

WASALATILAKA AND OTHERS
v.
THE EDUCATION EMPLOYEES
CO-OPERATIVE THRIFT AND
CREDIT SOCIETY LTD. AND OTHERS

COURT OF APPEAL

EDUSSURIYA, J.

CA APPLICATION NO. 585/92.

21, 30 SEPTEMBER, 20 OCTOBER AND

18 NOVEMBER, 1992.

Certiorari – Order of dissolution of Committee of Thrift and Credit Co-operative Society—Effect of amending Act No. 11 of 1992 – Supplies and services essential to the life of the community vis-a-vis Ministry of Food and Co-operatives – Power of dissolution.

The petitioners are members of the Committee of the Education Employees Co-operative Thrift and Credit Society Ltd. which has as its main objectives firstly the promotion of thrift among its members and secondly, extension of credit facilities to its members. The members are officers and other employees of various institutions under the Ministry of Education and Higher Education. The petitioners were elected to the Committee by the general body of the Society on 20th January 1992. The 5th respondent Hon. Weerasinghe Mallimarachchi, Minister of Food and Co-operatives, by Order dated 21 July, 1992 purported to be made in terms of Regulation 2 of the Emergency (Maintenance of Essential Supplies and Services) Regulation 1 of 1989 framed under section 5 of the Public Security Ordinance removed the petitioners and appointed the 2nd, 3rd and 4th respondents as Competent Authority of the Society. The order of removal made by the 5th respondent was made within hours of the election and was published in Gazette Extraordinary No. 724/D of 21 July, 1992. The order was made by the 5th respondent on the ground "that the continued presence of the petitioners as members of the Committee of Management would be totally detrimental and would adversely affect the interests of the society and that there is likely to be a disruption of the maintenance of supplies and services essential to the life of the community. The order referred to an "interim report" made under s. 47 (2) of the Co-operative Societies Law No. 5 of 1972 but in the affidavit filed by the 5th respondent he referred to an inquiry held under s. 46 of the Co-operative Societies Law held by one T. B. H. Perera. Section 47(2) was repealed by the amending Act No. 11 of 1992 which came into operation on 6th March 1992. The interim report was said to have been received on 13th March 1992. This was a report by the Commissioner of Food and Co-operative Development of an alleged investigation under s. 47 (2).

Held :

(1) Although prior to the amending Act No. 11 of 1992 a Commissioner could have, under section 47 (2) proceeded to act under section 48 (1) as amended by Act No. 32 of 1983 and dissolved a Committee after giving the Committee an opportunity to state its objections to dissolution and after considering such objections at a General Meeting, after 6th March 1992 he had no longer any authority to remove the Committee and there was no provision of law under which the Commissioner could have proceeded with an investigation under s. 47 (2) even if such an investigation had commenced prior to that date. The 5th respondent could not have acted on an "interim report" which allegedly contained material discovered in the course of an investigation under s. 47 (2) which the Commissioner had no right or authority to carry out. No report made under s. 46 was before Court.

(2) "Supplies and services essential to the life of the community" in the case of the Ministry of Food and Co-operatives refer to consumer items and other articles which are distributed by the Co-operative Societies and so, extension of credit facilities is not a supply or service essential to the life of the community. Further if credit facilities by the 1st respondent Co-operative Thrift and Credit Society are not available, government loans are, since the members of the 1st respondent society are all government servants.

(3) After the amending Act No. 11 of 1992 the powers of dissolution of the Registrar are limited to Co-operative Societies operating with state funds. As far as the other Societies are concerned such powers are now vested solely in the general body of the Society. The 5th respondent had therefore no power to make the impugned order.

Case referred to :

President of the Eravur Multi-Purpose Co-operative Society Ltd. v. The Minister of Co-operatives and Others S.C. Application No. 176/86.

APPLICATION for a Writ of Certiorari to quash the order of the Minister of Food and Co-operatives.

Faiz Mustapha, P.C. with *H. Withanachchi* for 1st, 3rd, 4th, 5th, 6th, 7th and 8th petitioners.

