

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE GOPINATH P.**

**FRIDAY, THE 6TH DAY OF FEBRUARY 2023 / 17TH MAGHA, 1944
WP(C) NO. 107 OF 2023**

PETITIONER:

TOMY JOSEPH
AGED 45 YEARS
PRESIDENT, IDUKKI DISTRICT DEALERS CO-OPERATIVE
SOCIETY LTD NO. I.401, HEAD OFFICE, NEDUMKANDAM,
IDUKKI DISTRICT, RESIDING AT THOTTUPURAM HOUSE,
KALLAR P.O., THANNIMOOD, IDUKKI DISTRICT, PIN - 685552
BY ADVS.
NISHA GEORGE
ANSHIN K.K
GEORGE POONTHOTTAM (SR.)

RESPONDENTS:

- 1 THE JOINT REGISTRAR OF COOPERATIVE SOCIETIES
[GENERAL], IDUKKI,
OFFICE OF THE JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES [GENERAL], PAINAVU, IDUKKI DISTRICT., PIN -
685603
- 2 THE ADMINISTRATIVE COMMITTEE
IDUKKI DISTRICT DEALERS CO-OPERATIVE SOCIETY LTD NO.
I. 401, HEAD OFFICE, NEDUMKANDAM, IDUKKI DISTRICT,
REPRESENTED BY ITS CONVENER., PIN - 685553

OTHER PRESENT:

SMT. BIMAL K NATH (SR GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
06.02.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.R**JUDGMENT**

The Writ Petitioner is the president of the Managing Committee of the Idukki District Dealers Co-operative Society Limited. He has approached this Court, being aggrieved by Ext.P2 order dated 23.12.2022 of the 1st respondent, which placed the elected Managing Committee of the Society under suspension in the exercise of jurisdiction under Section 32 of the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as 'the Act'). Ext.P2 order was issued pending the completion of an inquiry under Section 65 of the Act and relying on two interim reports dated 14.11.2022 and 15.12.2022, of the inquiry officer.

2. Sri. George Poonthottam, learned Senior counsel appearing for the petitioner, on the instructions of Adv.Nisha George, would contend that the action taken by the 1st respondent is contrary to the law and the express provisions of Section 65 of the Act. It is submitted that the provisions of Section 65(6) of the Act indicate that the action under Section 32 can be initiated only on completion of the inquiry. It is submitted that going by the law laid down by a Division Bench of this Court in ***Bose E.S v. Managing Committee (Under Order of suspension), Vellathooval Service Co-***

Operative Bank Ltd. and others, I.L.R.2021(3) Kerala 473, action under Section 32 of the Act could not be initiated without completing the inquiry commenced under Section 65 of the Act. Specific reliance is placed by the learned Senior Counsel appearing for the petitioner on paragraphs Nos.18 and 22 of the judgment of the Division Bench of this Court in ***Bose E.S. (supra)*** to emphasise that the provisions of Section 65 of the Act read with the provisions of Section 32 of the Act do not contemplate taking of any action under Section 32 of the Act based on any preliminary report of inquiry under Section 65 of the Act. It is submitted that a reading of Ext.P2 order issued by the 1st respondent does not even suggest why the inquiry under Section 65 of the Act cannot be completed without suspending the Committee by invoking the power under Section 32(3) of the Act read with the 3rd proviso to Section 32(1) of the Act. He states, on the authority of ***Mohinder Singh Gill and another v. Chief Election Commr., New Delhi and others, (1978) 1 SCC 405,*** that the order must either stand on its own or not at all. He placed reliance on the Full Bench ruling of this Court in ***Reji K. Joshy and Others v. Joint Registrar of Co-operative Societies (General) Kollam and Others, 2022(3) KHC 317(FB),*** to contend that after an inquiry is completed under the provisions of Section 65 of the Act, a copy of the inquiry report has to

