



2024/KER/31367

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

THURSDAY, THE 11TH DAY OF APRIL 2024 / 22ND CHAITHRA, 1946

WP(C) NO. 32291 OF 2014

PETITIONER:

CHERPLASSERY CO-OPERATIVE HOSPITAL LTD.NO. P 1288,
REPRESENTED BY ITS SECRETARY.

BY ADV.SMT.A.RAJESWARI

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY ITS SECRETARY,
CO-OPERATION DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 REGISTRAR OF CO-OPERATIVE SOCIETIES
THIRUVANANTHAPURAM-695 001.
- 3 JOINT REGISTRAR OF CO-OPERATIVE SOCIETIES
(GENERAL), PALAKKAD-678 001.
- 4 ASSISTANT LABOUR OFFICER
OTTAPALAM-679 101.

BY GOVERNMENT PLEADER SRI.JUSTIN JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
11.04.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**CR****JUDGMENT**

The petitioner is a Co-operative Hospital Society registered under the provisions of the Kerala Co-operative Societies Act, 1969. It is stated that the Society has an approved staff strength of 29 and 19 permanent employees are working in the hospital and 44 employees are engaged on contract basis. The Society is providing medical treatment at reasonable rates to patients apart from providing 10% discount on the cost of medicines.

2. The 4th respondent, the Assistant Labour Officer, Ottappalam, conducted an inspection in the Society regarding compliance of the provisions of the Labour legislations including the Kerala



Shops and Commercial Establishments Act, 1960, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961 and the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958, and issued Ext.P2 inspection note. To Ext.P2, the petitioner submitted Ext.P3 reply stating that the employees of the Society are covered under the provisions of the Kerala Co-operative Societies Act and the instructions issued by the Registrar of Co-operative Societies from time to time, and in cases covered by such special enactments, the 4th respondent has no jurisdiction to conduct inspection or issue directions. However, ignoring Ext.P3 reply, the 4th respondent issued Ext.P4 notice directing the petitioner to produce records maintained under the aforesaid



legislations and also to produce documents to show whether the petitioner has been exempted from the purview of the above legislations.

3. The petitioner states that 'Co-operation' falls under entry 32 of List II (State List) of Schedule VII of the Constitution of India, while 'Labour Welfare' is listed under entry 24 of List III (Concurrent List) and therefore, 'Co-operative Society' is a subject in which the State is competent to legislate and since the State has enacted the Kerala Co-operative Societies Act in exercise of such powers, the Co-operative Societies in Kerala are subject to regulation, supervision and control by the Registrar and the Co-operative Department. It is contended that the Kerala Co-operative Societies Act is a complete code by itself



and since provisions are made therein for the audit, inspection, enquiry, supersession, surcharge, adjudication of disputes, penalties *etc.*; operation of other labour laws applies only where no provision is made in the said Act and Rules. Accordingly, this writ petition is filed to quash Exts.P2 and P4 and to declare that the petitioner is bound to comply only with the provisions of the Kerala Co-operative Societies Act, Rules, and instructions issued thereunder in respect of its employees, and to direct the 4th respondent not to take any coercive action based on Exts.P2 and P4.

4. The writ petition was admitted by this Court on 02.02.2014 and further proceedings as per Ext.P4 was stayed.

5. A counter affidavit has been filed by the



4th respondent contending, *inter alia*, that the petitioner Society is an establishment coming within the purview of the Kerala Shops and Commercial Establishments Act, 1960, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961 and the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958, and the provisions thereof are applicable to the employees of the Co-operative Societies and the petitioner Society has not been exempted from the purview of any of the above legislations. It is stated that the petitioner has already taken registration under the Kerala Shops and Commercial Establishments Act, 1960. It is further stated that the petitioner was not maintaining records/ registers as required under the above enactments.



6. Heard the learned counsel for the petitioner and the learned Government Pleader.

7. The contention of the petitioner Society is that they are regulated by the provisions of the Kerala Co-operative Societies Act and the jurisdiction of the authorities under labour laws is ousted. In the light of the said contention, it will be apposite to consider a few judicial precedents regarding the applicability of certain labour legislations to Co-operative Societies.

