

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.SURENDRA MOHAN

THURSDAY, THE 29TH DAY OF JANUARY 2015/9TH MAGHA, 1936

WP(C).No. 30565 of 2007 (L)

PETITIONER(S) :

1. THE PRESIDENT,
KIZHAKKAMBALAM SERVICE CO-OPERATIVE BANK
LIMITED NO.83, KIZHAKKAMBALAM P.O.
ERNAKULAM DISTRICT.

2. THE KIZHAKKAMBALAM SERVICE CO-OPERATIVE
BANK LIMITED NO.83, KIZHAKKAMBALAM P.O.
ERNAKULAM DISTRICT REPRESENTED BY ITS, SECRETARY.

BY ADV. SRI.K.RAMAKUMAR (SR.)

RESPONDENT(S) :

1. THE GOVERNMENT OF KERALA
REPRESENTED BY ITS SECRETARY TO GOVERNMENT
DEPARTMENT OF CO-OPERATION, GOVERNMENT OF KERALA
THIRUVANANTHAPURAM.

2. THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES, ERNAKULAM.

3. SHRI.M.N.CHANDRAN, MULLACKAL HOUSE,
KANINADU, P.O.PUTHENCROUZ, ERNAKULAM
DISTRICT.

R,R3 BY ADV. SRI.P.V.BABY

R,R3 BY ADV. SRI.A.N.SANTHOSH

R,R1 BY ADV. GOVERNMENT PLEADER SHRI.E.M.ABDUL KHADER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
29-01-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WPC 30565/2007

PETITIONER'S EXTs:

EXT.P1: TRUE COPY OF NOTICE DT.23.5.1997 ISSUED TO R3 BY THE 2ND PETITIONER

EXT.P2: -DO- OF REPLY DT.29.5.2007 SUBMITTED BY R3 RECEIVED BY THE 2ND PETITIONER ON 31.5.07

EXT.P3: -DO- OF SHOW CAUSE NOTICE DT.13.11.2007 BY 2ND PETITIONER ALONG WITH COPY OF ENVELOPE

EXT.P4: -DO- ENQUIRY REPORT DT.1.11.07 BY THE ENQUIRY OFFICER

EXT.P5: -DO- NOTICE DT.1.12.07 BY THE 2ND PETITIONER BANK ALONG WITH ENVELOPE

EXT.P6:-DO- PETITION DT.16.9.2002 BY R3 BEFORE R2

EXT.P6A: -DO- STATEMENT DT.31.12.2003 BY THE PETITIONERS BANK

EXT.P7: -DO- ORDER NO:CRP NO:(1) 4470/01 DT.7.11.2006 BY R2

EXT.P8: -DO- APPEAL DT.6.12.2006 BY THE PETITIONERS BEFORE R1

EXT.P9: -DO- PRELIMINARY OBJECTION DT.16.10.2002 BY THE PETITIONERS BEFORE R2

EXT.P10: -DO- ORDER NO: GO(RT) NO: 574/07/CO-OP DT.11.9.2007

JJ

/TRUE COPY/

P.S.TO JUDGE

K. SURENDRA MOHAN,J.

W.P(C) NO. 30565 OF 2007

Dated this the 29th January, 2015.

JUDGMENT

The petitioners, President of the Kizhakkambalam Service Co-operative Bank and the Bank have filed this writ petition challenging Ext.P7 proceedings of the second respondent as well as Ext.P10 order of the first respondent by which Ext.P7 has been confirmed in appeal. The short facts of the case are the following.

2. The third respondent was working as a Sales man of the second respondent bank. He was proceeded against for misconduct alleging misappropriation of funds as well as other serious misconduct. Ext.P1 is the show cause notice issued to him containing the charges. He submitted Ext.P2 explanation to Ext.P1. Thereafter he was issued with another show cause notice Ext.P3 directing him to show cause why he

should not be dismissed from service. Thereafter, as per Ext.P5 dated 1.12.1997 the third respondent was dismissed from service. According to the petitioners, a domestic enquiry had preceded Exts.P3 and P5. The enquiry proceedings had to be completed ex parte, since the petitioner did not co-operate with the same. Notices had been issued to him by registered post, which were returned with the endorsement "unclaimed". Thus, since service was complete, the enquiry was proceeded with.

3. The third respondent thereupon challenged the order of dismissal against him before the second respondent, invoking his powers under Rule 176 of the Kerala Co-operative Societies Rules, 1969 (the 'Rules' for short). Thereafter, the third respondent approached this Court by filing O.P.10114/2001. As per judgment dated 27.3.2001 the second respondent was directed to consider and finally dispose of the matter. Accordingly, the second respondent heard the petitioners as well as the third respondent and by

order dated 5.6.2001 held that the enquiry conducted against the petitioner was violative of the principles of natural justice. Accordingly, the order of dismissal was set aside and the matter was remitted back with a direction to conduct a de novo enquiry after issuing proper notices.

