

Sahadevan Vs. Padmanabhan

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Court : Kerala

Decided On : Nov-24-2003

Reported in : 2004(1)KLT192

Judge : Cyriac Joseph and; K. Padmanabhan Nair, JJ.

Acts : Kerala Co-operative Societies Act, 1969 - Sections 32

Appeal No. : W.A. No. 1945 of 2003

Appellant : Sahadevan

Respondent : Padmanabhan

Advocate for Def. : B.S. Swathikumar, Govt. Pleader,; K. Ramakumar and; P.N.

Advocate for Pet/Ap. : George Poonthottam, Adv.

Disposition : Writ appeal dismissed

Judgement :

Cyriac Joseph, J.

1. This Writ Appeal is filed against the judgment in W.P.(C) No.34948 of 2003, which was allowed by the learned Single Judge. The appellant is the additional 4th respondent in the Writ Petition. Respondents herein are the petitioner and respondents 1 to 3 in the Writ Petition.

2. The 1st respondent P.K. Padmanabhan, President, Pattancherry Service Cooperative Bank Limited filed the Writ Petition challenging Ext.P8 order passed by the Joint Registrar of Co-operative Societies (General), Palakkad, superseding the Committee of the Pattancherry Service Co-operative Bank Limited under Section 32 of the Kerala Co-operative Societies Act (hereinafter referred to as 'the Act'). The learned Single Judge allowed the Writ Petition and quashed Ext.P8 order and directed the Administrator to hand over charge to the superseded Committee forthwith. It was also made clear that the quashing of Ext.P8 order would not stand in the way of the Joint Registrar passing a fresh order in accordance with law, if so advised.

3. The learned Single Judge quashed Ext.P8 order mainly on two grounds, viz., (1) the Joint Registrar while passing Ext.P8 order exercising the power under Section 32 of the Act did not fairly consider the contentions raised on behalf of the Committee in Ext.P7 reply to Ext.P6 show cause notice and did not give reasons for rejecting the explanations and objections contained in Ext.P7; and (2) before passing Ext.P8 order, the Joint Registrar did not comply with the requirement of consulting the Financing Bank and the Circle Co-operative Union as required under Sub-section (2) of Section 32 of the Act.

4. In reply to Ext.P6 show cause notice issued under Sub-section (1) of Section 32 of the Act, Ext.P7 explanation was submitted by the President of the Bank on behalf of the Committee. Ext.P7 contained the explanations for the irregularities alleged in Ext.P6 and the objections to the proposal to supersede the Committee. However in Ext.P8 order, the Joint Registrar did not refer to such explanations and objections or discuss the merits of such explanations or objections or state why the explanations and objections were not acceptable. Therefore, the learned Single Judge was right in holding that the Joint Registrar had not fairly considered the contentions raised on behalf of the Committee and had not given reasons for the finding that the charges against the Committee stood proved. In our view, the Joint Registrar was legally bound to deal with every explanation and objection stated by the Committee, to discuss the merits of such explanations and objections and to record the reasons for rejecting such explanations and objections. Since the Joint Registrar failed to do so, we hold that there was no fair

or proper consideration by him in this case. Hence, Ext. P8 order was rightly quashed on the first ground mentioned by the learned Single Judge.

5. Sub-section (2) of Section 32 provides that the Registrar shall consult the Financing Bank and the Circle Co-operative Union or the State Co-operative Union as the case may be before passing an order under Sub-section (1) of Section 32. It is seen from Ext.P6 that a copy of the notice dated 24.9.2003 issued under Sub-section (1) of Section 32 of the Act was sent to the General Manager, Palakkad District Co-operative Bank (Financing Bank) and the Secretary, Co-operative Union, Palakkad. Apart from sending a copy of the notice, no further request or direction was made. Ext.P8 order of the Joint Registrar shows that the views of the financing bank and the Circle Co-operative Union were not received on time and therefore, the Joint Registrar proceeded on the assumption that they had nothing to say in the matter. Learned Single Judge, relying on the decisions in *Jose Kuttiyani v. Registrar, Co-operative Societies* (AIR 1982 Ker. 12) and *Elakkal Service Co-operative Bank v. State of Kerala* (1997 (2) KLT 85) held that the mere sending of the copy of the show cause notice to the consultees would not satisfy the requirement of the provisions contained in Sub-section (2) of Section 32 of the Act. According to the learned Single Judge, the notice, the reply and the tentative findings of the Joint Registrar should be forwarded to the consultees so that they can form an opinion and inform the same to the Joint Registrar. The learned Single Judge has also pointed out that the impugned order, Ext.P8, does not show that any such consultation was made. There is no case for the appellant that, apart from sending a copy of Ext.P6 notice to the Financing Bank and the Circle Co-operative Union, the Joint Registrar had forwarded to them the explanations/objections given on behalf of the Committee and the tentative findings arrived at by the Joint Registrar after considering the explanations/objections of the Committee. Therefore, we have to proceed on the basis that, apart from sending a copy of Ext.P6 to the Financing Bank and the Circle Co-operative Union, no further action was taken by the Joint Registrar as part of the consultation process contemplated under Sub-section (2) of Section 32 of the Act. The consultation contemplated under Sub-section (2) of Section 32 of the Act can be effective and meaningful only if the show cause notice issued under Section 32(1), the explanations/objections given by the Committee to such how

cause notice and the tentative findings arrived at by the Joint Registrar after considering such explanations/objections are also forwarded to the Financing Bank and the Circle Co-operative Union requesting them to offer their views on the proposal to supersede the Committee. Such a consultation process has not taken place in this case. Therefore, the provisions of Sub-section (2) of Section 32 of the Act have been violated. Hence, Ext.P8 order was liable to be set aside on the second ground mentioned by the learned Single Judge.

6. In the above circumstances, we are of the view that the learned Single Judge was right in quashing Ext.P8 order and directing the Joint Registrar to hand over charge to the superseded Committee forthwith. Since the learned Single Judge has made it clear that the quashing of Ext.P8 will not stand in the way of the Joint Registrar passing a fresh order in accordance with law, it will be open to the Joint Registrar to do so, if so advised. However, if the Joint Registrar proposes to pass a fresh order, before passing a fresh order he will necessarily have to forward Ext.P6 show cause notice, Ext.P7 explanation and the tentative findings of the Joint Registrar, to the Financing Bank and the Circle Co-operative Union seeking their views on the proposal to supersede the Committee.

7. Subject to the above observations, the Writ Appeal is dismissed.