
(2016) 09 MAD CK 0127
In the Madras High Court
Case No : W.A.No.1075 of 2016

V. Thirulokachander

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Citation : (2016) 7 MLJ 129

Hon'ble Judges : Mr. Sanjay Kishan Kaul, CJ. and Mr. R. Mahadevan, J.

Bench : Division Bench

Advocate : Mr. R. Viduthalai, Sr. Counsel for N. Pragasam, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

R. Mahadevan, J.—This writ appeal has been filed challenging the order passed by this Court in W.P.No. 26080 of 2013 dated 28.04.2016.

2. The facts leading to the filing of the writ petition in W.P.No.26080 of 2013 from which the present writ appeal has arisen, are as follows:

(i)The prayer made in W.P.No. 26080 of 2013 was to quash the amendments which have been made to the bye-laws of the third respondent co-operative society, as being inconsistent with the provisions of the Multi-State Co-operative Societies Act, 2002, ("Act" in short) and to set aside the registration granted by the second respondent to those amendments and for a further direction to reinstate the petitioner/appellant herein as secretary and chief executive of the third respondent-society.

(ii)The appellant herein was appointed as a Senior Inspector of Co-operative Societies on 15.07.1993. During the year 1997, he was appointed by direct recruitment as secretary of the third respondent society and functioned as such, till 2003. During April 2003, a criminal complaint was registered against him, which was taken on file as S.C.No.193 of 2003, and the appellant was convicted by the Principal Sessions Judge, City Civil Court, Chennai. An appeal was filed as

against the said order before this Court and the sentence was suspended. By order dated 19.01.2005, the appellant was placed under suspension on the ground that he has been convicted of a criminal charge and the conviction has not been stayed by the High Court. On a challenge made by the appellant to such order of suspension in W.P.No.3657 of 2005, the same was stayed by order dated 28.04.2005. Thereafter, Criminal Appeal No.1546 of 2003, was allowed by judgment, dated 27.04.2010 and there was no further challenge to the said decision. Thus, the appellant was acquitted of the criminal charge. The writ petition which was filed challenging the order of suspension was allowed by order dated 30.09.2011. Therefore, the appellant's contention is that he should be reinstated as secretary and chief executive of the third respondent society. However, the Board of the third respondent Society by resolution, dated 21.10.2011, increased the cadre strength of secretaries from one to four and the fifth respondent was promoted as one of the secretaries by order dated 02.01.2012. The management of the third respondent-society filed a Writ Appeal in W.A.No.2274 of 2011, against the order in W.P.No.3657 of 2005, which was dismissed by the Hon''ble Division Bench by judgment dated 05.01.2012. Thereafter, the management of the third respondent society sent a letter to the appellant calling upon him to join duty on 29.03.2012 and on the appellant joining duty, he was placed under suspension on the same day on different set of charges. Alleging that such order of suspension is wilful disobedience of the order in W.P.No.3657 of 2005, the petitioner filed a Contempt Petition in Cont.P.No.782 of 2012. In the mean time, the management had filed a Special Leave Petition before the Hon''ble Supreme Court against the judgment in W.A.No.2274 of 2011 and the Special Leave Petition was dismissed by order dated 17.08.2012. It was thereafter, the appellant joined duty on 28.08.2012 and he was posted as Secretary-II. In the light of the same, the contempt petition was closed by order dated 31.08.2012. Thereafter on 24.11.2012, the Board passed a resolution amending various provisions of the bye-laws of the society.

(iii) The appellant sent a lawyer's notice to the second respondent calling upon him not to approve the amendments to the bye-laws and the appellant also moved for re-opening the Contempt Petition No.782 of 2012. Nevertheless the second respondent approved the amended bye-laws, which has been questioned in W.P.No.26080 of 2013. The contempt petition which was reopened, ended in a punishment being imposed on the president of the third respondent society, which was challenged before the Hon''ble Division Bench in Contempt Appeal No.6 of 2013, and the same was allowed by judgment dated 16.08.2013, imposing a cost of Rs.5,000/- on the appellant. The appellant was unsuccessful in a challenge made to the said order before the Hon''ble Supreme Court, as the Special Leave Petition was dismissed.

(iv) With the above background, the appellant filed the present writ petition challenging the amendments made to the bye-laws of the third respondent society which is a Multi-State Cooperative Society governed under the provisions of the Act and the rules and regulations framed thereunder, the registration of

those amendments as granted by the second respondent and for a direction that he should be only secretary of the society and the chief executive.

