
(2011) 09 CHH CK 0041
In the Chhattisgarh High Court
Case No : Writ Appeal No. 560 of 2010

Bal Ashram and Another

APPELLANT

Vs

State of C.G. and Others

RESPONDENT

Date of Decision : 06-09-2011

Acts Referred:

Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 33(4)

Citation : (2011) 4 CGLJ 606

Hon'ble Judges : Sunil Kumar Sinha, J; R.S. Sharma, J

Bench : Full Bench

Judgement

Hon'ble Shri Sunil Kumar Sinha, J.—This appeal is directed against the order dated 4th of December, 2010 passed in W.P. (C) No. 4882/2010 by the learned Single Judge of this Court. The facts, briefly stated, are as under:--

Appellant No. 1 is a registered society, incorporated under M.P. (C.G.) Society Registrikaran Adhiniyam, 1973. After its supersession on 15.05.2006, Collector Raipur was appointed as Administrator, who joined on 17.05.2006. Thereafter, respondent No. 2 was appointed Administrator on 14.05.2008. Earlier, two writ petitions namely W.P. (C) No 6290/2008 (Gokul Das Daga Vs. State of C.G. & Others) and W.P. (C) No. 3133/2009 (Bal Ashram & Another Vs. State of Chhattisgarh & Others) were filed and were disposed of by a common order dated 22nd of July, 2010. The operative part of the common order contained in paras 4 & 5 read as under :--

4. In view of the above, it is directed that the new administrator or the Registrar himself may ensure holding of elections as early as possible on the basis of members enrolled earlier prior to the appointment of new administrator, as early as possible, preferably within a period of six weeks from the date of receipt of a copy of this order.

5. With the aforesaid direction and observation, both the writ petitions are disposed of.

The subsequent writ petition i.e. W.P. (C) No. 4882/2010 was filed by the appellants on the ground that the said authorities incorporated new members subsequent to the order of supersession and appointment of administrator, i.e. 15.05.2006 and they wanted to convene the election on the basis of new membership list, which was not in accordance with law and was also in violation of order dated 22.07.2010 passed in above writ petitions. At the time of hearing of W.P. (C) No. 4882/2010, learned counsel for the respondents submitted that they are complying with the order dated 22.07.2010 in its letter and spirit for holding election on the basis of members enrolled earlier prior to the appointment of new administrator. On the said statement made by the counsel for the respondents, the learned Single Judge disposed of the writ petition reserving the liberty to the appellants to take recourse to proper forum, if the order dated 22.07.2010 passed in Gokul Das Daga (Supra) and other connected matter is not complied with in its letter and spirit.

2. Mr. Gautam Bhaduri, learned counsel appearing on behalf of the appellants, argued that the authorities of the State were trying to hold the election on the basis of new members enrolled after the supersession; sufficient material was brought to the notice of the Single Judge in this regard; therefore, the learned Single Judge, ought to have clarified in the order the legal position and would have directed in express words that the election would be convened on the basis of members who were enrolled on the date of supersession of the society and not on the basis of members enrolled thereafter. Mr. Bhaduri submitted that the Registrar/Administrator cannot enroll new members, therefore, the action relating to enrollment of new members was ab-initio void and election cannot be convene on the basis of newly enrolled members. He placed reliance on 2 decisions i.e. K. Shantharaj and another Vs. M.L. Nagaraja and others, ; and Sujit Kumar Banerjee Vs. State of M.P. and Others,

3. On the other hand, learned counsel for the interveners/newly enrolled members, opposed these arguments and contend that Registrar/Administrator has full authority to enroll new members and the election should be convened on the basis of voter list prepared after enrollment of new members by the administrator as per Section 33(4) of the Act, 1973.

4. We have heard the learned counsel for the parties at length and have also perused the records of the writ appeal as also the writ petition.

5. The learned Single Judge has already directed that the election shall be convened on the basis of members enrolled earlier, prior to the appointment of the new administrator, therefore, nothing more is required to be directed in writ appeal. Further if a controversy has been raised, we would clarify the order passed by learned Single Judge, which we do in the following manner.

6. In K. Shantharaj¹ (Supra), the matter was relating to Karnataka Cooperative Societies Act. Section 30 & 30A of the Act deal with the provisions of supersession of the committee and appointment of special officer, Sub-section

(3) of Section 30-A of the said Act reads as under:--

(3) The Special Officer subject to the control of the State Government and the Registrar, exercise and perform all the powers and functions of the committee of the co-operative society and take all such actions as may be required in the interest of the co-operative society.

It was interpreted by the Supreme Court that the language of the above provision would make it clear that the administrator or the Special Officer would do all functions in the interest of the society as per law. He will conduct the election as is enjoyed their under. But he is not vested with power to enroll new members of the society.

7. In *Sujit Kumar Banerjee*¹ (Supra), the learned Single Judge of M.R High Court, dealing with the matter of M.R (C.G.) Society *Registrikaran Adhiniyam*, 1973, relying on the above judgment of the Supreme Court, has also held that Administrator though has every power to exercise all the functions of the governing body as per Section 33(4), cannot enrol new members. He has to hold election on strength of membership, which were available with the society on the date of its supersession.

8. The provisions of above two Acts i.e. *Karnataka Co-operative Societies Act & M.P. (C.G.) Society Registrikaran Adhiniyam*, 1973. Section 33(4) are almost similar. Therefore, on the above view taken by the Supreme Court, the Registrar/Administrator was having no authority to enroll new members and he has to conduct the election on the basis of the list of members which was existing on the date of supersession, which in this matter would come on 15.05.2006.

9. Therefore, we dispose of this writ appeal by short clarification that the Registrar/Administrator as the case may be, shall hold the election strictly in accordance with the list of members, which was prevailing on the date of supersession i.e. 15.05.2006. We further direct that the election shall be convened within a period of 6 weeks from the date of receipt of a copy of this order. The liberty reserved in the order dated 4th December 2010 remains as it is.

10. The writ appeal, therefore, is disposed of with the above clarification of the impugned order dated 4th December, 2010. No orders as to cost.