
(2014) 07 KL CK 0291
In the High Court Of Kerala
Case No : W.P.(C) No. 17907 of 2014

V. Santhosh

APPELLANT

Vs

Assistant Registrar and Others

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Kerala Co-operative Societies Act, 1969 — Section 65, 65, 66, 66, 66(1)

Citation : (2014) 4 KLJ 397

Hon'ble Judges : K. Surendra Mohan, J

Bench : Single Bench

Advocate : V.G. Arun and T.R. Harikumar, Advocates for the Appellant; D. Somasundaram, Spl. GP, Advocates for the Respondent

Judgement

K. Surendra Mohan, J.—The petitioner is the President of the Koliyakode Consumer Co- operative Society Ltd., a Society registered under the provisions of the Kerala Co-operative Societies Act, 1969 and the Kerala Co- operative Societies Rules, 1969 (hereinafter referred to as the "Act" and "Rules" for short). The petitioner has filed this writ petition challenging Ext. P10 order of the 2nd respondent by which, an enquiry has been ordered under Section 68(1) of the Act. Earlier, the 1st respondent had issued an order dated 27.07.2013, appointing the Unit Inspector, Venjaramoodu as Enquiry Officer for conducting an inspection under Section 66 of the Act. The said order is Ext. P8. The petitioner had challenged the said proceedings before this Court in W.P.(C). No. 24726 of 2013. As per Ext. P9, the said writ petition was disposed of recording the statement made on behalf of the State that the petitioner would be given notice, if any adverse orders were proposed to be passed. Therefore, the writ petition was closed leaving open the statutory remedies available to the petitioner. Thereafter, the petitioner did not hear anything in the matter. He has now being served with Ext. P10 order of the 2nd respondent by which, an enquiry has been ordered under Section 68(1) of the Act. The direction is to quantify the loss that has been caused to the Society as well as to identify the persons responsible for causing such loss. The petitioner contends that Ext. P10 is unsustainable and

liable to be set aside for the reason that, he was not heard before the said order was passed.

2. According to Adv. Sri. V.G. Arun who appears for the petitioner, an enquiry has been conducted under Section 66 of the Act pursuant to Ext. P8 order. No copy of the report of enquiry has been furnished to the petitioner. The petitioner therefore does not know the contents thereof. Nor does he have any idea about the materials on the basis of which the findings therein have been arrived at. According to the counsel, Ext. P10 is an action initiated on the basis of the enquiry report under Section 66 of the Act. Reliance is placed on Rule 66(5) to contend that, it is mandatory for the petitioner to be heard before any action is taken on a report submitted under Section 66 of the Act. The said mandatory procedure not having been complied with before issuing Ext. P10, the said order is liable to be set aside. The learned counsel for the petitioner places reliance on the decision of this Court in Thiruvalla East Co-operative Bank Ltd. Vs. Joint Registrar, & Murali Vs. Joint Registrar, in support of his contentions.

3. The contentions of the learned counsel for the petitioner are opposed by the learned Special Government Pleader Sri. D. Somasundaram, who appears for the respondents. According to the learned Special Government Pleader, no order prejudicial to the interests of the petitioner has been passed till date. The enquiry under Section 66 is only a fact finding enquiry. Rule 66(5) contemplates only the determination of the costs of the enquiry and fixing of the liability to bear the costs. The hearing contemplated by the said provision is only for the said purpose as held by a Division Bench of this Court in State of Kerala v. Aravindakshan Nair, 2010 (3) KLT 11. It is also pointed out that, Rule 66 deals with the procedure to be followed while conducting an enquiry, inspection, suspension, investigation and surcharge. Each of the above are to be initiated, by following the procedure stipulated by Rule 66. The fact that Rule 66(7) deals with an enquiry under Section 66(1) also does not justify a conclusion that the hearing contemplated by Rule 66(5) has to be a necessary precondition for any action to be initiated on the basis of a report.

4. Heard. This writ petition is filed challenging Ext. P10, an order directing the conduct of an enquiry under Section 68(1) of the Act. In the first place, the conduct of an enquiry cannot be said to visit a person with any prejudice. Secondly, it is worth noticing that, no action has been initiated against the petitioner, to his prejudice on the basis of the enquiry that is stated to have been conducted pursuant to Ext. P8 order. Therefore, it cannot be said that the petitioner is prejudiced by any manner by the issue of Ext. P10.

5. The legal contention raised is that, the petitioner ought to have been afforded an opportunity of being heard before any action was initiated on the report of the enquiry under Section 66 of the Act. It is also contended that no copy of such enquiry report has been furnished to the petitioner so far. As already noticed above, the contention of the learned counsel for the petitioner is that, the hearing that is contemplated by Rules 66(5) of the Rules has not been afforded

to him before Ext. P10 order was passed. In order to consider the veracity of the above contentions, it is necessary to examine the legal provisions carefully.