Lalith Athulathmudali, P.C. with *Ranjan Gunaratne, Dr. Ranjith Fernando, Mahendra Amerasekera, Ranjini Morawaka, Nalini Dissanayake* and *Gamini Peiris* for 2nd and 9th petitioners.

P. L. D. Premaratne, P.C., Additional Solicitor-General with *K. C. Kamalabayson*, Deputy Solicitor-General for 2nd to 5th respondents.

January 15, 1993.

EDUSSURIYA, J.

The petitioners seek the issue of a Writ of Certiorari quashing the order made by the 5th respondent dated 21st July, 1992 purporting to act in terms of Regulation 2 of the Emergency (Maintenance of Essential Supplies and Services) Regulation 1 of 1989 framed under section 5 of the Public Security Ordinance and appointing a Board consisting of the 2nd, 3rd and 4th respondents to be the Competent Authority for the 1st respondent society.

The 1st respondent society is a Co-operative Society which has as its main objectives, firstly, the promotion of thrift amongst its members and secondly, extension of credit facilities to its members. Its members being officers and other employees of various institutions under the Ministry of Education and Higher Education.

The petitioners are members of the committee of the first respondent society which was elected on 20th July, 1992 and the 5th respondent has admitted in his affidavit that he is aware of their election to the committee. The petitioners were also members of the previous committee which had been suspended on 20th January, 1992 by the Commissioner of Co-operative Development.

The order of the 5th respondent which is complained of, had been made within hours of the said election and was published in the Gazette Extraordinary No. 724/3 of 21st July, 1992.

In paragraph 24(b) of his affidavit the 5th Respondent has given his reasons for making the said order, wherein he stated that "On a careful consideration of the matters mentioned in document 5R3, the matters set out in sub-paragraphs (e) to (j) of paragraph 24 and the on going investigation by the Criminal Investigation Department and the nature of the activities carried on by the first Respondent Society, I was of opinion that the continued presence of the Petitioners as members of the Committee of Management would be totally detrimental and would adversely affect the interests of the Society, and that there is likely to be a disruption in the maintenance of supplies and services essential to the life of the community. In the said circumstances, I made the said order of 21st July, 1992".

The report 5R3, referred to by the 5th respondent is dated 16th March, 1992 and has been signed by the Commissioner of Co-operative Development and addressed to the Secretary to the Ministry of Food and Co-operatives. In the 1st paragraph of 5R3 the Secretary has been requested to bring the contents of 5R3 to the attention of the 5th respondent.

5R3 is referred to as an "interim report of an investigation under s. 47(2)", which said section was repealed by amending Act No. 11 of 1992 which came into operation on 6th March, 1992. However, in the first paragraph itself the Commissioner of Co-operative Development has stated that on 13th March he received the interim report relating to an investigation that is now being carried out by the department". Thus 5R3 is not an interim report though the heading says so, but is a report prepared by the Commissioner of Food and Co-operative Development on an interim report of an alleged investigation under s. 47 (2).

The 5th respondent has affirmed in paragraph 24 (a) that the report 5R3 is based on the inquiry referred to in paragraph 20 of his affidavit. However, in paragraph 20, the 5th respondent has affirmed that an inquiry was held under s. 46 of the Co-operative Societies Law No. 5 of 1972 by one T. B. H. Perera.

Under s. 46 of the Co-operative Societies Law No. 5 of 1972 as amended by Act No. 32 of 1983 a Registrar could hold an inquiry into the constitution, working and financial condition of a registered society, whereas under s. 47 (2) the Registrar may of his own motion investigate or direct the investigation of the affairs of a registered society.

Thus 5R3 is not a report based on an interim report of an inquiry if any, carried out by T.B.H. Perera or anyone else under s. 46 of Law No. 5 of 1972, since the Commissioner of Co-operative Development has stated therein that it is an interim report of an investigation under s. 47 (2).

