IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

MONDAY, THE 10TH DAY OF AUGUST 2015/19TH SRAVANA, 1937

WP(C).No. 19146 of 2015 (P)

PETITIONERS:

1. TESSY VARGHESE, VATTAMKONDATHIL HOUSE,
ASSARIKADU P.O., THRISSUR-680 751.

2. JASMINE SHAJI, PERUMANA HOUSE,
CHENNAIPPARA P.O., THEKKEKKULAM,
THRISSUR DISTRICT.

3. MOHANAN C., MULLAPILLY HOUSE,
VAZHUKKUMPARA, CHUVANNAMANNU P.O.,
THRISSUR-680652.

BY ADVS.SRI.M.P.ASHOK KUMAR
SMT.BINDU SREEDHAR
SMT.R.S.MANJULA

RESPONDENTS:

1. THE SECRETARY TO GOVERNMENT ,
CO-OPERATIVE DIPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.

2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
OFFICE REGISTRAR OF CO-OPERATIVE SOCIETIES,
TRIVANDRUM-695 001.

3. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES(GENERAL), O/O. JOINT REGISTRAR,
THRISSUR DISTRICT-680 001.

4. THE PRESIDENT, PEECHI SERVICE CO-OPERATIVE BANK,
PEECHI, PATTIKKAD P.O., THRISSUR DISTRICT-680 652.

5. THE PEECHI SERVICE CO-OPERATIVE BANK,
PEECHI, PATTIKKAD P.O., THRISSUR DISTRICT
REPRESENTED BY ITS SECRETARY-680 652.

R4 & R5 BY ADV. SRI.GEORGE POONTHOTTAM
R1-R3 BY SPL. GOVT. PLEADER SRI.D.SOMASUNDARAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 19146 of 2015 (P)

PETITIONER'S EXHIBITS:

EXT. P1 : PHOTOCOPY OF THE COMPLAINT DATED 15-7-2013.

EXT. P2 : PHOTO COPY OF THE PETITION DATED 7-9-2013.

EXT. P3 : PHOTOCOPY OF THE SETTLEMENT ORDER DATED 21-4-2014 ISSUED BY THE JOINT REGISTRAR.

EXT. P4 : PHOTO COPY OF THE FIR 0708/2015 OF PEECHI POLICE STATION.

EXT. P5 : PHOTO COPY OF THE RESOLUTION DATED 2-5-2015.

EXT. P6 : PHOTO COPY OF THE APPEAL DATED 19-6-2015 FILED BY THE 1ST PETITIONER BEFORE THE SECOND RESPONDENT

EXT. P6(a) : PHOTOCOPY OF THE APPEAL DATED 19-6-2015 FILED BY THE 2ND PETITIONER BEFORE THE SECOND RESPONDENT

EXT. P6(b) : PHOTO COPY OF THE APPEAL DATED 19-6-2015 FILED BY THE 3RD PETITIONER BEFORE THE SECOND RESPONDENT

EXT. P7 : PHOTO COPY OF THE RECEIPT NO.29610 DATED 22-6-2015.

EXT. P7(a) : PHOTO COPY OF THE RECEIPT NO.29611 DATED 22-6-2015.

EXT. P7(b) : PHOTO COPY OF THE RECEIPT NO.29612 DATED 22-6-2015.

EXT. P8 : PHOTO COPY OF THE SHOW CAUSE NOTICE DATED 5-5-2015.

EXT. P8(a) : PHOTO COPY OF THE SHOW CAUSE NOTICE DATED 5-5-2015.

EXT. P8(b) : PHOTO COPY OF THE SHOW CAUSE NOTICE DATED 5-5-2015.

EXT. P9 : PHOTO COPY OF THE APPLICATION DATED 12-6-2015 SUBMITTED BY THE 2ND PETITIONER.

EXT. P10 : PHOTO COPY OF THE REPLY DATED 17-6-2015 ISSUED BY THE PRESIDENT TO THE 2ND PETITIONER.

EXT. P11 : PHOTO COPY OF THE NOTICE PUBLISHED IN THE MALAYALA MANORAMA DAILY DATED 21-6-2015.

EXT. P12 : PHOTOCOPY OF THE COMMUNICATION ISSUED BY SOCIETY ABOUT THE RESOLUTION OF GENERAL BODY EXPELLING FIRST PETITIONER DATED 07.07.2015

EXT. P12(a) : PHOTOCOPY OF THE COMMUNICATION ISSUED BY SOCIETY ABOUT THE RESOLUTION OF GENERAL BODY EXPELLING SECOND PETITIONER DATED 07.07.2015

EXT. P12(b) : PHOTOCOPY OF THE COMMUNICATION ISSUED BY SOCIETY ABOUT THE RESOLUTION OF GENERAL BODY EXPELLING THIRD PETITIONER DATED 07.07.2015

RESPONDENT'S EXHIBITS: NIL.

Dama Seshadri Naidu, J.

W.P.(C)No.19146 of 2015 P

Dated this the 10th day of August, 2015

JUDGMENT

Facts:

The petitioners, being the members of the fifth respondent Bank, were elected on 05.09.2012 as the Directors of the Board; in other words, as the members of the managing committee. The fifth respondent Bank, with a membership of 4500, has eleven members in the managing committee, including the petitioners, the first and second petitioners being the lady members.

2. In the course of time, five out of eleven members of the managing committee submitted Exhibit P1 complaint before the third respondent. They ventilated the grievance that the Secretary of the fifth respondent Bank had been functioning autocratically, by denying them access to the records, apart from compelling them to sign the minutes book and other registers in blank. At a later point of time,

having come to know that the Secretary had been secretly negotiating to purchase certain immovable property for the Bank at an exorbitant rate, the petitioners sought details from the Secretary of the proposed transaction. When no information was forthcoming, the petitioners, once again, submitted another representation, Exhibit P2, to the third respondent.

