

(2023) 12 KL CK 0183

High Court Of Kerala

Case No: Writ Petition (C) Nos.14402, 17689, 20803 Of 2022

Y.R.Vincent

APPELLANT

Vs

Joint Registrar Of Co Operative
Societies

RESPONDENT

Date of Decision: Dec. 19, 2023

Acts Referred:

- Kerala Co operative Societies Act, 1969 - Section 32, 34, 63, 65, 66, 66(1), 68, 68(1), 68(2), 79, 83(1)(e)
- Kerala Co Operative Societies Rules 1969 - Rule 66, 66(5), 66(7)

Hon'ble Judges: T.R. Ravi, J

Bench: Single Bench

Advocate: P.N.Mohanan, Srim.Sasindran, R.T.Pradeep, M.Bindudas, K.C.Harish, C.S.Sheeja

Final Decision: Disposed Of

Judgement

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(,,,

âœpersonsâ€ would also include the Committee cannot be sustained. In Shabin Antony v. Gireesh Kumar M.S & Ors. [2018(1) KHC 115], a",,,

Division Bench of this Court considered Sections 32 and 68 of the KCS Act and held that the area of operation of the two provisions are completely,,,

different and independent of each other. It was held that while Section 32 relates to the performance of duties by the Committee and action being,,,

taken against the Committee, Section 68 relates to the action being taken against any person who is entrusted with the organization or management of",,,

the Society. In Varghese M.D. v. The Joint Registrar of Co-operative Societies (General), Kakkanad and others [2022(2) KLT 659], a learned Single",,,

Judge of this Court has held that surcharge proceedings can only be against a member who was party to the decision which ultimately led to the,,, supersession and not against a member who had either ceased to be a member at the time the decision was taken or who became a member at a later,,, point of time. What is contemplated is the involvement of an individual in the decision making or in the action, which resulted in the supersession, for",,,, which a specific finding is necessary. In Joint Registrar (General) of Co-operative Societies, Thrissur and another v. Charley Panthallookaran & Ors.",,,, [2022 (2) KHC 70], a Division Bench of this Court while considering the scope of Sections 66 to 68 of the KCS Act, held that the Act does not confer",,,, any authority on the Registrar to straight away require any person to repay or restore any money to the Society based on the materials disclosed in an,,, enquiry and that it is required to order another inquiry to find out if any persons referred to in the provision has caused loss to the Society by any one,,, of the conducts mentioned therein. The Bench held that the inquiry contemplated in the provision is an investigation and not a mere seeking of,,, information.,,,

15. In A.K.Francis (supra), a learned Single Judge held that to attract Section 68, facts giving rise to the charge have to be disclosed in the course of",,,, the audit under Section 63, inquiry under Section 65, inspection under Section 66 or winding up of a Society. The above judgment has been quoted with",,,, approval by a Full Bench of this Court in the decision in Anil M.S. v. Joint Registrar (General) of Co-operative Societies, Thiruvananthapuram & Ors.",,,, [2021(4) KHC 119(FB)] and also referred to by a learned Single Judge in the decision in Musthafa T.H & Ors. v. State of Kerala & Ors. [ILR 2021,,, (4) Kerala 74]. In Musthafa (supra), the learned Judge held that an element of criminal intention in the action of the person mentioned in the provision",,,, is necessary to initiate proceedings under Section 68.,,,

16. In Ext.P7 judgment, Ext.P6 surcharge order has been quashed. The above judgment was not interfered with by the Division Bench in the appeal",,,, preferred by the respondents. Necessarily, a fresh order has to be issued, which has to comply with the statutory requirements. What is ordered is not",,,, a mere reassessment of the liability as is sought to be made out in Ext.P10 order. The question then is whether there is any finding in Exts.P9 & P10,,,

regarding the conduct of "any person," i.e., such person had made any payment contrary to the Act and the Rules or the Bye-laws or caused any",,,

loss or damage to the assets of the Society by breach of trust or wilful negligence of its mismanagement or has misappropriated or fraudulently",,,

retained any money or other property belonging to such Society or has destroyed or caused the destruction of the records of the Society. Applying the",,,

law laid down in the judgments referred to in the above paragraphs, I find that there is no specific finding regarding the involvement of the petitioners",,,

as is required under the statutory provisions, as explained in the decisions of this Court. It is evident from a reading of Section 68 and the manner in",,,

which the provision has been explained by this Court that what is required is not a finding which would justify a supersession of a Committee as",,,

provided for in Section 32 but a finding regarding the involvement of the persons mentioned in the provision, in the manner provided therein, for the",,,

purpose of surcharging them.,,,

17. Coming to the manner in which the liability is fixed on the petitioners, in Ext.P10, what has been done is only a re-assessment of the liability. As",,,

far as the fixation of liability on individuals is concerned, Ext.P1, which is the Section 66 enquiry report, does not specify any person individually and",,,

instead only makes mention of the Committee as a whole. After rendering findings regarding the aspects that were the subject matter of inspection,",,

suggestions are made in the report that for the financial discrepancies noted, action can be taken against the members of the Committee. Ext.P2,",,

which is the Section 68(1) report, says that the Committee intentionally caused a loss to the Society and that the same has to be recovered from the",,,

members who constituted the Committee during the relevant period. While fixing the liability, what has been done is to show amounts under seven",,,

heads, which are the same in the case of all the persons who are found liable. There are absolutely no findings as to how each of them has been found",,,

liable on the different heads by either their presence during any decision taken or otherwise.,,,

