

(2013) 2 KHC 201

High Court Of Kerala

Case No: W.A. No. 2053 of 2012

State of Kerala and
Others

APPELLANT

Vs

Board of Directors of
Urukunnu Service
Co-op. Bank Ltd.,
Kollam and Others

RESPONDENT

Date of Decision: Feb. 26, 2013

Citation: (2013) 2 KHC 201

Hon'ble Judges: S. Siri Jagan, J; Babu Mathew P. Joseph, J

Bench: Division Bench

Advocate: D. Somasundaram, Government Pleader, for the Appellant; K. Ramakumar , S. Subhash Chand, V. Ajitha, Smitha George, P.S. Sreedharan Pillai, George Poonthottam, T.K. Sandeep, Arjun Sreedhar, Arun Krishna Dhan, Joseph George (Mullakkariyil) and S.M. Prasanth, for the Respondent

Final Decision: Dismissed

Judgement

S. Siri Jagan, J.

By this Writ Appeal, the State of Kerala, the Registrar of Co-operative Societies, Thiruvananthapuram, the Joint Registrar

of Co-operative Societies (General), Kollam and the Assistant Registrar (General), Punalur, who were the respondents 1 to 4 in WP (C) No.

13874 of 2012, have come up in appeal against the judgment of a learned Single Judge in that writ petition. The writ petition was filed by the first

and second respondents herein, who are the Board of Directors of Urukunnu Service Co-operative Bank Ltd. and its president challenging Ext.

P7 order passed by the third appellant, u/s 32 of the Kerala Cooperative Societies Act (hereinafter referred to as the "Act") superseding the

Board of Directors of the first respondent bank, on certain allegations contained in Ext. P7 order. According to them, since the reasons stated in

Ext. P7 order related to actions of the previous Board of Directors, they are not answerable for the said allegations and no proceedings can be

initiated against the present Board of Directors u/s 32 on the basis of those allegations. The appellants herein took the stand that the allegations

found against the Board of Directors of the bank were very serious allegations, which are sufficient to invoke Section 32 of the Act and

consequently Ext. P7 order is perfectly valid and proper. The learned Single Judge after considering the rival contentions of the parties, examined

each and every allegation against the Board of Directors of the bank and found that except one, the others are not relating to the present Board of

Directors of the bank and therefore in respect thereof the appellants were wrong in invoking Section 32 of the Act against the present Board of

Directors. The learned Single Judge found that the only sustainable allegation as regards the members of the present Board of Directors is that they

failed to convene the general body meeting yearly. The learned Single Judge held that non-convening of the meeting is a matter which could have

been remedied by issuing necessary instructions to the Board and that the present Board had taken urgent steps to convene the general body on

13/06/2012 and 12/08/2012. Therefore, according to the learned Single Judge that could not have been a valid reason to supersede the present

Board of Directors by invoking Section 32 of the Act. The said judgment of the learned Single Judge is under challenge in this writ appeal. The

main contention of the appellants is that although some of the allegations contained in Ext. P7 order relate to the actions of the previous Board of

Directors, admittedly the present Board of Directors, after taking charge on 02/02/2010, did not convene an Annual General Body Meeting as

mandated by Section 29 of the Kerala Co-operative Societies Act. It is submitted that the last general body meeting of the Society was convened

on 23/08/2009 and thereafter no general body meeting had been convened. According to the appellants, Section 29 of the Kerala Co-operative

Societies Act mandates that every Co-operative Society shall convene an Annual General Body Meeting every year. According to them, it is not

merely a question of non-convening of annual general meeting alone. But the Director Board has to get the budget for each year passed by the

General Body in the Annual General Body Meeting, which has not also been done by the present Board of Directors. When Statute mandates that

every year a Co-operative Society shall convene an Annual General Body Meeting and get the budget for the year passed in that meeting, non-

convening of the general body meeting and non-passing of the budget for the year are very serious lapses on the part of the Director Board for

which the third respondent is legally empowered to supersede the Director Board.

