedings and informed that no further time would be granted. Since no action was taken, second respondent approached this Court and filed O.P.No3051 of 2000. This Court disposed of the said Writ Petition on 25.2.2000 directing the Bank to reinstate the second respondent, since no permission was obtained by the Bank under Rule 198(6) of the Rules, for keeping an employee under suspension beyond the period of one year. Aggrieved by the said judgment, the Bank preferred W.A. No. 456 of 2000, and the same was disposed of on 1.3.2000. The Bench noticed that the second respondent was already reinstated in Service.

4. The domestic enquiry was subsequently completed, and the Advocate Enquiry Officer submitted his report dated 20.4.2000. Enquiry Officer found the second respondent guilty of the charges. Sub Committee of the Bank, therefore, met on 22.4.2000 and decided to forward a copy of the enquiry report to the second respondent. Enquiry report was forwarded to the second respondent, calling for her objections. Sub Committee again met on 25.5.2000 and perused the enquiry report as well as the statements of objections filed by the second respondent and ordered as follows:

The charges proved against the two employees are very grave. Both of them have abused their position in the Bank to earn illegal personal gain. Such persons do not deserve any leniency in the matter of punishment. Both of them occupied senior positions in the Bank and they should have acted as models to other employees of the Bank. By their deliberate acts of misconduct, they have put the bank to serious jeopardy. The credibility of the bank has been seriously eroded. Taking into account of all these material facts, the Sub Committee is of the definite view that they deserve the maximum punishment. The fact that they have remitted the amount with interest does not in any way mitigate the gravity of the misconduct committed by them. In such circumstances the Sub Committee provisionally resolves to impose the punishment of dismissal from service on Smt. S. Madhavikutty, Chief Accountant (under suspension) and Smt. J. Shylaja, Accountant, Head Office of the Bank in terms of Rule 198 (1) (h) of

the Kerala Co-operative Societies Rules 1969 with effect from the dates of their suspension from service.

5. The Sub Committee then directed the second respondent and another Officer to show cause why provisional decision taken to dismiss them be not confirmed. Second respondent then submitted her reply dated 19.6.2000. Second respondent, without waiting for any reply from the disciplinary authority, moved the Joint Registrar and filed A.R.C. No. 159 of 2000 for the reliefs which we have narrated in the earlier part of the judgment. Arbitration case was entertained by the Joint Registrar, who passed the impugned order dated 24.6.2000 staying all further disciplinary proceedings against the second respondent till the disposal of the Arbitration case.

6. We are of the view that Joint Registrar was not justified in entertaining the Arbitration case against initiation of disciplinary proceedings against the employee. Co-operative societies are not created under the Kerala Co-operative Societies Act or Rules. They have got independent existence apart from the Act and Rules. Eventhough the} have to get registration under the Act, they have got independent status. Registration of a society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal, and with power to hold property, enter into contracts, institute and defend suits, and other legal proceedings and to do all things necessary for the purposes for which it was constituted. Apart from various provisions of the Act and rules, a Society has to function in accordance with the registered bye-laws. The Act and Rules do not infringe upon the autonomy of a co-operative society. Section 80 deals with officers of the Co-operative Societies. Rules 182 of the Rules deals with classification of various societies u/s 80(1) of the Act. Rule 186 deals with qualifications prescribed for various posts in the Societies. Rule 198 deals with disciplinary action. It says that any member of the establishment of a co-operative society may, for good and sufficient reasons, be punished by imposing various penalties. Rule 198(4) deals with the provision for appeal against the imposition of penalties. Rule 198, in so far as it is material, is extracted below:

198. Disciplinary Action:- (1) Any member of the establishment of a Co-operative Society may, for good and sufficient reasons, be punished by imposing any of the following penalties, namely:-

(a) Censure;

(h) Dismissal from service.

(2).....

(3) The authority competent to impose the various penalties on different categories of employees shall be as shown in the table below:-

Authority competent to impose

Rank of employee

Penalties under (a) to (c)

Penalties under (d) to (h)

Secretary/Manager or other Chief Executive officer and all employees holding posts higher than that of Sr. Clerk/Sr. Assistant/ I Grade Assistant/Equivalent other employees with same or identical scale of pay.

