

Jt. Registrar of Co-Operative Societies Madras and Others

Vs

P. S. Rajagopal Naidu and Others

Civil Appeals Nos. 2525 and 2526 of 1969

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

06.04.1970

JUDGMENT

GROVER, J. -

1. These appeals from a judgment of the Madras High Court involve the true ambit, scope and content of Section 72 of the Madras Co-operative Societies Act, 1961 (hereinafter called the Act).
2. The facts may be briefly stated. On 4th January, 1969 the Joint Registrar of Co-operative Societies issued a notice under Section 72 of the Act to the Committee of the North Arcot District Co-operative Supply and Marketing Society Ltd. It was stated in the notice that the Committee had not been functioning properly for sometime past. Charges were mentioned in detail and the Committee was called upon to make a representation against the proposal to dissolve it in view of the defects and irregularities mentioned in the notice. After examining the representation which was quite length and detailed, the Registrar recorded an Order on 11th April, 1969 dealing with each charge and holding that the Committee had not been functioning properly and had failed to perform its duties and discharge its responsibilities as required under the Act. The Committee was ordered to be suspended for a period of one year from 12th April, 1969 to 11th April, 1970. The Deputy Registrar of Co-operative Societies was appointed to work as a Special Officer and to manage its affairs for that period. The matter was taken in appeal to the Registrar by the Committee. The Registrar affirmed the Order of the Joint Registrar. Thereafter the President and the Director of the Co-operative Society moved the High Court under Article 226 of the Constitution. A number of points were taken in the writ petition but the main emphasis was laid on the proper procedure not having been followed under Sections 64, 65 and 66 of the Act before taking action under Section 72.
3. The learned single Judge of the High Court allowed the writ petition which had been filed by the President and the Director of the Co-operative Society. The learned Judge was not satisfied that there was any justification for the action taken by the Joint Registrar in the matter of supersession of the Committee. On appeals having been taken before a Division Bench under Clause 15 of the Letters Patent the case was referred to a Full bench. The Full Bench based its decision largely on the view that the procedure laid down in Sections 64, 65 and 66 must be followed before any order could be made by the Joint Registrar or the Registrar under Section 72. We may refer to the following portion of the judgment :

"Section 64, 65 and 66, which are the statutory procedural stems which interdict the apparently arbitrary course of action which a Registrar could undertake to interfere with the affairs of a society, its members or officers, provide a sufficient help to

tighten up such indiscriminate and unguided exercise of the powers by the Registrar, when it becomes necessary. In each of those sections it is incumbent on the Registrar, to give an opportunity to the member concerned, officer concerned or the society to rectify the defects"

"In our view and under the scheme of the Act, the condition precedent to the exercise of jurisdiction by the Registrar under one or the other of the sections considered above and in particular Section 72 is to secure an audit memorandum or a report of inspection or inquiry, so that he may be provided with the necessary material to act thereon. Unless such a fact-finding authority has provided the Registrar with the hypothesis to act and ultimately supersede an elected body, the impugned order of supersession will undoubtedly be tainted with the absence of a jurisdictional basis. Whether such a basis exists, is subject to review by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India."

4. The Full Bench affirmed the decision of the learned Single Judge.

5. The points which have been argued before us and which have to be determined are :

(i) Whether the Registrar before taking action under Section 72 must have an audit made under Section 64 and inquiry held under Section 65 and an inspection made under Section 66 of the Act and must also give an opportunity for rectification of the defects which may come to light as a result of such audit, inquiry or inspection ?

(ii) What is the scope of interference by the High Court with the order of a Registrar made under Section 72 of the Act ?

6. The Act was enacted to amend and consolidate the law relating to and to make better provision for the organisation of Co-operative Societies in the State of Madras. Section 2(2) defines the expression "Committee" to mean the governing body of a registered society to whom the management of its affairs is entrusted. By Section 2(1) the "Registrar" is defined to mean a person appointed to perform the duties of a Registrar of Co-operative Societies under the Act, and includes a person on whom all or any of the powers of a Registrar under the Act have been conferred under Section 3. Section 4 provides for the societies which may be registered. Chapter III gives the sections relating to the qualifications of the members and their rights and liabilities. Chapter IV contains provisions in respect of management of registered societies. Under Section 26(1) the ultimate authority of a registered society vests in the general body of its members. Under Section 27 the general body of a registered society has to constitute a Committee in accordance with the bye-laws and entrust the management of the affairs of the registered society to such Committee. The term of office of an elected member of any Committee is 3 years but one-third of the members elected to the Committee at the first election have to retire at the end of the first year after such election and the other one-third of the members elected have to retire at the end of the second year after such election and so on. The members so to retire at the end of the first and second years have to be determined by lot by the Committee. According to Section 28(4) no member of a Committee against whom an order under sub-section (1) of Section 71 has been passed, shall be eligible three years. Sub-section (5) of Section 28 provides that no member of a Committee which has been superseded shall be eligible for election or appointment to the Committee for a period of three years from the date of expiry of the period of supersession. Section 28(A) is in the following terms :

"(1) Where in the course of an audit under Section 64 or an inquiry under Section 65 or an inspection under Section 66 or Section 67, it appears that a person who is, or was, a member of a Committee has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or of gross or persistent negligence in connection with the conduct and management of, or of gross mismanagement of the affairs of the society or of misfeasance or default in carrying out his obligations and functions under the law, the Registrar may, without prejudice to any other action that may be taken against such member, by order in writing, remove such person from the office of member of committee if he holds such office, or disqualify him from holding in future the office of a member of the committee, if he has ceased to hold such office.

