(1985) 04 MP CK 0029

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 305 of 1978

Bikal Bihari Soni and others APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 26-04-1985

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 55(1)

Citation : (1987) JLJ 332 : (1986) MPLJ 347

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : M. Ali, for the Appellant; R.C. Khare for Respondent No. 3 and R.K. Thakur for Respondent Nos. 1, 2 and 4, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.

The petitioners Nos. 1 and 2 were the candidates for selection for appointment as ''Manager'' in pursuance to the advertisement (Annexure ''F'') and were not found qualified for the purpose. They feel aggrieved by the selection and appointment of respondents 5 to 57 as "Managers" and challenge the legality thereof in this petition filed under Art. 226 of the Constitution. The petitioner No. 3 claims to be a registered Trade Union representing the employees of respondent No. 3 and challenges the process of selection and appointment of Managers including respondents 3 to 57 in its representative capacity.

Facts of the case are within a very narrow campas and are as under:-

Respondent No. 3 is a Central Co-operative Bank registered under the M.P. Cooperative Societies Act, 1960 (hereinafter referred to as ''the Act'') and employs several persons for purposes of its business. The terms and conditions of its employees are governed by statutory Rules framed by the Respondent Registrar u/s 55(1) of the Act. The Rules are known as the M.P. Co-operative Central Bank Employees Services Rules 1977" and were brought into force on

1-4-1977. The membership of the respondent Bank consists of individuals as also registered primary Co-operative Societies at village level. The Managers under reference are the persons appointed to manage the affairs of these primary societies. These primary societies are separately registered under the Act and have their own Managing Committee to look after their work. The responden Bank advances loan to these societies who, on their turn, distribute the amounts to their individual members. Since most of these societies in so far as Mandla District is concerned, deal with Scheduled Castes and Scheduled Tribes in backward areas, they are known as "Adimjati Sewa Sehkari Samiti." Since these societies are affiliated to the respondent Bank, respondent Bank has been directed by the respondent Registrar to select and appoint Managers for them and see that their financial interests are completely safeguarded in this manner. The employees working for these primary societies draw their salary from a "pool fund", maintained by the respondent Bank and created by annual contributions made to it by each member society, the respondent Bank and the State Government. It is not disputed that in case the Managers are also held to be the employees of the respondent Bank, their appointment would also be governed by the Rules. The case of the respondents Nos. 1, 2 and 3, however, is that these Managers, though appointed by the respondent Bank, are really the employees of the individual co-operative societies and hence the Rules do not apply to their selection and appointment. From the return filed by the respondent State Government it appears that the question of recruitment of Managers for Adhim Jati Sewa Sehakari Samities was considered by the Cabinet Sub-Committee for Tribal Sub Plan in its meetting dated 13-8-1976 when it was decided that recruitment and training of Managers of these societies should be controlled and co-ordinated by the respondent Registrar. It appears that another State level committee considered the question of qualification of Managers and Managing Directors to be appointed in these societies in its meeting dated 10-10-1976 and not only their pay scale but also their qualification, experience and mode of recruitment also fixed. A perusal of the minutes of this meeting (Annexure R-3) does not however indicate that this committee considered the matter in the context of the provisions of the Act or the Rules.

It further appears that in pursuance to the decision taken in the meeting dated 10-10-1976, an advertisement inviting applications for appointment of persons against these posts was issued by the M.P. State Co-operative Central Bank, (Annexure R-4) and appointments were made against the post of Managers. It is the case of the respondent State that in spite of the aforesaid recruitment by the M.P. State Cooperative Bank, some posts of Managers remained vacant and hence the respondent Registrar issued instructions to various Banks on 25-2-1978 (Annexure R-2) to fill those vacancies by issuing advertisement and making selection in accordance with instructions contained therein. These instructions are said to have been issued under S. 55(1) of the Act and were binding upon the respondent Bank. In pursuance to these instructions, the respondent Bank selected and appointed respondents 5 to 57. The petitioners

Nos. 1 and 2 also applied for these appointments but they were found ineligible to be called for interview, as according to the respondents, they do not fulfil the requisite 7 year service experience requirement on 1-11-1976.

Submission of the petitioners in this regard, is that the appointment of respondents 5 to 57 is contrary to Rules 10, 22(iv) and 23(iii) of the Rules inasmuch as these appointments were made without notifying vacancies to the Employment Exchange as required, without holding written test as prescribed and in complete violation of quota rule provided under Rule 23(iii) of the Rules. The learned counsel for the respondents Nos. 1 and 2, however, defended the appointment on the ground that the Rules stand superseded by the instructions issued by respondent Registrar on 25-2-1978 (Annexure R-2) and hence there was no necessity to follow the provisions of the Rules. These respondents also challenge the locus standi of the petitioners to file the present petition, as according to them they have no connection whatsoever with the subject matter of the petition. These submissions are also vehemently urged by the learned counsel for the respondent Bank who, in addition, submitted that the petitioners cannot be said to be the employees of the Bank and hence the question of applying the rules for their selection and appointment would not arise.