be furnished to the members of the Managing Committee before action under Sections 32 or 68 of the Act is taken by the Registrar or his delegate. It is submitted that the view taken by a learned Single Judge of this Court in ***Hameed Kutty v. Joint Registrar of Co-operative Societies, 2017 (1) KLT 511*** is no longer good law in the light of the law laid down by the Full Bench of this Court in ***Reji K. Joshy (supra)*** and the law laid down by the Division Bench of this Court in ***Bose E.S (supra)***. It is submitted that the view taken by the learned Single Judge in ***Hameed Kutty (supra)*** has not obtained any seal of approval by the Division Bench while deciding the appeal against that judgment. The judgment of the Division Bench of this Court is reported as ***Hameed Kutty M.S and Others v. Joint Registrar of Co-op. Societies (General) Ekm and Others, 2018 (3) KHC 540 (DB)***. It is submitted that even the copies of the preliminary reports, which have been relied upon to issue Ext.P2 order, have not been supplied to the petitioner or any other member of the elected Managing Committee. However, they have now been placed on record through the counter affidavit filed in this case. He states that the misdeeds (if any) of the employees cannot be placed on the shoulders of the elected committee. It is submitted that the suspension of the elected Managing Committee has serious and drastic consequences, as observed by the Division Bench of this

Court in ***Bose E.S (supra)***. It is submitted that since the inquiry under Section 65 of the Act has not yet been completed, the action taken by the 1st respondent is without jurisdiction and ought to be set aside by this Court in the exercise of jurisdiction under Article 226 of the Constitution of India.

3. Smt. C.S Sheeja, the Learned Senior Government Pleader appearing for the respondents would submit that Ext.P2 order does not suffer from any vice warranting interference with it under Article 226 of the Constitution of India. It is submitted that the judgments of the learned single judge in ***Hameed Kutty (supra)***, as well as the Division Bench Judgment that affirms the view taken by the Learned Single Judge in ***Hameed Kutty (supra)*** as well as the Division Bench, judgment of this Court in ***Bose E.S (supra)***, are authorities for the proposition that the power under Section 32 of the Act includes the power of suspension, of course, to be exercised only in exceptional cases and where the situation so warrants. Learned Senior Government Pleader places reliance on the findings in Ext.P2, which, according to her indicates that the continuance of the Managing Committee in office, pending the inquiry, will have serious consequences as it is clear that the Managing Committee was indulging in various activities to cover up the various acts of omission

and commission, which are mentioned in Ext.P2. It is submitted that a reading of Section 64(4A) of the Act and Rule 47(d) of the Kerala Co-operative Societies Rules would indicate that even assuming without conceding that the various acts of omission and commission which form the subject matter of the inquiry under Section 65 of the Act, were done without the knowledge of the Managing Committee, the Managing Committee had a responsibility to ensure that the officers of the Society work strictly in accordance with the provisions of the Rules, Acts and instructions, governing the business of the Society. It is submitted that the view taken by the Single Judge in ***Hameed Kutty (supra)*** lays down the correct position in law, and there is nothing in the order of the Full Bench of this Court in ***Reji K. Joshy (supra)*** or in the Division Bench judgment of this Court in ***Bose E.S (supra)*** to indicate that the view taken by the learned Single Judge in ***Hameed Kutty (Supra)*** has been overruled or set aside. The Learned Senior Government Pleader also placed reliance on the judgment of a Division Bench of this Court in ***State of Kerala v. Sudarsanan, 1997 (2) KLT 522*** to contend that to exercise power under Section 32 of the Act, it is not even necessary that an inquiry under Section 65 of the Act should have been commenced. It is submitted that the wording of Section 32 of the Act is very clear and it indicates that the action can be taken under that

provision based on an inquiry; on the report of the financing bank; any report of the Vigilance and Anti-Corruption Bureau of the Government or the Vigilance Officer or otherwise. It is submitted that it is clear from the reading of Section 32 of the Act that even if Ext.P2 order were deemed to be an order independent of the proceedings initiated under Section 65 of the Act, it could have been justified in law, and there is no ground on which this Court could find that the 1st respondent exceeded his jurisdiction in issuing Ext.P2 order.

