(2016) 01 KL CK 0027

In the High Court Of Kerala

Case No : W.P.(C) No. 31890 of 2015

Zeena APPELLANT

Vs

Central Registrar of Co-operative Societies RESPONDENT

Date of Decision : 08-01-2016

Acts Referred:

Multi-State Cooperative Societies Act, 2002 — Section 108, Section 120, Section 123, Section 19(1)(c), Section 25, Section 29, Section 33, Section 34, Section 7

Citation : (2016) 1 KLT 811

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : N.J. Mathews and Madhu N. Namboothiripad, for the Appellant; P. Vandhana, C.G.C. and N. Nagaresh, Asst. Solicitor General of India, for the Respondent

Final Decision : Disposed Off

Judgement

Dama Seshadri Naidu, J.—1. The petitioner, a promotee of a proposed Multi State Co-operative Society, assails Exhibit P5 communication of the respondent on the grounds that she cannot be compelled to obtain a ''No-Objection Certificate'' from the Registrar of Co-operative Societies of the State concerned. The facts in brief are that when the petitioner submitted her application under S. 7 of the Multi-State Co-operative Societies Act, 2002, to the respondent for the registration of a Society, the respondent through Exhibit P3 required the petitioner to comply with certain objections, which include the production of a ''No-objection Certificate'' and modification of bye-laws.

2. In the course of time, the petitioner appeared before the respondent in person and presented the documents required by the respondent. She has, nevertheless, did not produce any No-Objection Certificate from the Registrar of Co-operative Societies of the State of Kerala.

3. Under those circumstances, the respondent, making a specific reference to Exhibit P4 order earlier issued by him, has passed Exhibit P5 impugned order

declaring that unless there is a strict compliance with the objections raised in Exhibit P3, the petitioner''s request for registration of a Co-operative Society cannot be entertained. Aggrieved, the petitioner has filed the present Writ Petition.

4. Sri. N.J. Mathews, the learned counsel for the petitioner, has initially contended that, as had been pointed out in Exhibit P3 by the respondent, the petitioner has complied with all objections save those that are extra-statutory. In elaboration, he has submitted that this Court has already quashed Exhibit P4 order of the respondent through its judgment in Haldar Vikas Credit Co-operative Society Ltd., Gujarat v. Central Registrar of Co-operative Societies, New Delhi & Ors. (, 2016 (1) KLT SN 77 (C. No. 81) : , 2015 (4) KHC 826).

5. As regards the modification of Clause 20 of the Bye-laws, the learned counsel would contend that nowhere has the statute imposed any limitation that shares could not be transferred in favour of a non-member. In other words, it is the specific contention of the learned counsel that the Bye-laws are strictly in compliance with the statutory mandate. He has accordingly urged this Court to allow the Writ Petition with a direction to the respondent to register petitioner''s Society.

6. Per contra, Smt. Vandana P., the learned Central Government Counsel, in tune with the respondent''s averments in the counter affidavit, has submitted that the Multi-State Co-operative Societies have been mushrooming exposing the gullible public to exploitative tactics being adopted by certain unscrupulous elements.

7. In elaboration of her submissions, the learned Central Government Counsel has submitted that the respondent has insisted on the petitioner''s producing a No-Objection Certificate from the Registrar of Co-operative Societies of the State of Kerala only to ensure that the credentials of the petitioner are properly verified. And the process of establishing a Multi-State Co-operative Society has been subjected to strict checks and balances.

8. It is thus the singular contention of the learned Central Government Counsel that Exhibit P3 objections have been raised, and strict compliance therewith has been insisted upon only with a view to protecting the public interest, apart from ensuring that no financial irregularities are committed by the mushrooming Co-operative Societies across the country.

9. Concerning the Bye-laws, especially Clause 20 thereof, the learned Central Government Counsel has contended that it is impermissible to transfer shares to non-members.

10. In reply, the learned counsel for the petitioner has submitted that the Multi-State Co-operative Societies Act, 2002 (for short the ''Act''), has got sufficient safeguards to prevent what is alleged to be either mushrooming of Co-operative Societies or exploitation of the general public by any such societies. In that regard, the learned counsel has drawn my attention to Chapters VII, VIII, and XV

of the Act, especially Sections 108, 120 and 123 thereof.

11. Heard the learned counsel for the petitioner and the learned Central Government Counsel for the respondent, apart from perusing the record.

12. To begin with, it is apposite to examine Exhibit P3 which contains the objections raised by the respondent and required to be complied with by the petitioner. The respondent has sought the production of the following documents to entertain, as a pre-condition, the petitioner''s request for the registration of a Co-operative Society:

"1. As the objects and functions of the society relates to credit, the following documents have been made mandatory for the proposed credit society to submit along with their proposal of registration, which are not enclosed by the Society:-

A. No Objection Certificate from the Registrar of Co-operative Societies of the States/U.T. Where the area of operation of the society extends.