President/Chairman

Sub Committee/Executive Committee

All other employees

Secretary/Manager of other Chief Executive Officer

President

(4) An appeal shall lie against every order imposing a penalty to the competent-appellate authority, shown in the table below:-

Authority competent to dispose " of appeal against

Rank of the Appellant

Penalties under (a) to (c)

Penalties under (d) to (h)

Secretary/Manager or other Chief Executive officer and all employees holding posts higher than that of Sr. Clerk/Sr. Assistant/I Grade Assistant/ Equivalent other employees with same or identical scale of pay.

Executive Committee or Board of Management

Board of Management

All other employees

President

Executive Committee/Board of Management

(5) No appeal shall be entertained if it is not preferred within a period of three months from the date of the order imposing the penalty.

(6).....

The above mentioned statutory provision clearly shows that penalties enumerated in Rule 198(1) (d) to (h) could be imposed only by the Sub Committee/ Executive Committee. In the instant case, as far as the second respondent is concerned, penalty was inflicted by the Sub.Committee/Executive Committee. Rule 198(4) gives a right of statutory appeal to an employee against

the order imposing the penalty to the competent appellate authority. As per Rule, 198(4), as far as the second respondent is concerned, the appellate authority is the Board of Management. This is the scheme of the rules. In the instant case, punishment of dismissal was imposed by the Disciplinary Action Sub Committee, which included the President of the Bank as well. A further appeal is proved to the Board of Management.

7. The question that arises for consideration in this case is whether, without availing of the statutory remedy, an employee could invoke Section 69 of the Act so as to interdict the disciplinary proceedings initiated by the Bank under Rule 198 of the Rules. Further, whether Joint Registrar has got power u/s 69 of the Act to interfere with the disciplinary proceedings initiated by the Bank which ultimately ended in dismissal of an employee. Question is no more res integra. A Division Bench of this Court in Kaloor Vadakkummuri Service Co-op. Society, v. Asst. Registrar, 1973,K.L.T. 523 considered the scope of Section 2(i) read with Section 69 of the Co-operative Societies Act, 1969 vis-avis the powers of the Industrial Tribunal/Labour Court under the Industrial Disputes Act. The Bench held as follows:

If the subject matter of the dispute before the Labour Court is one falling within the term "dispute" as defined in S. 2(i) and within S. 69 of the Act, and therefore within the competence of the Registrar to decide, this provision must prevail over the provisions in the Industrial Disputes Act which provides for the settlement of disputes such as that are referable to the Industrial Tribunals or Labour Courts. The real question in the instant case is not whether the dispute is one touching the business of the society, or its management or establishment, but whether it is a dispute within the competence of the Registrar to decide. The Industrial Disputes Act is meant for doing social justice and the powers conferred on the Industrial Tribunals and Labour Courts functioning under that statute are very much wider. Those Tribunals and Labour Courts are not trammelled by the inhibitions of contractual obligations or rights and can, in disregard of well-known concepts of law, readjust rights and obligations in a manner conceived to the just in the light of socio-economic changes that are taking place in various countries in this century. The jurisdiction exercised by such Tribunals and Labour Courts is therefore entirely different and though there may be said to be a "lis" and though there may be a judicial process involved, they do not function as courts nor do they exercise powers of a court or are they inhibited by rules of law which must guide and control the decisions of Courts. A dispute can be raised by a body of workmen, and this can be done even against the wishes and will of the concerned workman. In such a dispute between the body of workmen and the employer the aggrieved employee is often out of the picture or atleast not necessarily in the picture. Such a dispute and the adjustment of rights arising there from cannot fall within the disputes in the definition in S. 2(i) and therefore will not fall within S.69 of the Co-operative Societies Act. This is so, notwithstanding rule 67 of the rules of 1969, by which the Registrar is required to act according to justice, equity, and good conscience. The Registrar has not

the power of an Industrial Court; he himself acts in the manner in which a Court should function. The powers of the Labour Court, the 2nd respondent, functioning under the Industrial Disputes Act, 1947, are unaffected by the powers of the Registrar under S. 69 of the Act. The dispute that was resolved by the 2nd respondent by passing Ext.P5 award could not have been dealt with by the Registrar. He was not competent to deal with that question, He could not grant the relief of reinstatement which has been granted by the 2nd respondent.