4. Learned senior counsel appearing for the petitioner, in reply, would submit that after an inquiry is commenced under Section 65 of the Act and when the preliminary reports in that inquiry form the basis of the issuance of Ext.P2 order, it is not open to the 1st respondent to contend that an action under Section 32 of the Act is independent of the action under Section 65 of the Act. It is submitted that going by the law laid down in **Reji K. Joshy (supra)** and **Bose E.S (supra)**, once an inquiry under Section 65 of the Act is commenced, action under Section 32 or 68 of the Act can be taken only after the inquiry is completed and after a copy of the inquiry report has been made available to the Managing Committee members and they have been given an opportunity to show cause against the findings in the inquiry report.

5. Having heard the learned senior counsel appearing for the petitioner and the learned senior Government Pleader appearing for the respondents, I am of the view that the petitioner has not made out any case for interference. It is clear from the judgment of a Division Bench of this court in ***Bose E.S. (supra)*** that suspension of the managing committee of a Society can be resorted to in exceptional circumstances. The word 'suspension' is a word familiar to service jurisprudence where it is settled that the suspension of an employee is to ensure that the employee concerned is not in a position to interfere with or in any manner manipulate the records or do anything that would affect the conduct of a proper inquiry into the alleged acts of commission or omission by the employee concerned. This may be true of the power to suspend an elected managing committee also. The suspension of a democratically elected managing committee has serious consequences. However, suspension is only a temporary deprivation of position or privilege. (See ***Mohammad Azam v. State of Hyderabad; AIR 1958 AP 619***). The judgments of the learned single judge as well as the Division Bench in ***Hameed Kutty (supra)*** and the Division Bench judgment in ***Bose E.S (supra)*** indicate that suspension can be resorted to if the circumstances so warrant. Though the learned Senior Counsel appearing for the petitioner strenuously contends that the judgment in ***Bose E.S***

(supra) makes it clear that when an inquiry is ordered, any action can be taken under Section 32 only after its completion, I am of the view that this is not the law laid down in **Bose E.S (supra)**. From that decision, on my reading, the following position emerges:-

- a) Suspension and Supersession are not synonymous;
- b) The power under Section 32 includes the power to suspend a Managing Committee. However, such power is to be used sparingly and in exceptional circumstances. The power cannot be exercised maliciously or capriciously or for extraneous or irrelevant considerations, alien to the purpose for which such power is granted by the statute; and
- c) No procedure is prescribed for issuing an order of suspension.

This is clear from a reading of paragraphs 16, 17, 18, 21 & 22 of the judgment in **Bose E.S (supra)**, which to the extent relevant, reads as under:-

“16. In the light of the aforesaid decisions and Section 32 of the KCS Act at no stretch of imagination the contention of the appellant-writ petitioner that there is no distinction between supersession and suspension can be upheld. So also it cannot be said that at no circumstances the Registrar or the authority exercising the power of Registrar, under Section 32 of the KCS Act got no power to suspend a committee of a society for the mere reason that except in the third proviso to Section 32(1) the exercise of power of suspension was mentioned. In other words, in exceptional circumstances for protecting the interests of the members of the society it would become inevitable to keep a committee of a society under suspension. In the case of supersession of a committee of a Society/Bank invoking the power under Section 32(1) of the KCS Act there is no

question of the committee of the society coming back to power after any particular period unless the order of supersession is interfered with and the superseded committee is reinstated in service, upon a challenge against the said order. In other words, removal of a Managing Committee by way of supersession is permanent and in such eventuality the committee would be substituted by an Administrator or an Administrative Committee, with the main aim to conduct fresh election and put in power a new committee. However, in the case of suspension of a committee of a Bank/Society invoking the aforesaid power the committee would be reinstated on expiry of the period unless the period of suspension is not extended or the committee suspended was not superseded thereafter. At any rate, it is temporary and the suspended committee may be restored into office. Still, we are of the firm view that suspension of a committee of a Co-operative Society or Cooperative Bank is a very serious issue having serious consequences. When it is ordered based on financial dealings it may have disastrous impact on the fair name and good reputation, not only of the democratically elected members constituting the committee but also on the very Bank. Depositors and account holders may run on the Bank and may spoil its very business. Without specifying the compelling reason the power of suspension cannot and shall not be exercised, for various reasons.....”

