

(1973) 11 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 1034 of 1973

V. Bhaskaran

APPELLANT

Vs

Asst. Registrar of co-operative societies

RESPONDENT

Date of Decision : 15-11-1973

Acts Referred:

Constitution of India, 1950 — Article 226

Kerala Co-operative Societies Act, 1969 — Section 2, 2(i), 69, 70(3)

Citation : (1974) KLJ 90

Hon'ble Judges : G. Viswanatha Iyer, J

Bench : Single Bench

Advocate : K. Vijayan, for the Appellant; T.R. Govinda Warriar and K. Ramakumar, for the Respondent

Final Decision : Dismissed

Judgement

G. Viswanatha Iyer, J.—In this original petition the petitioner seeks for a writ of prohibition or other appropriate writ or direction prohibiting the 1st respondent from proceeding with Ext. P2, plaint filed under S. 69 of the Kerala Co-operative Societies Act. The petitioner was appointed as Cashier by Ext. P1 order dated 28-2-1973 in the 2nd respondent Society. Respondents 3 and 4 who are employees of the 2nd respondent filed a plaint, Ext. P2, before the 1st respondent, Assistant Registrar of Co-operative Societies, in which they stated that the petitioner has been appointed Cashier against the provisions of the Kerala Co-operative Societies Act and the bye-laws, that this is harmful to their interest, that their chances of promotion are prejudiced and that this appointment is against the circular issued by the Registrar prohibiting fresh appointments. Therefore they sought a cancellation of the appointment of the petitioner and for consequential reliefs. On receiving this plaint on the same day the 1st respondent by Ext. P3 order stayed the appointment order until the hearing of the suit and its decision. The case was posted for bearing to 9-3-1973. The petitioner challenges this order and also seeks for a writ of prohibition against the 1st respondent from proceeding with Ext. P2 suit as, according to

him, the dispute sought to be adjudicated upon will not come within the expression "dispute" as defined in the Co-operative Societies Act. The 1st respondent and respondents 3 and 4 have filed counter-affidavits. Their main contention is that the 1st respondent has jurisdiction to decide whether the dispute comes within the definition of "dispute" in Clause (i) of S. 2 of the Act, and therefore he has jurisdiction to stay the appointment of the petitioner as Cashier. They further contend that even if the 1st respondent has no jurisdiction, that is a matter which the petitioner has to urge before the 1st respondent and without doing that this petition under Art.226 of the Constitution is unsustainable.

2. S. 69 of the Co-operative Societies Act (Act 21 of 1969) provides that if a dispute arises between the various parties referred to in that Section, that dispute shall be referred to the Registrar for decision and no court shall have jurisdiction to entertain any suit or other proceeding in respect of such dispute. In this case the parties to the dispute are the parties referred to in the said Section. Respondents 3 and 4 are employees of the Society. They are also members of the Society. They challenge the order of the Society. So, it is a dispute between the Society and its employees. But, the bone of contention urged on behalf of the petitioner is that the dispute mentioned in Ext. P2 plaint filed before the Assistant Registrar is not a dispute coming within the definition of "dispute" in S. 2(i) of the Act. S. 2(i) reads thus

"dispute" means any matter touching the business, constitution, establishments or management of a society capable of being the subject of litigation and includes a claim in respect of any sum payable to or by a society, whether such claim be admitted or not.

As per this definition, in order that the claim put forward in Ext. P2 may be raised before the 1st respondent it must be a matter capable of being the subject of litigation. This means that the cause of action urged in Ext. P2 must be a cause of action which can form the subject of a suit in a civil court, Whether this is a matter which can form the subject of a litigation in a civil court is a question which can be decided by the Registrar as provided for in sub-s. (4) of S. 69 which is in the following terms:

If any question arises whether a dispute referred to the Registrar under this section is a dispute as defined in clause (i) of S. 2, the decision thereon of the Registrar shall be final.

It is therefore contended on behalf of the respondents that the 1st respondent has got jurisdiction to decide whether this is a dispute which comes within the purview of the definition of "dispute" and therefore the writ of prohibition shall not lie against the Registrar from deciding this jurisdictional fact. On the other hand, the counsel for the petitioner contends that the dispute raised before the 1st respondent is a dispute which cannot form the subject of a litigation in a civil court and therefore there is total lack of jurisdiction to the 1st respondent to decide this question. The facts which are urged as the cause of action are facts

