

(1984) 07 MP CK 0020
In the Madhya Pradesh High Court
Case No : M.P. No. 9 of 1980

Anil Kumar Ojha

APPELLANT

Vs

Appellate Authority, District Co-operative Land Development
Bank Ltd., Mandsaur and Another

RESPONDENT

Date of Decision : 02-07-1984

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1984 MP 123 : (1984) JLJ 619

Hon'ble Judges : G.L. Oza, Acting C.J.; V.D. Gyani, J; R.K. Vijayvargiya, J; R.K. Verma, J; P.D. Muley, J

Bench : Full Bench

Advocate : K.L. Sethi, for the Appellant; A.M. Mathur and S.L. Jain, for the Respondent

Judgement

Oza Actg. C. J.

1. This petition is directed against an order passed by the Chief Executive Officer, District Cooperative Land Development Bank Mandsaur removing the petitioner from service, and the order passed by the Appellate Authority under Rule 43 of the Rules framed u/s 55 (1) of the Madhya Pradesh Co-operative Societies Act, 1960.

2. This matter was listed before the learned single Judge before whom a preliminary objection was raised and on the basis of the preliminary objection as to whether a petition under Article 226 of the Constitution would lie against a Cooperative Society in view of the fact that it could be treated as a State under Article 12 of the Constitution. It appears that the learned single Judge observed that as this question deserves reconsideration of a Full Bench decision of this Court in Ramswarup Gupta Vs. Madhya Pradesh State Co-operative Marketing Federation Ltd. and Others, the matter may be placed before a larger Bench. Thereafter the matter was placed before a Division Bench and the Division Bench passed an order that as the decision of this Court in Ramswarup v. M. P. State Co-

operative Marketing Federation Ltd. (supra) is itself a decision of Full Bench the matter has to be placed before a larger Bench and, therefore, the petition has come up before us.

3. In this petition the petitioner has challenged the order of removal passed by the Chief Executive Officer, Land Development Bank, and also the order passed by the Appellate Authority under Rule 43. The contention advanced by the petitioner is that the order passed by the appellate authority is not a speaking order and as the Appellate Authority is a statutory body hearing an appeal under Rule 43 of the Rules framed u/s 55 (1) of the Co-operative Societies Act, a petition under Article 226 will lie. Learned counsel for the petitioner frankly conceded that he does not want to press the other question of issuing a direction against the Co-operative Society under Article 226.

4. In the Full Bench case of Ramswarup Gupta Vs. Madhya Pradesh State Co-operative Marketing Federation Ltd. and Others, itself it was observed :--

"As regards the second question whether a writ of mandamus, direction or order can be issued under Article 226 of the Constitution of India by a High Court against a Society registered- under Madhya Pradesh Co-operative Societies Act, 1960 it is apparent that, as observed by us earlier, a Co-operative Society registered under the provisions of Madhya Pradesh Co-operative Societies Act does not fall within the definition of the term "other authorities" as stated in Article 12 of the Constitution and is not a statutory body. Therefore, it will suffice to observe that normally such societies will not be amenable to writ jurisdiction of the High Court.

It appears that what has been ultimately decided in this Full Bench decision was about the Appellate Authority and it was - observed that that the jurisdiction under Article 226 of the Constitution can be invoked in proper cases where the violation of the provisions of Section 55 (1) is apparent. In view of the concession made by the learned counsel for the petitioner that he does not want to press the other question but to limit his contention in this petition only in respect of the order passed by the Appellate Authority, it appears that the question which, according to the learned single Judge, deserves reconsideration of the Full Bench decision does not arise, as it is well settled that when a statutory tribunal or an authority exercises jurisdiction under a statutory rule or law hearing an appeal involving the legal right of a citizen, the tribunal or authority is expected to pass a reasoned order. If such an order passed by the statutory tribunals or authorities is not a reasoned order or a speaking order, a petition under Article 226 of the Constitution will lie to this Court. Learned counsel for the parties frankly conceded that if the petition is restricted to this limited question, the doubt expressed by the learned single Judge is of no consequence and it is not necessary for this Court to go into the wider question about the jurisdiction of this Court under Article 226 whether a writ or direction can be issued against a Cooperative Society in view of Article 12 of the Constitution of India.

