(1993) 09 SC CK 0008

In the Supreme Court Of India

Case No : Civil Appeal No. 2706 of 1988 and Civil Appeal No''s. 5030 of 1985, 1762 of 1986, 2692-2705, 2707-2735, 4148 of 1988; Writ Petition (civil) No''s. 686, 810, 880, 1065, 1202 and 1251 of 1988, 85, 265, 283, 483, 687, 728, 799, 998, 1051, 1178 and 1362 of 19

Bhandara District Central Co-operative Bank Ltd. and Others APPELLANT

Vs

State of Maharashtra and Another etc. RESPONDENT

Date of Decision : 10-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)
Maharashtra Co-operative Societies Act, 1960 — Section 73A

Citation : (1993) JT 428 Supp

Hon'ble Judges : S. Mohan, J;N. Venkatachala, J;Lalit Mohan Sharma, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Lalit Mohan Sharma, J.—The Petitioners including the Appellants in civil appeals also have challenged the constitutional validity of Section 73A of the Maharashtra Co-operative Societies Act, 1960, as being violative of Articles 14, 19(1)(c) and 19(1)(g) of the Constitution of India. As all these cases have been heard together, they are being disposed of by this common judgment Except where otherwise indicated, we are proceeding to refer to the facts of Civil Appeal No. 2706 of 1988 which has been treated as the leading case.

2. By the impugned provisions a designated officer as defined in Section 73A(1) is not allowed to hold office in more than one society in violation of the restrictions mentioned in Sub-sections (2) and (4) thereof; and by Sub-section (5) the maximum period available to a designated officer to continue in office has been fixed in peremptory terms. Before proceeding further it will be useful to examine the provisions of Sub-sections (1), (2), (4) and (5) of Section 73A which are in the following terms:

73A (1) In this section and in Sections 73C, 73D and 73E, "a designated officer" means the Chairman and the President, and includes any other officer of the society as may be declared by the State Government, by notification in the Official Gazette, to be a designated officer, but does not include, any officer appointed or nominated by the State Government or by the Registrar.

(2) No person shall at the same time, be or continue to be a designated officer of more than one society falling in Category I or Category II or Category III of the categories mentioned below; and shall not be or continue to be a designated officer in more than two societies in the aggregate in the three categories:

Category I - Societies, the area of operation of which extends, to the whole of the State,....

Category II - Societies, the area of operation of which does not extend to the whole of the State....

(a) but extends to Greater Bombay and the authorised share capital of which is more than Rs. 10 lakhs; or

(b) but extends to one or more districts; or

(c) is less than a district and the authorised share capital of which is more than Rs. 10 lakhs,

Category III - Societies, the area of operation of which docs not extend to the whole of a district but extends to one or more talukas, or the authorised share capital of which is not more than Rs. 10 lakhs but it not less than Rs. 5 lakhs.

power to remove the defects pointed out therein and make the law consistent with the law declared by the court and validate the invalid law thus declared earlier retrospectively from the date when the invalid law was passed. This Court in D. Dasegowda v. State of Karnataka and Ors. Civil Appeal No. 797 of 1993 dated February 19, 1993 held that when the Act was made validating the passed Acts then or proceedings taken retrospectively it was a valid Act and removing the defects declared earlier is invalid by the court. It must be deemed and shall always be deemed that the actions taken under the invalid law were valid under the Act. In Rai Ramkrishna and Others Vs. The State of Bihar, repelling the similar contention this Court held that the legislature can validly make invalid law valid with retrospective operation to remove the defects. However, to a query put by the Court to Sri Salve as to how Section 11 of the Act could be upheld validating retrospectively by retaining the fund collected under Act 12 of 1983 with the State Govt., he stated in fairness that Section 11 was enacted only to defuse the effect of the writ of mandamus issued by this Court in Om Prakash's case, to refund the fee collected therein to the Appellants therein, but under its guise the State did not intend to nor would it intend to retain the said fund collected under the predecessor Act 12 of 1983 from September 30, 1983, the date on which the notification u/s 5(1) of that Act was published in the State Gazette and the entire fund would be passed on to the credit of the Board under the Act. In that view Section 11 also is valid.

3. Accordingly we hold that Section 5(1) and 11 are valid. The fee levied therein is not a tax but a fee towards the fund to expend for the purpose enumerated u/s 6(5) of the Act. The fund would be expended accordingly. In this view we hold that the appeals bear no merit. They are accordingly dismissed with costs quantified at Rs. 5,000/ - in each appeal.