

(1995) 04 MP CK 0026

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1237 of 1994

Arajpatrit Shashkiya Karmachari Grih Nirman Sanstha,
Gwalior

APPELLANT

Vs

Subhash Yadav and Others

RESPONDENT

Date of Decision : 21-04-1995

Acts Referred:

Constitution of India, 1950 — Article 166

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

Citation : AIR 1996 MP 39 : (1995) 40 MPLJ 988 : (1995) MPLJ 988

Hon'ble Judges : T.S. Doalia, J

Bench : Single Bench

Advocate : M.M. Kaushik, for the Appellant; K.B. Chaturbedi, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doalia, J.

This petition under Articles 226 and 227 of the Constitution has been preferred under following circumstances:--

There is a communication, copy whereof is Annexure P-7. This is dated 27th of August, 1994. In this, it is mentioned that some complaints were received by the concerned Minister at a function which has been described as "Khula Manch". These complaints have been referred for investigation and report. It is against the action contemplated by the aforementioned order, Annexure P-7, this petition has been filed.

The learned counsel appearing for the petitioner submits-

(i) The concept of entertaining complaints in a forum known as "Khula Manch" is not known to law.

(ii) The minister could not entertain the complaint because a procedure stands prescribed under the M. P. Co-operative Societies Act, 1960. According to him

disputes are referable u/s 64 of the aforementioned Act. It is submitted that the present procedure adopted would amount to entertaining disputes contrary to the provisions of Section 64 of the Act.

(iii) That the disputes could not be investigated by a person who is not authorised under the Act. According to him only a person who falls within the term "Registrar" is competent to go into the disputes.

(iv) That, what is going to be investigated is not apparent. A vague and fishing inquiry is not contemplated under the law.

The above arguments raised by the learned counsel for the petitioner are countered by the counsel appearing for the State. He has placed reliance on the Division Bench decision of this Court given in *Deodas Mohanta and another v. State of M. P. and others*, W. P. No. 2902/94 decided on 3-2-1995 at the Main Seat at Jabalpur. The Division Bench concluded that the disputes can be got settled through a forum known as "Khula Manch", but parties should give their consent. The reasoning given is that the procedure is akin to the procedure which is adopted in Lok Adalat.

Learned counsel for the petitioner however submitted that the ratio of the aforementioned judgment of the Division Bench is that the matter can be got adjudicated only if the parties give their consent and according to him this consent is missing in this case.

The opinion of the Division Bench was expressed by Hon"ble the Chief Justice Shri U. L. Bhat. The relevant observations made in para 13 are as under:--

"13. Section 64 of the Act provides for reference of disputes to the Registrar Cooperative Societies for decision. There are provisions for appeal and revision. According to the petitioners, Registrar has to decide disputes in accordance with law taking into consideration the provisions the Limitation Act and Court-fees Act. The basic contention of the petitioner is that decisions are taken at the Khula Manch by the second respondent or officers of the Department and that is violative of the provisions of the Act. The petitioners have not placed any reliable documentary material before us to show that the forum of Khula Manch was used to adjudicate disputes by pronouncement of decisions by any person. As explained in the returns, Khula Manch is conceived as a Forum to settle long pending and outstanding grievance by mutual consent on the pattern of Lok Adalats. Respondents have made it repeatedly clear in the return that Khula Manch is no different from Lok Adalat which is based on mutual consent of both the parties. It is clear that nobody is obliged to give consent for settlement of any grievance or dispute. Consent is purely voluntary. In these circumstances, we reject the contention that organising Khula Manch is contrary to any Constitutional or statutory provision."

I have considered the matter. I am of the view there is no merit in any of the contentions of the counsel for the petitioner.

It is not in dispute that complaints were entertained by Respondent No. 1 who happens to be a Minister in the Department of Co-operation and, therefore, he looks after even the subject of co-operative societies.

Under the rules of business framed under the Constitution, the executive business of the State is to be carried out in terms of Article 166 of the Constitution. While dealing with the interpretation of Article 166 of the Constitution, the Supreme Court in *Bachhittar Singh Vs. The State of Punjab*, , concluded that the order passed by the Chief Minister, even though it is on matters pertaining to the portfolio of another minister, will be deemed to be an order of the Council of Ministers. Reference be also made to the another decision reported as *Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another*, . It was held that constitutional scheme does contemplate that in a given case hearing can be given by a Minister who can take a quasi-judicial decision. It was observed at page 325 that:--

". . . . Pursuant to the rule, the record discloses, the Chief Minister, who was in charge of Transport, had made an order directing the Secretary to Government, Home Department, to hear the objections filed against the scheme proposed by the State Transport Authority."

