

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 20985 of 2015 (W)

PETITIONER : -

INDIAN CO-OPERATIVE CREDIT SOCIETY LTD,
REPRESENTED BY ITS MANAGING DIRECTOR, 8/1,
SUNDERAMURTHY ROAD, COX TOWN, BANGALORE-560 005.

BY ADVS. SRI. P. S. SREEDHARAN PILLAI
SRI. T. K. SANDEEP
SRI. ARJUN SREEDHAR
SRI. ARUN KRISHNA DHAN
SRI. JOSEPH GEORGE (MULLAKKARIYIL)

RESPONDENTS : -

1. JOINT REGISTRAR OF CO-OP. SOCIETIES (GENERAL),
CIVIL STATION, KANNUR-670 002.
2. THE REGISTRAR OF CO-OPERATIVE SOCIETIES,
THYCAUD, THIRUVANANTHAPURAM-695 001.

BY GOVERNMENT PLEADER SRI. A. J. JOSE AEDAIODI

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
19-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS : -

EXHIBIT P1 : COPY OF THE CERTIFICATE OF REGISTRATION BEARING
NO.MSCS/CR/77/98 DATED.20.8.1998 ISSUED BY THE CENTRAL
REGISTRAR OF CO-OPERATIVE SOCIETIES.

EXHIBIT P2 : COPY OF THE REGISTERED BYE-LAWS OF THE PETITIONER
SOCIETY.

EXHIBIT P3 : COPY OF THE PRESS REPORT IN MATHRUBHUMI DAILY ALONG
WITH NEWSPAPER DATED 9.7.2015.

EXHIBIT P4 : COPY OF THE PRESS REPORT IN DESHABHIMANI DAILY
NEWSPAPER DATED 14.08.2015 (ALONG WITH TRANSLATION).

EXHIBIT P5 : COPY OF THE PRESS REPORT IN MATHRUBHUMI DAILY
NEWSPAPER DATED 14.08.15 (ALONG WITH TRANSLATION).

RESPONDENTS' EXHIBITS : -

EXHIBIT R1(a) : COPY OF THE BROCHURE ISSUED BY THE PETITIONER
SOCIETY.

EXHIBIT R1(b) : COPY OF THE APPLICATION FOR SHARE.

EXHIBIT R1(c) : COPY OF THE PETITION DATED 12.08.2015.

EXHIBIT R1(d) : COPY OF THE PETITION DATED 13.08.2015.

EXHIBIT R1(e) : COPY OF THE PETITION DATED 01.07.2015.

EXHIBIT R1(f) : COPY OF THE ADVERTISEMENT IN MANGALAM DAILY.

EXHIBIT R1(g) : COPY OF THE CIRCULAR DATED 29.05.2013.

EXHIBIT R1(h) : COPY OF THE RECEIPT OF THE 1st RESPONDENT 17.08.2015.

// TRUE COPY //

P.A. TO JUDGE

DMR/-

DAMA SESHADRI NAIDU, J.

W.P.(c) No. 20985 of 2015

Dated this the 19th day of August, 2015

JUDGMENT

The petitioner, the Multi-State Co-operative Society having its Head Office in Bangalore, State of Karnataka, has its operations in four states, which include the State of Kerala as well. Initially, the petitioner filed the present writ petition seeking a declaration that it is entitled to carry on its operations in the State of Kerala as per Exhibit P1 registration certificate. It has also sought a further direction against the alleged adverse media briefing said to have been indulged in by the respondent officials as regards the legitimacy of its operations.

2. This Court on 13.07.2015 issued a direction restraining the respondents 1 and 2 from issuing any press or other media communication concerning the state or legitimacy of the petitioner Society.

