

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 31727 of 2015 (M)

PETITIONERS:

1. K. GOPALAKRISHNAN, KARIKKATTU HOUSE,
KANICHANELLOOR, MUTTOM P.O.,
HARIPAD, ALAPPUZHA-690 511.
2. V.K.SAHADDEVAN, VYPPILATHU HOUSE, MUTTOM P.O.,
HARIPAD, ALAPPUZHA-690 511.
3. T.SURENDRAN, PUTHORATHU HOUSE,
NANGIARKULANGARA P.O., ALAPPUZHA-690 513.
4. M.K.VENUKUMAR, THEKKEDATHU HOUSE,
EVOOR P.O., CHEPPAD, ALAPPUZHA-690 507.
5. JOHN CHACKO, KANJIRAMPARAMBATH HOUSE,
VALIYAKUZHI, MUTTOM P.O., HARIPAD, ALAPPUZHA-690 511.
6. BINDU, NALLAVEETIL HOUSE, MUTTOM P.O., HARIPAD,
ALAPPUZHA-690 511.
7. PRASANNAKUMARI, MURALEEBHAVANAM, KANICHANELLOOR,
MUTTOM P.O., HARIPAD, ALAPPUZHA-690 511.
8. P.M.RAJAN, INDIRA BHAVANAM, MUTTOM P.O., HARIPAD,
ALAPPUZHA-690 511.
9. K.N.SADASIVAN PILLAI, KOCHUKALEEKKAL HOUSE,
MUTTOM P.O., HARIPAD, ALAPPUZHA-690 511.
10. N.MOHANAN, IROOTTIL HOUSE, NANGIARKULANGARA P.O.,
ALAPPUZHA-690 513.
11. T.K.KRISHNAN, THATTAKKATTUVADAKEETHIL HOUSE,
MUTTOM P.O., HARIPAD, ALAPPUZHA-690 511.
12. D.RAJAGOPAL, KYPPATHIL THEKKATHIL HOUSE, KANJOOR,
CHEPPAD P.O., ALAPPUZHA-690 507.
13. SUDHA HARIDAS, SREEHARI, MUTTOM P.O., HARIPAD,
ALAPPUZHA-690 511.

BY ADVS.SRI.P.N.MOHANAN
SMT.I.VINAYAKUMARI
SRI.C.P.SABARI

RESPONDENTS:

1. THE JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES (GENERAL), ALAPPUZHA-690 001.
2. PART-TIME ADMINISTRATOR OF VALIAKUZHI SERVICE CO-OPERATIVE BANK LTD.NO.2559, MUTTOM P.O., HARIPAD, ALAPPUZHA-690 511.
3. VALIAKUZHI SERVICE CO-OPERATIVE BANK LTD.NO.2559, REPRESENTED BY SECRETARY, MUTTOM P.O., HARIPAD, ALAPPUZHA-690 511.
4. JOHN THOMAS, ADMINISTRATIVE COMMITTEE MEMBER OF VALIAKUZHI SERVICE CO-OPERATIVE BANK TD.NO.2559, MUTTOM P.O. , HARIPAD, ALAPPUZHA-690 511.
5. RADAKRISHNAN NAIR, ADMINISTRATIVE COMMITTEE MEMBER OF VALIAKUZHI SERVICE CO-OPERATIVE BANK LTD.NO.2559, MUTTOM P.O. , HARIPAD, ALAPPUZHA-690 511.
6. P.L.THULASI, ADMINISTRATIVE COMMITTEE MEMBER OF VALIAKUZHI SERVICE CO-OPERATIVE BANK LTD.NO.2559, MUTTOM P.O. , HARIPAD, ALAPPUZHA-690 511.

R3-6 BY ADVS. SRI.V.G.ARUN

SRI.T.R.HARIKUMAR

R1 BY GOVERNMENT PLEADER SRI.G.GOPAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN WP(C).No. 31727 of 2015 (M)

PETITIONER'S EXHIBITS:

EXHIBIT-P1: A TRUE COPY OF THE ORDER DATED 7.11.2014 OF THE FIRST RESPONDENT ORDERING AN ENQUIRY.

EXHIBIT-P2: A TRUE COPY OF THE NOTICE DATED 19.9.2015.