3. Acting on the complaint of the petitioners, the third respondent is said to have conducted an enquiry, which resulted in Exhibit P3. It is an order of settlement among the members of the managing committee on the initiative of the third respondent. Later, however, on the complaint of the petitioners 1 and 2, the police registered a crime in F.I.R.No.708/2015 on the file of the Peechi Police Station against the Secretary and the President of the Society for the alleged offences under Sections 509, 294(B), 506(1) and 34 of Indian Penal Code.

4. As a spin-off to the police complaint and the internal wrangling among the members of the managing committee, both the Secretary and the President of the respondent Bank, according to the petitioners, orchestrated majority and passed Exhibit P5 resolution proposing to expel the petitioners from the primary membership of the Bank. Aggrieved, the petitioners, challenging Exhibit P5, filed Exhibit P6 series of appeals before the second respondent by invoking Rule 176 of the Kerala Co-operative Societies Rules ('the Rules' for brevity).

5. Pending adjudication of Exhibit P6 series of appeals, the fourth respondent issued Exhibit P8 notice to the petitioners asking them to show cause why they should not be expelled from the primary membership of the Bank for their alleged adverse actions against the interest of the Bank. In response, with a view to giving a comprehensive reply, the petitioners sought certain documents from the

President. Later, after getting them, said to be voluminous, they presented Exhibit P9 representation before the President for extension of time to submit their explanation. Through Exhibit P10 the President of the Bank, however, rejected the petitioners' request to extend the time. Consequently, the Bank published Exhibit P11 notice to convene an extra-ordinary general body meeting on 28.06.2015.

6. Under these circumstances, the petitioners filed the present writ petition assailing Exhibit P5 resolution and Exhibit P8 show cause notice. This Court, on 26.06.2015, issued an interim order that the third respondent or any other senior officer deputed by him shall attend the special general body meeting to be convened on 28.06.2015 to decide the expulsion of the petitioners from the primary membership. This Court has further observed that the resolution, if any, to be passed expelling the petitioners

from the primary membership shall not be implemented for one month.

7. Later, the members of the fifth respondent Bank in the special general body meeting held on 28.06.2015, approved with a massive majority the decision of the managing committee to expel the petitioners from the primary membership of the Bank. The said decision was communicated to the petitioners through Exhibit P12. Thus, incorporating the subsequent developments, the petitioners filed I.A.No.9989/2015 to amend the pleadings. The said application was allowed, and the pleadings were amended incorporating the subsequent developments.

8. In the above factual background, Sri.M.P.Ashok Kumar, the learned counsel for the petitioners and Sri.George Poonthottam, the learned counsel for the fifth respondent Bank, have advanced their arguments. Since the learned counsel for the fifth respondent has raised a

preliminary objection concerning the maintainability of the writ petition on the ground of alternative remedy, it is appropriate to extract the submissions of the learned counsel on the said issue, first.

Submissions on the maintainability of the writ petition:

9. The learned counsel for the fifth respondent has submitted that the Bank is a Primary Co-operative Bank. In terms of Section 17 of the Kerala Co-operative Societies Act ('the Act' for brevity), the general body of the Bank, according to the learned counsel, has ample powers to endorse the decision of the managing committee to expel the petitioners from the primary membership. Exhibit P12 is a mere communication of the decision.

10. It is the singular contention of the learned counsel for the fifth respondent that the petitioners' remedy lies elsewhere. In expatiation of his submissions, the learned counsel would contend that under Rule 176 of the

Rules, the Registrar of the Co-operative Societies has ample powers to rescind any resolution for the reasons mentioned therein. According to the learned counsel, the expulsion is based on Exhibit P5 resolution; the petitioners, therefore, ought to have challenged, if at all, the said resolution under Rule 176 of the Rules before the second respondent. Indeed, the learned counsel has emphasised the fact that the petitioners have already taken recourse to Rule 176 and filed an appeal before the Registrar assailing the legality of Exhibit P5 resolution. The learned counsel sums up his submissions concerning the alternative remedy by asserting that recourse to Rule 176 of the Rules is not only an alternative but also efficacious remedy available to the petitioners.

11. Touching upon the powers of the second respondent, the learned counsel has also submitted that he is the first authority with wide and comprehensive

regulatory powers. In support of his submissions, the learned counsel has placed reliance on **Pradeep Kumar Biswas and Ors. v. Indian Institute of Chemical Biology and Ors.,**[1] **and Association of Milma Officers v. State of Kerala**[2]**.**

Submissions of the learned counsel for the petitioners on the maintainability of the writ petition:

12. To begin with, the learned counsel for the petitioners has made strenuous efforts to refute the contentions of the learned counsel for the fifth respondent regarding maintainability of the writ petition, having prefaced his submissions that the scope of Article 226 of the Constitution of India is very wide. The learned counsel has submitted that Rule 176 envisages interference by the Registrar of the Societies, the second respondent, only when the grievance is traceable to any of the things enumerated in the said Rules.

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[1] (2002) 5 SCC 111
[2] 2015 (1) KLT 849

13. The learned counsel for the petitioners has contended that the members of the managing committee, at best, can only be removed from being the office bearers by the majority members of the managing committee through the mechanism of no confidence motion. According to him, neither the managing committee nor the general body, which merely acted on the dictates of the President and Secretary, has the necessary powers to expel the petitioners from the primary membership of the Bank. In that context, the learned counsel would contend that the petitioners' expulsion is ultra vires of both the managing committee and the general body. Thus contends the learned counsel for the petitioners that the action of any authority, which is ultra vires, can always be questioned before this Court by taking recourse to Article 226 of the Constitution of India, notwithstanding the availability of an alternative remedy. In support of his submissions, the learned counsel for the

petitioners has placed reliance on **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.,**[3] **Committee of Management & Another v. Vice-Chancellor & Others**[4]**, Commissioner of Income Tax & Others v. Chabil Dass Agarwal**[5] **and Akalakunnam Village Service Cooperative Bank Ltd., v. Binu N**.[6]

14. The learned counsel has eventually submitted that in the light of the 97th Constitutional amendment, establishing a co-operative society is a fundamental right under Article 19(c) of the Constitution. According to him, the petitioners' summary removal from the primary membership of the society is in the negation of their fundamental rights.

