IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 7TH DAY OF SEPTEMBER 2015/16TH BHADRA, 1937

WP(C).No. 8841 of 2015 (E)

PETITIONERS:

1. B SAJEEVAN, PUTHENVILA VEEDU, MANANPUZHA.

2. N.RAVEENDRAN, KUNNU BUNGALOW, MULAVANA P.O., PERAYAM.

3. C.RAMESAN, KUZHIYIL PUTHENVEEDU, MUTHUPILAKKAD.

4. B.MOHANAN, VILAKKADU VILAYIL, NELLIMUKAL.

5. N.ANILKUMAR, THAVANNUR VEEDU, PORUVAZHI.

6. S.KANAKARAJAN, MURUKKUVILAYIL, PANNIVIZHA.

7. B.MURALEEDHARAN PILLA, KALARIVILA PUTHENVEEDU, MUTHUPILAKKAD.

8. K.BIJU, KATANNATHUNDIL, TUVAYOOR, KADAMBANAD.

9. USHAKUMARI, PRAVEEN HOUSE, PALLICKAL.

BY ADVS.SRI.P.C.SASIDHARAN
SRI.ARAVINDA KUMAR BABU T.K.

RESPONDENTS:

1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), O/O. JOINT REGISTRAR, QUILON - 691 001.

2. PART TIME ADMINISTRATOR, QUILON AUTOMOBILE EMPLOYEES CO-OPERATIVE SOCIETY LTD NO. Q 797, AMBALATHUMBHAGAM P.O., (UNIT INSPECTOR O/O THE ASSISTANT REGISTRAR SASTHAMKOTTA) - 690 521.

3. THE CIRLCE CO-OPERATIVE UNION, KUNNATTOOR CIRCLE, O/O. THE ASSISTANT REGISTRAR SASTHAMKOTTA REP. BY ITS SECRETARY - 690 521.

R2 BY ADV. SRI.P.SANTHALINGAM (SR.)
R2 BY ADV. SRI.S.SHARAN
R1-R2 BY SPL. GOVT. PLEADER SRI.D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07-09-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 8841 of 2015 (E)

PETITIONER'S EXHIBITS:

EXT. P1 - TRUE COPY OF THE NOTICE UNDER SECTION 32.

EXT. P2 - TRUE COPY OF THE EXPLANATION SUBMITTED BY THE SOCIETY.

EXT. P3 - TRUE COPY OF THE ORDER SUPERSEDING THE MANAGING COMMITTEE.

EXT. P4 - TRUE COPY OF THE RESOLUTION.

RESPONDENT'S EXHIBITS: NIL.

/TRUE COPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.8841 of 2015 E

Dated this the 7th day of September, 2015

JUDGMENT

The petitioners, nine in number, were the elected members of the Managing Committee of the Quilon Automobile Employees Co-operative Society, having been elected on 20.06.2010. As they had been at the helm of the affairs of the Society, the first respondent issued Exhibit P1 show cause notice purportedly under Section 32 of the Kerala Co-operative Societies Act, 1969 ('the Act' for brevity) seeking explanation from the petitioners, the members of the Managing Committee, why the Managing Committee comprising them should not be superseded. Though the petitioners did submit their explanation through Exhibit P2, the first respondent eventually passed Exhibit P3 order dated 28.02.2015 superseding the Managing

Committee and also appointing a Part-time Administrator. Assailing Exhibit P3, the petitioners have filed the present writ petition.

2. Sri.P.C.Sasidharan, the learned counsel for the petitioners, has submitted that Exhibit P3 is devoid of any reasoning, much less merit. In elaboration of his submissions, the learned counsel has laid specific emphasis on Section 32 of the Act, especially sub-sections (2) and (3) thereof.

3. Taking me through the statutory provisions, the learned counsel has submitted that in terms of sub-section (2) of Section 32, the first respondent ought to have consulted the financing bank and the Circle Co-operative Union before passing Exhibit P3 order. He has further contended that, if the first respondent, in any event, had come to an objective conclusion that consultation was not practicable, he ought to have, in terms of sub-section (3) of

Section 32, recorded cogent reasons in that regard.

4. Summing up his submissions, the learned counsel has submitted that under whatever excuse, including the alleged gravity of the allegations levelled against the members of the Managing Committee, the first respondent could not have given a go-bye to the mandatory statutory provisions and rendered a grossly illegal order. In support of his submissions, the learned counsel has placed reliance on **State of Kerala v. Urukunnu Service Co-operative Bank Ltd.**[1] and **State of M.P. v. Sanjay Nagayach**[2].