EXHIBIT-P3: A TRUE COPY OF THE FIRST RESPONDENT REPLY DATED 29.9.2015.

EXHIBIT-P4: A TRUE COPY OF THE ORDER DATED 1.10.2015 SUPERSEDING THE COMMITTEE WITH TRANSLATION.

EXHIBIT-P5: A TRUE COPY OF THE ORDER DATED 7.10.2015 OF THE FIRST RESPONDENT.

RESPONDENT'S EXHIBITS: NIL.

/TRUE CPY/

P.S. TO JUDGE

Dama Seshadri Naidu, J.

W.P.(C)No.31727 of 2015 M

Dated this the 8th day of December, 2015

JUDGMENT

Introduction:

The petitioners, thirteen in number, were the members of the erstwhile managing committee, which assumed charge on 24.06.2013. It seems some of them were also the members of the previous managing committee. Because the managing committee was guilty of the negligence in supervising the administration of the Bank, the respondent authorities initiated an enquiry and eventually passed Exhibit P4 order of supersession under Section 32 of the Kerala Co-operative Societies Act ('the Act' for brevity). Assailing the said order, the petitioners have filed the present writ petition.

Facts:

2. The two employees of the respondent Bank—Accountant and Secretary—misappropriated funds to a tune

of Rs.74 lakhs. As soon as the managing committee came to know of the misappropriation, it ensured recovery of Rs.64 lakhs from those persons. At any rate, given the magnitude of misappropriation, the Joint Registrar appointed an Inspector of the Department to enquire into the affairs of the Bank. In turn, the said Inspector submitted an enquiry report running into many pages.

3. Based on the report submitted by the Inspector, the Joint Registrar further initiated proceedings under Section 32 of the Act and issued Exhibit P2 show cause notice, which was replied to by the petitioners through Exhibit P3. Eventually, the Joint Registrar passed Exhibit P4 order superseding the managing committee comprising the petitioners as members and appointed an Administrator. Nevertheless, within three days, the Joint Registrar replaced the said Administrator with an administrative committee.

Summary of Submissions:**Petitioners':**

4. In the above factual backdrop, Sri.P.N.Mohanan, the learned counsel for the petitioners, has strenuously contended that, first, the petitioners, being the members of the managing committee, admittedly have no complicity in the alleged misappropriation committed by the two employees. According to the learned counsel, the managing committee takes care of only the policy decisions leaving the day-to-day administration to the employees, such as the Secretary.

5. The learned counsel has also submitted that even if the entire allegations are believed to be true, there is no whisper from any quarter that the petitioners have anything to do with the misappropriation or the alleged mismanagement. In the alternative, he has submitted that supersession of the managing committee resulting in the disqualification of the petitioners from contesting the

elections for two terms is grossly disproportionate to the alleged misconduct on the part of the petitioners, i.e. the supervisory lapses.

6. The learned counsel, drawing my attention to subsection (2) of Section 32, has submitted that the Joint Registrar, before passing Exhibit P4, admittedly consulted neither the Circle Co-operative Union nor the Financing Bank.

7. Laying specific emphasis on the fact that to earn a disqualification by way of supersession, the committee ought to have been found guilty of not mere negligence but culpable negligence, the learned counsel has placed reliance on the following judgments: **State of Kerala v. Urukunnu Service Co-operative Bank Ltd.**¹, **Rajeevan v. Sukumaran**², **Urukunnu Service Co-operative Bank Ltd. v. State of Kerala**³, **Ashok Kumar v. State of Kerala**⁴, **Vallappuzha Service Co-operative Bank Ltd. v. Joint**

1 2013 (2) KLT 74

2 2013 (3) KLT 253

3 2012 (4) KLT 941

4 2003 (3) KLT SN 86 (Case No.114)

Registrar⁵, Rajagopalan Nair v. State of Kerala⁶ and State of M.P. v. Sanjay Nagayach⁷.

8. Referring to the above citations, the learned counsel has also contended that consultation, as has been provided in sub-section (2) of Section 32 of the Act, is mandatory, and any infraction thereof vitiates the entire proceedings.

Respondents':

9. Per contra, both the learned Government Pleader and the learned counsel for respondents 3 to 6 have submitted in unison that the misappropriated amount is not Rs.74 lakhs but close to Rs.1 crore—to be precise Rs.94.64 lakhs. They have also submitted that the petitioners, being the members of the managing committee, have been guilty of gross misconduct, for they have sanctioned loans to the tune of Rupees four crores without proper documentation.

