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JT. REGISTRAR OF COOPERATIVE SOCIETIES, KERALA

v.

T.A. KUTTAPPAN AND ORS. ETC.

MAY 9, 2000

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[S. RAJENDRA BABU AND Y.K. SABHARWAL, JJ.]

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Kerala Cooperative Societies Act, 1969—Section 32—Administrator appointed Superseding Managing Committee who sought to enroll new members—Writ Petition filed before High Court to restrain Administrator—High Court allowed writ petition holding that there was no power to enrol new members—On appeal Held, Administrator performs all powers and functions of the managing committee in the interest of society and should conduct elections with the members on rolls, but cannot enrol new members—Enrolment of new members alters composition of society and such power should be exercised by an elected committee—Duty of an Administrator is to set right the default or negligence, if any, on part of the society and to enable it to carry its functions as enjoined by law.

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An administrator was appointed under Section 32 of the Kerala Cooperative Societies Act, 1969 superseding the Committee of Management of a Society. The administrator sought to enrol new members. Writ Petitions were filed before the High Court in order to restrain the administrator from enrolling new members. High Court allowed the writ petitions holding that the admission of a member is not mere “function” of the Committee, but is a power, which cannot be taken over by an Administrator. Hence these appeals.

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Dismissing the appeals, the Court

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HELD : 1. The Administrator, subject to control of Registrar of Cooperative Societies exercises all or any of the functions of the society, and the Special Officer subject to control of the State Government and the Registrar exercises and performs all the powers and functions of the committee of the society and in the interest of the society can take such action as is necessary for proper functioning of the society as per law. He should conduct elections as is enjoined thereunder, that is, he is to conduct election with the members as on the rolls and by necessary implication, he

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is not vested with power to enrol new members of the society. [1207-E-F]

K.L. Shantharaj & Anr. v. M.L. Nagaraja & Ors., [1997] 6 SCC 37, relied on.

George v. Joint Registrar, (1985) KLT 836 and *Cherthala Agricultural Rural Development Bank & Ors. v. Joint Registrar & Ors.*, (2000) 1 KLT 291 FB, referred to.

2. The Administrator or a Committee appointed while the Committee of Management of the Society is under supersession cannot have the power to enrol new members and such a question ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression "power to exercise all or any of the functions". Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. The functions are discharged or powers exercised or *vice versa* depending upon the context of the duty or power enjoined under the law if the two expressions are inter-changeable. What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. [1209-F-G]

3. A Cooperative Society is expected to function in a democratic matter through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than by an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession. When the Committee of Management of the Cooperative Society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the bye-laws. which is prejudicial to the interest of the society, the same is superseded and an administrator or a Committee is imposed thereon. The duty of such a Committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. [1210-C-D; F-G]

K.L. Shantharaj & Anr. v. M.L. Nagaraja & Ors., [1997] 6 SCC 37, relied on.

A CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1930-1936 of 1999 Etc. Etc.

From the Judgment and Order dated 28.8.98 of the Kerala High Court in O.P. Nos. 12184, 14840, 14886, 15700, 17258, 18396 and 20913 of 1997.

B Mukul Rohtagi, Additional Solicitor General, V.R. Reddy, C.S. Vaidhyathan, P.P. Rao, G. Prakash, Mrs. Beena Prakash, G.N. Shree Kumar, P. Sureshan, Ms. Deepa S. Monappan, Vinod, M.P., Dilip Pillai, Ramesh Babu M.R., L. Nageshwara Rao, Roy Abraham, Ms. Baby Krishnan, A. Raghunath and E.M.S. Anam for the appearing parties.

C The Judgment of the Court was delivered by

RAJENDRA BABU, J. These appeals by special leave are against a common order made in O.P.Nos.12184, 14840, 14886, 15700, 17258, 18398 and 20913/97. Section 32 of the Kerala Cooperative Societies Act, 1969 [hereinafter referred to as 'the Act'] enables the Registrar of Cooperative Societies to supersede the Committee of Management under the circumstances set forth in sub-Section (1) thereto. After supersession of the Committee of Management, the Registrar can appoint an administrator or administrators or a Committee as provided in Section 32(1)(a) and (b) of the Act. Such Committee or administrator or administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the Committee or of any officer of the society and take all such action as may be required in the interests of the society. When the administrator appointed on supersession of the Committee of Management of certain Cooperative Societies wanted to enrol new members to the society the same was objected to and the original petitions under Article 226 of the Constitution were filed before the High Court on the ground that the Registrar is only expected to carry on day-to-day functions of the society and see that election is conducted and a new Committee in accordance with the Act, Rules and bye-laws of the society is constituted. It was contended before the court that the earlier decision in *George v. Joint Registrar*, 1985 KLT 836, is no longer good law in the light of the decision of this Court in *K. Shantharaj & Anr. v. M.L.Nagaraj & Ors.*, [1997] 6 SCC 37. The Full Bench of the High Court, after referring to the earlier decision of the High Court and the decision of this Court in *K. Shantharaj's* [supra] held that the admission of a member is not mere 'function' of the Committee, but is a 'power' of the Committee to admit members or not as provided in Bye Laws of the Society. The

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Committee can exercise only certain functions and not any powers and, therefore, the administrator or a Committee appointed as aforesaid has no power to enrol new members. This order is in challenge in these appeals.

It is now brought to our notice that subsequent to the decision of the High Court, the provisions of Section 32 have been amended so that the administrator or the Committee will have power to exercise all or any of the powers and functions of the Committee. It is further brought to our notice that in *Cherthala Agricultural Rural Development Bank & Ors. v. Joint Registrar & Ors.*, (2000) 1 KLJ 291 (FB) it has been held that the decision in the case before us holding that the administrator has no power to enrol new members would have prospective and not retrospective effect. The scope of neither amended Section 32 of the Act nor the decision in *Cherthala Agricultural Rural Development Bank & Ors. v. Joint Registrar & Ors.* (supra) is required to be considered by us in these proceedings.

