
(2000) 08 OHC CK 0029
In the Orissa High Court
Case No : O.J.C. No. 9080 of 1999

Bhagirathi Badajena

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-08-2000

Acts Referred:

Citation : AIR 2000 Ori 180

Hon'ble Judges : Pradipta Ray, J;P.K. Misra, J

Bench : Division Bench

Advocate : Gangadhar Rath and P. Acharya, A. Pattanaik and S.R. Pati, for the Appellant; Ganeswar Rath, S.N. Mishra, A.K. Nanda and T.K. Praharaj, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—Petitioner was the elected Chairman of the Orissa State Cooperative Marketing Federation, Bhubaneswar (hereinafter referred to as "the Federation") and assumed office with effect from 11-4-1998 for a term of four years. Prior to such election, petitioner was nominated President of the said Federation along with two other Government officials as the members of the Committee of Management as per office order of the Registrar of Co-operative Societies. The petitioner was then at the helm of administration of the Society since February, 1996. When the petitioner was continuing in the said office holding the post by virtue of his election, the Registrar by virtue of power conferred under Sub-section (7) of Section 32 of the Orissa Co-operative Societies Act, 1962 (hereinafter referred to as "the Act") by order dated 21-7-1999 (Annexure-3) suspended the Committee of Management headed by the petitioner. Petitioner challenges the said order in Annexure-3 on the ground that the opp. party No. 2 has passed the order to pave way for the party in power to use the personnel and vehicle of the Federation for election of Co-operation Minister. It is alleged that the said order has been passed mechanically without application of mind which is illegal, arbitrary, unreasonable and

unsustainable in the eye of law. It is further submitted that order in Annexure-3 runs contrary to several judicial pronouncements of this Court and Apex Court, particularly judgment of this Court in the case of the Charan Binei v. State (OJC Nos. 3488 and 3760 of 1990, disposed of on 27-7-1991).

2. In Annexure-3 it has been alleged by the Registrar that from various allegations and enquiries, it reveals that the Committee of Management of the Federation has committed serious irregularities, omissions and commissions like,

- (i) illegal appointment of staff and their continuance;
- (ii) entering into a loss making oil deal, imprudent purchase of fertiliser and huge stock maintenance causing heavy financial loss;
- (iii) improper business deal of E.A.P.;
- (iv) lack of supervision and control over the staff leading to heavy misappropriation of fertiliser stock;
- (v) irregular leasing out of S,C. plant and failure to recover the outstanding dues; and
- (vi) unauthorised and illegal invitation of tender for joint venture building complex etc.

From the aforesaid allegations and enquiries, it was concluded by the Registrar that continuance of the Committee of Management is detrimental and prejudicial to the interest of the Federation, its members and Government.

3. Petitioner submitted that no allegation petition has ever been submitted to the Registrar nor enquiry to that effect has been conducted by him and if at all any enquiry was conducted by the Registrar, it has been done at the behest of Co-operation Minister without giving an opportunity of hearing to petitioner and on the basis of such enquiry conducted at the behest of Co-operation Minister, the Registrar has exercised his power while passing the Impugned order. It is further submitted that verbatim reproduction of the language used in the statute clearly indicates that the impugned order in Annexure-3 has been passed mechanically without due application of mind for coming to the conclusion that the omission or any serious irregularities for further continuance of the Committee of Management would be detrimental to the interest of the Federation. It is further submitted that it is an affiliated society who is directly affected because of commission, omission or any serious irregularities by the Committee of Management. Supersession of the Committee of Management has not only been done in the case of petitioner but also a number of other societies due to political vengeance and differences. It is further submitted that In view of election notification by Election Commission of India for holding election to the Lok Sabha, the State Government cannot make any new appointment or take any action etc. after declaration of election as per guidelines formulated by Election Commission of India and as such, suspension of the elected Committee of

Management and appointment of new Committee of Management being contrary to such guidelines, is not tenable in law and the Committee of Management will enable political party in power to use vehicles, personnel and other equipments of the Federation to the advantage of the party in power as action is taken after four days from the date of issuance of model Code of Conduct. It is further alleged that as has been admitted by the Registrar in paragraph-6 of the counter-affidavit in the connected matter being OJC No. 8898/99 that the State Government has directed the Registrar u/s 123-A of the Act to take necessary action. The same ground has also been taken in challenging notice issued u/s 32(1) of the Act which was issued on 16-9-1999 (Annexure-5).

4. Counter-affidavit has been filed on behalf of the opp. parties 1 and 2. A counter was also filed by opp. party No. 2 prior to issue of notice u/s 32(1) of the Act. In para-5 it was submitted that the deponent and Auditor General of Co-operative Societies have been directed by the Government u/s 123-A of the Act to conduct an enquiry with regard to oil deal, fertiliser scam and irregular appointment matters. The Government has also issued certain instructions to the Federation as a remedial measure but as the Federation did adhere to the instruction of the Government on receipt of enquiry report from the Auditor General of the Co-operative Societies, Government has requested the Registrar to take necessary follow up action and report back the irregularities and illegalities found out by the report of the Auditor General are detrimental to the interest of the Federation. The Registrar taking all the factors into consideration, in exercise of his power vested u/s 32(7) of the Act, suspended the Committee of Management to safeguard the interest of Federation. The Registrar in para-9 has further stated that there has been no irregularity or illegality in passing the impugned order in Annexure-3 u/s 32(7) of the Act and this action is not hit by Election Code of Conduct. Under these facts, this Court directed the State Counsel to produce records and as found from note sheet dated 20-7-1999 that on receipt of the enquiry report of the Auditor General dated 10-6-1999 forwarded by the Secretary to Government by his letter dated 14-5-1999 the matter was placed before the Registrar and the Registrar has passed the order of suspension of the Committee of Management for the present. The report of the Auditor General which is available in the said record supports the allegations made in the impugned notice by the Registrar which has been given as a ground for suspension of the Committee of Management headed by the petitioner. The allegations are not only relatable to the present Committee of Management, but also are relatable to the period when the petitioner was nominated as President of the Committee of Management by notification dated 6-2-1996.