3. Once again the petitioner approached this Court by filing I.A. No.12046/2015. The grievance of the petitioner is

that on 13.08.2015, on or about 2.00 p.m, the first respondent, without any notice or intimation, came to the office of the petitioner society at Kannur along with a platoon of press persons, some political activists, and also two jeep loads of Police personnel. It is the specific contention of the petitioner society that the first respondent intimidated the office staff present in the branch and illegally seized the registers and computers kept at the office, apart from closing down the very branch. Seeking judicial intervention, the petitioner filed the said interlocutory application.

4. The learned Government Pleader initially took time for instructions and today came up with counter affidavit justifying the action of the first respondent.

5. A reading of the counter affidavit, which is elaborate, reveals that the first respondent has only acted on the basis of the complaints filed by certain persons of the locality. At any rate, it is the specific plea of the first respondent, as has been persistently submitted by the learned Government Pleader, that he has been authorized by the Government of India, through Exhibit R1(g) Circular, dated 29.05.2013, under Section 108 of the Multi-State Co-

operative Societies Act, 2002 ('the MSCS Act' for brevity), to inspect the operations of the petitioner society.

6. Though not part of the record, the learned Government Pleader has also submitted that the first respondent acted in compliance with the direction given on 17.07.2015 by the Registrar of Co-operative Societies, the second respondent, to inspect the petitioner society and report.

7. The learned counsel for the petitioner, in reply, has submitted that the second respondent acting under the Kerala Co-operative Societies Act does not have any power of superintendence over the societies established under the MSCS Act. He has also further contended that even under Section 108 of the MSCS Act, the first respondent does not have the power to seize any material, much less close down the business of the society.

8. Heard the learned counsel for the petitioner and the learned Government Pleader for the respondents, apart from perusing the records.

9. The first respondent may have, I believe, a genuine concern about the legality of the operations carried on by the petitioner society. It is, however, axiomatic that bona

fide intentions cannot transform themselves into a statutory mandate. Unless an authority has been clothed with power by any provision of law, he cannot justify his action merely on the premise that the action has got a salutary purpose behind it; to wit, the public interest. Incontrovertible is the fact that the petitioner has Ext.P1 licence to carry on its banking business in this State as well.

10. In the present instance, if we examine Exhibit R1 (g) circular issued on 29.05.2013 by the Ministry of Agriculture, Government of India, the Registrar of Co-operative Societies of the States/Union territories has been delegated the power under Section 108 of the MSCS Act to carry out fact-finding enquiry to ascertain the operational status of the society, covering areas like business operation, membership position, compliance with statutory provisions etc., and submit a report to the Ministry of Agriculture.

11. Firstly, we may examine Ext.R1 (g) Circular issued by the Government of India, purportedly under Section 108 of the MSCS Act. The said circular reads as follows:

"With a view to ensure effective monitoring of the multistate co-operative societies located in various states and union territories, the government has decided to

authorize the Registrar of Cooperative Societies of the states/union territories by delegating powers to them under Section 108 of the MSCS Act 2002 of the multistate co-operative societies located/operational within their state. The Registrar of Cooperative Societies or any other officer of the state government, as the RCS may deem appropriate, shall carry out inspection of books of accounts and other activities of the society.

The list of multistate societies registered till May 28, 2013 is enclosed with the request *to carry out fact-finding inquiry to ascertain the operational status of the society covering areas like business operation, membership position, compliance with statutory provisions, etc., and submit the report to this office.*"

(emphasis supplied)

12. Indeed, since the powers have been delegated to the Registrar of Co-operative Societies or his sub-delegate under Section 108 of the MSCS Act, it is further apposite to examine Section 108 of the MSCS Act, which reads as follows:

108. Inspection of books of account, etc. of multi-State co-operative society.—(1) The books of account and other books and papers of every multi-State co-operative society shall be open to inspection during business hours—

(i) *by the Central Registrar, or*

(ii) *by such officer of the Government as may be authorised by the Central Government in this behalf :*

Provided that such inspection may be made without giving any previous notice to that society or any officer thereof;

(iii) *by the members of the multi-State co-operative society.*

(2) It shall be the duty of every director, other officer or employee of the multi-State co-operative society to produce to the person making inspection under sub-section (1), all such books of account and other books and papers of the multi-State co-operative society in his custody or control and

to furnish him with any statement, information or explanation relating to the affairs of such society as the said person may require of him within such time and at such place as he may specify.