5 2009 (3) KLT 838

6 1995 (2) KLT 184

7 2013 (2) KLT 733(SC)

10. The learned counsel for the respondents have submitted that at the time when the inspection took place, the managing committee could not produce any record to support their conduct or administration, such as granting loans to one of the employees who misappropriated the funds or granting gold loans to professional money lenders to the prejudice of the regular members of the Bank.

11. The learned counsel have further submitted that initially the Inspector, who was appointed by the Joint Registrar, having thoroughly enquired into the affairs of the Bank, submitted Exhibit P1 report dated 14.09.2015, running into many pages. They have further submitted that even Exhibit P4 order of supersession is very elaborate and has been backed by sufficient reasons as have been mentioned in the very order.

12. Eventually, the learned counsel have submitted that though there is what could be stated to be a technical lapse on the Joint Registrar's part in not consulting the

Financing Bank and Circle Co-operative Union, the fact still remains that the very Financing Bank has recommended for action against the managing committee. At any rate, the learned Government Pleader and the learned counsel for respondents 3 to 6, in the alternative, have further submitted that the petitioners have an efficacious alternative remedy of filing an appeal before the Government in terms of Section 83(1)(j) of the Act.

13. Heard the learned counsel for the petitioners and the learned counsel for respondents 3 to 6, as well as the learned Government Pleader, apart from perusing the record.

Discussion:

Any Infraction?

14. Indeed, characteristically Sri.P.N.Mohanan, known for his diligent research, has cited many decisions at the Bar. Differently stated, I cannot have any quarrel with the judicial dicta of those decisions. Nevertheless, the issue

is whether the facts of the case suit the ratio of those decisions. In all the decisions the judicial pronouncement is uniform and is on two counts. First, the power under Section 32 of the Act is quite drastic in its nature and ipso facto is required to be exercised very sparingly and with circumspection; with unfailing regularity the courts have, as has already been observed, held that mere negligence in the supervision of the affairs of the bank is not sufficient.

15. On the contrary, the observation is to the effect that the conduct of the managing committee should transcend mere negligence and is to partake the character of being culpable. Indeed, the learned counsel has laid much emphasis on the fact that Exhibit P4 does not by any stretch find that the conduct of the managing committee is culpable.

16. Second, as regards the prior consultation with the Circle Co-operative Union and the Financing Bank, this Court has found that the provision admits of no exceptions.

An Aside:

17. If I may indulge myself in some loud thinking, I wonder why the Joint Registrar, having rendered, obviously after taking considerable pains, a very elaborate Exhibit P4 order, has displayed quite an insouciant attitude in so far as the consultation is concerned. In more than half a dozen judgments quoted by the learned counsel for the petitioners—and countless other decisions not quoted at the Bar—this Court has bemoaned the avoidable procedural lapses, such as complying with Section 32, resulting in the miscarriage of justice. A case in point is the repeated lapses on an elementary safeguard: consultation.

18. Had the Joint Registrar been a little more diligent and circumspect, the repetition of the same situation could have been eminently avoided. I acknowledge, however, that in so far as the Financing Bank is concerned, there is a specific observation in the concluding paragraph of Exhibit P4 that the very Bank has recommended action against the

managing committee. To that extent, at least polemically, this Court is prepared to accept that the consultation may have been obviated. But vis-a-vis the Circle Co-operative Union, no explanation is forthcoming why it was found impracticable by the Joint Registrar to consult.

Section 32 of the Act:

19. Section 32 of the Act, as has been rightly contended by the learned counsel for the petitioners, is quite drastic, almost bordering on being draconian. The more drastic and draconian a power is, the more restrained and circumspect one ought to be in its exercise. Indeed, that is the distillate of the decisions relied on by the learned counsel for the petitioners at the Bar.