3. (I) Mr. R. Viduthalai, learned Senior counsel appearing for the writ petitioner/appellant herein, contended before the writ Court that there cannot be more than one chief executive for a society as per Section 51 of the Act and the amendment of the bye-laws providing for more than one secretary is repugnant to the provisions of the Act. It was submitted that the impugned amendment suffers from malice in law, as it was brought out with ulterior motive to deny reinstatement of the appellant /petitioner, as Secretary Cum Chief Executive to which post, he is entitled to be reinstated by virtue of the orders passed in the earlier round of litigation. It was further submitted that the increase of cadre strength from one secretary to four is only a ruse to increase the number of posts of secretary without any rationale or nexus with the object sought to be achieved. In this regard, the learned senior counsel referred to the definition of bye-laws in Section 3(c); definition of Chief Executive in Section 3(e); Section 10 regarding the scope and ambit of the bye-laws of the society; Section 11, regarding amendment of bye-laws; Section 12, coming into force of the amended bye-laws; and Section 51 relating to the appointment of the chief executive and his qualifications.

(ii) It was argued that the chief executive means a person appointed under Section 51 of the Act and hence, his appointment is governed by the Act, more particularly, by Section 51 thereof and the impugned amendment renders the appointment of the chief executive as an appointment made as per the bye-laws and hence, ultra vires the Act. It was further submitted that bye-law 2(h) creates plurality of the post of secretary, which is inconsistent with Section 51 of the Act and in particular, when singular term is used in Section 51 with regard to the chief executive, there can be only one secretary for the society. Emphasis was placed on the expression "a Chief Executive" and it was argued that there cannot be more than one chief executive nor there can be more than one secretary of the society. Further, it was submitted that the bye-laws prescribing a designation applicable to multiplicity of persons, as a designation for chief executive and thereby, enabling the choice to be made by the general body instead of Board to choose the actual appointee to exercise the powers of the chief executive would be in violation of the Act. Anticipating a challenge to the maintainability of the writ petition, it was argued that the decision rendered by the Hon'ble Larger Bench of this Court in the case of K. Marappan v. The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal and another reported in (2006) 4 CTC 685, relates to a society registered under the Tamil Nadu Co-operative Societies Act and not under the Multi-State Co-operative Societies Act and in the light of the recent decision of the Hon'ble Supreme Court in the case of Akalakunnam Village Service Cooperative Bank Ltd., & anr., v. Binu. N & Ors., reported in (2014) 9 SCC 294, the writ petition would lie against the co-operative society, when the registration of the amendments to the bye-law is a statutory function discharged by the competent authority. It was further submitted that

after setting aside the order of suspension passed against the appellant, he is entitled to be reinstated as Secretary Cum Chief Executive and amendments were made to the bye-laws after the order of reinstatement was passed by the Court, with a view to deny the appellant the post of chief executive of the Society. Thus, the legal submissions made by the learned senior counsel are broadly under three heads, namely, that the impugned bye-laws are ultra vires the provisions of the Act, the action of the management of the third respondent society is actuated by malice in law and that the action is arbitrary.

(iii) In support of the contention that the action is ultra vires, reliance has been placed on the decisions of the Hon"ble Supreme Court in the case of *M.T. Khan & Ors., v. Govt., of A.P., and Anr.*, reported in (2004) 2 SCC 267; *Global Energy Limited & Anr., v. Central Electricity Regulatory Commission* reported in (2009) 15 SCC 570; *Union of India & Ors., v. S.Srinivasan* reported in (2012) 7 SCC 683; *Vinod Kumar v. State of Haryana & Ors.*, reported in (2013) 16 SCC 293. For explaining the meaning of "malice in law" reliance has been placed on the decisions of the Hon"ble Supreme Court in the case of *Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors.*, reported in (2010) 9 SCC 437; *State of Tamil Nadu & Ors., v. K.Shyam Sundar & Ors.*, reported in (2011) 8 SCC 737; *Ratnagiri Gas & Power Private Ltd., v. RDS Projects Ltd & Ors.*, reported in (2013) 1 SCC 524. Reliance was also made to the decision in the case of *Shreya Singhal v. Union of India* reported in (2015) 5 SCC 1, to demonstrate as to what are arbitrary actions. On the above submissions, the learned senior counsel sought for setting aside the impugned amendments to the bye-laws and for reinstating the petitioner as the only secretary and chief executive of the third respondent society.