5. Per contra, the learned Special Government Pleader representing the first respondent, at the outset, in my view fairly, conceded that the first respondent did not, as a pre-condition, consult the financing bank and the Circle Co-operative Union in terms of sub-section (2) of Section 32 of the Act. He has also submitted that there is no specific

1 2013 (2) KLT 74
2 2013 (2) KLT 733 (SC)

finding in Exhibit P3 that there is compliance with sub-section (3) of Section 32 of the Act.

6. The learned Special Government Pleader has, however, submitted that the petitioners had an efficacious alternative remedy under Section 83(1)(j) of the Act. Without recourse to the said statutory provisions, the petitioners, contends the learned Government Pleader, ought not to have rushed to this Court on the mere premise that Exhibit P3 is grossly illegal. According to him, the Appellate Authority, the Government, is well equipped to deal with the issue that has arisen under Exhibit P3. It is, according to him, competent even to suspend the operation of the impugned order pending further adjudication.

7. In support of his submission that in the face of an efficacious alternative remedy no writ petition is maintainable under Article 226 of the Constitution, the learned Government Pleader has placed reliance on

Sadhana Lodh v. National Insurance Co. Ltd.[3] and an unreported judgment dated 21.08.2008 of this Court in W.P.(C)No. 14604/2008.

8. The learned counsel for the second respondent, on his part, has firstly referred to the decisions relied on by the learned counsel for the petitioner. It is his contention that those decisions could not come to the rescue of the petitioners. According to him, in the matters that fell for consideration before this Court and the Hon'ble Supreme Court in the decisions referred to above, the allegations levelled against the managing committees were only on account of the negligence but not misappropriation.

9. The learned counsel has taken me through the pleadings in the counter affidavit filed by the second respondent, especially paragraphs 5 to 8 therein, to underline the fact that the petitioners, as the members of the Managing Committee, have allegedly indulged in large

3 2003 (2) KLT 47 (SC)

scale financial irregularities.

10. In reply, the learned counsel for the petitioners, especially addressing the issue of alternative remedy, has submitted that Section 83(1)(j) of the Act is a generic provision dealing in an omnibus manner with all powers of either the Registrar or any other official discharging the functions of the Registrar. According to the learned counsel, it is not a question of alternative remedy; it is, in fact, a question of efficacious alternative remedy. Given the Governmental proclivity to have superseded the managing committees not subscribing to its political ideology, it is idle to expect, contends the learned counsel, the Appellate Authority to render any disinterested adjudication in terms of Section 83(1)(j), especially with regard to the issue under Section 32 of the Act.

11. Eventually, the learned counsel has drawn my attention to paragraph 27 of the Sanjay Nagayach (supra)

to stress the fact that the Hon'ble Supreme Court under identical circumstances, especially in the face of an objection raised on account of the alternative remedy, has overruled it by holding that the impugned order being grossly illegal, that plea cannot be sustained.

12. Heard the learned counsel for the petitioners and the learned counsel for the second respondent, as well as the learned Special Government Pleader for the first respondent, apart from perusing the records.

13. The issues that fall for consideration are as follows:

> I. Whether the writ petition is barred on account of the alternative remedy as has been provided under Section 83(1)(j) of the Act?
>
> II. Whether Exhibit P3 order can be sustained in the face of the admitted non-compliance by the first respondent with sub-sections (2) and (3) of Section 32 of the Act?

Issue No.I

14. To begin with, the learned Special Government

Pleader has laid heavy emphasis on the issue of alternative remedy. It needs no cogitation on my part to hold that once a person has an efficacious alternative remedy, he cannot take recourse to Article 226 of the Constitution. Precedents are a legion in that regard, including Sadhana Lodh (supra) and the unreported judgment dated 21.08.2008 (supra).

15. The fact, however, remains that in Sanjay Nagayach (supra), a provision in pari materia with Section 32, i.e. Section 53 of the Madhya Pradesh Co-operative Societies Act, has fallen for consideration. The State did raise an objection that the aggrieved person had an efficacious alternative remedy. In that context, the Hon'ble Supreme Court has held as follows:

> 27. The High Court, in our view, has therefore rightly exercised its jurisdiction under Article 226 of the Constitution and the alternative remedy of appeal is not bar in exercising that jurisdiction, since the order passed by the Joint Registrar was arbitrary and in clear violation of the second proviso to Section 53(1) of the Act.

16. In the light of the specific finding by the Apex Court on the same issue under identical circumstances, I cannot but be bound by the judicial dictum of the Apex Court. Accordingly, I hold that the objection as regards the alternative remedy does not pass judicial muster.

