

(2016) 07 MP CK 0028

In the Madhya Pradesh High Court

Case No : Writ Petition No. 113 of 2012

Adarsh Adivasi Machhchua

APPELLANT

Vs

Joint Registrar, Cooperative Societies

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Co-operative Societies Act, 1960 — Section 80-A, 9

Citation : (2016) 3 MPLJ 476

Hon'ble Judges : R.S. Jha, J.

Bench : Single Bench

Advocate : Shri Maninder S. Bhatti, learned counsel, for the Petitioner; Shri Vikram Johri, learned Panel Lawyer, for the Respondents nos. 1 to 5; Shri Vijay Kumar Shukla, learned counsel, for the Respondent nos. 6 and 7

Final Decision : Dismissed

Judgement

R.S. Jha, J.—This petition has been filed by the petitioner being aggrieved by the order dated 22.12.2011 (Annexure P/5) passed by the Joint Registrar, Cooperative Societies whereby the registration of the petitioner/society under Section 9 of the Cooperative Societies Act, 1960 (hereinafter referred to as the "Act") has been cancelled on the ground that the proceedings for registration of the petitioner society were taken up by the officer under Section 9 of the Act, without giving proper opportunity of hearing or considering the objections of the respondents no.6 and 7 who were directly effected persons.

2. The petitioner as well as respondent no.6 are the Society of Fishermen. The petitioner/Society applied for its registration under section 9 of the M.P. Co-operative Societies Act, 1960 for the purposes of getting fishing rights. However, as some of the members of the petitioner/Society were not local residents of the village for which the Society was sought to be registered, the rival Society of the petitioner i.e. respondent no.6 filed an objection against the registration in spite of which the petitioner/Society was registered by the competent officer under

section 9 of the Act. The respondent nos.6 & 7, being aggrieved by the registration of the petitioner/Society, filed a revision before the Joint Registrar, Co-operative Societies, Jabalpur against the order passed by the Officer under section 9 of the Act, and the Joint Registrar, Jabalpur, by the impugned order dated 22.12.2011 has set aside the order passed by the Registration Officer, being aggrieved by which the petitioner has filed the present petition.

3. The learned counsel for the petitioner/Society submits that the impugned order passed by the Joint Registrar, Cooperative Societies, Jabalpur is without jurisdiction inasmuch as the revision as filed by the respondents no.6 and 7 was not maintainable before the Joint Registrar, Co-operative Societies as the provisions of Section 80-A of the Act do not provide for entertaining revision against an order passed by a subordinate officer but can be entertained only against some proceedings that are pending in view of the decision of this Court rendered in the case of Lokendra Singh Bhadoriya and another v. Board of Revenue and others (1996 RN 393); that a revision can be filed before and be decided only by the Registrar, Cooperative Societies and not by the Joint Registrar under Section 80-A of the Act; that the order of registration passed under the Act, by the registering authority is final and therefore it could not have been examined in revision by the Joint Registrar in the impugned proceedings of revision; that the respondent had invoked the provisions of Section 80-A of the Act without first seeking the remedy of de-registration as provided and prescribed under Section 18-A of the Act and in such circumstances the Joint Registrar, Cooperative Societies could not have directly entertained the revision.

4. The learned counsel appearing for the respondent nos.6 and 7 per contra submits that the order of registration passed by the authority under Section 9 had been passed without giving any opportunity of hearing to the respondents no.6 and 7 who were directly effected persons as they are the local residents of the village where the fishing tank is situated whereas, the petitioner is a Society comprising of persons who are residing outside the local area. It is submitted that the State Government vide notification dated 16.6.2009 (Annexure R/1) issued in exercise of powers conferred by sub-section (2) of Section 3 of the Act and in supersession of its previous notifications has conferred all the powers of the Registrar under the Act and Rules upon the Joint Registrar, Co-operative Societies, Jabalpur. It is also pointed out that by another notification dated 26.7.1999, as modified and amended by notifications dated 5.1.1999, 14.12.2000 and 18.8.2003, a copy of which has been filed as Annexure R-6(2), the State Government has specifically authorised the Joint Registrar, Jabalpur to exercise powers vested in the Registrar under Section 80-A of the Act amongst other provisions.

5. It is submitted that in such circumstances the Joint Registrar, Cooperative Societies, Jabalpur had the power and authority to exercise revisional jurisdiction under Section 80-A of the Act. It is also submitted that the provisions of Section 80-A are not confined to exercising revisional powers only in respect of the

proceedings of any subordinate officer or decision of the Board of Directors but it also extends to examining the legality or propriety of any decision or order passed by any officer under the Act or the Board of Directors in respect of the proceedings undertaken by them. It is submitted that the decision relied upon by the learned counsel for the petitioner rendered in the case of Lokendra Singh Bhadoriya (supra) is confined only to the interpretation of the word "proceeding" contained in Section 80 of the Cooperative Societies Act, as it then stood and has not taken into consideration the other stipulations contained in the Section and therefore, cannot be considered to be an authority for the proposition urged by the petitioner.