The above mentioned decision was further relied upon by a Full Bench of this Court in Balachandran v. Dy. Registrar, 1978 KLT 249 (FB). Full Bench held as follows:

3. The jurisdiction of the Registrar in regard to arbitration under the Cooperative Societies Act, having been thus sketched by the decisions of this Court, the question is whether, on the facts disclosed in this case, the Registrar had jurisdiction or not. The learned Judge found jurisdiction in the Registrar on the addition of the word "establishment" in the definition of the word "dispute" which we have extracted earlier. In so finding, the learned Judge has lost sight of the important principle stated by the decisions to which we have just made reference, that the jurisdiction of the Registrar is co-terminous with the jurisdiction of the ordinary civil courts. It is beyond dispute that no rules or bye-laws regulating seniority and promotion as between the appellant and the 4th respondent, or in respect of the employees of the Co-operative Society have been framed. In the absence of such rules, regulations or bye-laws, a dispute as to seniority or promotion cannot be entertained or made the/subject of litigation in a civil court. The provisions of S. 14(I)(b) of the Specific Relief Act and the inability to grant the relief of reinstatement would exclude them from the purview of the ordinary civil courts, as stated in the decisions already noticed. Ex hypothesi such a dispute cannot be a subject matter of arbitration by the Registrar.

In this connection reference may also be made to the decisions of this Court in A.P.Sankara Wariyar v. The North Malabar Dist. Supply and Marketing Society Ltd., 1982 KJ. 124 and also in Sankaran v. Dy. Registrar, 1975 KLT 861. On the basis of the above mentioned decisions, the Joint Registrar could not have ordered reinstatement of an employee, who was dismissed from service. The dispute concerning disciplinary proceedings would not be characterised as a matter touching the business, constitution, establishment or management of the society u/s 2(i) so as to bring in within the ambit of Section 69 of the Act. the jurisdiction of the Registrar u/s 69 of the Act is co-terminous with that of the civil court. The general rule is that a civil court will not specifically enforce a contract of a personal service. We are of the view that the second respondent was not justified in invoking the power u/s 69 of the Act, so as to challenge the resolution passed by the Bank provisionally resolving to terminate the service of the second respondent. Further Joint Registrar was not justified in entertaining the Arbitration Case, at a stage when the Sub Committee has issued a show cause

notice to the second respondent on the basis of the enquiry report.

8. Counsel for the second respondent tried to sustain the order of the Joint Registrar, relying upon Rule 176 of the Rules. We are of the view that the power conferred on the Joint Registrar under Rule 176 is to be exercised sparingly. The said provision is extracted below for easy reference:

176. Registrar's power to rescind resolution: Notwithstanding anything contained in the bye-laws of a registered society, it shall be competent for the Registrar to rescind any resolution of any meeting of any society or of the committee of any society, if it appears to him that such resolution is ultra vires of the objects of the society, or is against the provisions of the Act, Rules; Bye-laws or of any direction or instructions issued by the Department; or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the Society.

Dealing with the powers under Rule 176 vis-a-vis disciplinary proceedings initiated under rule 198 of the Rules, a Division Bench of this Court in *Chithambaran v. Registrar of Co-op. Societies*, (1996) 2 KLT 66 held as follows:

Normally the power of the Registrar under Rule 176 should be invoked to tune up the administration of Co-operative Societies and if there is any serious infraction of any act or rules, the Registrar is given authority to intervene and correct such mistakes. This is a general power given to the Registrar for the smooth and effective functioning of the Co-operative Societies. In the matter of disciplinary proceedings, if the employees have got right of appeal, the proper remedy of the employees is to file appeal, against such orders. It is quite possible that even in the disciplinary proceedings there may be violation of certain rules. But when the employees have got a right of appeal it is for them to challenge the order before the Appellate Authority, and they contend before the appellate authority that there was violation of the Rules. In the instant case, the order of removal of the petitioner from service was passed by the Board of Directors instead of the President of the Co-operative Bank, who was the competent authority. This could be characterised as an infraction of Rule 198 of the Co-operative Societies Rules, and if a resolution is passed on that basis the Registrar can consider the matter under Rule 176.