8. The Division Bench of this Court in **Kanayannur Service Coop. Society Ltd. v. Sarakutty** [1987 KHC 78: 1987 (1) KLT 209] was called upon to consider the question whether the jurisdiction of the Authority under the Payment of Wages Act, 1936 was ousted by the provisions of



the Kerala Co-operative Societies Act. The Division Bench held that the Authorities under the Payment of Wages Act had jurisdiction to decide the question of payment of wages of employees of Co-operative Societies notwithstanding the provisions contained in Section 69 of the Kerala Co-operative Societies Act dealing with settlement of disputes.

9. As regards the applicability of the Kerala Labour welfare Fund Act, 1975 to Co-operative Societies, in **Pallippuram Service Cooperative Bank Ltd. v. Labour Welfare Fund Inspector** [2004 (2) KLT 616: 2004 KHC 631], this Court held that since the petitioner-Cooperative Society comes within the purview of the Kerala Shops and Commercial Establishments Act, the provisions of the Welfare Fund Act is applicable to them.



10. The Division Bench of this Court in **Edathua Service Co-operative Bank Ltd v. Authority under Section 6 of the KPSA Act** [1984 KLT 284: 1984 KHC 164] and **Sherthallai Taluk Co-op Land Mortgage Bank Ltd. v. Deputy Labour Commissioner** [1990 (2) KLT 175: 1990 KHC 357] held that the provisions of the Kerala Payment of Subsistence Allowance Act, 1972 will override the provisions of the Kerala Co-operative Societies Act.

11. The Division Bench of this Court in **Kottayam Dist. Co-operative Hospital Society Ltd. v Regional Provident Fund Commissioner, Kottayam and Another** [2014 KHC 762: 2015 (1) KLT SN 3] held that the provisions of the Employees' Provident Funds and Miscellaneous



Provisions Act, 1952, which is a Central Act, will have overriding effect over the Kerala Co-operative Societies Act, which is a State enactment, due to the principles based on the paramountcy of the Central legislation.

12. In **Chandrasekharan Nair v. Kerala State Co-operative Agricultural and Rural Development Bank Ltd.** [2017 (4) KLT 276: 2017 (5) KHC 15], the Full Bench of this Court held that Section 4(5) of the Payment of Gratuity Act, 1972 (Central Act) which enables an employee to opt for a better terms of gratuity has primacy and will prevail over the second proviso to Rule 59(iii) of the Kerala Co-operative Societies Rules which stipulates that the amount of gratuity payable shall not exceed the amount which an employee is



eligible as per the Payment of Gratuity Act, 1972 or under the Act and Rules, whichever is applicable.

13. The question, when a service dispute arises between an employee of any Co-operative Society and his employer (Co-operative Society), whether such dispute is triable by the forum prescribed under the Industrial Disputes Act, 1947 or under the Kerala Co-operative Societies Act has been set at rest by the Hon'ble Supreme Court in **Annamma K.A v. Secretary, Cochin Co-operative Society Ltd** [2018 (2) SCC 729: AIR 2018 SC 422: ILR 2018 (1) Ker. 225: 2018 (1) KHC 258: 2018 (1) KLT 414]. The Court held that the Kerala Co-operative Societies Act and the Industrial Disputes Act both possess and enjoy the



concurrent jurisdiction to decide any service dispute arising between the Co-operative Society's employee and his / her employer and that it is the choice of the employee concerned to choose any one forum out of the two forums available to him / her under the two Acts to get his / her service dispute decided, subject to satisfying the test laid down under the Industrial Disputes Act that the employee concerned is a "workman", the dispute raised by him / her is an "industrial dispute" and the Co-operative Society (employer) is an "Industry" as defined under the Industrial Disputes Act.

14. Now, let me examine the applicability of the Labour legislations viz; the Kerala Shops and Commercial Establishments Act, 1960, the



Minimum Wages Act, 1948, the Maternity Benefit Act, 1961 and the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958, to Co-operative Societies in the State.