(iv) Mr. V. Prakash, learned Senior counsel appearing for the respondent-society submitted before the writ Court that the writ petition was not maintainable, as the appellant has an effective alternate remedy and without exhausting the same, he could not have filed the present writ petition. Furthermore, as per the judgment in the case of *Marappan*, (cited supra), the writ petition cannot be maintained. It was further submitted that the appellant for the first time, was placed under suspension on 19.02.2001 by the then president of the society and the second occasion on 20.12.2001 on an allegation of misappropriation of funds and on the third occasion namely, on 19.05.2005, based on the conviction by the criminal Court. The appellant challenged the order of suspension by filing W.P.No.3657 of 2005, in which the president of the society was not impleaded as a party and an order of stay was granted on 27.04.2005. Though, an order of stay was granted, the petitioner did not report for duty for nearly five years and one Mr. Jayakumar functioned as secretary incharge. After, the fourth respondent took charge as president of the society, the fifth respondent was posted as secretary incharge after Jayakumar was relieved by order dated 11.07.2009. The appellant was acquitted of the criminal charge by this Court by judgment dated 27.04.2010. The writ petition challenging the order of suspension was allowed and the writ appeal filed by the management was dismissed and the special

leave petition against the said judgment was dismissed by the Hon''ble Supreme Court on 17.08.2012. In the mean time, the appellant filed contempt petition and the management of the society paid the appellant a sum of Rs.31,35,262/- and the order of suspension was revoked. It was pointed out that the appellant all along did not report for duty for more than four years. The contempt petition, which was closed by recording compliance was re-opened on mentioning and the designation given as Secretary-I, II, III, IV was removed by resolution, dated 25.03.2013. In the contempt petition, the president of the society was punished, however, the said judgment was set aside on appeal in Contempt Appeal No.6 of 2013 and a fine of Rs.5,000/- was imposed on the appellant by judgment, dated 16.08.2013. It was thereafter, this writ petition has been filed on 17.09.2013 and in the mean time, since the appellant did not join duty, the fifth respondent was posted as the Chief Executive on 23.12.2013. The appellant filed a review petition in R.A.No.200 of 2013, to review the judgment in contempt appeal, which was dismissed by the Hon''ble Division Bench by order dated 18.03.2014, and the special leave petition was also dismissed by the Hon''ble Supreme Court on 04.08.2014. It was further submitted that the amendments to the bye-laws are perfectly valid and justified, it has been done taking into consideration the requirement of the society and the amendments were placed before the larger democratic body i.e., Representative General Body consisting of more than 200 members empowered to seek amendment and based on such resolution, the bye-laws were amended. The increase in cadre strength exclusively falls within the domain of the third respondent society and that has been done after following the proper procedures strictly in adherence to the provisions of the Act and rules framed thereunder and there is no mala fide or any vindictive action as sought to be projected by the appellant.

(v) The learned Standing Counsel appearing for the respondents 1 and 2 in the writ petition, submitted that the amendment to clause 2(h) of the bye-laws of the society was found consistent with the provisions of the Act and the same was registered. It was further submitted that Section 49(2)(e) of the Act, empowers the Board of the society to make provisions for regulating the appointment of employees of the society, and their scales of pay, allowance and other conditions of service, including disciplinary action against such employees and therefore, the society can decide the mode/pattern of appointment of its employees and an addition that one among the secretaries shall be appointed as chief executive is well within the power of the Board of the society. Therefore, it was submitted that the amendments are in consonance with the provisions of the Act, and it has been passed in the Annual General Body Meeting held on 10.12.2012, which is the ultimate authority of the society in terms of Section 38(2) of the Act. With regard to the representation sent by the appellant through his advocate, the same was forwarded to the society as the powers of the appointment of chief executive falls under the powers and functions of the Board of Directors of the society. In this regard, the letter sent by the Deputy Director (Cooperation), Government of India, Ministry of Agriculture (Department of Agricultural &

Cooperation), New Delhi, dated 23.01.2013, was referred to.

(vi) After hearing the arguments advanced by the learned counsel on either side and perusing the materials available on record, with regard to the maintainability of the writ petition, the learned single Judge held that the decision in the case of Akalakunnam Village Service Cooperative Bank Ltd., & anr., v. Binu. N & Ors. (supra), which has been relied on by the learned senior counsel for the writ petitioner/appellant herein, stating that the writ would lie against the co-operative Society, does not render any support to the case of the appellant and it is clearly distinguishable on facts. With regard to the next argument made on behalf of the appellant that plurality of the expression cannot be adopted and there can be only one secretary and one chief secretary to the society, by referring to the words "a Chief Executive" and that the subordinate legislation, viz. the bye-laws as in the instant case, cannot travel beyond the scope of the Act and it must conform to the powers granted under the Act, the learned single Judge analysed the issue in detail and held that challenge to the bye-laws by the appellant, by filing this writ petition has to necessarily fail. The learned single Judge has further held that the contentions raised in respect of change in designation and also cadre strength, was rightly rejected by the Hon"ble Division Bench by holding that these two aspects come within the prerogative of the Executive and an employee cannot have any say in such matters and he does not have any right to make an objection with regard to the same. In view of the categorical finding recorded by the Hon"ble Division Bench in the said contempt proceedings, which has become final, as the review application filed to review the order was dismissed by order dated 18.03.2014 and the special leave petition filed against the judgment in contempt appeal and the order in review application was dismissed by the Hon"ble Supreme Court by order dated 04.08.2014, the learned single Judge held that the attempt of the appellant was to reopen a settled issue, which he is not entitled to do.

