

ISMAIL
v.
**SHANMUGALINGAM COMMISSIONER OF COOPERATIVE
DEVELOPMENT AND OTHER**

COURT OF APPEAL
JAYAWICKREMA, J.
RAJA FERNANDO, J.
C.A. (PHC) 63/99
JANUARY 16TH, 2000

Removal of a Member from Board of Directors - Cooperative Societies Law 5 of 1972 amendment 11 of 1992 - S. 46 Inquiry - S. 53, S. 60(A), S. 60(B). After S. 46 Inquiry is a second Inquiry necessary?

The 1st Respondent had initiated an inquiry under S. 46 of the Co-operative Societies Law. Thereafter on the findings the Petitioner was charge sheeted, and after the Petitioner/ answered the charges, the 1st Respondent without holding an inquiry rejected the explanation and found the Petitioner guilty of the charges preferred against him.

The application made to the High Court seeking to quash the decision of the 1st Respondent was dismissed.

Held :

- (i) In terms of S. 60B of Act 11 of 1992 a second Inquiry after the inquiry under S. 46 must be held.

APPEAL from an order of the Provincial High Court.

Faiz Musthapa P.C., with *Dr. Jayampathy Wickremaratne* for the Petitioner Appellant.

A. Gnanadasan D. S. G., with *A. Ameen S. C.*, for the 1st Respondent.

Cur. adv. vult.

March 20, 2001.
RAJA FERNANDO, J.

The Petitioner - appellant hereinafter referred to as the Appellant was the President of the 2nd Respondent Co - operative Society having been elected last on 23. 10. 93 for a period of 3 years.

The next election to the posts was due on or about 23. 10. 96 but was not held by the 1st Respondent the Commissioner of Co - operative Development and Registrar of Co - operative Societies, North and East Provinces.

As the election was not held on time, in terms of the By - laws of the 2nd Respondent - Society the Appellant and the other Directors of the Society had continued to function as President and Directors.

The 1st Respondent has then initiated an inquiry and investigated into the affairs and finances of the 2nd Respondent - Co - operative Society in terms of Section 46 of the Co - operative Societies law. Thereafter, the 1st Respondent has on the findings of the inquiry into the 2nd Respondent Co - operative Society charged the Petitioner - Appellant along with the Directors, under Section 60B as amended by Act No. 11 of 92 for non performance of their duties in a proper manner.

The Petitioner has answered the charges by letter dated 25. 11. 97.

On the show cause letter and the answer filed by the Petitioner - Appellant the 1st Respondent without holding an inquiry has rejected the explanation and found the Petitioner guilty of the charges preferred against the Petitioner - Appellant.

The 1st Respondent has thereafter taken steps to convene a meeting of the General Body of delegates of the 2nd Respondent Society and to report to it the finding that the petitioner - Appellant and the directors are guilty of the charges in the show cause letter to enable the General Body to remove the Board of Directors/ Manager including the Petitioner - Appellant and to elect a new Directorate.

According to the Petitioner - Appellant the meeting of the General body summoned by the 1st Respondent for 22. 02. 98 for the purpose of removing the Petitioner and other Directors by the General body did not take place as not a single member turned up for the meeting.

In the meantime the 1st Respondent Respondent has issued letter dated 18. 02. 98 removing the Petitioner from the post of President/Director of the 2nd Respondent Society acting under Section 60B of the Co - operative Societies law as amended by Act No. 11 of 1992 and appointed 3rd, 4th and 5th Respondents as Directors of the Board of Management of the said 2nd Respondent Society.

The Petitioner - Appellant filed Application No. HC/ NEP/ Amp/Writ Application No. 73/98 in the High Court of Amparai for orders in the nature of Writ of Certiorari, quashing the acts of the 1st Respondent - Respondent removing the Petitioner - Appellant from his post of President/Member of the 2nd Respondent-Respondent.

The High Court having heard submissions of both the Petitioner and the Respondents dismissed the Petition of the Petitioner - Appellant.

This appeal is against the order of the learned High Court Judge made on 18. 01. 99 dismissing the Petitioner's application to the High Court.

It would appear from the journal entries that elections for the Board of Directors of the 2nd Respondent Society is due to be held shortly (26. 03. 2001).

The removing of the Petitioner - appellant from the Board of Directors and the appointment of the 3, 4 and 5 Respondent-Respondents as directors of the 2nd Respondent society will hence be merely academic as their term has already expired.