It was further held that:--

"The aforesaid machinery evolved by the rules for the disposal of cases by the State Government has been followed in this case. The petitioners and other filed objections to the proposed scheme before the Secretary to the Government Transport Department. He gave a personal hearing to the parties -- some of them appeared in person and others by representatives, the entire material recorded by him was placed before the Chief Minister in charge of Transport, who made his order approving the scheme; and the order was issued in the name of the Governor, authenticated by the Secretary in charge of the Transport Department. It may, therefore, be said that the State Government gave the hearing to the petitioners in the manner prescribed by the rules made by the Governor."

". . . . The concept of a quasi-judicial act implies that the act is not wholly judicial; it describes only a duty cast on the executive body or authority to conform to norms of judicial procedure in performing some acts in exercise of its executive power. The procedural rules made by the Governor for the convenient transaction of business of the State Government apply also to quasi-judicial acts, provided those rules conform to the principles of judicial procedure."

Thus, no fault can be found with the procedure adopted by the concerned Minister in entertaining the complaint which pertained to department, allocated to him to under Rules of Business framed under Article 166. The department of Co-operative as noticed above is being looked after by respondent No. 1. Therefore, it can be said with authority that concerned Minister can deal with each and every aspect of the matter falls within the purview of the business

allocated to him under Article 166 of the Constitution. Apart from this, there is a statutory provision in the shape of Section 80 of the M. P. Co-operative Societies Act, 1960. This provision reads as under:--

"80. Power of State Government and the Registrar to call for proceedings of subordinate officers and to pass orders thereon.--The State Government or 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 subordinate officer for the purpose of satisfying itself or himself as to the legality or propriety of any decision or order passed and as to the regularity of the proceeding of such officer. If in any case, it appears to the State Government or the Registrar that any decision or order or proceedings so-called for should be modified, annulled or reversed the State Government or the Registrar, as the case may be, may pass such order thereon as it or he may deem fit."

Under the above Section, the State Government is at liberty on its own motion or an application being made by any party to call for and examine the record of any inquiry or proceedings of any subordinate officer for the purpose of satisfying itself about the legality or propriety of any decision taken or order passed and as to the regularity of the proceedings.

There is no dispute that when some illegality is brought to the notice of the State Government by a third person, and action is taken then even that action would be an action taken in exercise of suo motu jurisdiction. Such was the view expressed by Punjab and Haryana High Court in *Jaswant Singh v. State of Punjab* (1986) 1 Hyd Reports and Statutes (PB) 314. What was being interpreted was Section 69 of the Punjab Co-operative Societies Act, 1961. This section confers suo motu powers on the State Govt. It was observed that there is no difference in the exercise of the powers when action is taken by the State Govt. itself, or when the action is taken when a third person brings some illegality to the notice of the State Govt. At page 318, it was observed:--

"I hence fail to see how the position would become diametrically different if the matter is brought to the notice of the revisional authority (which is clothed with wide powers) by one of the parties to the dispute. The State Government is not a natural person and has no personal knowledge of its own and matters are thus brought to its notice either directly or by its employees or by other and no fatality can attach to an order on the hypertechnical ground that if the State Government had acted suo motu its action would have been unassailable but merely because the action is taken on proceedings brought to its notice by another the self-same action would become totally vitiated."