2. It is further submitted that the finding of the learned Single Judge that the proceedings are unsustainable since the third appellant had not

complied with the mandatory provisions of the Section 32(2) is also not sustainable. The learned Government Pleader would contend that sub-

section (3) of Section 32 gives liberty to the Registrar to dispense with the requirement of sub-section (2), if it is not reasonably practicable to

comply with the same. Under sub-section (2), before passing orders u/s 32, the Registrar shall consult the Financing Bank and Circle Co-operative

Union Bank or the State Cooperative Union, as the case may be. The contention is that the Financing Bank is the District Co-operative Bank,

which was under the management of the administrator and the third appellant joint Registrar of Co-operative Societies who passed the order u/s

32 himself is the administrator of the Financing Bank. Therefore, it is not logically practicable for the third appellant to consult himself is the

contention raised. Regarding the consultation with the circle co-operative union is concerned, the contention is that it is not absolutely mandatory

and it is perfectly open to the Joint Registrar to dispense with the same and just because the same has not been complied with, the order u/s 32

does not become unsustainable. The learned Government Pleader relies on the decision of a learned Single Judge in Balakrishnan Nair v. State of

Kerala ILR 1973 Ker. 511 which has been followed in Registrar of Co-operative Societies and Others Vs. P. Sasi and Others, In view of the

above, the learned Single Judge went wrong in setting aside Ext. P7 order superseding the managing committee is the contention of the appellants.

3. In answer, the learned counsel for the respondents 1 and 2 would contend that insofar as the consequences of a supersession u/s 32 is very

drastic and far reaching, all the requirements of Section 32 have to be strictly and mandatorily complied with. According to the counsel for the

appellants it is not merely one instance of default in complying with the Act and Rules or bye-laws that attract Section 32(1)(a), but such default

must be persistent prejudicial to the interests of the society and done with a culpable mind without which finding, no order can be passed u/s 32

superseding a committee. The explanation offered by the respondents 1 and 2 for non-convening the Annual General Body Meeting is that as early

as on 23/08/2009, the previous managing committee had in the Annual General Body Meeting convened on that day, passed the budgets for the

years 2009-2010 and 2010-2011, and therefore since there was already an approved budget by the general body for the years 2009-2010 and

2010-2011, it was not found necessary to convene an Annual General Body Meeting immediately and in fact a special Annual General Body

Meeting was convened on 13/06/2012 as directed by the Government. It is submitted that the Society was functioning with a validly passed

budget, although the same was one passed by the previous Director Board. It is also alleged that several other societies in Kollam District had also

adopted the same procedure of passing budget for two or three years together, which has not been objected to by the department at any time and

therefore the society was under the impression that it was an accepted practice in Co-operative Societies. It is further submitted that in fact a

notice for convening Annual General Body Meeting was issued on 21/07/2012, which is Ext. P11, which could not be convened since in the

meanwhile proceedings u/s 32 has been initiated. The counsel relies on the decision of one of us (Siri Jagan, J.) in The Managing Committee of

Vallapuzha Service Co-op. Bank Ltd. Vs. The Joint Registrar of Co-op. Societies, for the proposition that only persistent negligence in the

performance of the duties imposed by the Act or rules or bye-laws acting against the interest of the society and willful disobedience and willfully

failing to comply with the orders and directions issued under the Act or rules will attract Section 32(1)(a). It is further submitted that that decision

also stipulates that mere finding that the committee has done the acts alleged alone is not sufficient but there must be a further finding that they did

the same with a culpable mind which is absent in this case.

4. Regarding the requirement of compliance with the provisions of sub-section (2) of Section 32 the counsel would argue that the same is

mandatory, since the word used in the Section is "shall" and if the Joint Registrar wants to dispense with that procedure the order, on the face of it,

should disclose the reasons for dispensing with the same and why it is not reasonably practicable to comply with the said procedure. The

contention is that in Ext. P7 order all what has been stated is that it is not practicable to consult the Financing Bank and the Circle Co-operative

Union without giving any reasons as to why the same cannot be complied with. As such Ext. P7 order has not been passed in compliance with the

mandatory provisions of Section 32 and therefore, Ext. P7 is legally unsustainable. Consequently, the judgment of the learned Single Judge is

perfectly valid and proper is the contention raised.