<u>Submissions on the merits of the matter</u>:

15. The learned counsel for the petitioners has formulated the following question of law for consideration of

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3 (1998) 8 SCC 1
4 (2009) 2 SCC 630
5 (2104) 1 SCC 603
6 (2014) 9 SCC 294

this Court:

> Whether an elected office bearer can be expelled from the primary membership, in the absence of any specific provision for the same either in the Act or the Rules?

16. Initially, the learned counsel for the petitioners has made effort to stress the semantic significance of the expressions 'the member' and 'the office bearer'. In that regard, the learned counsel has drawn my attention to Sections 2(l) and 2(n) of the Act. Once there is an allegation that a particular member or an office bearer has acted against the interest of the Bank, there ought to have been, according to the learned counsel, a proper enquiry, which should have been done with strict adherence to the principles of natural justice. It is also the contention of the learned counsel for the petitioners that the expulsion of the petitioners from the primary membership is only because they have become a thorn in the flesh of the Secretary and the President of the Society. In other words, the expulsion is

vindictive.

17. Adverting to the genesis of the rivalry among the members of the managing committee, the learned counsel for the petitioners has submitted that Exhibit P1 complaint was filed by five out of eleven members of the managing committee before the third respondent. Later, Exhibit P2 complaint was filed before the third respondent by the petitioners alone. Drawing my attention to Exhibit P3 order passed by the third respondent in the wake of the complaints filed by the petitioners, the learned counsel has submitted that the said order has, in fact, found substance in the complaints. According to him, there is no gainsaying the fact that the complaints are not frivolous.

18. It is one of the principal contentions of the learned counsel for the petitioners that only because of the efforts made by the petitioners, permission was denied to the Society to purchase a property at an abnormal price.

According to the learned counsel, the Secretary and the President of the Bank have acted collusively to get Exhibit P5 resolution passed by the majority members of the managing committee. The learned counsel has rhetorically wondered whether filing of a complaint before the Registrar, the competent authority, amounts to defamation or acting against the interest of the Bank.

19. One of the allegations against the petitioners being that they are instrumental in the medias reporting adversely against the respondent Bank, the learned counsel would contend that if at all a Bank has any grievance against the media, it ought to have complained against the newspapers that have shown the Society in a poor light.

20. Adverting to Section 17 of the Act, the learned counsel reiterated his contention that a member may be removed from being an office bearer, but he or she cannot be expelled from primary membership. Rule 18 of the Rules

does not have any application to the office bearers. He has also elaborated on the different connotations of the expressions 'expulsion' and 'removal' of the members.

21. The learned counsel has also attacked Exhibit P10 refusal by the President to extend the time to the petitioners so that they could submit their explanation to Exhibit P8 show cause notice. Though the President has supplied the documents sought by the petitioners, according to the learned counsel, as they are voluminous, in the interest of fairness, the President ought to have provided the petitioners more time to submit a comprehensive explanation to Exhibit P8 show cause notice, especially taking advantage of the materials supplied by the respondent Bank.

22. It is the specific case of the learned counsel for the petitioners that only by taking recourse to Section 28AB (2) of the Act, the managing committee can remove an office

bearer from his position as the member of the said committee by expressing no confidence in the said person.

23. As the majority members of the managing committee and the general body have found fault with the conduct of the petitioners while they were acting as the officer bearers, any proceedings against the petitioners could affect only their position as being the office bearers. In other words, their actions as the members of the managing committee cannot affect their right to continue as the ordinary members of the Bank. According to the learned counsel, the expulsion of the petitioners from the primary membership is totally undemocratic. In support of his submissions, the learned counsel has placed reliance on **Chacko v. Jaya Varma**[7] **and Jagdev Singh v. The Registrar, Co-operative Societies, Haryana and others**.[8]

[7] 1999 (3) KLT 680
[8] AIR 1991 P&H 149

Submissions of the fifth respondent Bank:

24. The learned counsel for the fifth respondent Bank has begun his submissions by stressing the fact that the removal of membership is different and distinct from the removal of an office bearer from the managing committee. According to him, there is no provision in the Act or the Rules to remove a member of a managing committee. As per the scheme of the statute, especially Section 27 of the Act, the General Body, the learned counsel would emphasise, is the final authority.

25. Drawing my attention to Section 28AB of the Act and Rule 43A of the Rules, the learned counsel has contended that the substantive provision in the Act and the procedural prescription under the Rules only concern themselves with the removal of President, Vice President and other office bearers. These positions do not, definitely, include a member of the managing committee. According to

the learned counsel, the bye-laws may provide for various officers to be appointed in the hierarchy, apart from the members of a managing committee. In other words, if Section 28AB read with Rule 43A is to be given an expansive meaning, especially going by the definition of Officer under Section 2(n) of the Act, even an employee can be removed by simply taking recourse to Section 28AB. In the submission of the learned counsel, such an interpretation is impermissible, as it otherwise leads to calamitous consequences.

26. As a matter of hypothesis, the learned counsel would illustrate his submissions by contending that even the Secretary can answer the description of being an officer as per the definition under Section 2(h), but it is not in dispute that the Secretary cannot be removed by taking recourse to Section 28AB of the Act.

27. The learned counsel, in the alternative, has submitted that the members of the managing committee are elected by the general body; as such, their removal can be possible only through the process of the general body itself, but not by the managing committee. In support of his submissions, the learned counsel has placed reliance on **Mattachan v. Joint Registrar (General)**.[9]

28. Referring to legislative history of Section 28AB and Rule 43A, the learned counsel would contend that those provisions were incorporated as a consequence to the judicial dictum laid down by this Court in a Full Bench decision, where it has been observed that once there is no provision to remove an officer of the society, the said authority cannot be removed in any other manner.

