

Sooryanathan Vs. State of Kerala

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Court : Kerala

Decided On : Sep-24-2003

Reported in : 2004(1)KLT383

Judge : K. Balakrishnan Nair, J.

Acts : Kerala Co-operative Societies Act, 1969 - Sections 32I; [Constitution of India](#) - Article 226

Appeal No. : O.P. Nos. 3003 and 30185 of 2002

Appellant : Sooryanathan

Respondent : State of Kerala

Advocate for Def. : M.A. Thomaskutty and; R. Divakaran, Advs.

Advocate for Pet/Ap. : N.K. Karnis and; T.S. Roy, Advs.

Judgement :

K. Balakrishnan Nair, J.

O.P. No. 30031 of 2002

1. The petitioner in this Original Petition is the President of the Imury (East) Ksheerolpadaka Co-operative Society Ltd. No. E.68(D). The election to the Managing Committee of the said Society was held on 7.9.2002 and the new

Committee under the Presidentship of the petitioner assumed charge on 12.9.2002. This Original Petition is filed by him challenging Ext.P3 order of the Government allowing the appeal filed by the members of the previous Managing Committee against the order of supersession of that Committee under Section 32 of the Kerala Cooperative Societies Act. The brief facts of the case are the following:

2. The previous Managing Committee assumed charge on 19.10.2000. That Committee was superseded by order dated 28.9.2001 by the 2nd respondent, Deputy Director of Dairy Development. The then Managing Committee members challenged the said order by filing O.P. No. 29809/2001. The said Original Petition was disposed of by judgment dated 15.1.2002 issuing the following direction:

'Therefore, I dispose of the Original Petition making it clear that if an appeal is received by the Government within a period of one month from today, the same will be entertained as having been filed in time and appropriate orders will be passed within a period of two months from the date of receipt of the appeal, with notice to the petitioners'.

In obedience to the said direction, the members of the Committee filed appeal on 6.2.2002. It was heard on 15.5.2002. In the meantime, the Administrator took steps to hold fresh election and the election was notified on 2.8.2002. Polling was held on 7.9.2002 and the newly elected Committee under the Presidentship of the petitioner assumed charge on 12.9.2002. While so, the Government issued Ext.P3 order dated 5.10.2002 setting aside the order of supersession. The previous Committee's term will expire only on 19.5.2005. Therefore, they staked their claim to assume charge.

3. This Original Petition was filed by the President of the new Committee challenging Ext.P3 order passed by the Government allowing the appeal filed by the members of the previous Committee and seeking consequential reliefs. The petitioner challenged Ext.P3 mainly on the following grounds:

(i) The appeal filed by the previous Managing Committee against the order superseding them was filed beyond the time limit of 60 days prescribed under the

Act and the Rules. Therefore, the Government should not have entertained it.

(ii) The next ground urged was that there was a delay of more than five months between the date of hearing and the date of passing the appellate order by the Government. So, that order is vitiated.

(iii) The third point urged was that in view of the subsequent developments, the Government should not have granted any relief in the appeal.

4. The 4th respondent who was the President of the previous Managing Committee filed a counter affidavit. According to the 4th respondent, when the fresh election notification was issued, he took all possible steps to prevent the holding of election. But, the 2nd respondent Deputy Director went ahead with the steps to hold the election. The stand of the Government in this Original Petition is that in view of Ext.P3 order the election to the present Managing Committee must automatically go.

5. I heard both sides. Learned counsel for the petitioner, in support of his submission that the appeal was not maintainable as the same was filed beyond 60 days, relied on the decision in *Kerala Motor Transport W.W.F. Board v. Government of Kerala* (2001 (1) KLT 608). In support of the second contention regarding the delay in passing the order, the petitioner relied on the decision of the Apex Court in *Anil Rai v. State of Bihar* (2001 (7) SCC 318). To prop up the third argument that the Government should not have passed any order in view of the subsequent developments, the petitioner relied on the decision in *S.R. Bommai v. Union of India* (AIR 1994 SC 1918).

6. The Managing Committee was removed from office by an illegal order. That illegality has been declared by the Government in Ext.P3. Therefore, the subsequent election and the assumption of charge by the present Managing Committee etc. being dependent proceedings must fall to ground in view of Ext.P3 appellate order of the Government. The decision of the Apex Court in *Bommai* 's case, concerning the election to the State Legislature, cannot be pressed into service while dealing with an election to the Managing Committee of a Cooperative Society. A Division Bench of this Court in *P. Panicker v. Venugopalan Nair* (1993

(2) KLT 641) has considered the fate of dependent orders on setting aside primary orders. It was held in the said decision as follows:

'13. The principle relating to 'dependent orders' is well settled in law. If a particular order is set aside by the court, it does without saying that the consequential or dependent orders, if any, passed on the basis of the orders so set aside, will also normally fall to the ground as a matter of course and need not be specifically set aside. In that view of the matter, the consequential declaration of the appellants, as elected to the Managing Committee, automatically falls through without the need for being set aside separately. Venkatachalaiah, J. (as he then was) in *G. Ramegowda v. Spl. L.A. Officer, Bangalore* (AIR 1988 SC 899), para 5 observed:

'This is an instance of what are called 'dependent orders' and if the order excusing the delay is itself set aside in these appeals, the further exercise made in the meanwhile, by the High Court finally disposing of the appeals would be rendered nugatory'.