6. The learned counsel for the respondents no.6 and 7 contends that Section 80-A of the Act gives power to the Joint Registrar to call for and examine the decision or order or regularity of any proceeding undertaken by any officer or Board of Director under the Act and therefore, the contention of the petitioner that he should have first invoked power under Section 18-A of the Act is misconceived, more so as the officer and authority empowered to exercise powers under Section 18-A of the Act and Section 80-A of the Act, is the same i.e Joint Registrar, Co-operative Societies.

7. I have the learned counsel for the parties at length.

8. For the purposes of appreciating the rival submissions of the parties it is necessary to consider the provisions of Section 80-A of the Act which deals with the power of the Registrar to call for proceedings of the subordinate officer and the Board of Directors of the Society and to pass orders thereon. The said section as amended in the year 1999 is in the following terms:

"80-A. Power of Registrar to call for proceedings of subordinate Officers and Board of Directors of a society and to pass orders thereon. - The Registrar may, at any time on his own motion or on the application made by any party, call for and examine the record of any enquiry or the proceedings by any sub-ordinate officer or a decision of a Board of Directors of a Society for which Government has contributed to its share capital or has given loans or financial assistance or has guaranteed the repayment of loans granted in any other form for the purpose of satisfying himself as to the legality or propriety of any decision or order passed and as to the regularity of the proceedings of such officer or Board of Directors. If in any case, it appears to the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed, the Registrar, may pass such order thereon as he may deem fit :

Provided that no order under this Section shall be made to the prejudice of any party unless such party had an opportunity of being heard.

Provided further that the powers conferred on the Registrar under this Section, shall not be delegated to any officer below the rank of Joint Registrar."

9. From a bare perusal of this section it is apparent that the Registrar, on an

application being made to him by a party or on his own motion, may call for and examine the record of any enquiry or proceeding of any subordinate officer or in respect of a decision of the Board of Directors of a Society for which the Government has contributed to its share capital or has given loan or financial assistance or has guaranteed repayment of loan granted in any form and the Registrar, after calling for the records of any such enquiry or proceeding, can examine the legality or propriety of any decision or order passed by the officer or Board of Directors and also examine the regularity of proceedings of such officer or the Board of Directors. The section further provides that on such examination if it appears to the Registrar that any decision or order or proceeding so called for should be modified, annulled or reversed the Registrar may pass such order thereon as he deems fit. The second proviso to this section also provides and enables the powers of Registrar to be delegated but at the same time curtails the power of delegation to an officer not below the rank of Joint Registrar.

10. The aforesaid analysis of the section and a bare reading of the same makes it absolutely clear that the powers of revision conferred on the Registrar under Section 80-A of the Act are not confined to merely examining the legality or regularity of any proceeding of a officer or the Board of Directors but also extends to examining the legality or propriety of any decision or order as well, and this aspect is specified and clarified by the second sentence of Section 80-A of the Act which enables the Registrar to modify, annul or reverse any decision or order or proceeding and to pass such order thereon as he may deem fit.

11. As the Registrar under Section 80-A of the Act has been conferred with the power to call for the record of any enquiry or proceeding undertaken by any subordinate officer and to examine the legality of any decision or order or any proceeding undertaken by such officer and to modify, annul or reverse any such decision or order or proceeding and this aspect has been specifically stated and clarified by the statutory provision of Section 80-A of the Act itself, I am of the considered opinion that the contention of the petitioner/Society that the power of revision conferred under Section 80-A of the Act is confined only to merely examining the legality or validity of the proceedings that are pending under the Act and not to examining the validity of any decision or order passed by the officer under the Act is patently misconceived.

12. For the reasons as aforesaid, the contention of the learned counsel for the petitioner that once the proceeding culminates into a passing of an order, no proceeding remains pending before any authority and in such circumstances on the coming to the end of proceedings under the Act, the power of Section 80-A of the Act cannot be invoked, also deserves to be rejected as a bare reading of Section 80-A of the Act makes it abundantly clear that the Registrar has the power to annul, modify or reverse any order decision or proceeding taken up or undertaken by any subordinate officer or the Board of Directors specified under Section 80-A of the Act.