6. Sections 65 to 68 form part of Chapter VIII of the Act which has been divided into Part A and Part B. Part A deals with Audit while Part B deals with Inquiry, Suspension, Investigation and Surcharge. Section 65 deals with Enquiry by the Registrar, while Section 66 confers Power on the Registrar, of Supervision and Inspection. Section 66A, that has been subsequently added, deals with the Power of the Registrar to issue general directions while Section 66B deals with the Suspension of Officers. Section 66C mandates submission of returns by every Co-operative Society to the Registrar. Section 67 confers power on the Registrar to apportion the cost of the enquiry or inspection between the Society and the person who demanded the inspection. Section 68 deals with Surcharge. Section 66A deals with the appointment of a Vigilance Officer.

7. Rule 66 is located in Chapter VIII of the Rules. The heading of the Chapter says "Inquiry, Inspection, Suspension, Investigation and Surcharge". Chapter VIII of the Rules contain Rules 66 and 66A. Section 66A deals with Inquiry and Investigation of the Vigilance Officer, with which we are not concerned. The above arrangement of the provisions show that, Rule 66 is a provision that deals with not merely enquiry and inspection but also suspension, investigation and surcharge. Therefore, Section 66(5) has to be understood as dealing with only the particular aspect with which the said provision is concerned. Rule 66(5) of the Rules is extracted hereunder for convenience of reference.

"(5) 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 may be 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."

The above provision deals with the question as to what details the report of enquiry under Section 66 shall contain. A Division Bench of this Court has interpreted Rule 66(5) and held that the said provision does not contemplate me grant of an opportunity to any Society or person except with regard to a proposal to order the costs of inspection. The Division Bench has considered the issue in *State of Kerala v. Aravindakshan Nair* (Supra) after considering me scope of Section 67 as well as Rule 66(5), in following manner:

"In our view, R. 66(5) does not contemplate any opportunity to be given to any

society or any person, except with regard to the proposal of the Registrar for ordering cost of inspection, whether it be in terms of the report or in variation with the recommendation contained in the Report."

8. Any other interpretation would result in a situation where immediately on receipt of a report under Section 66, the petitioner would have to be afforded an opportunity of being heard even if what is contemplated is only to order a further enquiry as contemplated under Section 68 of the Act. Section 68(2) of the Act contemplates a further opportunity of being heard before any action could be initiated under the said provision. Two sets of hearing is not contemplated under any of the settled principles of hearing. A hearing also is contemplated only before any adverse decision is proposed to be taken against a party. If after considering the report under Section 66, what is contemplated is to proceed under Section 68, the petitioner gets sufficient opportunity under Sub Section 2 of the said provision of being heard. Therefore, Rule 66(5) has to be understood as being applicable only to the matters that are dealt with in the said provision. It is not the law that a right of hearing is necessarily to be afforded before any action is contemplated on the basis of a report.

9. The learned counsel for the petitioner has placed reliance on the decision of a Single Bench of this Court in Thiruvalla East Co-operative Bank Ltd. Vs. Joint Registrar, (supra). However, in view of the later decision of the Division Bench referred to above, the decision relied upon by the petitioner cannot be said to be good law any longer. The petitioner has also placed reliance on the decision in Murali Vs. Joint Registrar, to contend that in a similar situation this Court had directed the petitioner therein to be issued with a copy of the report of the enquiry. In the above decision also, the issue regarding the grant of a hearing under Rule 66(5) of Rules has been dealt with in the following manner.

"The issue raised is that the petitioner was entitled to be heard before the issuance of an order in the nature of Ext. P13 in view of R. 66 of the Kerala Co-operative Societies Rules (hereinafter referred to as "the Rules"). Sub-r. 5 R. 66 provides for a rule of hearing before the Registrar decides to issue orders. R. 66 of the Rules is directly relatable to the proceedings under Ss. 65 and 66 of the Act. This means that while the Registrar proceeds to issue directions as are contemplated under S. 66, the Society is entitled to be heard before any such order is issued. This does not necessarily mean that before the Registrar of Co-operative Societies takes a decision under S. 68(1) of the Act, the societies will have to be heard. In my considered view, if the contention of the petitioner is accepted as such he will have to be afforded an opportunity of hearing, firstly, before the Registrar of Co-operative Societies takes a decision to proceed under S. 68(1) and secondly, during the course of proceedings under S. 68(1) of the Act. This does not sound to be in tune with any settled principles of the rule of hearing."

10. In view of the above, I am not satisfied that any interference with Ext. P10 is called for at this stage.

11. With regard to the question of furnishing the petitioner with a copy of the report submitted pursuant to Ext. P8 enquiry, the learned Special Government Pleader submits that the petitioner could seek and obtain a copy of the report from the 2nd respondent. The 2nd respondent is therefore, directed to issue a copy to the petitioner on usual terms, if he makes an application for the purpose.

In view of the above, this writ petition is dismissed. It is made clear that the contentions of the petitioner against the report are all left open.