Prior to the amending Act No. 11 of 1992, a Commissioner could have under s. 47 (2) proceeded to act in terms of s. 48 (1) amended by Act No. 32 of 1983 and dissolved a Committee after giving the Committee an opportunity to state its objections to its dissolution and after considering such objections at a general meeting. However, in

this instance, firstly, the Commissioner of Co-operative Development acted under a repealed section, secondly, the Committee had not been given an opportunity of stating its objections and thirdly, the general body has not had an opportunity of considering the objections if any.

It therefore, appears, that when the Commissioner of Co-operative Development realised that he no longer had the authority to remove the Committee, he prepared a report which he claimed was based on an interim report of an investigation in an attempt to get the 5th respondent to do what he the Commissioner could not do after the amendment. Needless to say that after 6th March 1992, the date of the amending Act No. 11 of 1992, there was no provision of law under which the Commissioner could have proceeded with an investigation under s. 47 (2) even if such an investigation had commenced prior to that date.

Thus it is clear that the sole purpose of the Commissioner in preparing and forwarding 5R3 to the Secretary to the 5th respondent was to use the 5th respondent as a cat's paw.

In view of the above mentioned reasons the 5th respondent should not have acted on 5R3 which allegedly contained material alleged to have been discovered in the course of an alleged investigation under s. 47 (2) which the Commissioner had no right or authority to carry out after 6th March, 1992, the date on which the amending Act became law.

I may also mention that although in paragraph 20 of his affidavit the 5th respondent has stated that T. B. H. Perera's report in respect of an inquiry alleged to have been held under s. 46 will be available for inspection by Court no such report was filed in Court even later. In any event it is difficult to understand why such a report if available was not filed along with 5R3.

In view of these reasons grave doubt arises as to whether there was in fact any inquiry under s. 46 or any investigation under s. 47 (2) which commenced prior to the amendment No. 11 of 1992.

Further, from the document 5R4 which the 5th respondent has filed with his affidavit it is evident that a Co-operative Inspector had reported that one Mrs. Haneena, the Accountant was responsible for

the shortage of a sum of Rs. 1,48,772/30. The petitioners have alleged that not only Mrs. Haneena but also the Deputy General Manager (Finance), two Assistant Accountants and the Cashier had been subsequently interdicted by the Committee following a report made by a retired Assistant Commissioner of Co-operative Development appointed by that Committee to hold a disciplinary inquiry against the said Mrs. Haneena. The petitioners have also alleged that after the former Committee was suspended by the Commissioner of Co-operative Development with effect from 23rd January, 1992 and the 2nd and 3rd respondents and two others appointed to manage the affairs of the 1st respondent society they reinstated those officers whom the Committee had interdicted. Though the 5th respondent has claimed to be unaware of this, the 2nd and 3rd respondents have not filed affidavits denying the same, nor is there any statement by them to the effect that those officers were re-instated after due inquiry. In any event the 2nd and 3rd respondents could not have said so of Mrs. Haneena in view of 5R4. So that these officers had been reinstated by those appointed by the Commissioner of Co-operative Development who is the same person who prepared 5R3, and if there had been any inquiry or investigation by T. B. H. Perera or anyone else after the former Committee was interdicted, such inquiring officer would have had to rely on these officers who were reinstated, and the books maintained by them, since these officers were persons entirely responsible for maintaining Books of Accounts and payments and this is evident from 5R3 which states that the 2nd petitioner had obtained a large sum of money from the Accountant who is none other than the said Mrs. Haneena.

As stated earlier, the 1st respondent society has as its main objective the promotion of thrift amongst its members and the extension of credit facilities to its members.

The question then arises whether the services provided to its members by the 1st respondent society can be brought within the meaning of the words "supplies and services essential to the life of the community".

It is my view that "supplies and services essential to the life of the community", in the case of the Ministry of Food and Co-operatives refer to consumer items, and other articles which are distributed by the co-operative societies throughout the country to the members

of the public and which are necessary for the daily life of the community, and therefore extension of credit facilities to its members by the 1st respondent society is not a supply or service essential to the life of the community. All members of the 1st respondent society who are employees of the Ministry of Education as government servants are entitled to obtain government loans for the purchase of building sites, to repair or renovate residences, construction of houses, distress loans for relief from debt, etc. Therefore, in any event, in view of the availability of government loans for the above mentioned purposes, the extension of credit facilities to its members by the 1st respondent society cannot be termed a service essential to the life of the community.