The question whether an administrator appointed during supersession of a Committee of Management of a Cooperative Society can enrol new members is no longer *res integra*. When an identical question came up before this Court for consideration in *K. Shantharaj's* case [supra], this Court held that from the language of Sections 30 (which is similar to Section 32(4) of the Act) and 30A of the Karnataka Cooperative Societies Act, 1959, it would be clear that the administrator, subject to control of Registrar exercise all or any of the functions of the society, and the Special Officer subject to control of the State Government and the Registrar exercise and perform all the powers and functions of the committee of the society and in the interest of the society can take such action as is necessary for proper functioning of the society as per law. He should conduct elections as is enjoined thereunder, that is, he is to conduct election with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. In the light of this clear enunciation of law the view taken by the High Court appears to be correct.

However, the learned Addl.Solicitor General appearing for the appellants, submitted that there is difference in language between the provisions of the Karnataka Cooperative Societies Act and the Act which was, in fact, noticed by the Karnataka High Court and, therefore, submitted that the decision in *K. Shantharaj's* case [supra] is not applicable to the facts of this case. For the purpose of appreciation of this submission, it is necessary to set out the relevant provisions of the Karnataka Act and the Kerala Act :

A *Section 30(2) of the Karnataka Act*

“The administrator so appointed shall subject to the control of the Registrar and such instructions as he may give from time to time, exercise all or any of the functions of the Committee or of any officer of the Cooperative Society and take such action as he may consider necessary in the interest of the society.”

B *Section 30-A of the Karnataka Act*

C “Appointment of Special Officer. - (1) Where the State Government, on a report made to it by the Registrar or otherwise, is satisfied that any Cooperative Society is not functioning in accordance with the provisions of this Act or the rules made thereunder or its bye-laws or any order, direction or circular issued by the State Government or the Registrar, it may notwithstanding anything in this Act, by order, appoint a Special Officer for such Cooperative Society for such period not exceeding two years :

F Provided that the State Government may, if it considers it necessary extend the said period of two years by such further period not exceeding one year.

(2) * * *

G (3) The Special Officer shall, subject to the control of the State Government and the Registrar, exercise and perform all the powers and functions of the Committee of the Cooperative Society or any officer of the Cooperative Society and take all such actions as may be required in the interest of the Cooperative Society.”

Section 32(4) of the Act

“The Committee or administrator or administrators so appointed shall, subject to the control of the Registrar and to such instructions as he may be from time to time give, have power to exercise all or any of the functions of the Committee or of any officer of the society and take such action as may be required in the interests of the society.”

The learned Addl. Solicitor General relied on that portion of the judgment of the Division Bench which affirmed the view of the learned Single Judge where a comparison between the Act and the Karnataka Act was considered and we may set out what was stated by the Division Bench :

“Accordingly, he is not entitled to enrol new members. But it has to be noted that the wording of Section 32(4) of the Kerala Cooperative Societies Act is slightly different from the wording of Section 30 of the Act. In the Kerala Act, the Administrator has power to exercise all or any of the functions of the committee, whereas in the Karnataka Act, the Administrator can only exercise all or any of the functions of the committee. Moreover, as stated earlier, the difference in the authority vested in an Administrator and a Special Officer, as is made in the Karnataka Act is not considered in the Kerala decision. The difference in the authority vested in an Administrator and a Special Officer in the Karnataka Act, is very significant which is absent in the Kerala Act. In that view of the matter, the dictum laid down by the Division Bench of the Kerala High Court, cannot have any application while determining the comparative authority of an Administrator and a Special Officer appointed under Sections 30 and 30-A of the Karnataka Act respectively.”

This very aspect was also brought to the notice of the Full Bench of the Kerala High Court.

If we carefully analyse the provisions of the Act, it would be clear that the administrator or a Committee appointed while the Committee of Management of the Society is under supersession cannot have the power to enrol new members and such a question ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression have “power to exercise all or any of the function.”. Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. Often we do express that functions are discharged or powers exercised or vice versa depending upon the context of the duty or power enjoined under the law if the two expressions are inter-changeable. What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Indeed this Court, while considering the provisions of Section 30-A of the Karnataka

A Act, which enabled a Special Officer appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the Cooperative Society (and not merely functions), took the view that the administrator or a special officer can exercise powers and functions only as may be required in the interests of the Cooperative Society. In that context, B it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. We may add that a Cooperative Society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. C Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than by an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession. This Court has taken the view, it did, bearing in mind these aspects, though not spelt out in the course D of the judgment. Even where the language of Section 30-A of the Karnataka Act empowered a special officer to exercise and perform all the powers and functions of Committee of Management of a Cooperative Society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have E power to exercise all or any of the functions of the Committee" in the Act and "exercise all or any of the functions of the Committee" in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance. What is of significance is that when the Committee of Management of the Cooperative Society commits any default or is negligent in the performance of the duties imposed under F the Acts, rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a Committee is imposed thereon. The duty of such a Committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a Committee G appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult.

H Thus, we are of the view that this Court in *K. Shantharaj's* case [supra] took the view that an administrator or a special officer in the Karnataka Act

is not vested with the power to enrol new members of the Cooperative Society in this context. While reiterating that view in regard to the Kerala Act, we afford further reasons to support the said view and dismiss these appeals, though for reasons different from those expressed by the High Court. However, in the circumstances of the case, there shall be no orders as to costs.

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Appeals dismissed.

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