B. A certificate to the effect that the credential of the Chief Promoter/Promoters members have been verified by the Registrar of Co-operative Societies of the States where the head office is proposed to be located.

2. ID proofs have not been submitted along with the proposal.

3. Bye-law No. 20(i) is vague as shares can be transferred to members only."

13. It is the specific contention of the learned counsel for the petitioner that on 30.07.2015, the date mentioned in Exhibit P3, the petitioner did present herself before the respondent along with all the documents, mentioned in Exhibit P3, save the No-Objection Certificate from the Registrar of the Co-operative Societies of Kerala State.

14. Indeed, the respondent has insisted on the petitioner''s producing a No-Objection Certificate; the demand is said to be based on his Exhibit P4 order issued on 24.05.2013. As has been rightly contended by the learned counsel for the petitioner, this Court considered the legal sanctity of the said order in Haldar Vikas Credit Co-operative Society Ltd. (supra). In fact, after elaborate consideration of the issue, this Court, per me, quashed Exhibit P4 order by observing thus:

"35. To begin with, the first respondent cannot be equated with the Central Government; secondly, Exhibit P3 is not a notification having statutory force; and finally, the power conferred on the second respondent through Exhibit P3 to issue NOC for a Multi-State Co-operative Society to have its operations in the State concerned is clearly beyond the very scope of the Central Enactment. Under these circumstances, this Court does not have any other option than holding and accordingly holds that Exhibit P3 is ultra vires and consequently Exhibits P4 and P6 also render themselves void ab initio."

15. In the process of adjudicating the legality of the respondent''s Exhibit P4

order, this Court has further observed thus:

"33. One should not lose sight of the fact that in terms of the 97th Constitutional Amendment, the right to establish a Co-operative Society has been made a fundamental right under Section 19(1)(c) of the Constitution. If there is any limitation to be imposed, it ought to have been spelt out under Clause (4) of Article 19. Such power of interdiction against the fundamental right cannot be imposed through delegated legislation."

16. As can be seen from the counter affidavit of the respondent, the said authority has made a strenuous effort to distinguish the ratio of Haldar Vikas (supra). In the counter affidavit, he pleads that in Haldar Vikas the issue was with regard to amendment of bye-laws of an already registered Society. According to the respondent, the ratio of Haldar Vikas does not apply to the registration of a new Multi-State Co-operative Society.

17. Indeed, it is true that in Haldar Vikas (supra), a Society has already been established in the State of Gujarat. It wanted to have its operations extended to the State of Kerala as well. Accordingly, having amended its Bye-laws, it sought the respondent''s permission. Under those circumstances, the respondent insisted, in fact placing reliance on the very Exhibit P4, that the petitioner therein should produce a No-Objection Certificate from the Registrar of Co-operative Societies of the State of Kerala.

18. In my considered view, whether it is extension of the operations of an existing Society into a new State or establishing a Multi-State Co-operative Society in a particular State, the requirements are the same--at least, as have been demanded by the respondent: producing a No-Objection Certificate from the Registrar of Co-operative Societies of the State concerned.

19. In Haldar Vikas (supra), this Court has examined the entire statutory gamut of the issue and eventually held that Exhibit P4 order is ultra vires. Thus, once the order has been declared to be a dead letter, the respondent cannot be permitted to rely on the same on the premise that it has no application to establishing a new Society.

20. Insofar as the issue of transferring the shares, as has been incorporated in Clause 20 of the Bye-laws, is concerned, Section 25 of the Act enlists the persons who may become members; Section 29, on the other hand, deals with the disqualifications of a person to be a member of a Multi-State Co-operative Society.

21. If we examine the statutory scheme further, we can see that Section 34 of the Act deals with restriction on transfer of shares or interest. The provision, in fact, reads to the effect that the transfer of shares or interest of a member in the capital of, Multi-State Co-operative Society shall be subject to such conditions as to maximum holding as specified in Section 33. In fact, Section 33 mandates that no member, other than the authorities referred to in Clauses (c) to (g) of

sub-section (1) of Section 25 of the Act shall hold more than such portion of the total share capital of the Society (in no case exceeding one-fifth thereof), as may be prescribed in the Rules or Bye-laws of such Multi-State Co-operative Society.

22. None of the above provisions, evidently, reveals any such embargo as has been sought to be put by the respondent on the transfer of shares. As a result, I am further constrained to hold that the respondent''s objection vis-a-vis Clause 20 of the Bye-laws cannot be sustained. In the facts and circumstances, this Court allows the Writ Petition declaring that the respondent cannot insist on the petitioner''s producing a No-Objection Certificate from the Registrar of Co-operative Societies of the State of Kerala. It is further made clear that Clause 20 of the Bye-laws does not suffer from any infirmity, especially concerning the transfer of shares.

Consequentially, the respondent shall entertain the petitioner''s request for registering a Multi-State Co-operative Society, provided the petitioner complies with the rest of the statutory formalities. No order as to costs.