4. Against the said order, the bank as well as the third respondent preferred appeal before the Government. The Government heard both the appeals together and directed the second respondent to re-examine the matter and to decide the matter finally as per an order dated 29.9.2001. However, when the second respondent initiated further proceedings in the matter, the petitioners approached this Court by filing an original petition, O.P.3255/2001. The said writ petition was disposed of by judgment dated 19.3.2002 setting aside the order passed by the first respondent and directing the third respondent to prefer an appeal to the committee of the second petitioner bank.

5. Accordingly, the appeal was considered by the

committee of the second petitioner. A personal hearing was afforded to the respondent on 1.7.2002 and the same was dismissed by the proceedings of the committee.

6. Aggrieved by the dismissal of his appeal, the petitioner challenged the decision of the committee before the second respondent invoking the power under Rule 176 of the Rules. The bank thereupon raised a preliminary objection regarding the maintainability of the petition, which is Ext.P9. Thereafter, they approached this Court by filing O.P.31007/2001. As per judgment dated 16.9.2003 the said writ petition was disposed of by this Court directing the second respondent to consider the petition and to pass appropriate orders thereon. The question regarding maintainability of the petition was also directed to be considered. Thus, the matter was again heard by the second respondent on 17.12.2005. Thereafter, the matter was again heard on 27.9.2006 after which, Ext.P7 order was issued setting aside Ext.P5 order of dismissal passed against the third

respondent. The bank challenged Ext.P7 in appeal before the first respondent. The matter was considered by the first respondent and by Ext.P10 order, Ext.P7 order has been confirmed. The petitioners have filed this writ petition challenging Exts.P7 and P10 orders.

7. According to Smt. Ammu Charles, the counsel for the petitioner, the second respondent had no jurisdiction to entertain the petition preferred by the petitioner challenging Ext.P5 order of dismissal. It is pointed out that, Section 69 of the Kerala Co-operative Societies Act, 1969 (the 'Act' for short) had been brought into force with effect from 2.1.2003. Thereafter, all non-monetary disputes with the society had to be decided by the Co-operative Arbitration Court. Reliance is also placed on the decision of a Division Bench of this Court in P.S.Raveendran v. State of Kerala [2007(3)KHC 780] to contend that, the second respondent had no power to decide the dispute regarding the dismissal of the third respondent which was essentially a non-monetary dispute. The fact that,

this Hon'ble Court had issued a direction to the second respondent to consider the petition preferred by the third respondent would also not confer power on the authority. In view of the above position of law it is contended that Exts.P7 and P10 are liable to be set aside and the matter directed to be considered by the Co-operative Arbitration Court.

8. With respect to the findings in Exts.P7 and P10 that the domestic enquiry conducted against the third respondent was vitiated by violation of the principles of natural justice, it is contended by the learned counsel that, notices had been issued to the third respondent at all stages of the proceedings. However, they were returned, without being claimed by him. Therefore, left with no other alternative the enquiry had to be proceeded with ex parte. In view of the above state of affairs, it is contended that there has been no violation of the principles of natural justice. The third respondent had been found guilty of misconduct including misappropriation of funds and therefore, the punishment imposed on him was

warranted.

9. Adv.P.V.Baby appears for the third respondent. According to the counsel, the power under Rule 176 of the Rules is totally different from the power to decide disputes conferred on the Co-operative Arbitration Court by Section 69. Acting within the scope and ambit of Rule 176 of the Rules the second respondent had sufficient authority to set aside any resolution of a society, if it was found to be violative of any of the provisions of the Act, Rules or the bye laws of the society. Such power is intended to ensure that functioning of the societies are properly regulated. Such powers are neither abridged or taken away by Section 69. Therefore, it is contended that setting aside the dismissal of the third respondent in Ext.P7 is perfectly justified. The counsel places reliance on the decisions of this Court to contend that, the second respondent was sufficiently empowered to issue Ext.P7. It is further contended that, in the present case though it is stated that notices had been issued to the third

respondent by registered post the notices in respect of the crucial day on which the third respondent was set ex parte had not been issued by registered post. In view of Section 104 of the Act specifically providing that all communications under the Act be issued by registered post, any other mode of service of notice is unacceptable. It is also pointed out that this is a case in which Rule 198 of the Rules have been violated. No charge sheet was served on the petitioner, nor was a copy of the enquiry report furnished to him. The first and second respondents both found that there was infraction of the principles of natural justice. It is contended that there are absolutely no grounds to interfere with Exts.P7 and P10.

10. Heard. As already noticed above, what was under challenge before the second respondent was the decision of the committee of the second petitioner that dismissed the appeal filed by the petitioner challenging the order of dismissal, Ext.P5 passed against him. Rule 176 of the Rules reads as follows:–

“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.”