13. In view of the analysis of Section 80-A made in the preceeding paragraphs, I

have no hesitation in stating that if the contention of the learned counsel for the petitioner is accepted and the revisional powers conferred on the Registrar under Section 80-A of the Act is confined only to examining cases of irregularity in pending proceedings alone, it will lead to an absurd result of rendering the specific and clear words mentioned in the statutory provision under section 80-A otiose and redundant inasmuch as the specific mention in the said section regarding the powers of the Registrar to call for the records for the purposes of satisfying himself as to the legality or propriety of any decision or order of any officer subordinate to him and the consequent power conferred upon him to modify, annul and reverse any decision or order passed by such officer or Board of Directors would become meaningless and otiose. It is a settled principle of statutory interpretation that where the language of the statutory provision is clear and unambiguous, full effect to the same is to be given and the Court while interpreting such a provision has to give full play and effect to the words used in the provision and cannot restrict the operation of the statutory provision and cannot render otiose or meaningless any part of the statutory provision by means of a restrictive judicial interpretation.

14. The reliance placed by the learned counsel for the petitioner on the decision of this Court in the case of Lokendra Singh Bhadoriya (supra) is also misplaced and misconceived inasmuch as the facts and issues involved in that case are totally different and, therefore, the decision rendered therein is not material for the purposes of deciding the issue involved in the present petition because in the case of Lokendra Singh Bhadoriya (supra) this Court was required to consider as to whether a notice of election issued by the authority under the Cooperative Societies Act was a proceeding against which the revision proceedings could have been taken up and it was in that context that this Court held that a notice of election was not a proceeding. In fact a perusal of paragraph 5 of the order passed in the case of Lokendra Singh Bhadoriya (supra) makes it clear that in the last five lines of the said paragraph, this Court has held that the legality or propriety of any decision or order passed can be considered under Section 80 of the Act. Apparently the issue raised by the petitioner in the present case i.e as to whether the powers of revision under Section 80-A of the Act, can only be exercised to scrutinise the validity or legality of same pending proceedings under the Act and cannot be invoked or utilised for the purposes of deciding the correctness or the legality of any order or decision under the Act, was not involved or decided in the case of Lokendra Singh Bhadoriya (supra). In the circumstances, the reliance placed by the learned counsel for the petitioner on the decision of this Court in Lokendra Singh Bhadoriya (supra) in support of his submission is misconceived as the aforesaid decision does not render any assistance to the petitioner in the facts and circumstances of the present case.

15. I am also of the considered opinion that while the decision relied upon by the learned counsel for the petitioner is an authority on the interpretation of the word "proceedings" mentioned in the unamended provision of Section 80 of the Act as it stood prior to insertion of Section 80-A of the Act and not in respect of

Section 80-A of the Act however, as the scope of impact of the words "decision" or "order" and the power of the Registrar to modify, annul or reverse any order or decision mentioned in Section 80-A did not come up for interpretation or consideration in that case therefore, the decision rendered in the case of Lokhendra Singh Bhadoriya (*supra*) is not and cannot be taken to be an absolute authority on the scope and power of revision to be exercised under Section 80-A of the Act which was even otherwise not under consideration in the aforesaid decision and, therefore, has to be treated as an authority only in respect of the interpretation of the word "proceedings" and the scope of revision in that regard.

16. In view of the aforesaid analysis, the contention of the learned counsel for the petitioner that the Registrar had no power or authority to call for the proceedings of the Registering officer and to annul the order of registration passed by him is hereby rejected.

17. The next issue raised by the learned counsel for the petitioner is regarding the competency and the authority of the Joint Registrar to exercise revisional powers under Section 80-A of the Act. From a bare perusal of Annexure R/1 filed by the State along with its return and Annexure R-6-2 filed by the respondents no.6 and 7 in their return makes it abundantly clear that the State Government in exercise of powers vested in it by Section 3(2) of the Act has conferred powers upon the Joint Registrar, Co-operative Societies, Jabalpur to exercise all powers conferred upon the Registrar under the Act. A perusal of Annexure R- 6-2 makes it further clear that vide notification dated 26.7.1999 as amended by subsequent notifications dated 5.1.1999, 14.2.2000 and 18.8.2003 the State Government has specifically conferred the powers of the Registrar under Section 80-A of the Act upon the Joint Registrar, Cooperative Societies, Jabalpur amongst other sections which are mentioned in the said notification.

18. In view of the aforesaid delegation, which has been made in exercise of statutory powers vested in the State, there can be no iota of doubt that the Joint Registrar, Cooperative Societies, Jabalpur has the power and authority to exercise revisional powers under Section 80-A of the Act and that the delegation of the powers upon the Joint Registrar under Section 80-A of the Act is also in conformity with the stipulation contained in the second proviso to Section 80-A of the Act and therefore, the contention to the contrary made by the counsel for the petitioner in this regard is meritless and is accordingly rejected.