29. The learned counsel has taken me through Sections 16 and 27 of the Act, apart from Rule 16 of the Rules to emphasise the qualifications of members and also

[9] 2006 (2) KLT 45

the final authority in the society. According to the learned counsel, the only issue that falls for consideration before this Court could be whether the decision taken by the general body is within its powers. In other words, once it is found that the decision is intra vires, there can be no judicial review of the said decision.

30. According to the learned counsel, having already challenged Exhibits P5 and P6 before the first respondent, the petitioners cannot abandon those proceedings and assail the correctness of Exhibit P12, which is only a consequential order in the face of Exhibit P5 resolution passed by the managing committee, as has been affirmed by the general body.

31. Veering back to the issue of maintainability, the learned counsel would contend that there are sufficient procedural safeguards under Rule 176, and that the said Rule provides an efficacious alternative remedy. The

Registrar being the first authority in adjudicating the disputes in a society, relief Nos.7 and 10, at this juncture, cannot be granted. According to the learned counsel, there is a wide difference between certiorari and mandamus. As there is no order of judicial nature, even of quasi-judicial nature, the petitioners cannot seek any certiorari from this Court concerning any of Exhibits P5, P8 and P12.

32. The learned counsel has also drawn my attention to the interim order passed by this Court on 26.06.2015. According to the learned counsel, this Court has already given sufficient directions to protect the interest of the petitioners. In expatiation of his submissions, the learned counsel would contend that this Court directed the third respondent either to monitor the general body meeting in person or to appoint a competent officer in that regard. In fact, the general body meeting, according to the learned counsel, was held under the supervision of an official

appointed by the third respondent. Drawing my attention to a statement filed by the officer who officiated the general body meeting, the learned counsel would contend that though the President of the Society has given the petitioners sufficient opportunity before the general body to defend their actions, they shied away from the same and did not avail themselves of the opportunity.

33. Distinguishing the ratio of the judgment in **Sanku v. State of Kerala**[10], the learned counsel would contend that the decision taken by the society in that judgment was not subjected to the approval of the general body. Summing up his submissions, the learned counsel would contend that once there is no patent illegality in the resolution passed by the general body, more particularly when the very meeting was held under the supervision of an authority appointed consequent to the direction of this Court, any judicial intervention at this stage is totally

[10] 1976 KLT 792

uncalled for. The learned counsel has, accordingly, urged this Court to dismiss the writ petition.

Issues:

1. Whether a writ petition is maintainable against the expulsion of the petitioners from the primary membership of the Society?

2. Whether a member of the Managing Committee can be removed from the primary membership of the Society for his alleged misfeasance in the capacity of being the member of the Managing Committee?

3. Whether the petitioners have acted against the interests of the Society in terms of Section 17 of the Act?

Discussion:

34. As to the maintainability of the writ petition, the fulcrum of the respondent Bank's argument is Rule 176 of the Rules, which requires to be examined. Rule 176 reads thus:

> "176. Registrar's power to rescind resolution:-- Notwithstanding anything contained in the bye-laws of a registered society, it shall be competent for the Registrar to rescind any resolution of any meeting of any society or the committee of any society, if it appears to him that such resolution is ultra vires of the objects of the society, or is against the provisions of the Act, Rules, Bye-laws or of any direction or instructions issued by the Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society."

35. Sweeping as the provision is, it is to be remembered that the very provision is a piece of subordinate legislation. Further, the rescission of the resolutions of a society is notwithstanding the bye-laws, but not the provisions of the primary legislation, that is, the Act. Not in dispute is the fact that the rescission can be of the resolutions passed either by the managing committee or the society itself.

36. If we further examine the sweep of the provision, the resolution should appear to be ultra vires of the objects of the society or is against the provisions of the Act, Rules, Bye-laws, or of any direction, or instructions issued by the

Department, or calculated to disturb the peaceful and orderly working of the society or is contrary to the better interest of the society.

37. Indeed, Rule 176 does not—nay, cannot—spell the doom for or annihilate an autonomous institution like a society, which now enjoys a constitutional status; nor is the Registrar a one-stop solution or a panacea to cure all the ills of the society. The role of the State in the affairs of societies is supervisory, and, beyond that, at best, a guiding factor for the common weal of the members. If Rule 176 is to be given an expansive meaning, by giving the expressions employed therein a free run, then every society, to my mind, becomes an instrumentality of State, for there is, undoubtedly, all-pervasive control by the State. It is not to be.

38. The elemental phraseology employed in Rule 176 to express the impacting instances is as follows: (1) Ultra vires of the objects of the society; (2) against the provisions

of the Act, etc.; (3) direction or instructions issued by the Department; (4) calculated to disturb the peaceful and orderly working of the society; or (5) is contrary to the better interest of the society.

39. Rule 176 of the Rules, without cavil, does not speak of any safeguards, such as putting the affected person on notice, or of any mechanism of adjudication, including the consequential remedial recourse for the affected person. Either a quasi-judicial adjudication or even pure administrative adjudication, if there were to be any distinction between them, requires all the above safeguards —but not a legislative or quasi-legislative power.

40. Co-operative societies, as the very name suggests, operate on the principle of collective management. The societies largely speak through resolutions. The Registrar's power of interdiction, albeit in the name of statutory violation, of the resolutions of all

hues, while exercising the administrative powers, can only be startling and stultifying—an anathema to the cooperative spirit of autonomous institutions, now having attained constitutional status.

41. The power conferred under Rule 176 of the Rules, in my considered opinion, is the regulatory power exercised by the Registrar when the society passes any resolutions in terms of the bye-laws, but in conflict with the statutory provisions or policy directives of the Government, but not, I may stress, the day to day administrative measures and management. It is, indeed, a power of surveillance.