In this regard, reference be made to the decision given by the Supreme Court in the case of *Everest Apartments Co-operative Housing Society Ltd. Vs. State of Maharashtra and Others*, where the scope of Section 154 of the Maharashtra Cooperative Societies Act, 1960 was under consideration. The Supreme Court was of the view that the State could exercise suo motu jurisdiction even where

the Government was moved by a person not a party to the dispute. Relevant observations made by the Supreme Court be noticed again (Para 6):--

".....It is, of course, true that the words "on an application of a party" which occur in Section 150 of the Act and in similar enactments in other Acts, are also not to be found. But that does not mean that a party is prohibited from moving Government. As Government is not compelled to take action unless it thinks fit. The party who moves Government cannot claim that he has a right of appeal or revision. On the other hand, Government should welcome such applications because they draw the attention of Government to cases in some of which Government may be interested to intervene. In many statutes, as for example, the two major procedural Codes, such languages has not only inhibited the making of applications to the High Court, but has been considered to give a right to obtain intervention, although the mere making of the application has not clothed a party with any rights beyond bringing a matter to the notice of the Court. After this is done it is for the Court to consider whether to act or not. The extreme position does not obtain here because there is no right to interference in the same way as in a judicial proceeding. Government may act or may not act; the choice is of Government. There is no right to relief as in appeal or revision under the two Codes. But to say that Government has no jurisdiction at all in the matter is to err and that is what Government did in this case."

Reference be also made to the decision of the Privy Council in the AIR 1948 102 (Privy Council) . In the above case, the Privy Council has observed (At P. 107 of AIR):

"It is possible that there might be a contest in which words so inapt for that purpose would create a duty. But in the present case there is no such context. On the contrary Section 33 follows upon a number of Sections which determine the rights of the assessee and is itself, as its language clearly indicates, intended to provide administrative machinery by which a higher executive officer may review the acts of his subordinate and taken the necessary action upon such review. It appears that as a matter of convenience, a practice has grown up under which the Commissioner has been invited to act "of his own motion" under the section and where this occurs a certain degree of formality has been adopted. But the language of the section does not support the contention, which has at the root of the third question and is vital to the respondent's case, that it affords a claim to relief."

To the same effect is a decision given by a Full Bench of Punjab and Haryana High Court reported as Gurnam Kaur v. State of Punjab (1993) 13 L. R. S. 254. The Full Bench concluded as under:--

"The aforesaid provision does not specifically mention that such powers could be exercised by the Commissioner or by the Financial Commissioner suo motu or at the instance of the interested or the aggrieved parties. In the absence of use of such phraseology, it cannot be said that the Financial Commissioner or the

Commissioner could not act under the provision aforesaid. Rather the statute is to be interpreted in such a manner that it fulfils the object for which the same is framed."

Thus, under Article 166 of the Constitution read with Section 80 a Minister of the Government is competent to deal with any matter which comes under his department. Co-operative Society is a department which falls within the purview of respondent No. 1 and, therefore, he can exercise powers not only under Article 166 but also call for and examine the record of any proceedings or any action taken by any functionary in the Cooperative Department. The action of the concerned Minister is thus according to law covered by Section 80 of the Act. As such the arguments raised are without any basis.

The other argument raised by the learned counsel for the petitioner is that the order Annexure P-7 does not indicate as to what matter is going to be examined. In this regard he also states that the person who has been appointed to hold an enquiry is not that officer who can be said to be fall within the term "Registrar". The communication Annexure P-7 has been issued by the Inspector, Co-operative Societies. This appears to be preliminary fact finding enquiry. He has to merely submit a report. As and when a report is submitted the further question as to what action is to be taken and who is to take such further action would be decided. Therefore, the appointment of the Enquiry Officer with a view to go into certain preliminary facts is not beyond the Act. With regard to the allegations of vagueness all that is required to be said is that the petitioner would appear before the concerned officer and the concerned officer would give the details to the petitioner. As such, the question that some vague matters are going to be looked into is a mere apprehension on the part of the petitioner. He would appear before the officer and would be at liberty to seek information as to the exact matter which is going to be enquired into.

I am of the view that:--

(i) That Minister in the State Government can take cognizance of the matter which is allocated to him under the rules of business, framed under Article 166 of the Constitution.

(ii) That in the present case, respondent No. 1 being Minister in the Department of Co-operation can take cognizance of the matter even in a forum "Khula Manch" and he could get action initiated on it.

(iii) That the Minister can exercise the powers of the State Government and, therefore, he could act even u/s 80 of the M. P. Co-operative Societies Act.

(iv) Suo motu powers can be exercised even when third party brings some illegality to the notice of the State Government or the officer mentioned in Section 80 of the M. P. Co-operative Societies Act.

(v) Fact finding enquiry can be held by the officer.

This petition is without merit and is dismissed.