“17. When once it is found that “suspension” and “supersession”, of a committee of a society are different and distinct in nature and consequences and the power to remove conferred under Section 32 of the KCS Act takes within its fold both ‘supersession’ and ‘suspension’ and the procedures mandatorily to be followed to supersede a committee and the exceptional situation enabling non-adherence, are specifically mentioned in the Act in respect of supersession of a committee, the question is whether they are to be followed mandatorily for suspending a committee of a society, even in the absence of specific mandate therefor, in the KCS Act or in KCS Rules. Evidently, even the contention of the respondents is that the procedures prescribed under Section 32 are not required to be followed for suspending a committee and they are to be adhered only for supersession. Obviously, the respondents relied on the decision of a Single Bench of this Court in Hameed Kutty's case (supra) ((2017) 1 KLT 511) which was confirmed by a Division Bench decision reported in (2018) 3 KLT 149, to buttress the same. It is to be noted that while approving the decision of the writ court in Hameed Kutty's case ((2017) 1 KLT 511) and repelling the contention of the appellants therein regarding absence of power of suspension the Division Bench in the decision in (2018) 3 KLT 149, did not go into the question as to whether the procedures prescribed to be followed before superseding a committee of a society should be followed before suspending the committee of a society

and if not, whether any procedure is required to be followed for suspending the committee of a society. In paragraph 3 of the judgment the Division Bench held that the appeal challenging the order keeping the Board of the society under suspension had become infructuous owing to its subsequent supersession. In such circumstances, we are of the view that in the absence of a consideration in detail by the Division Bench on that issue the question is whether the direction to treat Ext.P7 as a notice under Section 32(1) of the KCS Act could be sustained taking note of the fact that admittedly, Section 65 inquiry is still pending. According to the authority conducting the inquiry more time is required for completing the same.....”

“18.The words ‘on completion of the inquiry’ used in sub-section (6) of Section 65 would undoubtedly reveal that initiation of action in accordance with the provisions of Section 32, based on an inquiry under Section 65 is permissible only on completion of the inquiry. In the case on hand both Annexure-R1(a) and Ext.P7 would reveal that the inquiry under Section 65 is going on and it would take more time for completion. When that be the admitted and indisputable position with respect to the stage of inquiry under Section 65 in the light of the specific provision under sub-section (6) of Section 65 initiation of action in accordance with the provisions of Section 32, based on inquiry under Section 65 is not permissible. Whether it should be initiated is a matter which could be decided by the Registrar only on completion of the inquiry and subject to his satisfaction regarding its requirement. In the case on hand, such a stage has not reached. In such circumstances, issuing a direction to treat Ext.P7 as notice and requiring the petitioner to file objections and directing the first respondent Joint Registrar to consider the objections after complying with the procedure contemplated under Section 32 of the KCS Act, without further clarification on the scope of such consideration, would amount to predetermination of the necessity of initiation of action in accordance with the provisions of Section 32 and conferring such a power before the completion of inquiry under Section 65 against the specific mandate under sub-section (6) of Section 65 of the KCS Act.....”

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“21.....Hence, power of suspension, when the procedure for its exercise is not very expressly provided under the KCS Act, shall be exercised only in very, very exceptional circumstances.”

“22. As noticed hereinbefore, the appellant in W.A. No. 1031/2020 mainly sought for quashment of Ext.P7, the nature of which is not in dispute. A scanning of Ext.P7 would reveal that it is not an order superseding the committee of the Bank and in fact, what is specifically stated in Ext.P7 is that on satisfying that the continuance of the committee in power would

hamper the smooth conduct of the inquiry under Section 65 of the KCS Act, waiving the notice under Section 32(1) and by invoking the provisions under Section 32(3) of the KCS Act the committee is suspended for a period of six months. Consequently, the Assistant Registrar (General), Idukki was appointed as the Administrator of the Bank. It is relevant to note that in Ext.P7 what exactly is the power for suspending a committee available under the KCS Act is not specifically mentioned. The question is whether the word 'suspension' is a synonym of the word 'supersession' employed under Section 32 of the KCS Act. We have already found that the expression 'suspension' is distinct and different from the expression 'supersession' and that the power of suspension of a committee of a society should be exercised only sparingly and only in very, very exceptional circumstances. The third proviso to Section 32(1) (b) itself would reveal that they are different and distinct. The said proviso is extracted herein-below, at the risk of repetition:—