Therefore it is my firm view that the 5th respondent is not empowered under the Emergency Regulations to make the impugned Order.

Now, the amendment No. 11 of 1992 to the Co-operative Societies Law draws a distinction in connection with the course of action which a Registrar can follow, after an inquiry into the constitution, working and financial conditions or inspections relating to the books of societies operating with state funds and those which are not.

The powers vested in the Registrar relating to dissolution of committees and appointment of suitable persons to manage the affairs of a society can now be exercised only in the case of societies operating with state funds. As far as the other societies are concerned such powers are now vested solely in the general body of the society.

Therefore the purpose of amendment No. 11 of 1992 appears to be to limit the powers of the Registrar who is an officer of government and to remove such societies not operating with state funds from governmental control.

In this particular instance, the membership of the 1st respondent society is comprised of government servants and the majority of them are teachers and they must be considered to be quite capable of handling their own affairs and besides, the amending act gives the general body the power to remove any undesirables from the Committee.

In fact the charges that had been framed against the petitioners as members of the previous Committee had been placed before the general body and had been considered by the general body. Thereafter, a vote had been taken on whether a Committee should be elected and the general body had resolved to elect a Committee. At the election the 1st petitioner had been elected unanimously, the 2nd and the 3rd petitioners elected uncontested. The 4th, 5th, 6th, 7th, and 8th petitioners who had been members of the former Committee had also been elected.

The 5th respondent in his affidavit claims to be unaware of the consideration of the charges by the general body. If in fact the charges had not been considered by the general body, the 5th respondent would have undoubtedly stated, as he has done in respect of other averments in the 2nd petitioner's affidavit, that he is 'reliably informed' that it was not so.

After the amendment No. 11 of 1992, the future and the destiny of the 1st Respondent society lies with the general body since the law now provides the general body with the machinery to deal with an errant Committee. Therefore, where the Committee has been democratically elected as envisaged by law I do not see how the 5th respondent could make the impugned Order.

However, I may mention that the petitioners themselves admit a shortage of Rs. 1,077,849/24 according to a report prepared by one D. S. Mohotti, Internal Auditor, appointed by the 2nd petitioner, and now that the powers of the Registrar of Co-operatives have been removed, it is in the interests of the members to keep an eye on the steps taken by the Committee in relation to the shortage. Also, when the same person or persons stand for election over and over again and there is, as in this case a shortage which runs into over Rs. 1,000,000 it is time that the members not only asked themselves whether such persons are indispensable, but also took a closer look at the work of the Committee, because if they do not, the time may come when the 1st respondent society may not be able to fulfil its objectives.

According to the 5th respondent's affidavit the 1st respondent society has an amount of Rs. 158 million as deposits. Further, there is no affidavit by anyone that a loan applied for has been refused

due to lack of funds or that there has been delay in processing applications for loans and that such delays were deliberately caused, because the 1st respondent society had no funds to grant the loans applied for.

In these circumstances, I am of the view that there was no material on which the 5th respondent could have reasonably drawn the inference that a disruption of the extension of credit facilities to the members of the 1st respondent society was likely, even if such a service is considered to be essential to the life of the community.

In paragraph 24 (a) the 5th respondent has affirmed that instances of mismanagement were brought to his notice. Sharvananda, C.J. has held in *President of the Eravur Multi Purpose Co-operative Society Ltd. v. The Minister of Co-operatives and others*,⁽¹⁾ that there can be mismanagement of a society's affairs without there being any disruption of essential supplies.

For the above mentioned reasons, this Court grants the relief sought by the petitioners in paragraph (a) of the prayer to their Petition. Petitioner are also entitled to costs of this application.

Certiorari issued.