relating to the appointment and promotion of the employees of the Society. There are no statutory provisions relating to this appointment or regarding the conditions of service of employees of the Society. No contract is urged in support of the claim put forward by respondents 3 and 4 and therefore the matter sought to be put in issue is a matter relating to appointment and promotion which cannot form the subject of a litigation in a civil court. So, according to the petitioner's counsel, there is a total lack of jurisdiction on the part of the 1st respondent to entertain Ext.P2 suit and in such a case even though the 1st respondent may have jurisdiction to decide whether the dispute is one coming under the definition of "dispute", a writ of prohibition will lie against the 1st respondent from proceeding with Ext. P2. In support of this contention the petitioner's counsel relied on the decisions of the various High Courts regarding the scope of a prohibition when a total lack of jurisdiction is ex facie disclosed in the proceedings initiated. He relied on the decision in *Sri Lakshmindra Theertha Swamiar of Sri Shirur Mutt and Another Vs. The Commissioner, Hindu Religious Endowments, Madras and Others*, , *A.N. Lekshmana Shenoy Vs. The Income Tax Officer, , The Workers and Staff employed under the Express Newspapers (Pr.) Ltd. and Others Vs. The Management of the Express Newspapers (Pr.) Ltd. Madras and Others*, , *The State of U.P. and Another Vs. Duli Chand Kashi Prasad, and S. Venkatesan and Another Vs. Nihalchand Agarwala and Others*, . He also relied on a passage from de Smith's *Judicial Review of Administrative Action*. Second Edition, page 410 in support of his contention that when there is a total lack of jurisdiction and the facts are not in dispute, a writ of prohibition can be issued at the earliest stage itself. He need not wait until the tribunal has actually stepped outside its jurisdiction, as for instance, continuing the hearing after an incorrect determination of a jurisdictional fact. The passage referred to reads as follows:

On the other hand, there have been modern decisions in which applications for prohibition have been held admissible even before the inferior tribunal has had the opportunity to address itself to the disputed question of its jurisdiction. In any event, a doubt as to whether an application for prohibition is premature is likely to be resolved in the applicant's favour if the final order of the tribunal may be protected by statute from challenge.

This passage, according to the petitioner, clearly supports him in his contention that he can move for a writ of prohibition to the 1st respondent even before the 1st respondent has actually taken a decision on the question of jurisdiction.

3. I am afraid that the petitioner's claim for a writ of prohibition is rather premature. The 1st respondent has jurisdiction to decide whether the dispute is one coming under the definition of "dispute". He has not applied his mind at all to that question. Unless the petitioner can show that the 1st respondent has actually stepped outside his jurisdiction, or is undoubtedly about to step outside his jurisdiction, he cannot sustain a claim for a writ of prohibition. Whether the 1st respondent has got jurisdiction to decide the dispute will depend on a

decision whether it is a dispute coming under the Act. The latter question, which may be called the jurisdictional fact, can be decided by the 1st respondent himself. If he decides that this is not a dispute coming under the Act, the matter will end there. Only if he decides that this is a dispute coming under the Act, the question whether he has stepped outside his jurisdiction will arise. There is nothing in these proceedings to show that he has at this stage stepped outside his jurisdiction. The petitioner has not so far moved the 1st respondent for a decision whether the dispute will come under the definition of "dispute" in S. 2 (i) of the Act. Only if he raises such a contention and the 1st respondent decides against him, the question whether he has exceeded his jurisdiction and therefore whether a writ of prohibition must be issued will arise for determination. At this stage the petitioner is not entitled to ask for a writ of prohibition. His claim is premature. The decisions referred to by him are all cases where there is either a determination of a jurisdictional fact by the tribunal or there is an expression of an intention to entertain matters into which the tribunal has no power to enquire. That is not the case here. Therefore, the principles laid down in the above cases do not apply to the facts of this case.

4. But, the 1st respondent is clearly wrong in passing Ext. P3 order. No doubt, S. 70(3) empowers the Registrar to pass interlocutory orders pending a decision. The power to pass an interlocutory order can be exercised only pending a decision of the dispute. This presupposes that he has got jurisdiction to decide the dispute. That means an interlocutory order is not a master of course on filing a plaint under S. 69. The 1st Respondent must have at least considered the nature of the dispute, whether there is a prima facie case for determination by him and whether the interests of justice require any interlocutory order should be passed. The power to pass an interlocutory order should be sparingly exercised and only if deemed necessary in the interests of justice. There is nothing to show from the order that the 1st respondent has applied his mind to the nature of the plaint, the cause of action urged in it, the relief asked for and whether he can grant it. A laconic statement that he is "convinced that an interlocutory order is called for" is not enough. Reasons for such prima facie conviction in the nature of this case should have been stated to show whether he has applied his mind to the question of the nature of the dispute. In the absence of such consideration and finding the order passed is unsustainable. This order was rightly kept in abeyance pending this O.P. Therefore, I quash Ext. P3 order and direct the 1st respondent to reconsider the matter in the light of the directions given above after giving an opportunity to the parties to be heard in the matter. The original petition is allowed to the limited extent stated above. In all other respects, it is dismissed. The parties shall bear their costs.