5. We have heard all the parties.

6. Although the other reasons mentioned in Ext. P7 for invoking Section 32 squarely relate to the actions of the previous Board of Directors, one

fact is admitted which is that after taking charge on 02/02/2010 the present Director Board had not convened a general body meeting and had not

passed a budget Then the only other question is as to whether that is sufficient to invoke the powers of the 3rd appellant u/s 32 of the Act. In

Vallapuzha Service Co-operative Bank Limited"s case (supra) a learned Single Judge of this Court (Siri Jagan, J.) has held on the scope of sub-

clauses (a) & (b) of Section 32(1) thus:

Prior to the amendment in 2000, Section 32(1) contained only the provisions contained in sub-sections (a) and (b) of the present Section, but

rolled into the same sub-section. In M. Rajagopalan Nair and Others Vs. State of Kerala and Others, a learned Judge of this Court held that the

words "persistent", "negligent", "willful", and "lawful" occurring in the Section are the key words to guide the normal understanding of the

satisfaction that is required of the Registrar for an action for superseding the committee. Another learned Single Judge of this Court has, in

Krishnan v. Joint Registrar, 1997 (1) KLT SN 16 (C. No. 20), held that the relevant ingredients for satisfaction of the Registrar u/s 32 are

persistent negligence in the performance of the duties imposed by the Act or Rules or bye-laws acting against the interests of the Society and willful

disobeying and willfully failing to comply with the orders and directions issued under the Act or Rules. But, those decisions were rendered

construing the Section as it obtained prior to the amendment in 2000. After amendment also, a learned Judge of this Court had in Ashok Kumar v.

State of Kerala, 2003 (3) KLT SN 86 (C. No. 114) held that it is not negligence alone which authorises interference u/s 32(1), but the same

should be persistent, deliberate and also at times fit to be characterized as culpable. Then again that related only to negligence and not to the other

ingredients of Section 32(1).

Although the State had filed an appeal against that judgment, it is submitted at the bar that the State had withdrawn that appeal and therefore that

decision is the law on the subject as on today. In view of the reasoning given therein, we have no hesitation to accept the same as the correct law

as well. Therefore, for invoking sub-clause (a) of Section 32(1), it is not sufficient to merely hold that the managing committee had committed a

default or is negligent in the performance of the duties imposed on it by its act or the rules or bye-laws, but such default should be shown to be

persistent and must be prejudicial to the interest of the society as well. Apart from the same, in paragraph 12 of the said decision it has been

specifically held thus:

12. Supersession of a democratically elected committee is a very drastic and extreme step. It is not necessary to cite any judicial precedents to

hold that action u/s 32 cannot therefore be taken lightly for mundane violations. Only if the findings against the committee are such that the

continuance of the committee would be extremely prejudicial to the interests of the Society, the exceptional and rare action u/s 32 shall be taken.

Findings on the culpability of the committee on their improper action should inform the action of the Registrar while initiating proceedings u/s 32. In

other words, the mere finding that the committee has done the acts alleged alone is not sufficient; the same should be supported by a further finding

that they did the same with a culpable mind, failing which the action of the Registrar would be improper.

We are in respectful agreement with the same also. Going by that law, in addition to the finding that on account of the non-convening of the Annual

General Body Meeting and non-passing of the budget for the year, there must be a further finding by the Joint Registrar that the non-convening of

the general body meeting was not only persistent, but also that such non-convening was with a culpable mind.