“Provided also that the Board of a Co-operative Society shall not be superseded or kept under suspension where there is no Government share holding or loan or financial assistance or any guarantee by the Government or any Board of Institution constituted by the Government.”

In fact, it was only under the afore-extracted proviso that the word 'suspension' is used in Section 32 of the KCS Act in regard to the Board of a Co-operative Society and nowhere else the said expression has been used in Section 32. Under the aforesaid provision what is stated is that a society shall not be kept under suspension when there is no Government share holding or loan or financial assistance or any guarantee by the Government or any Board or institutions constituted by the Government. The rest of the provisions under Section 32 of the KCS Act would reveal that what was actually dealt with under Section 32 is the power and manner of exercise of the power of supersession of a committee of a society. In other words, it is the expression used under the aforesaid proviso in the negative sense that is claimed as the source of power to suspend a committee but then, unlike in the case of supersession as relates suspension no procedure is specifically prescribed. It is therefore, all the more necessary to be more cautious and careful in passing an order of suspension of a committee of a society, especially in view of the position specifically noted by us with respect to inquiry under Section 65 of the KCS Act. When once it is found that the power of suspension exists, absence of specific provision dealing with procedures in the matter of suspending a committee of a society cannot be a reason for its arbitrary or unreasonable exercise.”

On the facts of that case, it was held that since the inquiry was not complete, the direction of the learned single judge to treat Ext.P.7 in that case as a show cause notice for supersession was not proper.

6. I, therefore, hold that an order of suspension under Section 32 of the Act is not dependent on the completion of the inquiry under Section 65 and the power can, for grave and compelling reasons, be exercised even when the inquiry is pending.

7. That brings us to the question as to whether there were any exceptional circumstances, in this case, warranting the exercise of the power to suspend pending the completion of the inquiry under Section 65 of the Act. A reading of Ext.P.2 shows that the following weighed with the 1st respondent in taking a decision to suspend the Managing Committee:-

- *During the period between 29.11.2022 to 03.12.2022, an amount to the tune of Rs.1,38,21,850/- had been fraudulently deposited in the names of various members of the society. It is falsely shown in records that the said amount is transacted to various branches of the Society from the Head office. Further inquiry is to be conducted to find out whether these fraudulent entries are made to conceal prior illegal transactions/financial irregularities in the society;*

- *With the knowledge of the Managing Committee and with the aid of the software companies, repeated corrections were made with respect to records in the*

software maintained by the Society;

● *It has been found that repeated corrections/alterations/changes were made concerning the deposit schemes like the daily deposit scheme, group deposit scheme and SHG loans disbursed to Self Help Groups. The department has not given recognition or approved the said schemes. Most illegal transactions were carried out under the guise of these schemes.*

● *Financial fraud has been committed through illegal transactions amounting to Rs.4,52,23,000/-. The members of the Managing Committee committed fraud by approving the loans issued based on forged documents/records. It is found that signatures appearing in the applications and related documents concerning the said schemes kept at the head office and branches of the Society were also forged/faked.*

● *Grave/serious financial irregularities were committed by misappropriating/exploiting the members' accounts (Fixed Deposit Account, Daily Deposit Scheme Account and Advance Branch Account).*

● *Sri. R. Sudarsanan (Member No.716), the then Vice President and Sri. N.M. Thankachan (Member No.906), Managing Committee Member, had given complaints concerning the anomalies/ irregularities in the Society.*