(3) It shall also be the duty of every director, other officer or employee of the multi-State co-operative society to give to the person making inspection under this section all assistance in connection with the inspection which the multi-State co-operative society may be reasonably expected to give.

(4) The person making the inspection under this section may, during the course of inspection,—

(i) make or cause to be made copies of books of account and other books and papers, or

(ii) place or cause to be placed any marks of identification thereon in token of the inspection having been made.

(5) Notwithstanding anything contained in any other law for the time being in force or any contract to the contrary, the Central Registrar or an officer authorised under clause (ii) of sub-section (1), making an inspection under this section shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by such person;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of the multi-State co-operative society at any place.

(6) Where an inspection of the books of account and other books and papers of the multi-State co-operative society has been made under this section, the Central Registrar or an officer authorised under clause (ii) of sub-section (1), making the inspection shall make a report to the Central Government.

(emphasis supplied)

13. An analysis of the above provision makes it clear that the books of account, etc., of a multi-State co-operative

society are open to inspection by the Central Registrar, or by such officer of the Government as may be authorised by the Central Government. Indeed, there is no need to give any prior notice to the society to be inspected. The person inspecting the office or the branch of the society may make or cause to be made copies of books of account and other books and papers. He can also place any marks of identification on the account books, etc., in token of the inspection having been made.

14. The inspecting authority has been conferred with the powers of a Civil Court under the Code of Civil Procedure in respect of the discovery and production of books of account and other documents, apart from the power of summoning and enforcing the attendance of persons and examining them on oath. Eventually, the inspecting authority shall make a report to the Central Government.

15. Thus, statutorily speaking, Section 108 concerns itself with the inspection of books of account etc., of a Multi-State Co-operative Society. Further, a specific procedure has been prescribed as is evident from the above extracted provision. Once a Multi-State Co-operative Society has been inspected in terms of Section 108 of the MSCS Act, the

inspecting authority can only make a report to the central government, which in turn is required to take appropriate decision based on the enquiry report, if need be.

16. Lord Bingham in his much acclaimed book *The Rule of Law*¹ under Chapter VI captioned 'The Exercise of Power' opines that ministers and public officers at all levels must exercise the powers conferred on them in good faith, fairly, for the purpose for which the powers were conferred, without exceeding the limits of such powers and not unreasonably.

17. The learned Author has further commented thus²:

"It is an elementary principle that anyone purporting to exercise a statutory power must not act beyond or outside the limits of the power conferred. Here again the principle is so old that it is often known by its Latin name: *ultra vires*, beyond the powers. It is common sense. If a head teacher has statutory authority to exclude a disruptive pupil for (say) two weeks, he or she cannot lawfully exclude a pupil for a month. If a local authority has statutory power to borrow up to £10 million, it cannot lawfully borrow £100 million..."

18. Beginning with *Taylor v. Taylor*³ through a series of judicial pronouncements, such as *Nazir Ahmad v. King Emperor*⁴, *State of UP v. Singhara Singh*⁵, *Kuntesh Gupta v. Hindu Kanya Mahavidyalaya*⁶, *Ram Phal Kundu v. Kamal Sharma*⁷, and *M. P.*

¹ P.69, Kindle Ed.

² Ibid P.73

³ 1876 (1) Ch D 426

⁴ AIR 1936 PC 253

⁵ AIR 1964 SC 358

⁶ (1987) 4 SCC 525

⁷ AIR 2004 SC 1657

*Wakf Board v. Subhan Shah*⁸ the House of Lords, the Privy Council and the Supreme Court with unfailing regularity have held that a statute prescribing a particular method of exercise of certain power means it has prohibited other methods, if any. In other words, when a statute requires any particular thing has to be done in a manner prescribed under the statute, the same cannot be done in any other manner, and that other methods of performance are necessarily forbidden.