42. If an authority violates a provision, it is a clear case of exercising power beyond the authorised limits or in transgression of the legislative mandate; it is essentially an issue of lack of power. There can, however, be instances where an authority uses the powers within the permissible

limits, but not for an intended purpose or animated by malice in law or fact. It is an intra vires exercise of power but ineffectual or improper exercise thereof. I do not think Rule 176 of the Rules has the potential of pulverising the powers of the society on every count. Even when we look at Section 109 of the Act, the provision conferring on the Government, by way of delegation, the rule making power, it has not explicitly dealt with the issue of conferring on the Registrar a blanket power of nullifying resolutions under all circumstances.

43. Keeping in view the 97th Constitutional Amendment and Article 43B of the Constitution, the Hon'ble Supreme Court in **Thalappalam Service Co-op. Bank Ltd. & Others v. State of Kerala & Others**[11] has observed as follows:

> "19. Rights of the citizens to form co-operative societies voluntarily is now raised to the level of a fundamental right and State shall endeavour to promote their autonomous

[11] ILR 2013 (4) Kerala 159

> functioning. The Parliament, with a view to enhance public faith in the co-operative institutions and to insulate them to avoidable political or bureaucratic interference brought in Constitutional (97th Amendment) Act, 2011, which received the assent of the President on 12.01.2012, notified in the Gazette of India on 13.01.2012 and came into force on 15.02.2012.
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> 20. A Constitutional amendment has been effected to encourage economic activities of co-operatives which in turn help the progress of rural India. Societies are expected not only to ensure autonomous and democratic functioning of co-operatives, but also accountability of the management to the members and other share stake-holders. Article 19 protects certain rights regarding freedom of speech. By virtue of above amendment under Article 19(1)(c) the words "co-operative societies" are added."

44. Parts IX (73rd Amendment) and IX-A (74th Amendment) of the Constitution incorporate the constitutional amendments in relation to Local Self-Governments, and those amendments are analogous to Part IX-B (97th) amendment concerning the Co-operative Societies. In **Ravi Yashant Bhoir v. District Collector, Raigad & Others,**[12] the Hon'ble Supreme Court, while interpreting the impact of Parts IX and IX-A of the Constitution, has held that those

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12 (2012) 4 SCC 407

amendments confer complete autonomy on the Local Self Government Institutions. It is further observed that exercise of any power having the effect of destroying the Constitutional institution besides being outrageous is dangerous to the democratic set-up of this country. In my considered opinion, Rule 176 of the Rules has to be, inevitably, read and understood in the context of the constitutionally elevated status of the Societies.

45. It is further pertinent to observe that in Ravi Yashwant Bhoir (supra), the Hon'ble Supreme Court has held that removal of a duly elected member even on the basis of proven misconduct is a quasi-judicial proceeding in nature. Though 'it is difficult in theory and impossible in practice' to have any watertight demarcation between administrative and quasi-judicial functions, if we examine the established judicial dicta in this regard, there is a distinction, very thin or subtle, though. In **Automotive Tyre**

Manufacturers Assn. v. Designated Authority[13], the Supreme Court has held that the nature of a quasi-judicial function will depend on the following features: (1) the nature of the power conferred; (2) the person or persons and who it is conferred; (3) the framework of the law concerning such power; (4) the consequences ensuing from the exercise of such power; and (5) the manner in which such power is expected to be exercised.

46. In **Indian National Congress v. Institute of Social Welfare,**[14] the Supreme Court, after examining various authorities—Indian and foreign—has held that the legal principles laying down when an act of a statutory authority would be a quasi-judicial act are the following: Where (a) a statutory authority empowered under a statute to do any act (b) which would prejudicially affect the subject (c) although there is no lis or two contending parties and

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14 (2002) 5 SCC 685

the contest is between the authority and subject and (d) the statutory authority is required to act judicially under statute, the decision of the said authority is quasi-judicial.

47. In **Jaswant Sugar Mills Ltd. v. Lakshmichand,**[15] one of the earliest decisions, the Hon'ble Supreme Court, has elaborately stated the principal features of quasi-judicial adjudication to be the following ones: (1) it is in substance a determination upon investigation of a question by the application of objective standards to facts found in the light of pre-existing legal rules; (2) it declares rights or imposes upon parties obligations affecting their civil rights; and (3) that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law in the presentation of legal argument, and a decision resulting in the disposal of

15 AIR 1963 SC 677

the matter on findings based on those questions of law and fact. Going by the said criteria, the power to be exercised under Rule 176 of the Rules is anything but quasi-judicial.

48. Once it is held, as has been done now, that the grievance ventilated by the petitioners does not fall within the purview of Rule 176 of the Rules, I do not think the issue of a Co-operative Society being not a State or its instrumentality may not be germane to be considered. Even otherwise, Article 12, which has fallen for consideration in Pradeep Kumar Biswas (supra), does not concern itself with the proceedings under Article 226 of the Constitution, under which the concept of public law remedy is much more expansive.

49. In **A.Umarani v. Registrar, Co-operative Societies and Others,**[16] the Apex Court has observed that except playing supervisory role, the State has no administrative control over the day-to-day affairs of a

[16] (2004) 7 SCC 112

society. In the end, it has held that a writ petition against a Co-operative Society is maintainable if the action of the Co-operative Society is violative of the statutory provisions.

50. After undertaking an exhaustive analysis of the case law on the issue of maintainability of a writ petition against a co-operative society, a learned Larger Bench of Seven-Judges in **Association of Milma Officers v. State of Kerala**[17] has summarized the judicial dictum, a portion of which, being relevant, is extracted herein below:

> "i) The Writ Petitions against Co-operative Societies are maintainable in certain circumstances. When the action complained in the Writ Petition is of any statutory violation on the part of the Co-operative Society, a Writ Petition will lie. The action of the Co-operative Society, if falls in a public domain or breach of the public duty is complained of, a writ may also lie. However, in the absence of breach of any statutory duty or public duty, a Writ Petition cannot be entertained against a Co-operative Society.
> . . . "

(emphasis added)

51. In fact, in Association of Milma Officers (supra), it can be seen that the first petitioner is an association of

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[17] 2015 (1) KHC 779

officers and the second petitioner is an employee in the second respondent Milk Marketing Federation. It is the case of the petitioners that even though the second petitioner was eligible to be appointed to the post of Senior Manager (Dairy), respondents 3 and 4 were taking hasty steps to appoint some other person to the said post. On facts, it is eventually held that the writ petition is not maintainable.