20. Before proceeding further, it is pertinent to examine Section 32 of the Act, which to the extent relevant reads as follows:

“32. Supersession of committee.- (1) If the Registrar, after an inquiry by himself or through his subordinates or on a report of the financing bank, or the Vigilance, and Anticorruption Bureau of the Government or the Vigilance

Officer or otherwise, is satisfied that the committee of any society,-

(a) persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or does anything which is prejudicial to the interests of the society; or

x x x

(emphasis supplied)

Negligence:

21. This Court in its earlier pronouncements has read the expression 'persistently', which in fact was used as an attributive adverbial to the verb 'makes default', also to apply to the expression 'negligence', thus treating it as a compound attribute. As such, any further syntactical analysis is obviated. Therefore, essentially we have to conclude that mere negligence, which could be in the nature of, say, a supervisory lapse, should not visit upon the democratically elected members with drastic consequences, such as getting them debarred from contesting the election and holding the office in a society for ten long years.

22. This drastic, sweeping, I may observe, consequence of debarring the members for ten long years

without any intermediary attenuated forms of punishment has, perhaps, deterred or checked the administrative authorities or even Courts, more often than not, from sustaining the invocation of Section 32 of the Act against the varied aberrations of the administrators of the Societies.

23. I am very conscious that this Court, as a constitutional adjudicatory machinery, is called upon to interpret the statute straight and simple and render justice. Justice is not an inventive judicial instrument; it is rather a necessary corollary to the judicious application of the law to the facts following certain accepted canons of construction of the statutes and the Constitution, too. The whole process is compendiously called judicial adjudication. Trite is the truth that adjudication is unmindful of consequences; it is, on the other hand, in the legislative wisdom to consider all the eventualities and bring about legislation or legislative changes to see that the varied needs of the organisations and institutions, including the administrative agencies, are

best served—adverse fallout on the application of law is avoided.

24. I hope the legislature will, at an appropriate time, take note of the practical pitfalls present in the literal application of Section 32 of the Act. And it may ensure graded punishment at the discretion of the quasi-judicial authorities concerned, instead of one uniform punishment of barring the persons for ten long years for whatever sort of dereliction on their part. The authorities under Section 32, be the Registrar, the primary authority, or the Government, the appellate authority, ought to have been left with sufficient discretionary power to impose graded punishment based on the gravity of dereliction of duty or maladministration on the part of the management. But, that is not to be. Nevertheless, I make it clear that it is only a loud thinking for the consideration of the legislature and nothing beyond.

The Purport of the Enquiry:

25. Veering back to the facts of the matter, I must observe that Exhibit P4 paints a very grim picture of the state of affairs of the respondent Bank. On one hand, two employees peculated public money to a tune of almost about a crore. The managing committee surprisingly accommodated the request of one of the delinquent employees and granted him, as can be gathered from Exhibit P4, a loan to the tune of Rs.24 lakhs without proper documentation. For the Joint Registrar has recorded that at the time of inspection it was found that the loan was granted on the mortgage of certain properties but without the production of the original title deeds.

26. It seems, based on the submissions of the learned counsel for the petitioners, the defect has been cured subsequently. As far as the other transactions are concerned, it has come to light in the enquiry that loans worth about four and a half crores have been sanctioned

improperly. A case in point being that 2403 persons have been sanctioned gold loans, but only 418 of them were in favour of the regular members. According to the learned counsel for the respondents, the rest of the gold loans were extended to professional money lenders who pledged the gold of their borrowers, thereby denying the advantage of loans to the deserving members of the Bank.

27. Be that as it may, though the petitioners, as the members of the managing committee, may not have any direct complicity in the misappropriation; as regards the mismanagement, we cannot say with the same certitude. The enquiry resolutely reveals that the petitioners have turned a Nelson eye to the grave irregularities and, in fact, have condoned them. Illustratively, granting a loan to an employee who has already embezzled funds, more particularly with a view to ensuring that he would repay a part of the amount so that the gravity would stand reduced, cannot be appreciated.

28. In other words, instead of forcing the delinquent employee to pay the amount, the petitioners have re-routed the Bank's funds in the name of a loan as if the amounts misappropriated had been paid back, at least in part, by the delinquent employee. Not much cogent explanation is available concerning the huge irregularities involving the financial transactions worth about four and a half crores.

29. True, this Court has all along been cautious and circumspect when it comes to the case of superseding as per Section 32 of the Act any democratically elected managing committee. At the same time, this Court is required to balance the equities by keeping in view the safety of the society as well. In other words, any unduly condoning or patronizing attitude may spell doom and disaster to the welfare of the Society and its members, too.