In this appeal the reliefs sought by the petitioner - Appellants are to set aside the order of the learned High Court Judge dated 18. 02. 99 where the application to quash the order of the 1st Respondent - Respondent was refused and to make order setting aside the removal of the Petitioner - Appellant and K. Rajendran from the Board of Management of the 2nd Respondent - Society and the appointment of the 3rd, 4th, 5th Respondents - Respondent as Directors of the 2nd Respondent Society.

As stated earlier with the expiration of the period of office of the Board of Directors of the 2nd Respondent Society on 31. 07. 00 the Petitioner, Mr. Rajaratnam and the 3rd, 4th and 5th Respondents have all ceased to be directors of the 2nd Respondent society and therefore an order of this court to prevent the Petitioner - Appellant from being removed from the Board of Directors of the 1st Respondent society of removing the 3rd, 4th and 5th Respondents from the same board does not arise.

However, in terms of by - laws 53 of the 2nd respondent Society and Section 60A (2) of the Co - operative Societies Act a member who has been removed from the management of a society after an inquiry under Section 46 shall not be eligible for re - election to office of any Registered Society for a period of five years from the date of such removal.

Therefore it will be necessary to inquire into the legality of the removal of the Petitioner by the 1st Respondent by his letter dated 18. 02. 98.

The first submission of the Petitioner is that the 2nd Respondent Society is not a society operating with state funds and hence the 1st Respondent could not have removed the Petitioner and the rest of the Committee under Section 60A (2).

"State funds" has been defined in the Act to mean loans, advances and grants by the Government and includes any loan, grant of advance out of funds referred to in Sections 48 and 57 of the Act.

The learned High Court Judge has come to the conclusion that the 2nd Respondent Co - operative is one which operates with state funds on the basis of documents 1R4 and 1R5 and that the 1st Respondent has complied with the requirements of Section 60B prior to deciding on the removal of the Petitioner from the 2nd Respondent Society.

Section 60B of the Act reads thus:

"If the Registrar is of the opinion after an inquiry and inspection into the books of the registered society under Section 46, that any officer or employee of any registered society is not performing his duties in a proper manner, or is unfit or otherwise unable to discharge his duties efficiently, he may notwithstanding anything to the contrary in this Law, the Co - operative Employees Commission Act, No. 12 of 1972 or any other Law after giving such officer or employee, an opportunity to state their objections, by order in writing suspend or interdict, as the case may be such officer or employee pending such inquiry as may be necessary and after such inquiry remove such officer or employee from office :

Provided that any employee aggrieved by an order of removal made under this subsection, may appeal therefrom to the Co - operative Employees Commission established under Act, No. 12 of 1972 within a period of thirty days, and the decision of such Commission shall be final.

- (2) Where any employee is removed under subsection (1) and where such order for removal has been affirmed by the Co-operative Employees Commission or no appeal against such order has been preferred within thirty days, another employee may be appointed, in accordance with the provisions applicable in respect of such appointment."

Accordingly it is clear that after the inquiry under Section 46 where the Registrar (1st Respondent) is of the opinion that any officer or employee is not performing his duties in a proper manner after giving such officer or employee an opportunity to state their objections and after such inquiry remove such officer or employee from office.

Section 60B clearly contemplates a second inquiry after the inquiry under Section 46 which the 1st Respondent has failed to hold.

The learned High Court Judge has refused the petitioner's application to set aside the Order of the 1st Respondent made on 18. 01. 99 on the basis that a second inquiry was not necessary and that the inquiry under Section 46 was sufficient.

The above finding of the learned High Court Judge is contrary to the provisions of Section 60B of the Co - operative Societies Act as amended by Act No. 11 of 1992.

Therefore on the ground that an inquiry was not held under Section 60B after giving such officer an opportunity to state their objection the Order of the 1st Respondent - Respondent is bad. Hence the order of the learned High Court Judge made on 18. 01. 99 is set aside. We also set aside the Order of the 1st Respondent - Respondent finding the Petitioner - Appellant guilty of non performance of his duties to the 2nd Respondent - Respondent Society in a proper manner without an inquiry.

If the 1st Respondent - Respondent requires to take action against the Petitioner - Appellant he could do so after an inquiry under Section 60 B of the Co - operative Societies Act.

The Commissioner of Co-operative Development and Registrar of Co-operative Societies, North and East Province is free to elect or appoint the Board of Directors to the 2nd Respondent Society according to the Co-operative Societies law No. 5 of 1972 as amended, as scheduled.

The petition of the Petitioner - Appellant is allowed to the extent of setting aside the findings of the 1st Respondent - Respondent that the Petitioner - Appellant is guilty of non performance of his duties to the 2nd Respondent Society in a proper manner.

JAYAWICKRAMA, J. - I agree.

Appeal partly allowed.