Issue No.II:

17. Since the fulcrum of the adjudication is Section 32 of the Act, it is profitable to examine the same. The said provision, to the extent relevant, reads as follows:

> “32. Supersession of Committee.- (1) If the Registrar, after an inquiry by himself or through his subordinates or on a report of the financing bank, or the Vigilance and Anti-corruption Bureau of the Government or the Vigilance Officer or otherwise, is satisfied that the committee of any society,--
>
> (a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or bye-laws or does anything which is prejudicial to the interest of the society; or
>
> (b) ………….
>
> (c) ………….

(d) misappropriates or destroys or tampers with the records or causes the destruction of records to cover up any misconduct or malpractice,

He may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee and appoint in its place, one administrator or an administrative committee consisting of not more than three individuals, one among them as convener, who need not be members of the society, to manage the affairs of the society for a period not exceeding six months.

xxxx xxxx xxxx

(e) Every member of the committee superseded under this section shall from the date of order of such supersession stand disqualified to contest in the election to or to be nominated to the committee of any Society or to be appointed as an administrator in any society for two consecutive terms.

(2) The Registrar shall consult the financing bank and the Circle Co-operative Union or State Co-operative Union as the case may be before passing an order under sub-sec.(1).

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2) it shall not be necessary to give an opportunity to the Committee to state its objections and to consult the Unions and financing banks, in cases where the Registrar is of the opinion that it is not reasonably practicable to do so, subject however to the condition that in such cases the period of supersession shall generally be for six months and in case a new committee, cannot be constituted or enter upon office in accordance with the bye-laws of the society within the period of supersession the period may be extended for a further period not exceeding six months -

(a) in the case of a co-operative society only after consulting the Circle Co-operative Union concerned; and

(b) in the case of an Apex Society or a Central Society only after consulting the State Co-operative Union."

18. Indeed, there is no cavil about the fact that the first respondent has been mandated under sub-section (2) of Section 32 to consult the financing bank and the Circle Co-operative Union before passing an order under sub-section (1). Further, sub-section (3), a non-obstante provision, provides for certain exemptions. In fact, in terms of the said provision, it is not necessary for the first respondent to give an opportunity to the Managing Committee to state its objections or consult the financing bank and Circle Co-operative Unions if he is of the opinion that it is not reasonably practicable to do so. The provision, however, further compels the first respondent to record, in such an eventuality, cogent reasons therefor. Indeed, another consequence is that in a case of non-consultation,

the period of suspension is also truncated.

19. A perusal of Exhibit P3, the translated version, makes it manifestly clear that the order is laconic, nay silent, of any justification concerning the non-consultation in terms of sub-section (2) of Section 32. Further, there is no whisper as regards the compelling circumstances that have made it impracticable for the first respondent to consult the financing bank and the Circle Co-operative Union. It is apposite to extract that portion of the order, supposedly, containing the reasoning or justification as regards the eventual conclusion arrived at by the first respondent. Exhibit P3, to the extent relevant, reads as follows:

> “To this notice the President, Secretary, other Managing Committee members were present before the Joint Registrar and rendered their explanation on 18.02.2015. The Managing Committee as a whole failed to explain the allegation against them reasonably. In these circumstances, it is quite reasonable to supersede the society for their serious and prejudicial action and hereby issue the following orders:”

20. In Urukunnu Service Co-operative Bank (supra), a learned Division Bench of this Court has observed that the Co-operative Societies should normally be managed by elected representatives; the very drastic step of superseding the managing committee under Section 32 can be resorted to only in exceptional circumstances, and more particularly only after the authority scrupulously following the procedure prescribed in Section 32. Their Lordships have further observed that if a managing committee is superseded under Section 32, it attracts disqualification of every member of the managing committee in the matter of contesting future elections for two consecutive terms to the Managing Committee. It is in view of the drastic nature of the power that the Legislature has, according to the learned Division Bench, incorporated safeguards in the matter of exercise of such powers, so that it will not be arbitrary. Having found that no cogent or acceptable reasons have

been recorded, the learned Bench has further observed that the least that is expected of the authority is to give some indication in the order itself why he has chosen to dispense with the consultation with a financing bank and the Circle Co-operative Union.

21. In Sanjay Nagayach (supra), the Hon'ble Supreme Court, dealing with an identical situation, as has been presented in the present writ petition, has held as follows:

> “22. The Registrar/Joint Registrar, while exercising powers of supersession has to form an opinion and that opinion must be based on some objective criteria, which has nexus with the final decision. A statutory authority shall not act with a pre-conceived notion and shall not speak his masters' voice, because the formation of opinion must be his own, not somebody else in power, to achieve some ulterior motive. There may be situations where the Registrar/Joint Registrar are expected to act in the best interest of the society and its members, but in such situations, they have to act bona fide and within the four corners of the Statute. In our view, the impugned order will not fall into that category.”