7. In this writ appeal, the first respondent has filed an affidavit before this Court wherein there is a specific allegation that seven Co-operative

Societies, in Pathanapuram Taluk, in Kollam District, had not convened a general body meeting and no action has been taken against them. It is

also further alleged that there is a practice, prevailing in Cooperative Societies in Kollam District, of passing budgets for two or three years in one

Annual General Body Meeting, which has not been disapproved of by the authorities under the Co-operative Societies Act, although they have

been regularly auditing the accounts of those Co-operative Societies. It is further submitted that in this society also the society had in the Annual

General Body Meeting on 23/08/2009 passed the budget for 2009-2010 and 2010-2011 and therefore the managing committee was under the

impression that the same would be sufficient compliance with the statutory formalities u/s 29 of the Act. In view of the affidavit filed by the first

respondent, we directed the Government Pleader to see that an appropriate affidavit is placed on record in respect of the said averments. Pursuant

to the same, an affidavit has been placed on record, wherein both facts have not been disputed. It is admitted that some of the Co-operative

Societies are not convening general body meetings for long and that it appears that in some Co-operative Societies there is a practice of passing

budgets for two or three years in one Annual General Body Meeting. What is stated in the affidavit is that the authorities will take appropriate

action against all the erring societies. But it remains a fact that such a practice has been adopted by some of the Co-operative Societies. It is also a

fact that Co-operative Societies are being audited by the statutory auditor and therefore the same must have come to the attention of the auditor.

The appellants have no case that any action has been taken against those societies so far. It is only when the same was pointed out in this writ

appeal that the appellants have come up with a case that action will be taken. The accounts of the first respondent Co-operative Society is also

being audited from time to time. The appellants have no case that such an irregularity has been brought to the notice of the first respondent by the

auditors at any time. In fact when it came to the notice of the 1st respondent, they had in fact issued a notice dated 21/07/2012 convening the

Annual General Body Meeting. That shows that the default on the part of the first respondent in not convening the general body meeting and not

getting the budget passed each year are not persistent defaults and that there is nothing to show that the defaults were with a culpable mind. It is

further submitted that the Co-operative Society is running at huge profit. It is not as if the society is functioning without a budget passed by the

general body meeting. The circumstances would also certainly prove that the first respondent had no culpable mind in not convening the Annual

General Body Meeting as well. Therefore, we are also not satisfied that there is sufficient grounds for invoking Section 32(1)(a) of the Act, for

superseding the Director Board of the Society on the ground that there is persistent default or negligence in the performance of the duties imposed

on the Board of Directors by the Act, rules or bye-laws.

8. In this connection, the learned Counsel for the first respondent brings to our attention a decision of the Supreme Court in Ravi Yashwant Bhoir

Vs. District Collector, Raigad and Others, In that decision the question raised was as to whether non-convening of the meeting of the general body

is a conduct which is sufficient to remove an elected office bearer of a Municipal council. We are of opinion that although the law laid down in that

decision is in the context of the provisions of the Municipalities Act, the ratio of that decision is applicable to the facts of this case, to the extent that

the non-convening of meeting of general body is only a technical misconduct and would not be an automatic misconduct by inference, unless some

positive intentional misconduct is shown.

The short note as available in KLT reads thus:

Not calling the meeting of the General Body of the House may be merely a technical misconduct committed inadvertently in ignorance of statutory

requirements. It is nobody's case that the appellant had done it intentionally/purposely in order to avoid some unpleasant resolution/demand of the

council. No finding of fact has been recorded either by the competent authority or by the High Court that some urgent/important work could not be

carried out for want of General Body meeting of the council. Merely not to conduct oneself according to the procedure prescribed or omission to

conduct a meeting without any corresponding loss to the corporate body, would not be an automatic misconduct by inference, unless some

positive intentional misconduct is shown. It was an admitted fact that the meeting had not been called. However, in the absence of any imputation

of motive, not calling the meeting by the appellant could not in itself, be enough to prove the charge.

This decision also supports the view taken in Vallapuzha SCB Ltd."s case (supra) extracted hereinabove in paragraph 8, which we have

approved. Going by those decisions, the allegation that the 1st respondent did not convene a general body meeting cannot be a ground for

superseding the Board of Directors of the Society u/s 32 of the Act.

