
Baiju, O.K.Vs Joint Registrar Of Co-Operative Societies (G)

Writ Petition (C) No. 24870 Of 2023

Court: High Court Of Kerala

Date of Decision: Sept. 8, 2023

Acts Referred:

Kerala Co Operative Societies Act, 1969 – Section 32, 32(1), 66

Citation: (2023) 09 KL CK 0052

Hon'ble Judges: Sathish Ninan, J

Bench: Single Bench

Advocate: P.P.Jacob, Sreedhar Ravindran, M.Sasindran, K.M.Firoz, Jaiby Paul, M.Shajna

Final Decision: Disposed Of

Judgement

Sathish Ninan, J.

1. Order of supersession of the Managing Committee of the Mukkom Service Co-operative Bank is under challenge by the members of the Managing

Committee.

2. The Managing Committee assumed office pursuant to the elections held on 11.11.2018. The term of the Committee is to expire on 11.11.2023. In

the meanwhile, the board was under suspension from 28.12.2020 and was out of office till 06.12.2021. As per Ext.P5 dated 15.11.2022 the Joint

Registrar ordered an enquiry. This was followed by Ext.P9 show-cause notice dated 10.07.2023 issued under Section 32(1) of the Co-operative

Societies Act seeking explanation as to why action should not be taken for supersession of the Committee. As per Ext.P10 dated 12.07.2023 the

petitioners sought three weeks time to file detailed explanation and for hearing. Thereafter the petitioners filed W.P.(C) No.22997/2023 before this

Court, challenging the action. Pending the writ petition, the Joint Registrar-first respondent passed Ext.P11 order of supersession dated 19.07.2023. It

is challenging the same that the writ petition has been filed.

3. I have heard learned Senior Counsel Sri.P.Ravindran on behalf of the petitioners, learned Government Pleader for the first respondent,

Sri.M.Sasindran for the second respondent, Sri.K.M.Firoz, for the third respondent and Sri.Jaiby Paul for the fourth respondent.

4. As is evident from Ext.P11 order of supersession, the proceedings are initiated based on the report of inspection under Ext.P5 and audit certificates.

In the enquiry certain serious irregularities and defects were noticed namely;

(i) Grant of excess interest in violation of the Circular 5/21 of the Registrar of Co-operative Societies resulting in loss to the Bank.

(ii) Failure to re-classify the Bank to the lower category and re-arrange staff pattern thus violating Circular 32/13 of the Registrar.

(iii) Making appointments without re-classifying the Bank and thus causing loss.

(iv) Failure to maintain fluid resource.

(v) Deficit in stock.

5. The learned Senior Counsel argued that, though the term of office of the Committee was to be from 11.11.2018 till 11.11.2023, even prior to the

order of supersession on 19.07.2023 the board was under suspension from 28.12.2020 to 06.12.2021. It was the Administrator who was managing the

affairs for most of the time, and no allegations could be levelled against the petitioners. The allegations against illegal appointments were negated by

a Division Bench of this Court in Ext.P3 judgment in W.A. No.1250/2021 and 1310/2021. Therefore the same is not liable to be reopened. Though

there is a finding that the Bank did not maintain sufficient fluid assets, the same is disproved even by the report relied on by the respondent. Sufficient

opportunity was not granted to the petitioners to submit their explanations even to the report on enquiry under Section 66 and also to the notice under

Section 32 of the Act.

6. The learned counsel for the respondents would on the other hand contend that, the irregularities noted are during the period when the petitioners

were in management, that when the Administrator was in office the fluid reserve was much higher than the required limit, that there has been a

drastic depletion as soon as the petitioners reassumed office. There has been persistent conduct prejudicial to the interests of the society resulting in

huge loss, it is contended. Relying on the judgment of the Apex Court in Mohinder Singh Gill and Another v. The Chief Election Commissioner,

New Delhi and Others (AIR 1978 SC 851)and of the Delhi High Court in Satish Chandra Khandelwal v. Union of India and Others AIR 1983

Del.1, it was argued that, grant of opportunity of hearing would only mean a reasonable opportunity as the circumstance would warrant. When there

is a need for expedition, the opportunity need not be an elaborate ritual. In the case at hand, it having been revealed that the continuance in

management is detrimental and harmful to the interests of the society immediate action was necessary which compelled the authority to grant only a

short but sufficient time for the petitioners to respond to the notice and for hearing, it was submitted.

7. I have considered the rival submissions. As contended by the petitioners, Ext.P9 notice for hearing under Section 32 was issued on 10.07.2023

seeking explanation within four days. As per Ext.P10, the petitioners sought three weeks time for objections and hearing. On a reading of the order it

is evident that, on the date fixed for hearing the petitioners sought time but was not granted. The findings in respect of which explanations have been

sought are serious in nature. An order of supersession being of drastic consequences, sufficient opportunity ought to have been granted to the

petitioners to voice their explanations. This is all the more so since even as against the report under Section 66, the petitioners did not get a proper

hearing. Of course therein also the conduct of the petitioners was to seek for time. I do not consider it necessary to go into further details regarding

the same. The authority could have granted a reasonable opportunity to the petitioners to place their objections and also for a hearing.

8. The proceedings under Section 32 have been initiated based on the report on enquiry and also audit reports. There having not been an effective

opportunity for the petitioners to urge their contentions/ explanations, I am of the opinion that the petitioners could be afforded a further opportunity of

hearing in terms of Section 32(1) of the Act. However, considering the seriousness of the defects noticed, it is deemed appropriate to keep the

committee under suspension till such hearing is conducted and orders passed.

9. Resultantly, the writ petition is disposed of as hereunder :-

(i) Ext.P11 order of supersession dated 19.07.2022 is quashed.

(ii) The petitioners shall file their objections if any to Ext.P9 notice, on or before 18.09.2023.

(iii) The petitioners shall appear for hearing before the first respondent at 3.00 p.m. on 20.09.2023.

(iv) The first respondent shall pass orders with due consideration to the explanations/contentions of the petitioners, on or before 28.09.2023.

(v) Till orders are passed in terms of clause(iv) above, the Committee shall be deemed to be under suspension and the Administrator shall continue in

office.