18. In Ext.P7 judgment, this Court has specifically said that as regards loss caused to the Society by the deceased office bearers, appropriate steps",,,

have to be taken in accordance with the law. Necessarily, when liability is to be fixed on deceased persons, their legal representatives will have to be",,,

put on notice, and liabilities can be fixed only to the extent of the assets that they have inherited from the deceased. This Court had specifically held in",,,

Ext.P7 that the liability is not joint and several as between the members of the Committee. As such, the liability if any of the deceased cannot be",,,

fastened to the other members of the Committee. Exts.P9 and P10, hence, to the extent they do not proceed to fix the liability of the deceased persons",,,

in accordance with the law, cannot be sustained.",,,

19. Another aspect that is relevant is with regard to the findings on the difference between the value of the assets and liabilities. The amounts were",,,

fixed in the surcharge proceedings in Ext.P6 based on a finding that there is an increase in the difference between assets and liabilities to the extent of",,,

Rs.22,75,590/-. It is not known how the very same amount has formed the basis for fixing the surcharge in Exts.P9 and P10, while admittedly, a sum",,,

of Rs.64,87,118/- has been remitted, thus causing a considerable decrease in the liabilities. It does not stand to reason that after the liabilities have",,,

reduced considerably, the increase in the difference between the assets and liabilities will remain the same in Ext.P6 and Exts.P9 and 10. Apparently",,,

the remittance of the amount has not even been considered while fixing the liability in Exts.P9 and P10. This is only one glaring example of the",,,

discrepancies in the reconsideration, which is claimed to have been done after the judgment of this Court. As contended by the petitioners and as is",,,

evident from the Exts. P9 and P10 report, there has only been a re-assessment of the liabilities of each person based on their period in Office, and",,,

there has not been any reconsideration of the issue of whether the surcharge proceedings are to be initiated based on the findings in the inquiry. When",,,

fresh orders are directed to be issued after quashing the order of surcharge issued earlier, what is required is not a mere quantification based on the",,,

materials collected in the enquiry. Nor could the respondents have taken into account the very same amount in Ext.P6, which is already set aside, and",,,

apportion the said amount differently between members, based on their period in the Committee alone. That was not what was directed in Ext.P7. A",,,

surcharge proceeding necessarily has civil consequences, and after rendering a finding regarding the liability of petitioners individually, the amount of",,,

liability is to be quantified based on the actual loss that has been sustained by the Society. Such an actual loss has to be calculated on the basis of the,,,

materials which are available. When Ext.P10 itself gives credit to amounts that have been repaid, it was necessary that the heads of liabilities for",,,

surcharge are also subjected to necessary changes. It would appear from a reading of Exts.P9 and P10 that the author of the order has only,,,

understood the directions in the judgment of this Court to mean a re-assessment of the individual liabilities of the members by including persons who,,,

have died and excluding persons who are not in office. I am hence of the opinion that Exts.P9 and P10 cannot be sustained since they are not in,,,

accordance with the law laid down in the decisions referred to above or in accordance with the directions issued in Ext.P7 and are also not sustainable,,,

on the facts revealed in the enquiry. They are bad for the reason that they have not considered amounts which have been received by the Society,",,,

admittedly. They are also bad for the reason that they proceed on the basis of the liability of the Committee rather than on individual liability, which",,,

needs to be assessed in terms of Section 68. Exts.P9 and P10 are hence set aside. There will be a direction to the 1st respondent to pass fresh orders,,,

in accordance with the direction contained in Ext.P7 judgment as affirmed by the Division Bench and based on the observations made above, if they",,,

intend to continue with proceedings pursuant to Exts.P1 and P2.,,,

WP(C) No.17689 of 2022,,,

20. The prayer in the writ petition is to quash Ext.P10 order produced therein and for a direction to the 2nd respondent to hand over the minutes of the,,,

Society taken by him as evidenced by Ext.P9 receipt and to give necessary aid for the discharge of duties to the Managing Committee members as,,,

and when required. Ext.P10 proceeds on the basis that the petitioners had forcefully taken possession of the minutes book of the Society and the same,,,

is to be retrieved by means of proceedings under Section 34 of the KCS Act. It can be seen from Ext.P9 that the minutes book had been taken,,,

custody of by the 2nd respondent, and hence, the basis of Ext.P10 order does not exist. Ext.P10 cannot hence be sustained and is hence quashed.",,,

Regarding the prayer for a direction to the 2nd respondent to hand over the minutes book to the petitioner and to provide aid for the functioning of the,,,

Committee, since the period of the Committee has expired on 4.11.2023, the prayer is no longer relevant, and hence no further orders are necessary." ,,,

The writ petition is disposed of as above.,,,

WP(C)No. 20803 of 2022,,,

21. The prayer in the writ petition is for a direction to respondents 1 and 3 to hand over the administration of the bank to the petitioners as the term of,,,

the Administrator was over on 20.06.2022 and in view of Exts.P6 and P7 orders issued pursuant to Exts.P4 and P5 judgments. In the judgment in,,,

W.P.(C)No.14402 of 2022, Exts.P4 and P5, which have been produced as Exts.P9 and P10 therein, have been quashed. The term of the Committee",,,

constituted by the petitioners also expired on 4.11.2023. What is hence required is a proper election to the Committee and handing over charge to the,,,

newly elected Committee. In the above circumstances, this writ petition is disposed of directing the respondents to take steps to conduct the election to",,,

the Committee of the 2nd respondent Bank at the earliest.,,,