9. In this connection it is necessary to note a decision relied on by the learned Government Pleader, which holds that non-convening of general

body meeting is a sufficient ground for superseding a committee, viz. State of Kerala Vs. Sudarsanan, N. and Others In view of the Supreme

Court decision in Ravi Yashwant Bhoir"s case supra, that decision can be distinguished on facts. Further it is clear from the said decision that the

Division Bench took the view it has taken in that decision since neither the budget nor the audit report was placed before the Annual General Body

Meeting for three years. In this case the society was functioning with a budget passed for the year by the previous Board of Directors and

therefore that decision must be confined to the facts of that case.

10. In view of the above, we do not find any infirmity in the findings of the learned Single Judge that there was no valid reason available for the

appellants to supersede the Board of Directors by invoking Section 32 of the Act, for the only reason that they did not convene a general body

meeting and get the budget passed.

11. Even apart from that, we are satisfied that Ext. P7 order is bad for non-compliance with the mandatory provisions of Section 32(2) of the Act.

Section 32(2) stipulates that the Registrar shall consult the Financing Bank and Circle Co-operative Union or State Cooperative Union, as the case

may be, before passing an order under sub-section (1) of Section 32. Of course under sub-section (3) of Section 32, the Registrar is given the

power to dispense with consultation with the unions and the financing bank, where the Registrar is of opinion that it is not reasonably practicable to

do so. Here, the third respondent Joint Registrar has chosen to dispense with the requirement under sub-section (2) in one sentence which reads as

follows:

We are of opinion that insofar as the Co-operative Societies should normally be managed by elected representatives, the very drastic step of

superseding the managing committee u/s 32 can be resorted to only in exceptional circumstances, that too only after scrupulously following the

procedure prescribed in Section 32. In fact, if a managing committee is superseded u/s 32 that attracts disqualification of every member of the

managing committee in the matter of contesting future elections to the managing committee for two consecutive terms. It is in view of the drastic

nature of the power that the Legislature has incorporated safeguards in the matter of exercise of such powers, so that it will not be arbitrary.

Therefore, we are of opinion that sub-section (2) is mandatory unless the Joint Registrar gives very cogent and acceptable reasons for dispensing

with such requirement. The least that is expected of the third appellant is to give some indication in the order itself as to why the Joint Registrar had

chosen to dispense with the consultation with a Financing Bank and Circle Co-operative Union. As admitted in Ext. P7 itself that procedure has

not been complied with and no reasons worth mentioning has been stated in the order.

12. Of course, the learned Government Pleader had made a valiant attempt to justify the dispensing with the requirements, stating that it was

logically not possible to consult the Financing Bank insofar as the Joint Registrar himself is the administrator of the Financing Bank and therefore,

one cannot be found fault with for not consulting oneself. We are unable to agree with the same. As administrator of the Financing Bank, the third

appellant Joint Registrar is in a better position than anybody else to state the opinion of the Financing Bank as to the financial implications which the

Financing Bank may suffer on account of the supersession of the bank financed by the Financing Bank. It is all the more so, when the supersession

was at a time when the society was running at a profit. Therefore, it is mandatory for the Joint Registrar to state in his order the opinion of the

financing bank on the proposal to supersede the first respondent u/s 32. Further no valid explanation is forthcoming as to why it was not

reasonably practicable to consult the circle Co-operative Union. Circle Co-operative union is an expert body. Under Rule 139 of the Kerala

Cooperative Societies" Rules, one of the functions of a Circle Co-operative Union is to offer their views on matters relating to supersession of

committees. When such functions are conferred on the Circle Co-operative Union, which have been incorporated in the Rules with a purpose, the

Joint Registrar cannot lightly exclude such consultation without very cogent and convincing reasons. Therefore, it was mandatory on the part of the

Joint Registrar to consult that expert body before taking the drastic step of superseding a managing committee of a democratically elected

managing committee of a Co-operative Society. For dispensing with the same, there must be very cogent and acceptable reasons. A learned Single

Judge of this Court has in M. Selvi Vs. General Manager, Dist. Industrial Centre and another, after noting several foreign decisions and the

decisions of the Supreme Court held that a mere statement in the order that an "alarming situation" is present is not enough to do away with

procedural requirements while taking the drastic step of superseding a committee u/s 32. A Division Bench of this Court has held in Sahadevan Vs.