● *The Secretary had convened several Managing committee meetings (Eg: 5-2-2021, 29-03-2021, 29-03-2022, 26-05-2022) and approved the group deposit advances and SHG loans based on forged documents. Thus, the managing committee members have committed dereliction of duty and violated the provisions in the bye-law of the Society*

- *Group deposit schemes were opened in the name of the members of the Society without their knowledge or consent. Advance amounts concerning the said deposit schemes were withdrawn fraudulently. An amount of Rs.2,83,23,000 had been withdrawn by forging documents in the name of 77 members of the Society through 354 Group Advance Accounts. An amount to the tune of Rs.1,69,00,000 had been withdrawn by forging signatures and documents in the name of 19 Self-Help Groups without the knowledge of the members of those groups.*

- *The inquiry under section 65 of the Kerala Cooperative Societies Act,1969 cannot be completed in the presence of/by maintaining the present Managing Committee as the Committee incorporated as per section 28 of the Act, had committed various financial frauds, forged various documents/records and made various changes/alterations/corrections in the records.*

The very nature of an order of suspension indicates that such power is to be exercised to meet an emergent situation where it may be necessary to keep an elected Managing Committee out of office in order to complete the inquiry under Section 65. If it were to be held that such power can be exercised only after the inquiry is completed under Section 65, it might even defeat the purpose for which an inquiry is contemplated. A reading of Ext.P2 clearly shows that the officer had taken a view that it was necessary to keep the Managing Committee under suspension pending inquiry under Section 65 as it would be difficult to complete the inquiry in a proper manner if the

elected Managing Committee is allowed to continue in office pending inquiry. Considering the reasons which compelled the 1st respondent to take such a view, I am not inclined to hold that the power was exercised maliciously or capriciously or for extraneous or irrelevant considerations.

8. The Full Bench in ***Reji K. Joshi (supra)*** has taken the view that when an inquiry is ordered under Section 65, the committee is entitled to a copy of the report, on completion of the inquiry. This procedure obviously applies in a case where, on the basis of the report of the inquiry, action is contemplated for supersession (under Section 32) or action under Section 68 of the Act is proposed. If this procedure is required to be followed when an emergent situation arises to suspend an elected Managing Committee, the very purpose of recognizing a power to suspend under Section 32 would be lost.

The writ petition fails and it is accordingly dismissed.

sd/-

**GOPINATH P.
JUDGE**

ajt/acd

APPENDIX OF WP(C) 107/2023

PETITIONER EXHIBITS

- Exhibit-P1 TRUE COPY OF THE ORDER NO. JGGIDK/595/2022-SCTM DATED 03.09.2022 ISSUED BY THE JOINT REGISTRAR (GENERAL), IDUKKI.
- Exhibit-P2 TRUE COPY OF THE ORDER DATED 23.12.2022 BEARING NO. JRGIDK/595/2022-SCTM ISSUED BY THE JOINT REGISTRAR (GENERAL), IDUKKI.
- Exhibit-P3 TRUE COPY OF THE ORDER DATED 16.12.2022 BEARING NO. JRGIDK/595/ 2022-SCTM ISSUED BY THE JOINT REGISTRAR (GENERAL), IDUKKI.
- Exhibit-P4 TRUE COPY OF THE BYE-LAW OF THE PETITIONER'S SOCIETY.
- Exhibit-P5 TRUE COPY OF THE INTERIM ORDER DATED 18.11.2021 IN W.P.(C)NO. 25695 OF 2021 PASSED BY THIS HON'BLE COURT.

RESPONDENT ANNEXURES

- ANNEXURE R1 (A) THE TRUE PHOTOCOPY OF THE INTERIM REPORT DATED 15/12/2022 FURNISHED BY THE INQUIRY OFFICER.
- ANNEXURE R1 (B) TRUE PHOTOCOPY OF THE PROCEEDINGS SUSPENDING THE SECRETARY OF THE SOCIETY DATED 31.12.2022.
- ANNEXURE R1 (C) THE TRUE PHOTOCOPY OF THE FIR NO. 12/2023 OF NEDUMKANDAM POLICE STATION.