(vii) Stating so, the learned single Judge has rejected the writ petition. Challenging the same, the present writ appeal has been filed and the same has been posted today for admission.

4. The learned senior counsel appearing for the appellant has submitted that the learned single Judge has erred in law in holding that the writ petition is not maintainable as the Regulation challenged relates to the amendment of the bye-laws made by the General Body of the Co-operative Society without properly appreciating the law laid down by the Hon"ble Supreme Court in Akalakunnam Village Service Cooperative Bank Ltd., & anr., v. Binu. N & Ors., reported in (2014) 9 SCC 294, and the decision of the larger Bench of this Court in K. Marappan v. The Deputy Registrar of Co-operative Societies, Namakkal Circle, Namakkal and another reported in (2006) 4 CTC 685. He further submitted that the learned single Judge ought to have seen that the Registrar of Co-operative Societies is discharging statutory powers in registering the amendment of the bye-laws as the Act mandates that the registrar should be satisfied that the

amendment of the bye-laws is in accordance with law and not repugnant to the provisions of the Multi-State Co-operative Societies Act, and hence the exercise of statutory powers in the present case is amenable to the challenge under Article 226 of the Constitution of India.

5. The learned senior counsel for the appellant has contended that the ratio laid down by the Hon'ble Supreme Court in M.T. Khan's case (supra) applies to the facts of the present case on all fours. He further stated that the learned single Judge has erred in law in holding that in terms of Section 49(2)(e) of the Act, the Board of Multi-State Co-operative Societies shall regulate the appointment, totally overlooking the fact that the said section does not enable the creation of more than one chief executive or creation of additional posts of secretary when such designation is dedicated to the chief executive who is singularly in-charge of the affairs of Multi-State Cooperative Societies. He further contended that the learned single Judge has erred in law in relying upon the observation of the Hon'ble Division Bench in the contempt appeal filed by the contemnor as a conclusive finding regarding the justifiability creating more than one post of secretary, totally overlooking the scope of contempt appeal apart from overlooking the liberty given by the Division Bench to raise the issue regarding chief executive in the appropriate proceedings.

6. Heard the learned Senior Counsel appearing for the appellant and perused the materials available on record carefully.

7. With regard to the ground raised in respect of maintainability of the writ petition, the learned senior counsel appearing for the appellant referred to the decision in the case of Akalakunnam Village Service Cooperative Bank Ltd., & anr. v. Binu. N & Ors.(supra), and submitted that writ would lie against the co-operative society, when the duty enjoined by it is of a public nature or when there is infringement of any statutory rules by a cooperative society. In the decision of the Hon'ble Supreme Court in Akalakunnam Village Service Cooperative Bank Ltd., & anr. v. Binu. N & Ors.(supra), it is seen that there has been a violation of the circular issued by the Registrar which has statutory force in terms of Section 69 of the Kerala Cooperative Societies Act, 1969, and hence, it was held that the appellants therein need not be driven to avail the alternate remedy under Section 69 of the said Act. The said decision does not render any support to the case of the appellant herein as the facts in that case with that of the present case, are clearly distinguishable. Hence, the contention raised by the appellant that the writ petition is maintainable, cannot be countenanced.

8. With regard to the next ground that the amendment of the bye-laws of the society is amenable to challenge under Article 226 of the Constitution of India, we find that what was questioned is the decision taken by the general body of the third respondent society and such decision cannot be amenable to challenge in a writ petition in particular, on the grounds raised by the appellant.