The same principle is, more or less, laid down in *C.N. Ambrose v. Meenakshi* (AIR 1953 TC 109) and in *S. Venkararama Ayyar v. Unnamalai Ammal* (AIR 1951 Mad. 883), while dealing with remand orders. Any decree passed by the trial court pursuant to the order, of remand would stand automatically vacated by operation of law when the remand order is set aside by the High Court. Yet another instance of 'dependent orders' is where, upon the setting aside of a preliminary decree, there results an automatic setting aside, by operation of law, of any final decree passed on the basis of the preliminary decree (see *Lakshmi v. Marudevi* (AIR 1915 Mad. 197) and *Regiah v. Peddireddi* (AIR 1957 AP 330))'.

In view of this direct authority on this point, the contention of the petitioner relying on the Bommai's case cannot be accepted.

7. Further, Ext.P3 cannot be attacked for the delay in filing appeal as the same was filed as per the directions of this Court in O.P. No. 29809/2001. The High Court is a superior court of unlimited jurisdiction. The concept of court of unlimited jurisdiction' is discussed in Paragraph 713 in Halsbury's Laws of England, Fourth Edition, Volume 10. It is stated therein as follows:

'713. Limits of Jurisdiction - The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court. An objection to the jurisdiction of one of the superior courts of general jurisdiction must show what other court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary'.

This statement of law has been quoted with approval by our Apex Court in more than one decision. The latest of them is *M.M. Thomas v. State of Kerala* (2000 (1) SCC 666). Therein, it was held,

'15. In Halsbury's Laws of England (4th Edn. Vol. 10, para 713) it is stated thus:

The chief distinctions between superior and inferior courts are found in connection with jurisdiction. Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular court has jurisdiction, so as to make it clear that the exercise by the superior court of its general jurisdiction is unnecessary. The High Court, for example, is a court of universal jurisdiction and superintendency in certain classes of actions, and cannot be deprived of its ascendancy by showing that some other court could have entertained the particular action'.

(Though the above reference is to English courts the principle would squarely apply to the superior courts in India also).

16. Referring to the said passage and relying on the decision of this Court in *Naresh Shridhar Mirajkar* (AIR 1967 SC 1), a two Judge Bench of this Court in *M.V. Elisabeth v. Harwan Investment & Trading (P) Ltd.* (AIR 1993 SC 1914) has observed thus : (AIR Headnote),

'The High Court in India are superior courts of record. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or discretionary jurisdiction of the Supreme Court, the High Court have unlimited jurisdiction.....'. In view of the above legal position, there is nothing wrong with the disposal of the appeal by the Government on merits, ignoring the delay. Apart from that, an order of this Court unless it is modified in appropriate proceedings like appeal or review, is binding on all parties. The concept of 'voidness' is not at all applicable to the orders of superior courts of unlimited jurisdiction as held in *Issac v. Robertson* (1985 AC 9). Whatever be the legal defect contained in the order of this Court, the same will have to be obeyed. Prof. H.W.R. Wade in *Administrative Law*, 8th Edition quoting the words of Lord Diplock in *Issacs v. Robertson* stated as follows:

The order of a superior court, such as the High Court, must always be obeyed, no matter what flaws it may be thought to contain. Thus, a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time limit. As Lord Diplock explained:

The contrasting legal concepts of voidness and voidability form part of the English law of contract. They are inapplicable to orders made by a court of unlimited jurisdiction in the course of contentious litigation. Such an order is either irregular or regular. If it is irregular, it can be set aside by the court that made it upon application to that court; if it is regular it can only be set aside by an appellate court upon appeal if there is one to which an appeal lies.'

Therefore, I find nothing wrong in the action of the 1st respondent in entertaining the appeal and granting relief to the 4th respondent based on the direction of this Court in O.P. No. 29809/2001.

8. The next point urged by the petitioner is the delay in pronouncing the order on appeal. It was done after a lapse of five months from the date of hearing. Normally, this ground is available to the appellant if the appellate order is against him. The Petitioner, who is a stranger, cannot complain of the delay in disposing of an appeal. The delay between hearing and passing final orders is considered as

an illegality for violating the principles of natural justice. If a matter is heard and reserved for a long period, the Judge or the administrator will forget all the arguments addressed. So, if the order is passed after the lapse of a long spell, it may amount to an order passed without hearing. Violation of the principles of natural justice gives rise to a cause of action only to the concerned parties and not to a stranger to the proceeding like the petitioner. Relying on the words of Lord Denning M.R. in *Hoffmann-Loch Roche & Co. v. Secretary of State for Trade and Industry*, Prof. H.W.R. Wade in his *Administrative Law* 8th Edition stated:

'It seems plain that denial of a fair hearing is a wrong which is personal to the party aggrieved. If he himself waives the objection and does not complain, it is not the business of other people to do so, for as against them there is nothing wrong with the decision'.

Therefore, the contention built up by the petitioner based on the delay in pronouncing Ext.P3 order, cannot be upheld.

9. Apart from that, only one among the appellants before the Government is impleaded in this Original Petition. Therefore, as far as the other appellants are concerned, the impugned order has become final and binding. So, the challenge against Ext.P3 is not maintainable for the reason that all the affected parties are not impleaded.

For the above reasons, the Original Petition fails and it is dismissed. No costs. O.P. No. 30185 of 2002

10. This Original Petition is filed praying for implementation of the appellate order of the Government challenged in O.P. No. 30031/2002. In view of the dismissal of that Original Petition, this Original Petition is liable to be allowed. Accordingly, the Respondents shall allow the petitioners herein to assume charge as the Managing Committee members of the Imury Ksheerolpadaka Sanghom Ltd. No. E 68(D) within two weeks from the date of production of a copy of this judgment.

This O.P. is allowed as above. No costs.