52. The conclusion being on facts, and not being a part of the ratio, what binds is the ratio extracted above, but not the result. Now, I will set about to examine whether there is any statutory violation on the part of the fifth respondent society in expelling the petitioners from primary membership of the society. Before proceeding further, I may observe that in the light of the definitive pronouncement of the learned Larger Bench of this Court, I have not felt the need of re-examining the case law concerning the maintainability of the writ petition placed reliance on by the

learned counsel for the petitioners, since most of those precedents have already been considered in Association of Milma Officers (supra).

53. The learned counsel for the fifth respondent has, in fact, emphasised the fact that the petitioners have already challenged Exhibit P5 resolution of the managing committee before the second respondent. According to him, the subsequent expulsion of the petitioners based on Exhibit P12 resolution of the general body is only consequential. As a finding, being rendered that Rule 176 of the Rules, does not extend to the resolutions passed by the Society expelling the members from primary membership, I do not think there can be any estoppel against the petitioners, for parties, as is well known, cannot confer jurisdiction on an authority, even by consent.

In re, Issue Nos.II & III:

54. To address the issue on merits, I have to

essentially examine the statutory scheme to the extent relevant for our discussion. Section 2(l) defines "Member" to mean a person joining in the application for the registration of a co-operative society or a person admitted to membership after such registration in accordance with the Act, the Rules and the bye-laws and includes a nominal or associate member. Clause (n) defines an “Officer” to mean the President, Vice President, Chairman, Vice-Chairman, Secretary, Manager, Member of Committee or Treasurer. After this enumeration, the provision further includes an officer, a liquidator, an administrator, and any other person empowered under the Rules or the bye-laws to give directions regarding the business of a co-operative society.

55. It is one of the contentions of the learned counsel for the fifth respondent that an office bearer, a member of the managing committee, cannot be removed other than by

way of a resolution passed by the general body, for it is the said general body that elects the member of the committee. The rival contention is that for the alleged shortcomings on the part of a member of the managing committee, the said member may lose the confidence of the majority members of the committee, and it may result in the expression of no confidence motion.

56. Chapter IV of the Act deals with the management of co-operative societies. Section 28 thereof delineates the process of appointing the committee. Section 28AB of the Act prescribes the method of election and removal of President, Vice-President, etc. It is apposite to examine the said provision, which reads as follows:

> "28AB. Election and Removal of President, Vice-President, etc:- (1) A committee constituted under sub-section (1) of Section 28 shall elect from themselves a President, a Vice-President, a Treasurer or any other officer by whatever name he is designated in the manner as may be prescribed.
>
> (2) A committee shall remove from office the President, Vice-President or Treasurer or any other officer of the committee if a motion expressing want of confidence in any or all of them is carried with the support of the majority of

> the members of such committee in accordance with the procedure as may be prescribed."
>
> (emphasis added)

57. Indeed, Rule 43A of the Rules elaborates on the procedure, to be adopted for expressing the no confidence motion. The contention of the learned counsel for the fifth respondent is that Section 28AB speaks of an officer and that even the Secretary fits the description of being an officer. Ipso facto, he contends that reference to 'officer' in the said Section does not pertain to a member of the managing committee.

58. Indisputably, Section 2(n) defines the term officer, and it includes a member of the committee. Of course, the expression further includes any other person empowered under the Rules or the bylaws to give directions regarding the business of a co-operative society. As can be seen from Section 28AB extracted above, the expression "officer" is circumscribed by "of the committee". As such,

the contention of the learned counsel for the fifth respondent is only to be rejected.

59. In my considered opinion, Section 28AB read with Rule 43A makes it manifestly clear that there is an efficacious mechanism for the removal of a member of the committee by expressing no confidence in him or her. It is pertinent to observe that the provision under reference does not mandate that for expressing no confidence any reason or justification has to be supplied. As a result, I am inclined to and accordingly conclude that there is a proper mechanism in place for removing a member of the managing committee: by expressing no-confidence.

60. I may further observe that the petitioners have fallen foul with the majority of the members of the managing committee, they questioned the ways of the Secretary and the President of the Society, and they have complained to the authorities about the alleged

malpractices or about the efforts of those persons not to allow the petitioners to participate in the affairs of the society. All these things had happened when the petitioners were the members of the managing committee.

61. What cannot be lost sight of is the fact that, based on the complaints of the petitioners and two others, the second respondent appointed the Assistant Registrar (General), Thrissur, to investigate the allegations and report. He did submit his report. In fact, the Assistant Registrar, having found substance in the allegations, notwithstanding the justification supplied by the President of the Society, effected a reconciliation among the members of the managing committee and recorded Exhibit P3 compromise, which was signed by all the members of the managing committee, as well as the Joint Registrar.

62. From Exhibit P3, it is evident that in response to the allegations leveled by the petitioners, the President only

supplied justification, but not denial. Let us see the nature of justification concerning some of the allegations. As regards the petitioners' allegation that dissent in the meeting were not recorded properly, the President would defend the action by saying that all the members of the Board belonged to the same political party and recording the dissent will adversely affect the reputation of the Bank. With regard to another allegation, the President would say that there was no practice of recording and reading out the minutes of the Board meeting. The Board meetings were also not held regularly on the excuse that there was a strained relationship among the members of the committee; as a result, the meetings were held only once in a month. The President has also gone on record saying that the copies of the bye-laws were not given to the petitioners, to avoid unnecessary allegations. Stranger is the defence than the irregularities said to have been committed by the

President and the Secretary of the society.