5. It is, therefore, clear that in view of the fact that the petitioner wants to press this petition purely on the limited question as regards the order passed by the Appellate Authority, which is alleged to be Annexure-XI, there is no question of considering the Full Bench decision of this Court in Ramswarup v. M. P. Stats Co-operative Marketing Federation Ltd, (supra).

6. Section 55 of the M. P. Co-operative Societies Act provides;--

"55 Registrar's power to determine conditions of employment in societies.

(1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in society or class of societies and the society or class of societies in which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

(2) Where a dispute, including a dispute regarding terms of employment Working conditions and disciplinary action taken by a society, arises between a society and its employees, the registrar or any officer appointed by him not below the " rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees.

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of the order sought to be impugned.

Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded.

Sub-section (1) of Section 55 empowers the Registrar to frame rules governing the terms and conditions of employment in a society or class of societies. It is not disputed that in exercise of these powers the Registrar framed rules in regard to the service conditions of the Land Development Bank--vide order dated 1st February 1973. Rule 43 of these rules reads:--

^^?? vihy

??? cSad ds leLr deZpkfj;ksa dks nh xbZ naMkKk ds fo:) fuEu vf/kdkfj;ksa dh vfiy izLrq dh tk ldsxhA

?d? izcU/kd v/;{k ds vkns"k ds fo:) LVkQ desVh dks

?[k? LVkQ desVh ds vkns"k ds fo:) lapkkyu eaMy dks

?2? y/kq"kkLrh ?ekbuj ifu"kesaV? ds izdj.kksa esa vihy xzklugh dh tk ldsxhA

???naMKk lqfpr djus ds fnukad ls ?? fnu dh vof/k esa vUnj gh vihy nk;j dh tk ldsxhA

??? lkekU;r% vihyksa dks izLrq djus ds fnukad ls rhu efgus dh vof/k esa fuiVks nsuk pkfg;sA

Sub-rifle (1) of this rule provides for an appeal to the authorities t enumerated in

clauses (ka) and (kha) of that sub-rule. It appears that an order passed by the Chief Executive Officer under clause (ka) is appeal able before the staff committee. :Annexure-XI appears to be an intimation of the order on appeal which reads"

fo"k;kuqlkj okilh vihy ij LVkQ desVh fnukad ?&"&"? dks cSBd esa fopkj fd;k x;k ftlesa

fu.kZ; fy;k x;k fd izdj.k esa iqufopkj dk dksbZ dkj.k utj ugha vkus ls eq[; dk;Ziky vf/kdkjh }kjk fy;k x;k fu.kZ; ;Fkkor j[kk x;kA

It is on the basis of this to at the only quest ion raised by the petitioner in this petition is that this order passed by the Appellate Authority in exercise of the powers conferred under rules, which art statutory rules as they are framed by the Registrar in exercising of the powers conferred u/s 55 (I) of the Co-operative Societies Act is not in accordance with law as it is not a speaking order and gives no reasons for the conclusion arrived at.

7. In The Nayagarh Co-operative Central Bank Ltd. and Another Vs. Narayan Rath and Another, their Lordships of the Supremep Court also observed (para 5):--

"The High Court has dealt with the question whether a writ petition can be maintained against a Co-operative Society, but we are inclined to the view that the observations made by the High Court and its decision that such a writ petition is maintainable are not strictly in accordance with the decisions of this Court. We would have liked to go into the question for ourselves, but it is unnecessary to do so as respondent No. 1 by his writ petition was asking for relief not really against a Co-operative Society but in regard to the order which was passed by the Registrar, who was acting as a statutory authority in the purport-ed exercise of powers conferred on him by the Co-operative Societies Act. The writ petition was in that view maintainable."

8. In view of the limited question now raised in this petition, in our opinion, it is not necessary for us to go into the question for reconsideration of the Full Bench decision of this Court, as it is settled that a statutory authority hearing an appeal involving a legal right of the citizen must pass a speaking order. In view of this limited question, therefore, it would, not be proper for us to go into that question. It is: therefore, directed that the petition be listed before the learned single Judge who will hear it on the limited question and dispose it of in accordance with law.