(2) No person shall be removed or disqualified under sub-section (1) without being given an opportunity of making his representations. A copy of the order removing or disqualifying him shall be communicated to him."

7. Chapter V relates to the duties and privileges of registered societies. Chapter VI relates to State aid to registered societies and Chapter VII relates to their property and funds. We are concerned primarily with the provisions of Chapter VIII which begins with Section 64. Sub-Section (1) thereof makes it obligatory on the Registrar to audit or cause to be audited by some person authorised by him in writing the accounts of every registered society once at least in every year. Under sub-section (4) every person who is or has been an officer or employee of the society and every member and past member has to furnish such information in regard to the transactions and working of the society as the Registrar or the person authorised by him may require. Sub-section (5) says that the Registrar may, or order in writing, direct any officer of the society to take such time as may be specified in the order to remedy within such time as may be specified in the order to remedy within such time as may be specified the defects, if any, disclosed as a result of the audit. Section 65 authorises the Registrar on his own motion or on the application of a majority of the Committee or on the request of the Collector, to hold an inquiry, or direct some person authorised by him in writing to hold an inquiry into the constitution, working and financial condition of a registered society. Under sub-section (2) powers have been conferred inter alia to have free access to the books of accounts, etc., summoning and examination of persons on oath having knowledge of the affairs of the society. When an inquiry is held under Section 65 the Registrar must communicate its result in the manner and to the persons and institutions set out in sub-section (3) Sub-section (4) lays down that Registrar may, by order in writing, direct any officer of the society or its financing bank to take such action as may be specified in the order to remedy the defects, disclosed as a result of the enquiry. Section 66 empowers the Registrar on his own motion or on the application of a creditor of a registered society to inspect or direct any person to inspect the books of the society. After the inspection has been made the Registrar has to communicate the results of the inspection in the manner set out in sub-section (2) Sub-section (3) enables the Registrar to direct any officer of the society to take such action as may be specified in the order to remedy the defects, if any, disclosed as a result of the inspection. Section 67 gives the right to a financing bank to inspect the books of any registered society which is indebted to it. Section 70(1) is reproduced below :

"70(1). Where in the course of an audit under Section 64 or an inquiry under Section 65 or an inspection under Section 66 or Section 67, it is brought to the notice of the Registrar that a paid officer or servant of a registered society has committee or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society the Registrar, may, if in his opinion, there is prima facie

evidence against such paid officer or servant and the suspension of such paid officer or servant is necessary in the interests of the society, direct the committee of the society pending the investigation and disposal of the matter, to place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him."

Section 71 contains provisions relating to surcharge and says that where in the course of an audit under Section 64 or an inquiry under Section 65 or an inspection under Section 66 or Section 67 or the winding up of a society, it appears that any person who is or was entrusted with the organization or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence the Registrar may enquire into the conduct of such person, officer or servant and make an order requiring him to repay or restore the money or property or to contribute such sum to the assets of the society by way of compensation. Under the proviso, such an inquiry must be held within 6 years from the date of any omission and an opportunity must be afforded to the person against whom the order is sought to be made. Section 72(1)(a) which is material for our purposes reads :

"72(1)(a). If, in the opinion of the Registrar, the committee of any registered society is not functioning properly or wilfully disobeys or wilfully fails to comply with any lawful order or direction issued by the Registrar under this act or the rules, he may, after giving the committee an opportunity of making its representations, by order in writing, dissolve the committee and appoint either a person (hereinafter referred to as the special officer) or a committee of two or more persons (hereinafter referred to as the managing committee) to manage the affairs of the society for a specified period not exceeding two years."

Sub-section (6) makes it obligatory on the Registrar to consult the financing bank to which the society is indebted before taking any action under sub-section (1). It will be useful at this state to reproduce Section 85(1) which relates to winding up of registered societies :

"85(1). If the Registrar, after an inquiry has been held under Section 65 or an inspection has been made under Section 66 or Section 67, or on receipt of an application made by not less than three-fourths of the members of a registered society, is of opinion that the society ought to be wound up, he may, after giving the society an opportunity of making its representations, by order in writing direct it to be wound up. A copy of the order shall forthwith be communicated to the society by registered post".