19. It is also clear from a bare perusal of Section 80-A of the Act that the powers conferred therein can be exercised within any reasonable time by calling for and examining the record of any enquiry or proceeding of any subordinate officer for the purposes of examining the legality or propriety of any decision or order passed and as to the regularity of the proceedings and if in any case it appears that the decision or order or proceeding suffers from illegality, the Joint Registrar may modify, annul or reverse the same and may pass such orders thereon as he may deem fit. Section 80-A of the Act does not contain any restriction or stipulation to the effect that the revisional power conferred upon the authority

cannot or should not be invoked or exercised in a case where a remedy is provided or prescribed under the Act and in absence of any such statutory condition or rider contained in Section 80-A of the Act this Court in exercise of powers under Article 226 of Constitution of India cannot read any such stipulation, restriction or condition therein as urged by the learned counsel for the petitioner to the effect that the powers under Section 80-A of the Act could not be invoked in view of existence of Section 18-A of the Act which confers power on the Registrar to de-register a Society. It however goes without saying that the revisional authority should normally keep the aspect of availability of a statutory remedy in mind before exercising its powers but in any case, the issue in such cases would be more of propriety than illegality and in the facts of the present case, would not render the order of the revisional authority illegal or bad in law.

20. Quite apart from the above, the aforesaid aspect becomes irrelevant and inconsequential in the facts and circumstances of the present case as it is clear that the powers under Section 18-A and 80-A of the Act are both required to be exercised by the Registrar, Cooperative Societies or the Joint Registrar, Cooperative Societies who has been conferred with the authority to do so which fact is apparent from a perusal of notification dated 26.7.1999, as modified from time to time, Annexure R-6(2), wherein Section 18-A also finds specific mention along with Section 80-A of the Act.

21. In view of the aforesaid analysis, the contention of the learned counsel for the petitioner that the powers of revision could not have been exercised or invoked by the Joint Registrar in view of the provision of Section 18-A of the Act, deserves to be rejected in the peculiar facts and circumstances of this case.

22. Having held that the Joint Registrar, Cooperative Societies, Jabalpur had the power to exercise revisional jurisdiction and to examine the validity of the impugned order passed by the Registering authority under Section 9 of the Act, I now proceed to examine the validity of the impugned order passed by the Joint Registrar. From a perusal thereof, it is apparent that the Joint Registrar had examined the record of the case and the proceedings under taken by the officer under Section 9 of the Act and has found that the respondent no.6 had written several letters raising objection to the registration of the petitioner/Society on 30.4.2009, which was received in the office of the Registering Officer on 1.5.2009; a letter/objection dated 26.8.2009 which was received in the office on 26.8.2009; letter dated 22.7.2009 which was received on the same day; letter dated 19.2.2010 which was received in the office of the officer on 22.10.2010; and letter dated 11.5.2010 addressed to the Commissioner, Cooperative Societies, Bhopal raising specific objections regarding the registration of the petitioner/Society and the disqualification of some of its members for the purpose of obtaining lease/license for undertaking fishing activities in the fishing tank that was situated in Village Lohkari situated in Kundam Tahsil. The Joint Registrar had also found, on examining the records, that though these objections

were filed by the respondents no.6 & 7 and were received in the office of the officer concerned, they could not be traced in the record of the Registering Officer and in such circumstances the respondents no.6 and 7 were neither heard nor given any opportunity by the Registering Officer before passing the order allowing the application for registration filed by the petitioner/Society.

23. On the basis of the aforesaid factual finding the Joint Registrar, Cooperative Societies has held that as the order was passed under Section 9 of the Act, without considering the objection of the respondents no.6 and 7 or giving them any opportunity of hearing therefore, the order was bad on account of the fact that it had been passed without following the procedure prescribed by law and in violation of the rights of the respondents no.6 and 7 to be heard, more so as respondents no.6 and 7 who are the local fisherman residing in the village concerned are the directly and adversely effected persons. By recording the aforesaid finding the Joint Registrar, Co-operative Societies has annulled the order dated 1.2.2010 passed by the Registering Officer and has cancelled the registration of the petitioner/Society. Nothing has been placed before me to indicate that the aforesaid finding recorded by the Joint Registrar is either perverse or contrary to and not based on the oral or documentary evidence available on record.

24. In the facts and circumstances of the case, I am of the considered opinion that the impugned order passed by the Joint registrar Cooperative Societies does not suffer from any perversity or illegality on facts or in law warranting interference by this Court.

25. The petition filed by the petitioner being meritless is, accordingly, dismissed.

26. In the facts and circumstances of the case, there shall be no order as to costs.