30. Going by the tone and tenor of Exhibit P4, it is quite essential that any misappropriation or maladministration has to be nipped in bud, lest it should

threaten the very existence of the Bank. Of course, one cannot, at the same time, be oblivious to the fact that the supervisory or administrative lapses without mala fides or culpability may still result in the potential debarring of the members of the committee for ten long years. Nevertheless, if that is the legislative intendment, the Court can do little to the contrary.

Procedural Lapse: To What Extent?

31. Admittedly, there is a procedural lapse: not consulting the Financing Bank and the Circle Co-operative Union. That said, this Court is faced with a situation whether the entire Exhibit P4 order is required to be set aside so that the managing committee could be restored, or the Joint Registrar should be directed to take remedial steps from the stage where the defect is noticed.

32. Predictably, the learned counsel for the petitioners has insisted that once this Court has found that Exhibit P4 order cannot be sustained on the grounds that

there are incurable procedural lapses, the entire order should go, and status quo ante should prevail. In other words, the managing committee should resume charge. On the contrary, the learned Government Pleader as well as the learned counsel for respondents 3 to 6 has contended that this Court, if at all, finds that there is any procedural irregularity, it may as well direct the Joint Registrar to take remedial steps from the stage where the defect was observed.

33. In **ECIL v. B. Karunakar**⁸, a three-Judge Bench of the Hon'ble Supreme Court has held that if the Court or Tribunal finds that there is any procedural infraction and its compliance in the usual course could have made a difference to the result in the case, then it should set aside the order of punishment. The proper relief that should be granted, their Lordships have felt, is to direct reinstatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under

8 (1993) 4 SCC 727

suspension and continuing the inquiry from the stage of furnishing him with the report.

34. Following Karunakar in **Hiran Mayee Bhattacharyya v. S.M. School for Girls**⁹, the Apex Court has specifically observed that the re-enquiry should not lead to reinstatement or back wages.

35. Further, in **Union of India v. Y.S. Sadhu**¹⁰, a learned Division Bench of the same Court has referred to the previous decisions on the point and held that the course to be followed is that there shall not be any reinstatement, but the proceedings shall continue from the stage where it stood before the alleged vulnerability surfaced.

36. Applying the above principle, I am of the considered opinion that in the present instance admittedly the Joint Registrar has not consulted both the Financing Bank and the Circle Co-operative Union. Of course, in so far as the Financing Bank is concerned, Exhibit P4 reveals that

9 (2002) 10 SCC 293

10 (2008) 12 SCC 30

the very Bank has requested the Joint Registrar to take action against the managing committee. No reasons, however, have been forthcoming why it was not practicable for the Joint Registrar to consult the Circle Co-operative Union.

37. In the absence of any material available on record in the form of any communication from the Financing Bank that it has requested the Joint Registrar to take action, I deem it appropriate that the Joint Registrar shall consult both the entities before passing the final order.

Conclusion:

38. In the facts and circumstances, on the singular ground that Exhibit P4 suffers from lack of consultation, which is mandatory, this Court sets aside the same. However, the Court hastens to add that it shall not result in automatic reinstatement of the managing committee comprising the petitioners.

39. Consequently, until the Joint Registrar resumes the process of consultation and completes it, the respondent Bank should be placed under the control of an Administrator, who shall be an official from the department. This arrangement, in fact, has been necessitated given the allegation by the petitioners that the Administrator, who had been initially appointed, was replaced within three days by an administrative committee comprising three members, who are said to be the local politicians.

40. Be that as it may, I make it clear that I am not persuaded by the allegation that the members of the administrative committee are local politicians: I do not see any stigma having been attached to the integrity of a person to be the member of the committee merely because he is labelled as a politician. At any rate, the fact that the administrator was replaced within three days finds no logical or logistical support. To avoid any unseemly controversy on the issue, this Court deems it desirable that

the management of the Bank should be by a responsible official of the Department.

41. To sum up, the Joint Registrar shall complete the entire exercise of consulting the Financing Bank as well as the Circle Co-operative Union and pass appropriate orders as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment. It is further made clear that in the process of consulting the entities mentioned above, the Joint Registrar shall afford an opportunity of hearing to the petitioners before passing any orders.

With the above observations, the writ petition stands disposed of. No order as to costs.

Dama Seshadri Naidu, Judge

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