19. A mere perusal of Exhibit R1(g) makes it clear that power has been delegated to the Registrar of Co-operative Societies of the State concerned only to inspect any Multi-State Co-operative Society and submit a report to the Central Government.

20. It is not in dispute that the first respondent may have received complaints from different quarters concerning the *modus operandi* of the petitioner society. Further, exhibits filed along with the counter affidavit do show, at least *prima facie*, that there is a needle of suspicion as regards the business tactics alleged to have been adopted by the petitioner society.

21. In my considered view, the scope of inspection under Section 108 of the Act is quite comprehensive.

⁸ (2006) 10 SCC 696

Nothing comes in the way of the first respondent in having a thorough inspection conducted into the affairs of the petitioner society. What cannot, however, be lost sight of is that the first respondent is only a delegate under a particular statutory provision and is expected to act within the four corners of the said provision. While submitting his report to the central government, the first respondent can as well urge the government to take immediate remedial measures vis-à-vis any particular society, if at all its affairs are suspicious or in violation of any statutory provision.

22. It assumes some importance to note with concern, though, that exhibits filed along with I.A. No. 12046/2015 also contain copies of press reports on the occasion of the inspection conducted by the first respondent. Both the Exhibits P4 and P5, the news reports in the vernacular, have uniformly reported that the inspection was conducted with an element of hostility, and that certain evitable events took place at the time of inspection, at least, owing to intervention of the outsiders. The presence of the police is not denied, either.

23. If it is a mere inspection of records or the business activities of the petitioner society, I do not see any

compelling need for the first respondent to make such elaborate arrangements and inspect the petitioner society premises under police protection. I do not see any averment in the counter affidavit to the effect that there has been any resistance by or threat from the petitioner society.

24. Since all the observations are only *prima facie* in nature regarding the nature of inspection the petitioner has undertaken, this Court does not want to comment further. The fact, however, remains that apart from seizing the records, the first respondent has also closed down the premises. The excuse supplied by the first respondent is that as there was nobody to take care of the branch, it was closed, and the key was kept with him.

25. It is, indeed, the specific contention of the first respondent that the person in charge of the branch fled the place. Be that as it may, it is very hard to comprehend how on the occasion of a mere inspection by the first respondent, especially under Section 108 of the Act, the personnel of the petitioner society have fled the scene abandoning the branch. The news reports, though cannot be elevated to the status of proven documents, nevertheless, leave sufficient tell-tale signs concerning what could have transpired on that

eventful day.

26. It only serves the interest of justice, if this Court declares and declares that the petitioner society, in the light of Ext.P1 certificate, is entitled to carry on its business operations in the State of Kerala. This Court, consequently, further directs the first respondent not to obstruct the petitioner's business activities further. As a consequence, the first respondent shall hand over the keys of the branch to the personnel of the petitioner society as soon as they approach him. Short of permissible statutory measures as have been stipulated in the MSCS Act, 2002, the first respondent or any other authority exercising powers directly or as a delegate shall indulge in misinformation or vilification by way of adverse media briefing or reportage.

27. It is, however, made abundantly clear that, if the first respondent or any other authority has got power under any statute, be it MSCS Act or any other regnant regulatory regime, this judgment of the Court does not come in his or her way of taking further action against the petitioner society, if at all it has been involved in any illegal operations or operations without proper licence. At the same time, the said authorities shall be guided by the rule of law and fair

procedure.

It is hoped that the first respondent does not relish arrogating to himself the powers not vested in him, and thereby act beyond the call of his duty, even in the name of protecting the public interest.

With the above observations, this writ petition is disposed of.

**DAMA SESHADRI NAIDU
JUDGE**

DMR/-