
(2010) 12 CHH CK 0005
In the Chhattisgarh High Court
Case No : Writ Petition No. 3512 of 2003

Bhagwat Prasad and Others

APPELLANT

Vs

President, Harijan Machya Shahakari Samiti and Others

RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Co-operative Societies Act, 1960 — Section 19C

Citation : (2011) 2 MPJR 130

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the legality and validity of the order dated 11.8.2003 (Annexure P-6), passed by the Assistant Registrar, Cooperative Society, Janjgir, District Janjgir - Champa, whereunder the resolution for expulsion of the petitioners from membership of Harijan Machya Shahkari Samiti (respondent No. 2), was approved.

2. The indisputable facts, in nutshell, are that the petitioners alongwith others formed the respondent No. 2/Samiti and the same was registered under the Cooperative Societies Act, 1960 (for short "the Act, 1960"). The respondent No. 2/ Samiti was engaged in the business of fishing and profit and loss was shared amongst the members of the Samiti.

3. The Sub Divisional Officer, (Revenue), Shakti (for short "the SDO") after having observed about the financial irregularities allegedly committed by the respondent No. 1, who happened to be the President of respondent No. 2/ Samiti, stayed fishing activities of the respondent No. 2/Samiti, vide order dated 16.7.2002 (Annexure P-1). There against, the respondent No. 1 preferred a revision before the Additional Collector, without impleading the petitioners as parties. The Additional Collector by order dated 2.4.2003 (Annexure P-2) cancelled the said order passed by the SDO.

4. In the meantime, the respondent No. 2/ Samiti, vide notification dated 18.3.2002, expel the petitioners from the Samiti, without affording an opportunity of hearing and without show cause notice. The petitioners preferred an application before the Registrar, Cooperative Societies, praying that the removal of the petitioners was illegal for want of compliance of statutory requirement before their expulsion from the respondent No. 2/ Samiti.

5. The Assistant Registrar, Cooperative Societies, passed the order dated 11.8.2003 (Annexure P-6) after having recorded the fact that the petitioners were served show cause notice by UPC Under Postal Certificate) to respond and appear in the meeting of the Managing Committee on 18.3.2002 and the petitioners failed to file their response. Thus, the decision taken by the Managing Committee on 18.3.2002, which was subsequently approved in the meeting of General Body on 31.3.2002 was just and proper. Needless to state that the order of expulsion of the petitioners passed in the meeting held on 18.3.2002, was approved by the General Body in its meeting held on 31.3.2002. The Assistant Registrar by the impugned order dated 11.8.2003 (Annexure P-6) approved the same. No copy of the relevant resolutions have been filed by either parties.

6. Shri Kotecha, learned counsel appearing for the petitioners submits that proviso to Section 19-C of the Act, 1960, clearly provides that no resolution for expulsion of membership shall be valid, unless the concerned member has been given 7 days notice either personally or by registered post, of the proposal to expel him and has been given an opportunity of representing his case to the Committee.

7. Admittedly, the petitioners were neither served personally nor by registered post and thus, the resolution dated 18.3.2002 and 31.3.2002, are invalid and subsequent impugned order of approval passed by the Assistant Registrar, also fall to the ground.

8. On the other hand, Shri Shridhar, learned Panel Lawyer appearing for the State submits that show cause notices were issued to the petitioners and the petitioners have failed to file reply to the show cause notice. Thus, the petitioners cannot claim that the statutory rule prescribed u/s 19-C of the Act, 1960 has not been followed. The petition deserves to be dismissed.

9. None appears nor any representation is made on behalf of the respondent No. 1 & 2, despite service of notice. Thus, Amicus Curiae was appointed for assistance of the Court.

10. On perusal of the documents, particularly the impugned order, it is found that the Tribunal has recorded a finding that show cause notice was sent under UPC on 5.9.2002. There is no finding of the fact that show cause notice was served either personally or by registered post. The Assistant Registrar has completely brushed aside the provisions of law as prescribed in proviso to Section 19-C of the Act, 1960. Thus, the resolution dated 18.3.2002, passed by the Managing Committee and thereafter approved by the General Body on 31.3.2002, are

vitiated and subsequently, the impugned order is bad and unjust.

11. Without going into the merits of the case as to whether there were allegations or no allegations, it is an admitted position that statutory requirement of giving 7 days notice either personally or by registered post, of the proposal to expel the petitioners and further affording an opportunity of hearing to represent their cases to the committee, was not complied with by the respondent No. 1 & 2. The Assistant Registrar had not adverted to the same and completely ignored the above stated provisions.

12. For ready reference Section 19 - C reads as under:

19 - C. Expulsion of members: - (1) The Committee may, by a resolution passed by three- fourth majority of the members present and voting at a meeting held for the purposes, expel a member if he-

(a) intentionally does any act likely to injure the credit of the society or bring it to disrepute; or

(b) willfully deceives the society by false statements; or

(c) carries on any business which comes or is likely to come into conflict with the business carried on by the society; or

(d) persistently makes default in payment of his dues or falls to comply with any provisions of the bye-laws:

Provided that no such resolution shall be valid unless the member concerned has been given seven days" notice, either personally or by registered post, of the proposal to expel him and has been given an opportunity to represent his case to the committee.

13. This Court in the matter of Narendra Kumar Mishra v. State of Chhattisgarh & Others, (W.P. No. 1328/2003, decided on 12.12.2006), and in Vimal Kumar Singh v. State of Chhattisgarh and another, (W.P. No. 1033/ 2003, decided on 19.01.2007), held that the entire proceedings for non compliance of the procedural requirements would be vitiated.

14. It is a trite law that when the statute provides for particular procedure, the authority has to comply with the same and cannot be permitted to act in contravention of the same. When a statute requires to do a certain thing in a certain way, the thing must be done in the same way. The legal maxim "Expressio unius est exclusio alterius", is foundation for the above-stated proposition of law. (See: State of Bihar v. J.A.C. Saldanna (AIR 1980 SC 3276), Haresh Dayaram Thakur Vs. State of Maharashtra and Others, , Prabha Shankar Dubey v. State of Madhya Pradesh, (AIR 2004 SC 486), and Indian Banks" Association v. Devkala Consultancy Service, (AIR 2004 SC 2615).

15. Applying the well settled provisions of law to the facts of the case, where it is crystal clear that the procedure as prescribed u/s 19-C of the Act, 1960 has not

been followed before expelling the petitioners from membership of the respondent No. 2 Samiti, the entire proceeding is vitiated. The resolution dated 18.3.2002 and 31.3.2002 and impugned order dated 11.8.2003 (Annexure P-6) are quashed. The petitioners are entitled to all consequential benefits flowing from this order.

16. Ms. Naushina Afrin Ali, learned Amicus Curiae, is entitled to payment of Rs. 5000/- as professional fee and expenses, payable by the State Government, within a period of four weeks. This Court records appreciation for her able assistance in the matter.

17. For the reasons mentioned hereinabove, the writ petition is allowed. No order as to costs.