15. The question whether the provisions of Kerala Shops and Commercial Establishments Act, 1960 would apply to Co-operative Societies is no longer *res integra*. This Court in **Assistant Labour Officer v. Kadungallur Service Co-operative Bank Ltd [1980 KHC 331: ILR 1980(2) Ker.154]** has held that establishments under the Co-operative Societies Act are not exempted from the purview of the Kerala Shops and Commercial Establishments Act and the Society cannot claim immunity from the operation of the Shops Act. In **Anandan v. Assistant**



Labour Officer [2012 (3) KHC 236: 2012 (3) KLT 347: 2012 (2) KLD 425: 2012 (3) KLJ 233], this Court has held that a Co-operative Bank would come within the definition of 'commercial establishment' under the Kerala Shops and Commercial Establishments Act.

16. Section 2 (4) of the Kerala Shops and Commercial Establishments Act defines 'commercial establishment' and reads as follows:

"4) 'Commercial establishment', means a commercial or industrial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, hotel, restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or



entertainment and includes such other establishment as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purposes of this Act, but does not include a factory to which all or any of the provisions of the Factories Act, 1948 (Central Act 63 of 1948) apply.'

Section 2(8) defines 'establishment' and the definition as it stood prior to substitution by Act 3 of 2015 reads as under:

"(8) 'establishment' means a shop or a commercial establishment."

17. The Hon'ble Supreme Court, in **Sasidharan v. Peter and Karunakar and others** [AIR 1984 SC 1700: (1984) 4 SCC 230: 1984 KLT 1039:1984 KHC 406], while considering the question as to whether Lawyers' office or firm is a



commercial establishment under the Kerala Shops and Commercial Establishments Act, simplified the definition contained in Section 2(4) by restating it in separate clauses as follows:

- (1) Commercial Establishment means five different kinds of establishments: commercial, industrial, trading, banking or insurance;-
- (2) Commercial Establishment means an establishment or administrative service in which the persons employed are mainly engaged in office work:
- (3) Commercial Establishment means a hotel, restaurant, boarding or eating house, a cafe or any other refreshment house;
- (4) Commercial Establishment means a theatre or any other place of public amusement or entertainment; and
- (5) Commercial Establishment includes such



other establishment as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purposes of the Act. Commercial Establishment does not include a factory to which any of the provisions of the Factories Act, 1948 apply.

Going by the definition of 'commercial establishment' paraphrased in **Sasidharan** (supra), an establishment in which persons employed are mainly engaged in office work comes within the ambit of 'commercial establishment'. A Division Bench of this Court in **A. Karunakaran Nair v. Authority under Payment of Wages Act** [1971 KLT 661:1971 KHC 145], observed that, the word "establishment" has to be understood in a wider sense. The Division Bench, interpreting Section 2 (4) of the Kerala Shops and Commercial



Establishments Act held as follows:

The word 'establishment' used in the second part of the definition does not appear to be used in the sense in which it is defined under Section 2(8), which says that 'establishment' means a shop or a commercial establishment. If the word 'establishment' used in the second part means a 'commercial establishment' as defined, the second part will not be of much help in understanding the meaning of the first part. We are therefore of opinion that the word 'establishment' in the second part of the definition is used in the meaning the word has in common parlance, viz., "An organised staff of employees or servants, including, or occasionally limited to, the building in which they are located" (vide Shorter Oxford English Dictionary), with the result that a 'commercial establishment' will mean an establishment or



administrative service in which the persons employed are mainly engaged in office work, etc.”

Thus, irrespective of the societal activity, be it commercial, industrial, trading or banking, every Cooperative Society fits within the wider definition of 'establishment' in Section 2 (4) of the Kerala Shops and Commercial Establishments Act which includes an establishment in which the persons employed are mainly engaged in office work. Therefore, the provisions of the Kerala Shops and Commercial Establishments Act are applicable to the petitioner Society and they are liable to maintain the registers and records as stipulated under Section 30 of the Shops Act and the Rules framed thereunder.