22. Having observed thus, their Lordships have directed reinstatement of the Managing Committee, apart

from mulcting the State with heavy costs. In that process, the Apex Court has also laid down general directions in view of the mushrooming of cases in various courts challenging the orders of suspension of the elected committees. It is profitable to extract the said general directions, which are as follows:

> "(1) Supersession of an elected Managing Committee/Board is an exception and be resorted to only in exceptional circumstances and normally elected body be allowed to complete the term for which it is elected.
>
> (2) Elected Committee in office be not penalised for the shortcomings or illegalities committed by the previous Committee, unless there is any deliberate inaction in rectifying the illegalities committed by the previous committees.
>
> (3) Elected Committee in Office be given sufficient time, say at least six months, to rectify the defects, if any, pointed out in the audit report with regard to incidents which originated when the previous committee was in office.
>
> (4) Registrar/Joint Registrar are legally obliged to comply with all the statutory formalities, including consultation with the financing banks/Controlling Banks etc. Only after getting their view, an opinion be formed as to whether an elected Committee be ousted or not.
>
> (5) Registrar/Joint Registrar should always bear in mind the consequences of an order of supersession which has the effect of not only ousting the Board out of office, but also

> disqualify them for standing for election in the succeeding elections. Registrar/Joint Registrar therefore is duty bound to exercise his powers bona fide and not on the dictation or direction of those who are in power.
>
> (6) Registrar/Joint Registrar shall not act under political pressure or influence and, if they do, be subjected to disciplinary proceedings and be also held personally liable for the cost of the legal proceedings.
>
> (7) Public money not to be spent by the State Government or the Registrar for unnecessary litigation involving disputes between various factions in a co-operative society. Tax payers money is not expected to be spent for settling those disputes. If found necessary, the same be spent from the funds available with the concerned Bank."

23. Definitive as the above precedential pronouncements are, before proceeding further, I may have to refer to the contentions raised by the learned counsel for the second respondent. According to him, the ousted Managing Committee has been guilty of gross financial irregularities. The proceedings under Section 65 of the Act, admittedly, have so far not attained finality; as such, it cannot be conclusively held that the petitioners are guilty of any financial irregularities. If they are, there are specific provisions that take care of the issue.

24. On the other hand, the law has not contemplated different procedural parameters based on the gravity of the allegations. An official cannot be allowed to disregard the statutory mandate taking shelter under an excuse that the Managing Committee sought to be superceded has been facing grave allegations.

25. A perusal of Section 32 leaves no manner of doubt in anybody's mind that it has been couched in mandatory terms that the first respondent shall consult the financing bank and the Circle Co-operative Union before inflicting any supersession. Further, if there were to be any dispensation of consultation, cogent reasons ought to be specified. In the present instance, neither of the safeguards has been complied with by the first respondent.

26. In the facts and circumstances, especially in view of the definitive judicial pronouncements rendered by a learned Division Bench of this Court and the Hon'ble

Supreme Court respectively, I do not hesitate to hold that Exhibit P3 order is entirely unsustainable and cannot be countenanced.

27. Having regard to the facts and circumstances discussed above, this Court is of the considered opinion that Exhibit P3 order of the first respondent is per se illegal and is required to be invalidated. This Court, therefore, declares that Exhibit P3 is illegal, arbitrary and unsustainable, and accordingly hereby sets it aside. As a consequence, the writ petition is allowed, short of directing re-induction of the petitioners' Managing Committee, the term of which came to an end pending adjudication of this writ petition.

Needless to observe that if there had been no Exhibit P3 order, the Managing Committee would have continued to be at the helm of the affairs until its term comes to an end. The fact, however, remains that pending adjudication of the present writ petition, their term came to an end on

19.06.2015. Under these circumstances, this Court is unable to restore the Managing Committee comprising the petitioners, despite the clear finding as regards the illegality of Exhibit P3.

Given the patent illegality of Exhibit P3, it is meat to mulct the State with costs to a tune of ₹ 25,000/- to be credited to the Kerala State Legal Services Authority. It is, however, left open for the State to realise the said amount, in its discretion, from the first respondent, keeping in view Circular No.45/2013 dated 12.07.2013.

Dama Seshadri Naidu, Judge

tkv

'C.R.'