8. It is significant that Section 72(1) does not contain any mention of Sections 64 to 67 which appear in Section 70(1) and of Sections 65, 66 and 67 which are expressly mentioned in Section 85(1). If the intention of the Legislature was that the supersession of the Committee under Section 64, 65, 66 and 67, there is no reason why language analogous to Section 70(1) or Section 85(1) containing an express mention of the aforesaid sections, should not have been employed. An audit under Section 64 has to be done every year in view of the mandatory form of the language of that Section 64. But as regards Sections 65 and 66 the Registrar has been given the discretionary powers to make an inquiry or an inspection in accordance with those sections, there is no duty or obligation cast on him for doing so before he proceeds to take action under Section 72. All that is required by

Section 72(1)(a) is that the Registrar should form an opinion that the Committee of any Registered society is not functioning properly or has wilfully disobeyed or failed to comply with any lawful order or direction issued by him. So far as the question of the society not functioning properly is concerned, that may depend on what the Registrar discovers after a proper audit, enquiry and inspection. But he can form that opinion even on material aliunde and the language of the section does not warrant by necessary implication the taking of the view that he is bound to form that opinion after following the entire procedure prescribed by the other sections under discussion. At any rate it is not possible to read a requirement while taking action under Section 72 of satisfying the provisions in the aforesaid section by making a direction in the first instance to remedy the defects disclosed as a result of the audit, inquiry or inspection. The functioning of the society may be so irregular and the defects disclosed so blatant and prejudicial to the society that no question can arise of any direction being made in the first instance for their being remedied by the persons or officers concerned. It may be that when the Registrar acts under the second limb of Section 72(1)(a) and proposes to supersede the committee for wilful disobedience or wilful failure to comply with any lawful order or direction issued by the Registrar under the Act or the rule that the provisions contained in Sections 64, 65 and 66 may become relevant. But that does not and cannot mean that the Registrar must as a condition precedent give a direction under those sections for the defects or the irregularities to be remedied and should take action only under the second limb i.e., when there is a wilful disobedience or wilful failure to comply with those orders or directions. It may be that the opinion which the Registrar has to form must be based on some objective facts but those objective facts in the absence of any clear indication under Section 72 cannot be confined to what may be disclosed after the Registrar has exercised powers in the matter of audit, inquiry and inspection under the provisions of Section 64, 65 and 66. Thus even though the opinion may be a purely subjective process, there must be cogent material on which the Registrar has to form his opinion that the society is not functioning properly in order to sustain the issuance of a notice under Section 72(1)(a) and subsequent supersession of the Committee after considering its representation. The requisite opinion has indisputably to be formed honestly and after applying his mind by the Registrar to the relevant material before him the only condition precedent for a taking action under Section 72(1) is that the Registrar must consult the financing bank to which the society is indebted (vide sub-section 6). There is no other requirement or condition precedent laid down by the Legislature which the Registrar must fulfill before he acts in the matter of supersession of the Committee. We are unable to concur in the view of the High Court that an action taken under Section 72 without giving an opportunity to the member, officer or the society to rectify the defects found after an audit, inquiry or inspection held under Sections 64, 65 and 66 would constitute an exercise of power without jurisdiction.

9. The Single Judge laid a great deal of emphasis on the Committee being an elected body and the prejudice that would be caused to its members if they are visited with the consequences of supersession on account of irregularities and improper functioning of the previous members of the Committee. What was argued before the High Court was that one-third members have to be elected. If certain grave irregularities are committed say in the years 1964, 1965, it would be unfair to the new members who have been elected to supersede the Committee in 1968. We do not consider that that would be the correct approach in construing Section 72 which is meant for superseding the Committee as a whole when its working discloses such irregularities or improprieties as would justify its supersession. Normally, it would be expected that only that Committee would be superseded who functioning has been found to be highly defective. The object of supersession apparently is to appoint a Special Officer or a managing committee in order to set the working mal-administration by a committee has so adversely affected the functioning of the society that it is

essential in the interests of the society itself to give temporarily the control of its affairs to a neutral authority. At any rate if the operation of Section 72 in certain circumstances is likely to operate harshly so far also certain member of the committee are concerned, it is not possible to read into it other provisions of the act which are not incorporated in the section expressly or by necessary implication.

10. We have been taken through the material parts of the orders of the Registrar and the Joint Registrar and we do not find any such infirmities in them which would justify interference by the High Court under Article 226 of the Constitution. The High Court could not act also an Appellate Court and re-appraise and re-examine the relevant facts and circumstances which led to the making of the orders of supersession as if the matter before it had been brought by way of appeal. The limits of the jurisdiction of the High Court under Article 226 when a writ in the nature of certiorari is to be issued are well-known and well-settled by now and it is pointless to re-state the grounds on which any such writ or direction can be issued. We are satisfied that there was no justification whatsoever for quashing the orders of the Joint Registrar and that of the Registrar in appeal. The appeals are consequently allowed with costs and the judgment of the High Court is set aside. The writ petitions are ordered to be dismissed. One hearing fee.

</html