In the above mentioned case, the employee was removed from service by an order passed by the Board of Directors, instead of the President of the Bank, who was the competent authority under the Rules. This action of the Bank took away the right of an employee to file an appeal to the Board of Management under Rule 198(4) of the Rules. Registrar could rescind the same under Rule 176 of the Rules, since the impugned order took away the statutory right of appeal. Bench also made a reference to the decision of this Court in *P.S. Co-op. Society v. Rugmini Amma*, (1996) 1 KLT 100, wherein also an identical question was considered by another Division Bench. Learned single Judge in *Kunhammad v. Joint Registrar*, (1998) 1 KX.T. 60, dealing with Rule 176 of the Rules, held as

follows:

It is no longer possible to entertain argument that the Registrar is helpless in the matter of interfering with any disciplinary action taken by the Society against an erring employee. It is equally beyond the dispute that the Registrar cannot while passing orders under Rule 176 of the Rules interfere with the findings of the facts arrived either by the sub committee or by the appellate body. The power is restricted to the area where the Registrar is only to see that the Society works within the four corners of the Cooperative Societies Act, Rules, Bye-laws or orders issued under the Act or Rules.

We are of the view that the above mentioned decision would positively show that Registrar could exercise power under Rule 176 only if it finds that the resolution passed by the committee is against the object of the Society or the provisions of the Act or Rules, bye-laws or directions, or instructions issued by the Department. In this case second respondent could not establish that the Sub Committee has violated any of the provisions of the Act Rules, byelaws, directions or instructions issued by the Department Disciplinary Action Sub Committee, along with the President, relying upon the report of the Enquiry Officer issued the show cause notice to the second respondent as to why disciplinary proceedings be not taken under Rule 198 of the Rules. We have already indicated that subsequently the committee has also taken the decision to dismiss the second respondent from service under Rule 198 (4) of the Rules.

9. We do not find any infirmity in the orders passed by the Sub Committee. We notice that the apprehension of the second respondent which was raised before the learned single Judge as well as before the Joint Registrar was that since the appeal is to be preferred to the Board of Management against the decision of the Sub Committee, and since the President was the member of the Sub Committee, the second respondent's right of appeal is taken away. We are of the view that such a contention cannot be countenanced at this stage. There is no statutory bar for a President being a member of the committee which initiated disciplinary proceedings against the second respondent. Question is whether being a member of the Sub Committee which inflicted punishment of dismissal, the President could be a member of the appellate authority exercising power under Rule 198(4). We notice that this contingency has not arisen yet, since the second respondent has not preferred any appeal before the Board of Management as provided under Rule 198(4) of the Rules. The principle *nemo debet esse iudex in propria causa* is applicable only in a situation when such a contingency arises, we need not express any opinion at this stage. It is not as if the Board of Management cannot function without the President. There is ample provision in the bye laws of the Bank which say that if the President is incapacitated due to various reasons, to participate in the Board of Management, the Vice President or designated person could convene the meeting. Therefore the contention of counsel for the second respondent that the Board of Management could not have met in the absence of the President of the Bank has no basis. In view of the

above mentioned circumstances, we are of the view that the Joint Registrar was not justified in entertaining ARC 159 of 2000 and also passing the order dated 26.4.2000. We accordingly quash those proceeding, as without jurisdiction. We also declare that no circumstances exist so as to invoke Rule 176 of the Rule\$, in the facts and circumstances of the case. We therefore set aside the judgment of the learned single Judge and allow this appeal. We make it clear that we are not expressing any opinion with regard to the merits of the case which has to be considered by the Board of Management, if an appeal is preferred by the second respondent in accordance with law.