63. Indisputably, Exhibit P3 order of the District Co-operative Joint Registrar shows that the allegations on the part of the petitioners are not entirely unfounded. Having held that the society could have taken recourse to Section 28AB for removing the petitioners by the majority members of the committee from being the officers of the managing committee, I may further examine whether there is any justification for the society to expel the petitioners from the primary membership of the society.

64. I may state at the cost of repetition that to express no-confidence motion what is required is a majority in the managing committee but not any reason or justification therefor. At this juncture, it is pertinent to examine Section 17 of the Act, which reads as follows:

> "17. Expulsion of members:- (1) Any member of a society who has acted adversely to the interests of the society, may be expelled upon a resolution of the general body passed at a special meeting convened for the purpose by the votes of

> not less than two-thirds of the total number of members present and voting at the meeting.
>
> (2) No member shall be expelled under sub-section (1) without being given an opportunity of making his representation.
>
> (3) A copy of the resolution expelling a member shall be communicated to the member within a period of fifteen days from the date of passing of the resolution."

65. A perusal of the above provision clearly reveals that expulsion of any member of the society is not at the mere will or pleasure of the majority. It needs, without exception, reasons. The member to be expelled ought to have acted adversely to the interests of the society. In the first place, no member shall be expelled without being given an opportunity of making his representation. Rule 18 of the Rules prescribes the procedure to be followed before a member could be expelled from the basic membership. It is profitable to extract Rule 18, which reads thus:

> "18. Procedure for the Expulsion of members: A member who has acted adversely to the interest of the society [or has failed to comply with the provisions of the bye-law] may be expelled from the society as per S.17, adopting the following procedure:-

(a) Where any member or a society proposes to bring a resolution for the expulsion of any other member, he shall give written notice thereof, to the Chairman of the society. On receipt of such notice or when the Committee itself decides to bring in such resolution, the Committee shall send a registered notice to the member concerned to furnish his explanation, if any, on the matter within 15 days from the date of receipt of the notice. The member shall also be given an opportunity of being heard in person, if he so desire.

(b) On obtaining the explanation. if any, and on being heard in person, if he so desires and on giving opportunity to the complainant, to substantiate his allegation or after taking into consideration any written representation which he might have sent to the Committee or General Body, the committee shall decide as to the course of action to be adopted against the member concerned. If the committee decides to expel the member it shall convene a special General Body meeting after issuing due notice appending the agenda thereto and place the matter before it for decision under Section 17."

66. In the present instance the majority members of the managing committee have decided to expel the petitioners. It appears that having supplied the necessary documents required by the petitioners, the President refused to grant extra time to the petitioners to enable them to submit their explanation. In Exhibit P10, the President has concluded that the petitioners have no defence to offer.

The Rule, in fact, mandates that apart from any written representation, the member facing the charges shall be given an opportunity of being heard in person, if he so desires. Later, after considering the defence, both in writing and oral, if any, the managing committee shall decide the course of action to be adopted against the member concerned. If the committee decides to expel a member, it shall convene a special general body meeting after issuing due notice appending the agenda thereto. The managing committee shall place the matter before the general body for decision under Section 17 of the Act.

67. From the record, it is not clear whether the petitioners had been offered any opportunity to make their oral submissions, if any, before the managing committee, notwithstanding the President's refusal to extend the time to enable the petitioners to submit their explanation. Exhibit

P11 is a notice in the newspaper concerning the date of general body meeting.

68. As regards the allegations contained in Exhibit P8 show cause notice, firstly it is to the effect that, petitioners' claim that the respondent Bank had not been functioning correctly was found by the Registrar to be incorrect. On the contrary, Exhibit P3 report, however, reveals a different picture. Another issue is that the allegations have defamed the Bank. In what manner the defamation has been caused has not been spelt out. There is also another allegation concerning false propaganda; the said allegation, too, suffers from want of particulars. The note of disagreement in the Board meetings is said to have been against the interest of the Bank. Nevertheless, dissent is the backbone of democratic functioning of any institution, more pertinently that of a co-operative society.

69. Another claim is that the petitioners have spread canards in the media. It is, certainly, not the case of the respondent Bank that the petitioners held any press meeting to disseminate any false information. If media have written something adverse against the Bank knowing it to be false, the question is whether the petitioners could be blamed for that. There is, however, one allegation that sticks out like a sore thumb: that the petitioners had forcibly taken away the minutes book. The defence of the petitioners is that as they had been denied access to it, they had the temporary custody of it. Be that as it may, this singular instance does not amount, in my considered view, to the petitioners' acting adversely to the interests of the respondent Bank. In fact, such conduct as alleged to be adverse to the interests of the Bank shall be much more persistent and more blatant, with an element of malice, having the potential of disrupting the administration of the

Bank.

70. In Sanku (supra), this Court has held that a person approaching a judicial forum cannot be characterized as being prejudicial to the interests of the organization. On a compendious consideration of all the allegations in Exhibit P8 show cause notice, it is evident that in some cases all that the petitioners had done was express their dissent, in some other cases, be the whistle blowers. Exhibit P3 falsifies the stand of the Society that the petitioners' allegations were without any substance.

71. Expressing dissent is the essential feature of any democratic organization, and its stifling spells doom for any organization. Absolute conformity is at the peril of progress and the curtain raiser for despotic doom of an institution. Adverse media reports can hardly be blamed on the petitioners, even if they were suspected to be behind it, for there can be no disgraceful demise of a right, to be a

member, on a mere suspicion. On the other hand, the respondent Bank has not taken measures to ascertain the source of news reports. Approval of the petitioners' removal by an overwhelming majority of the general body is no answer to the statutory infraction. In a system with checks and balances, numbers alone do not matter, for a numerical majority does not nullify the rule of law.