Padmanabhan, on the question of compliance with sub-section (2) of Section 32 thus:

Sub-section (2) of Section 32 provides that the Registrar shall consult the Financing Bank and the Circle Co-operative Union or the State Co-

operative Union as the case may be before passing an order under sub-section (1) of Section 32. It is seen from Ext. P6 that a copy of the notice

dated 24/09/2003 issued under sub-section (1) of Section 32 of the Act was sent to the General Manager, Palakkad District Co-operative Bank

(Financing Bank) and the Secretary, Co-operative Union, Palakkad. Apart from sending a copy of the notice, no further request or direction was

made. Ext. P8 order of the Joint Registrar shows that the views of the financing bank and the Circle Co-operative Union were not received on time

and therefore, the Joint Registrar proceeded on the assumption that they had nothing to say in the matter. Learned Single Judge, relying on the

decisions in Jose Kuttiyani and Others Vs. The Registrar of Co-operative Societies, Kerala, Trivandrum and Others, and Elakkal Service Co-

operative Bank v. State of Kerala, 1997 (2) KLT 85 held that the mere sending of the copy of the show cause notice to the consultees would not

satisfy the requirement of the provisions contained in sub-section (2) of Section 32 of the Act. According to the learned Single Judge, the notice,

the reply and the tentative findings of the Joint Registrar should be forwarded to the consultees so that they can form an opinion and inform the

same to the Joint Registrar. The learned Single Judge has also pointed out that the impugned order, Ext. P8, does not show that any such

consultation was made. There is no case for the appellant that, apart from sending a copy of Ext. P6 notice to the Financing Bank and the Circle

Co-operative Union, the Joint Registrar had forwarded to them the explanations/objections given on behalf of the Committee and the tentative

findings arrived at by the Joint Registrar after considering the explanations/objections of the Committee. Therefore, we have to proceed on the

basis that, apart from sending a copy of Ext. P6 to the Financing Bank and the Circle Co-operative Union, no further action was taken by the Joint

Registrar as part of the consultation process contemplated under sub-section (2) of Section 32 of the Act. The consultation contemplated under

sub-section (2) of Section 32 of the Act can be effective and meaningful only if the show cause notice issued u/s 32(1), the explanations/objections

given by the Committee to such show cause notice and the tentative findings arrived at by the Joint Registrar after considering such

explanations/objections are also forwarded to the Financing Bank and the Circle Co-operative Union requesting them to offer their views on the

proposal to supersede the Committee. Such a consultation process has not taken place in this case. Therefore, the provisions of sub-section (2) of

Section 32 of the Act have been violated. Hence, Ext. P8 order was liable to be set aside on the second ground mentioned by the learned Single

Judge.

13. The learned Government Pleader would try to draw an analogy with the requirement of a notice u/s 33, which has been held to be not

mandatory in the Division Bench decision in Registrar of Co-operative Societies and Others Vs. P. Sasi and Others, The requirement of

publication of a notice in the notice board cannot be compared with the requirement of consultation with two important expert bodies, which is

envisaged as a safeguard against arbitrary action on the part of the Registrar. Therefore the ratio of that decision cannot be made applicable to the

requirement u/s 32(2) of the Act. Ext. P7 is devoid of any reason whatsoever, let alone acceptable reasons. Therefore on that ground also the

impugned order is liable to be set aside.

14. In the above view, we do not find any infirmity in the judgment of the learned Single Judge. Accordingly, the appeal is dismissed. In view of the

stay granted in this writ appeal the judgment of the learned Single Judge had not been implemented. The same shall be implemented within a period

of two weeks from today. Immediately after re-assuming charge the managing committee shall take steps to see that an Annual General Body

Meeting is convened within two months from the date of re-assuming charge and get the budget for the year passed in accordance with the

provisions of the Kerala Co-operative Societies Act and Rules.

The appeal is dismissed with the above directions.