Therefore, the question that fell for consideration of the second respondent was whether the said resolution was:

- i) ultra vires the objects of the society or
- ii) against the provisions of the Act, Rules, bye-laws or of any direction or instructions issued by the department or
- iii) calculated to disturb the peaceful and orderly working of the society or
- iv) is contrary to the better interests of the society.

The above are the grounds on which, the jurisdiction has been

conferred on the second respondent to rescind a resolution by Rule 176 of the Rules. A perusal of the impugned orders Exts.P7 and P10 show that, the facts of the case have been referred to in detail, therein. It has been found that, no intimation regarding the last date of posting of the enquiry on 6.8.1997 was issued to the third respondent. It is not in dispute that, the third respondent had received notice on 1.8.1997, had appeared at the enquiry and sought a postponement thereof by producing a Medical Certificate. It has been found in the impugned orders that, there is no evidence of any subsequent notice having issued to the third respondent by the petitioners. It has been found that, after the third respondent had submitted his explanation Ext.P2, no intimation regarding the appointment of an enquiry officer was given to him. Nor was a memo of charges issued or even charges framed against the third respondent. It is the case of the third respondent that, he had come to know of the appointment of the enquiry officer only when a notice was

issued by the said officer. Though he had responded to the notice that he had received, he had not been served with any subsequent notice thereafter. He was served with only the order of dismissal. Though both the first and second respondents have gone into the above aspect, they found that no notice was issued.

11. Rule 198 of the Rules stipulate that, no kind of punishment shall be awarded to an employee unless he has been informed in writing of the grounds on which it is proposed to take action against him and he has been afforded an opportunity including a personal hearing to defend himself. In the present case, since no domestic enquiry was conducted against the third respondent with proper notice to him, it is clear that Rule 198 was violated. As already noticed above, Rule 196 confers power on the second respondent to rescind a resolution, in cases where it is found inter alia, that a resolution is against the provisions of the Act, Rules or bye-laws of the society. This is a case where the domestic enquiry

on the basis of which Ext.P5 has been passed was conducted in violation of the specific provision of the Rules, viz., Rule 198. Therefore, the present case is one in which it has to be held that the second respondent had the jurisdiction to entertain the petition preferred by the petitioner and to pass Ext.P7. It is true that, the resolution that was under challenge was one that related to the dismissal of an employee. However, it has been held by this Court that to confine the scope of Rule 176 by incorporating a rider that the power under the said provision would not be available to rescind a resolution in respect to service matter even where the resolution is found to be otherwise unsustainable under the said provision is not warranted. A Division Bench of this Court has in *President, Pudupariyaram Service Co-op.Society v. Rugmini Amma* [1996(1)KLT 100] held as follows in paragraph 6 which is extracted hereunder for easy reference:-

“There is nothing in Rule 176 to suggest that power under the Rule cannot be invoked if resolution relates to disciplinary actions against

any employee. Nor is there any need to read such a rider into the rule. Even if the decision relates to disciplinary sphere of its employees the Registrar can nevertheless invoke powers under Rule 176 provided the resolution offends any provision of law or is against any direction issued by the department or is contrary to society's interest."

In Chithambaran v. Registrar of Co-op.Societies [1996(2) KLT 66] also it has been held that the power under Rule 176 is the general power given to the Registrar for the purpose of ensuring a smooth and effective functioning of co-operative societies. The said dictum has been quoted with approval by another decision of this Court in Trivandrum Co-op.Urban Bank Ltd. v. Jt.Registrar of Co-op.Societies [2001(1) KLT 99]. The above being the position it has to be held that, the power under Rule 176 of the Rules available to the second respondent would not be inhibited or restricted by the provisions of Section 69 of the Act.

12. The counsel for the petitioner has placed reliance

on the decision in P.S.Raveendran v. State of Kerala (supra) where a Division Bench of this Court has held that a dispute in connection with the employment of officers and servants of different class of societies would have to be determined under Section 69 of the Act. The said case involved inter se seniority disputes between junior clerks. As per the order that was under challenge before this Court, it was held by the second respondent that one of the respondents was senior to the petitioner. This Court had to consider whether the said order was sustainable under Rule 176. This Court has placing reliance on the decision in Prakasini v. Joint Registrar [2006(1) KLT 199] held that, the second respondent had no jurisdiction to pass orders settling inter se seniority among employees of the society. Such disputes were to be settled by the Co-operative Arbitration Court. No such situation as in the said case exists in the present case. As already found above this is a case in which it has been found by both respondents 1 and 2 that the order of dismissal Ext.P5 has

been issued in violation of the principles of natural justice as well as the specific provision contained in Rule 198(2) of the Rules.

In view of the above, I do not find any infirmity in Exts.P7 and P10 orders warranting an interference with them. This writ petition is therefore dismissed.

Sd/-
K. SURENDRA MOHAN
Judge

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