18. The object of the Minimum Wages Act,



1948 is to provide for fixing minimum rates of wages to workmen employed in scheduled employments. Section 2 (g) of the Minimum Wages Act defines 'scheduled employment' to mean an employment specified in the schedule, or any process or branch of work forming part of such employment. 'Employment in Shops and Establishments (including hotels and restaurants)' is included at serial No.21 of Part I of the Schedule. The employment in a Co-operative Society, which is an establishment under the Kerala Shops and Commercial Establishments Act comes within Part I of the Schedule. The question as to whether employment in private hospital is scheduled employment under the Minimum Wages Act came up for consideration before the Division



Bench of this Court in **Jayachandran v. State of Kerala** [1984 KHC 366 : 1984 KLT 903 : ILR 1984 (2) Ker. 605] and this Court held that by adding item No.21 'Employment in Shops and Establishments (including hotels and restaurants)' to Part I of the Schedule under Section 27 of the Minimum Wages Act, the legislative intention was to bring within the fold of Scheduled employment all shops and establishments which would fall within the ambit of the expression 'establishment'. A hospital being an establishment was held to come within the purview of Part I of the Schedule. Section 26 deals with the power of the appropriate Government to exempt any class of employees employed in scheduled employment from the provisions of the Minimum Wages Act. No



notification exempting employment in Co-operative Societies or private hospitals from the provisions of the Minimum Wages Act has been brought to the notice of this Court. The petitioner being a Co-operative Society and a private hospital, the provisions of the Minimum Wages Act are applicable and is liable to maintain registers and records as provided under Section 18 of the Minimum Wages Act and Rules framed thereunder.

19. As regards the applicability of the provisions of the Maternity Benefits Act, 1961, the Division Bench of this Court in **Noorul Islam Educational Trust v. Assistant Labour Officer and Another** [2008 (1) KHC:2008 (1) KLT 473: ILR 2008 (1) Ker. 97] held that the provisions of Maternity Benefits Act are applicable to all shops



and establishments in the State. Section 2 of the Maternity Benefits Act deals with the application of the Act and it reads as follows:-

“2. Application of Act.

[(1) It applies, in the first instance,--
(a) to every establishment being a factory, mine or plantation including any such establishment belonging to Government and to every establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances;
(b) to every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months:]

PROVIDED that the State Government may, with the approval of the Central Government, after giving not less than two months notice of its intention of so doing, by notification in the Official Gazette, declare that all or any of the provisions of this Act shall apply also to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.
(2) [Save as otherwise provided in [sections 5A and 5B], nothing contained in this Act] shall apply to any factory or other establishment to which the provisions of the Employees State Insurance Act, 1948 (34 of 1948), apply for the time being.”

Section 3(e) of the Maternity Benefit Act defines 'establishment' to mean-



- “(i) a factory;
- (ii) a mine;
- (iii) a plantation;
- (iv) an establishment wherein persons are employed for the exhibition of equestrian, acrobatic and other performances,
- [(iva) a shop or establishment; or]
- (v) an establishment to which the provisions of this Act have been declared under sub-section (1) of Section 2 to be applicable.”

(underlining supplied)

Section 2 read with Section 3(iva) provides that the provisions of the Maternity Benefits Act apply to a shop or establishment. The Division Bench of this Court in **Centre for Professional and Advanced Studies, School of Medical**

**Education v. Abhitha Karun and Ors.** [2022 (5)

KHC 291: 2022 (5) KLT 311: ILR 2022 (3) Ker.

984], has held that the term 'establishment'

referred to in the Maternity Benefits Act can be

any and every establishment within the meaning of

any law for the time being in force in the State in

relation to establishments. The petitioner being a

Society and a hospital would answer the definition

of 'establishment' under the Maternity Benefits

Act. In exercise of the powers under the proviso to

sub section (1) of Section 2 of the Maternity

Benefits Act, the Government of Kerala, vide G.O.

(M.S) No. 5/72/Labour dated 21.01.1972, have

made the provisions of the Maternity Benefits Act

applicable to establishments under the Kerala

Shops and Commercial Establishments Act. The



petitioner is liable to maintain registers and records provided under Section 20 of the Maternity Benefits Act and the Rules framed thereunder.