9. The next ground raised by the appellant is that the ratio laid down by the

Hon"ble Supreme Court in M.T.Khan's case (supra) applies to the facts of the present case on all fours, and that the learned single Judge has erred in law in holding that in terms of Section 49(2)(e) of the Act, the Board of Multi-State Co-operative Societies shall regulate the appointment, totally overlooking the fact that the said section does not enable the creation of more than one chief executive or creation of additional posts of secretary when such designation is dedicated to the chief executive who is singularly incharge of the affairs of Multi-State Co-operative Societies. In this regard, relying on the decision of the Hon"ble Supreme Court in the case of M.T. Khan's case (supra), where the challenge was to the appointment of the two Advocate Generals by the Andhra Pradesh Government, it is submitted that the subordinate legislation viz. the bye-laws as in the instant case cannot travel beyond the scope of the Act and it must conform to the powers granted under the Act. The decisions in the case of Global Energy Limited & Anr., v. Central Electricity Regulatory Commission (supra), Union of India & Ors., v. S. Srinivasan (supra) and Vinod Kumar v. State of Haryana & Ors.,(supra), were relied on. The learned single Judge has analysed the matter in detail and rejected the said contention. The relevant portion of the order of the learned single Judge is extracted hereunder:

"14. Un-amended by-law 2(h) defines Chief Executive to mean the Secretary of the society. After the amendment, Chief Executive has been defined to mean one among the Secretaries authorised by the Board of Management. This is stated to be impermissible in terms of Section 51(1) of the Act, which states that there shall be "a" Chief Executive of every Multi State Cooperative Society to be appointed by the Board and he shall be a full time employee of such Multi State Cooperative Society. The Multi State Cooperative Societies Act has not defined "Chief Executive" of a Multi State Cooperative Society and what is contemplated under Section 51(1), that there should be a Chief Executive and the Act does not place an embargo on the society to restrict the number of posts of Secretary, since in terms of Section 49(2)(e), Board of Multi State Cooperative Society may exercise all such powers as may be necessary or expedient for the purpose carrying out its function under the Act and in terms of sub-section (2) of Section 49, without prejudice to the generality of the powers conferred under sub-section (1) of Section 49, such powers shall include the power to make provision for regulating the appointment of employees of the Multi State Cooperative Society, the scales of pay, allowances and other conditions of services, including disciplinary action against such employee. The society proposed an amendment to increase the cadre strength in the post of Secretary from one to four and this proposal was approved by the General Body of the society.

15. Furthermore, the second respondent has rightly stated that the power to make provision of regulating appointment of the employees is with the Board under Section 49(2)(e) of the Act. The contention raised by the petitioner that cadre strength was increased with a view to deny the petitioner the post of Chief Executive etc., as being a case of malice in law, has not been substantiated by the petitioner."

10. Furthermore, it was held that there is no inconsistency in the bye-laws nor there is any repugnancy to the bye-laws with that of the statute nor it is ultra vires of the provisions of the Act. It was further held that after the contempt proceedings were closed, the petitioner attended office on 31.08.2012, for two days and remained in the office for one to two hours and thereafter, he made representation seeking leave from 01.09.2012, which was not approved by the society and yet he still continued to stay away to the duty and his absence is unauthorised and therefore, the challenge to the bye-laws by the appellant, by filing the writ petition has to necessarily fail.

11. Pointing to the judgment of the Hon"ble Division Bench in Contempt Appeal No.6 of 2013, the learned single Judge held that the Hon"ble Division Bench has rightly rejected the contention of the appellant by observing that when as per the reinstatement order, the appellant was posted as Secretary-II and when all the attendant benefits were also given, unless it is brought to the notice of the Court that there is either loss of emoluments or loss of status, the Court cannot accept the case of the appellant.

12. With regard to the contentions put forth by the learned senior counsel appearing for the appellant on the above grounds, since the appellant has not prima facie substantiated those contentions, the same were rightly rejected by the learned single Judge in the writ petition. Further, with regard to the other grounds raised, the learned single Judge has given proper reasons to reject the same, dealing with the matter elaborately, on merits. Hence, the same also does not require any interference by this Court. The reasons given by this Court are clear, cogent, convincing and acceptable. Mere statement made by the appellant that the action of the respondents has been done to reach a different end and it is a colourable exercise, cannot be countenanced and those statements have been made without any proof to substantiate it. The attempt of the appellant is nothing but re-appreciating or re-arguing the case which had already been decided by this Court, on merits, elaborately.

13. In view of the foregoing reasons, the writ appeal is liable to be dismissed. Accordingly, the impugned order passed by this Court in W.P.No.26080 of 2013 dated 28.04.2016 is confirmed and the writ appeal is dismissed in limine. No costs.

14. After passing the above judgment, Mr. P. Satheesh Kumar, learned counsel for respondents 3 to 5, subsequently appeared before this Court and he was apprised of the judgment.