72. After 97th Constitutional Amendment, the position of the Co-operative Societies stands on a different footing; they no longer are pure private affairs of a band of thrift oriented persons who are obliged to regulate their affairs as per the bye-laws of their society within the four corners of the statute, namely the Kerala Co-operative Societies Act, 1969 and the Rules made thereunder. The very institution of the co-operative society now has attained a constitutional status. Now, the statute has been subordinated. Once the autonomous status of the Society has been elevated to a

constitutionally consecrated position, the role of the State has become merely supervisory—not more than a surveillance to ensure that there is statutory compliance. The State cannot have an all-pervading control, nor has its brooding presence writ large at every stage of the affairs of the Society.

73. Once a group of persons has the fundamental right to establish a Society, as it is a collective right, every one of the group has individually, too, the same right to combine himself or herself with others having the similar objective and form a Society. This right to form a Society extends to be a member of an established one for the purpose of continuation since the membership is open and not restricted, so long as the eligibility criteria are met. Thus, the right to establish takes into its fold the right to continue in the Society, and thereby, by implication, a member's right not to be removed arbitrarily stands

constitutionally protected. Nor can a person's membership be dependent on the whims or the vagaries of the majority. What requires a member to be disqualified is the infraction of the statutory stipulations, not the antagonism of the majority. A member may lose his elected position once the electors disfavour him, but his position as a primary member is sacrosanct and has been constitutionally consecrated; it cannot be trifled with, nor can it be inextricably interlinked with the vicissitudes of the majority. It does not mean to say that the primary membership is immune from any interference. It only means that there ought to be clearly established acts on the part of the member adverse to the interest of the Society and that any evaluation of the allegations having the potential of resulting in the expulsion of the member requires strict scrutiny.

74. A loner, a dissenter, or a rebel with a cause but within the confines of law, is as much necessary as a conforming, obedient member for the progress of an Organisation, the co-operative society being no exception. Stifling the dissent in the name of majority is no answer unless it is the mandate of the statute, and the said statute passes the constitutional muster. If expulsion is to be treated as a semi-penal punishment, then the 'Rule of Lenity' may have an application. For an act of omission or commission, if punishment is to be inflicted, it is the lesser of the punishments available that is to be inflicted.

75. Having already held that there cannot be any expulsion of the petitioners from the primary membership, apart from their removal from the managing committee on their losing the confidence of the majority members, I am to further hold that even in terms of Section 17 of the Act, the respondent Bank has not established any ground to justify

that the petitioners have indulged in any act adverse to the interest of the respondent Bank. I reiterate that the respondent Bank does not have any statutory hindrance to proceed against the petitioners, short of their removal from the primary membership of the respondent Society.

Relief:

76. In **B.R.Ramabhadriah v. Secyretary, Food and Agriculture Deptt.**[18], the Supreme Court has held that as far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds. In Law of Writs (Pg.1578, Vol.2, 6th Edn.) the learned author V.G.Ramachandran sums up the legal position regarding the moulding of the relief thus: Looking to the decisions of the Supreme Court starting from Charanjit Lal[19] it clearly

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18 (1981) 3 SCC 528

19 AIR 1951 SC 41

appears that the Supreme Court has taken a liberal view by holding that a petition under Article 32 or Article 226 of the Constitution should not be rejected merely on the ground of formal defects in praying for proper reliefs.

77. The petitioners have sought as many as eleven reliefs. They have, inter alia, sought a mandamus seeking the quashment of Exhibits P5 and P8 series of show cause notices. They have also sought a declaration that the Board of Directors of the Society has no authority or jurisdiction to expel other Directors of the Board from the primary membership of the Society, which is in addition to a declaration that a Director elected to the Board of Directors of a Co-operative Society is entitled to continue till the expiry of his elected term. Indeed the petitioners have also sought a writ of certiorari or “any other appropriate writ or order” for the quashment of Exhibits P12, P12(a) and P12 (b).

78. It is the contention of the learned counsel for the respondent Bank that no certiorari can be issued. It is beyond cavil that Exhibit P12 series of resolutions has been passed by the General Body, as the learned counsel would put it, consequent to Exhibit P5 resolution of the managing committee and Exhibit P8 show cause notices. Thus goes the contention of the learned counsel for the fifth respondent bank that Exhibit P12 resolutions do not have the trappings of a quasi-judicial order. In fact, the Honourable Supreme Court has held in Automotive Tyre Manufacturers Assn. (supra) that an order of removal of an elected member is quasi-judicial in nature.

79. Leaving the technicalities aside, we cannot loose sight of the fact that to meet the ends of justice the courts have taken recourse to not only mandamus and certiorari but also certiorified mandamus. With the march of the time and the change in the judicial views, adherence to absolute

technicalities cannot be in the interest of justice.

80. Notwithstanding the numerous reliefs sought by the petitioners, this Court, moulding the reliefs, declares that Exhibit P12 series of resolutions passed against the petitioners are against the provisions of the Kerala Co-operative Societies Act, 1969. Firstly, the petitioners ought not to have been summarily expelled for their alleged commissions and omissions in their capacity of being the 'officers' of the managing committee. In that context, the respondent Society's invocation of Section 17 of the Act is illegal and impermissible. This finding, in my view, also passes the muster of the criterion fixed in Association of Milma Officers (supra) that there ought to be a statutory infraction. It is not a case of the wrong exercise of power; it is, in fact, invocation of power not available to the Society under the given fact situation.

81. Even assuming that the respondent Society could invoke Section 17 of the Act to expel the petitioners summarily from the primary membership, as has already been observed, the allegations in Exhibit P8 show cause notice do not amount to acts adverse to the interest of the Society warranting expulsion.

82. The corollary to the above findings is that the petitioners shall continue to be the members of the respondent Bank unhindered. It is, however, made clear that no observation of this Court in the present adjudication shall come in the way of the majority members of the managing committee expressing their no-confidence in the petitioners, if they chose to, after following the due procedure.

In the result, the writ petition is allowed subject to the above observations. No order as to costs.

Dama Seshadri Naidu, Judge

tkv/rv **'CR'**