20. The last question to be considered is whether the provisions of the Kerala Industrial Establishment (National and Festival Holidays) Act, 1958 (for short, 'Festival Holidays Act') would apply to the petitioner Co-operative Society. The Festival Holidays Act has been enacted to provide for the grant of national and festival holidays to persons employed in industrial establishments in the State of Kerala. The Act defines 'industrial establishment' to mean:

- (i) any establishment, industrial, commercial or otherwise, where (twenty) or



more persons are employed, or were employed on any day of the preceding twelve months and includes-

. a factory as defined in the Factories Act, 1948 (Central Act 63 of 1948); and

. a plantation;

(ii) any other establishment which the Government may, by notification in the Gazette, declare to be an industrial establishment for the purpose of this Act;

Section 10 of the Festival Holidays Act deals with exemptions from the provisions of the Act. The petitioner being a Co-operative Society and a hospital comes within the ambit of 'establishment' under the Festival Holidays Act. The Government of Kerala have issued G.O. (P) No. 67/2014/GAD.



dated 05.03.2014 declaring that the holidays to institutions coming under Kerala Shops and Commercial Establishments Act will be governed by Festival Holidays Act. Section 7 of the Festival Holidays Act deals with powers of Inspector appointed under Section 6(1) of the Act to make examination of the registers and records. The petitioner is bound to maintain the registers and records under the Festival Holidays Act.

21. No doubt, the Co-operative Societies Act deals with the conditions of service of the employees of the Society like creation of posts, qualification for appointment, method of appointment, payment of salary, promotion, retirement, *etc.* However, the provisions of the Kerala Shops and Commercial Establishments Act,



1960, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961 and the Festival Holidays Act, deal with enforcement and inspection of various welfare and social security measures for employees which are not essentially covered by the provisions of the Kerala Co-operative Societies Act and Rules. All these enactments operate in different fields with different purposes and objectives, although there may be incidental trenching. The Division Bench of this Court in **Kadungallur Service Co-operative Bank Ltd** (supra), on an analysis of the provisions of the Kerala Shops and Commercial Establishments Act and the Kerala Co-operative Societies Act observed that the Shops Act contains many a provision to safeguard the welfare of the employee like age of



the employee, working hours, sanitation, precaution against accidents, hours of rest, *etc.* whereas, the rules framed under the Kerala Cooperative Societies Act generally deal with the terms and conditions of employment and do not deal with the welfare measures and safety measures specifically provided for in the Shops Act and Rules. The fact that the conditions of service of employees of Co-operative Societies are governed by the Co-operative Societies Act, will not make the provisions of the aforesaid labour legislations inapplicable to Co-operative Societies. Undoubtedly, the Kerala Co-operative Societies Act is a welfare legislation. The Kerala Shops and Commercial Establishments Act, 1960, the Minimum Wages Act, 1948, the Maternity Benefit



Act, 1961 and the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 are social security legislations. It is trite law that when social security legislations are being interpreted, it always has to be interpreted liberally with a beneficial interpretation. The Constitution Bench of the Hon'ble Supreme Court in **Steel Authority of India v. National Union Water Front Workers** [(2001) 7 SCC 1: AIR 2001 SC 3527: 2002 KHC 609] held that, in a case of ambiguity in the language of a beneficial labour legislation, the Courts have to resolve the quandary in favour of conferment of, rather than denial of, a benefit on the Labour by the Legislature but without re-writing and / or doing violence to the provisions of the enactment. The employees of the Co-operative



Societies are entitled to the benefits of the said labour legislations. The Kerala Co-operative Societies Act and Rules do not exclude the operation and applicability of the aforesaid labour laws to Co-operative Societies and the petitioner is bound to comply with the provisions of the said labour enactments.

The writ petition fails and is, accordingly, dismissed.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

SRJ



APPENDIX

EXHIBIT P1.	TRUE COPY OF THE RESOLUTION OF THE MKANAGING COMMITTEE DATED 9-11-13.
EXHIBIT P2.	TRUE COPY OF THE INSPECTION NOTE DATED 19-7-2014.
EXHIBIT P3.	TRUE COPY OF THE REPLY OF THE SOCIETY.
EXHIBIT P4.	TRUE COPY OF THE NOTICE ISSUED BY THE 4TH RESPONDENT DATED 12-11-14.