

[\[Kerala Co-operative Societies Act\] Mere Endorsement Of Complaint By Minister Doesn't Eliminate Registrar's Discretion To Not Order Inspection: High Court](#)

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

V.G. ARUN; J.

WP(C) NO. 19033 OF 2022; 18 JANUARY 2023

THE PRESIDENT, VENNOOR SERVICE CO-OPERATIVE BANK LTD.

versus

STATE OF KERALA

Petitioner by Advs. George Poonthottam (Sr.), Nisha George

Respondents by Advocate General Office, GP Amminikutty K.

J U D G M E N T

The petitioner is the President of a Primary Agricultural Co-operative Society functioning in Thrissur District. The 4th respondent, a former Managing Committee Member of the Society, had lodged complaints before the Registrar of Co-operative Societies and the Minister for Co-operation, alleging misappropriation of funds and maladministration by the present Managing Committee members. This resulted in Ext. P4 report of the Assistant Registrar, Chalakudy pointing out certain defects in the functioning of the Society. Referring to Ext. P4 report, the Registrar of Co-operative Societies ordered an inspection under Section 66 of the Kerala Co-operative Societies Act, 1969 ('the Act' for short). The petitioner alleges that the order under Section 66 (Ext. P5) was issued at the instance of the Registrar of Co-operative Societies, who, in turn, had acted on the dictate of the Minister for Co-operation. In support of this allegation the petitioner relies on Ext. P6 complaint filed by the 4th respondent, wherein an endorsement is made by the Minister, requiring the Registrar to look into the matter. The writ petition is hence filed, seeking the following reliefs;

- i. Issue a writ of certiorari calling for the records leading to Ext. P5 and to quash the same;
- ii. Issue a writ directing that the direction contained in Ext. P6 and the consequential order issued as per Ext. P5 is the result of dictation taking away the independent right of the statutory functionary and therefore bad in law;
- iii. Grant such other reliefs as this Court deems fit in the facts and circumstances of the case.

2. Senior Advocate Gerorge Poonthottam appearing for the petitioners contended that Ext. P5 order is *ex facie* illegal, being an order passed under dictation. It is submitted that, under the scheme of the Act, the Government and the Co-operative Department has minimal role and if a Section 65 inquiry or a Section 66 inspection is to be ordered, that can be done only on the basis of the satisfaction arrived at by the Registrar, based on the available materials. On the contrary, in spite of no major defect being pointed out in Ext. P4 report of the Assistant Registrar, an inspection under Section 66 was ordered, based merely on the dictate of the Minister for Cooperation communicated through the Registrar. In order to buttress the contention that an inquiry cannot be ordered on the basis of the Minister's direction or endorsement, reliance is placed on the decisions in **Kottayam Co-op. Bank Ltd. v. State of Kerala** (1988 (1)

KLT 827), **Panicker Kadavu Consumer Co-op. Society Ltd. v. Registrar of Co-op. Societies** (1994 KHC 387), **Managing Committee of Kandalloor Farmers Service Co-operative Bank Ltd. v. Joint Registrar of Co-operative Societies and Another** (2008 (4) KHC 618) and **Calicut City Service Co-op. Bank Ltd. v. Registrar of Co-operative Societies, Tvm. And Ors.** (2010 (2) KHC 154).

3. Adv.P.P. Thajudeen, the Special Government Pleader (Co-operation), refuted the contention that Ext. P5 is an order passed under dictation and submitted that, merely because a complaint filed before the Hon'ble Minister was forwarded to the Registrar, who in turn had sent it to the Joint Registrar to do the needful, Ext.P5 cannot be termed as an order under dictation. A reading of Ext. P5 would show that the direction to conduct inspection under Section 66 was ordered by the Joint Registrar based on the preliminary report filed by the Assistant Registrar and being convinced about the need for conducting the inspection.

4. As contended by the Senior Counsel, it is settled law that an order passed under dictation by an authority, which is statutorily bound to pass the order independently and on self-satisfaction, is *ex facie* illegal. In **Kottayam Co-op. Bank Ltd.** (supra) the Minister for Co-operation had endorsed a note to the Registrar of Co-operative Societies to call for an urgent report from the Joint Registrar within 15 days and to direct the Joint Registrar to instruct a Society not to conduct the interview for making new appointments in the Bank. That direction was issued based on a complaint filed by some of the candidates who had participated in the written test conducted by the Society. The hasty manner in which the direction was implemented evoked sarcastic comments from this Court about the promptitude with which the order was passed. The Court observed that, while making the endorsement, the Minister had wrongly assumed that the Government had got the supervisory power to pass any order in respect of any matter affecting any Co-operative Society. After careful scrutiny of the relevant provisions of the Act, the learned Single Judge held that the impugned order to be illegal, since the Government is not conferred with any such power. No specific finding regarding the legality of the impugned order on the ground that the order was passed under dictation is seen rendered. In **Panicker Kadavu Consumer Co-op. Society Ltd.** (supra), the learned Single Judge went to the extent of holding that, even a request from a higher authority to a subordinate authority will tantamount to a positive command and viewed in that perspective, even the *indas* (endorsement) of the Minister for Co-operation is to be treated as an order to the Joint Registrar. The said finding cannot be termed an authoritative pronouncement, since the manner in which the so-called *indas* (endorsement) was worded is not discernible from the judgment. In **Managing Committee of Kandalloor Farmers Service Co-operative Bank Ltd.** (supra), while dealing with the legality of an inquiry ordered under Section 65 of the Act, the learned Single Judge observed that the inquiry under Section 65(1) ought to be ordered by the Joint Registrar on his own motion and not under the instructions of the Minister. In **Calicut City Service Co-op. Bank Ltd.** (supra), the Minister had made an endorsement in the margin of a document, directing a vigilance inquiry. The Registrar simply forwarded that document for investigation without applying his mind. The Court held the procedure to be illegal, as it was clear that the Registrar had acted under dictation.

5. While I am in respectful agreement with the dictum laid down in the above decisions, it is doubtful whether the endorsement made by the Minister in the case at hand would amount to dictation. To clear the doubt, one has to understand the

meaning of the word 'dictate'. The Oxford Dictionary meaning of the word 'dictate' is 'to state or order with the force of authority' and 'dictation' means 'the action of giving orders authoritatively or categorically'. In Black's Law Dictionary, 'dictate' means 'to order or instruct what is to be said or written' and 'dictation' means 'to pronounce orally what is destined to be written at the same time by another.' Here, the Minister has only made an endorsement, asking the Registrar to look into the matter and the Registrar forwarded the complaint to the Joint Registrar for taking appropriate action. As such, there is no element of dictation in the endorsement made by the Minister. Similarly, merely by reason of the Registrar having forwarded the complaint with a direction to do the needful, the discretion vested with the Joint Registrar under Section 66 of the Act is not taken away. A reading of Ext. P5 reveals that the Joint Registrar had ordered inspection based on the findings in Ext. P4 report of the Assistant Registrar. The Joint Registrar having thus ordered inspection under Section 66, based on his own satisfaction, the mere fact that the complaint was filed before the Minister for Co-operation and routed to the Joint Registrar through the Registrar of Co-operative Societies, are not sufficient to hold that the Joint Registrar had acted under dictation. As held by this Court in **Sadasivan K.G. v. Joint Registrar and Ors.** (ILR 2008 (1) Kerala 64), the Registrar is empowered to initiate action under Section 66 based on the complaint filed by a member of the Society.

For the aforementioned reasons, the writ petition is dismissed.

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