5. Section 32(7) of the Act reads as follows :

"Notwithstanding anything contained in this section, if in the opinion of the Registrar, the Committee of any Society is acting in a manner prejudicial to the interest of the Society or its members, or has committed such serious irregularities or illegality that further continuance of the Committee would be

detrimental to the interest of the Society, the Registrar may at any time before or, as the case may be, after issue of a notice under Sub-section (1), suspend the Committee, and make such arrangement as he thinks proper for the management of the affairs of the Society during the period of suspension of the Committee :

Provided that if the Committee so suspended is reinstated the period of suspension shall count toward its term."

From the aforesaid facts, it is clear that allegation of the petitioner that impugned order of suspension of the Committee of Management in Annexure-3 has been passed for political reason at the behest of the Co-operation Minister is not corroborated from the record and petitioner has not adduced any evidence except the bald allegation made in the writ petition. Therefore, all these allegations with regard to political motive for suspending the Committee of Management is not tenable in fact.

6. With regard to second submission that the same is violative of Election Code of Conduct as the impugned order has been assed after four days from the day Code of Conduct is applicable is also not tenable in law as there is no prohibition in the Code of Conduct for taking such action. Petitioner has also failed to point out any provision in the Code of Conduct annexed to the writ petition as Annexure-4 to indicate that such prohibition is available in any of the issues of the Code of Conduct. Therefore, submission of petitioner on this Count has also no force.

7. Third point urged by petitioner that opp. party No. 2 passed the order mechanically by repeating the language of Sub-section (7) is also not correct because specific instances of irregularities and illegalities committed by the Committee of Management as found from the report of the Auditor General were mentioned in the order of suspension of Committee of Management. Therefore, this ground has also no substance to challenge the illegality of the impugned notice to Annexure-3.

8. It appears from the record that the Auditor General's report was forwarded to the office of the Registrar on June 14, 1999. The Registrar got the same examined and verified in his office. Upon consideration of the report the Registrar on July 21, 1999 issued the impugned order of suspension. In view of the specified instances of alleged irregularities and illegalities committed by the Committee of Management mentioned in the report of the Auditor General, it cannot be said that there was no material to form the opinion as required for exercise of the power u/s 32(7) of the Act. When there are materials with necessary date and Instances, Court should not interfere with the opinion formed on the basis of such objective material.

9. The fourth ground urged by petitioner that there is a submission by opp. party No. 2 for a direction having been issued u/s 123-A of the Act that Suspending the Committee of Management is not factually correct. What has been admitted

in the counter that a direction has been issued u/s 123-A of the Act to the Registrar and Auditor General to make certain enquiry and certain remedial measure was suggested which has not been carried out by the Committee of Management headed by the petitioner. As per direction of the Government.

10. Auditor General has made enquiry and forwarded his finding to the Government who in turn forwarded the same to the Registrar for his perusal and further action; It has nowhere stated what action the opp. party No. 2 has to take on the basis of such report. That means it was left to the Registrar's discretion to act in a manner in accordance with the statute and on the basis of finding regarding allegations made in the report. It is, therefore, very clear that the Registrar has not acted by direction or dictate to suspend the Committee of Management or to invoke the power u/s 32(7) of the Act.

11. With regard to the last submission urged by petitioner that the Impugned order in Annexure-3 is against the settled law pronounced by this Court and the Apex Court specially in Charan Binei's case (supra). This is a common judgment in the petition filed by the one Charan Misoi and Mohan Pradhan and have challenged the Registrar's order dated 10-9-1990 superseding the Committee of Apka Central Cooperative Bank Ltd. This Court has quashed the order of suspension of the Committee of the Bank being of the view that Registrar's power to suspend is an extreme power to be exercised with great caution only if continuance of the Committee is detrimental to the society and not for minor irregularity. This Court has found that the Committee had been in the office only for eight months. Now there was nothing on record to show that it has done any such act which could be detrimental and prejudicial to the interest of the society. But the present case stands in a different footing. The irregularities and illegalities mentioned In the order on the basis of the report of the Auditor General prima facie cannot be termed as minor irregularities. They if correct, are of such serious nature that it effects very existence of the society. Therefore, the aforesaid decision is of no assistance to the petitioner.

12. In view of these findings, our conclusion is that the Registrar on proper application of mind to the allegations and findings of report of the Auditor General which are of very serious nature, having taken action in the interest of public in accordance with power conferred u/s 32(7) of the Act. there is no illegality or infirmity in the impugned order in Annexure-3.

13. The writ petition falls and is dismissed. AH interim orders are vacated. The proceedings u/s 32(1) of the Act initiated by notice No. 21757 dated 16-9-1999 be disposed of as expeditiously as possible. But in the facts and circumstances of the case, there will be no order as to costs.

Pradipta Ray, J.

14. I agree.