Before examining the matter further, the question of locus standi may be examined first. Though the old rule was that only the "person aggrieved" should be permitted to be a petitioner before this Court, this rule has been given a go-bye not only in India but also in England where it originated. The conventional rule was given by Lord Justice James in 1880 in Re-sidebotha, Ex-parte Sidebotham (1880) 14 Ch.D. 458 : 42 LT 783 (C.A.) and has been exploded by Professors Schwartz and Wade in their legal control of Government" where they opined that ''restrictive rules about standi or inimical to a healthy system of administrative law.'' In this country Hon. Justice Krishna Iyer in Municipal Council, Ratlam Vs. Vardichan and Others, noted the peculiar characteristic of our system of justice and emphasised the need to improve the same. In Fertilizer Corpn. Kamgar Union vs. Union of India (AIR 1981 S.C. 344) the Supreme Court held that "when a citizen belongs to an organization which has special interest in the subject-matter, if he has some concern deeper than that of a busybody, a writ petition by such a citizen would have been permissible under Art. 226 of the Constitution." The view of the Supreme Court was that, "The law can no longer be a Closed shop." Later decisions of the Supreme Court have almost exploded the conventional concept and recognized the right of an organization and even an individual''s locus standi when a class and section in interest is affected. (See Sunil Batra Vs. Delhi Administration and Others etc., . Dr. Upendra Lakani vs. State of U.P., 1983 (2) (S.C.C. 488) and Peoples Union for Democratic Rights vs. Union of India (1983 (2) S.C.C. 494 . The Supreme Court in Judges Transfer case (People''s Union for Democratic Rights and Others Vs. Union of India (UOI) and Others, , i.e. S.P. Gupta Vs. President of India and Others, , after examining recent developments in law on the subject, observed that, "The Court would therefore, unhesitatingly and without the slightest qualms of conscience cast aside the technical rules of procedure in the exercise of its dispensing power and treat the latter of the public minded individual as a writ petition and act upon it." (para 17). After this it is no longer open to the respondents to challenge the locus standi of the petitioners who were not only the candidates for this selection but also of the respondent No. 3 which is a union of such employees having necessary interest in proper selection and appointment of employees in the respondent Bank.

We may now examine the contents of 1977 Rules. It is not disputed that these Rules were made by the respondent Registrar in exercise of its statutory powers u/s 535(1) of the Act. Section 55(1) of the Act permits the Registrar to frame Rules governing the terms and conditions of the employees in a society and reads as under:-

The Registrar, may from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the societies terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf.

This provision was considered by a Division Bench of this Court m Hemant Kumar Gupta vs. District Co-operative Central Bank (1983 M.P.L.J. 461), in the context of appointments of managing Directors to "Adimjati Sewa Sahakari Samiti" in Sarguja District along with section 95 of the Act which confers rule making powers on the State Government and was held to be constitutionally valid. Rule 2(f) of the Rules defines "employees" to include not only the persons employed directly in the Bank but also persons employed in societies affiliated to the Bank. The definition reads as under:-

"Employees" means persons employed in the Bank and/or societies affiliated to it on the date these rules come into force, and those appointed by the Bank thereafter to do any work of the Bank or societies affiliated to it and includes an employee who has been dismissed, discharged or retrenched from employment or whose employment has been otherwise terminated and shall, in respect of matters relating to such dismissal discharge, retrenchment or termination be deemed to be an employee.

The relationship of a Manager appointed by the Bank to look after the affairs of an affiliated society was also considered by the Division Bench in Hemant Kumar Gupta''s case (supra) when it was held that the Manager so appoited remained the employee of the Bank. This conclusion was reached by the Division Bench even without referring to the definition aforesiad. Rule 4 of these Rules provides for conditions and procedure of recruitment. As far as Managers are concerned their qualification is dependent on the class of society in which they are to be posted. The Registrar, however, has been given the authority to lay down qualifications for such posts in respect of which the minimum qualification has not been ascertained under these Rules. Rule 10 requires notifications of vacancies to the Employement Exchange and also publication of the advertisement in the local newspaper. Rule 22 provides for method of selection of suitable candidates. Sub-Rule (iv) of this rule provides that candidates for all the posts, excepting drivers, peons and chokidars, shall have to undergo a written test in the manner prescribed by the Registrar. It is further provided that candidates qualifying in the test shall only be eligibile for final selection by the Selection Committee. Rule 23(iii) provides that, "in making appointments, excepting the posts of Peons/Watchmen/Drivers and Lower Division Clerks, the Bank would be able to fill a maximum of 40 per cent. Posts by direct recruitment". This rule, therefore, lays down the "Quota Rule" and restricts recruitment only to 40 per cent. of the posts. There is no dispute that these rules have not been followed in the instant case inasmuch as educational qualifications prescribed for these recruitments were higher than provided in the Rule, written test was not held and almost all vacancies have been filled by direct recruitment over-stepping 40 per cent. limit laid down in the Rule. The submission of the respondents, however, is that the order dated 25-2-1978 (Annexure.R-2) was also given by Registrar in exercise of his powers u/s 55(1) of the Act and has the effect of superseding 1977 Rules. It is, therefore, submitted that breach of the Rules, as aforesaid, has no effect on the appointments of the respondents. Since this submission goes to the root of the matter it may be examined now.

Section 2(36) of the M.P. General Causes Act, 1957 which is almost identical to the provisions in the General Clauses Act defines the ''rule'' to mean a rule made in exercise of power conferred by any enactment and includes a regulation made as a rule under any enactment. It is, thus clear that the rule as generally understood is made by the authority empowered by a statute to make such rules while exercising such statutory powers in this behalf. It is the case of the respondents themselves that 1977 Rules were made in exercise of such statutory powers u/s 55(1) of the Act. The aforesaid Rule, quoted earlier, is thus statutory and is in two parts. The first part permits the Registrar to frame Rules from time to time governing the terms and conditions of employment in a society or class of societies. The second part requires the society or class of societies to which these Rules are applicable, to comply with the order that may be issued by the Registrar in this behalf. The first part is really the rule making authority conferred upon the Registrar whereas the second part is the order making authority of the Registrar. General distinction between "Rule" and "Order" is now no longer in doubt. The rule making function is usually regarded legislative in nature. As far as the present provision is concerned, the rule making power conferred on the Registrar has been held to be in the nature of legislative power in Hemant Kumar Gupat''s case (supra). As far as the order making power is concerned, such a power is generally used to describe the exercise of executive power to take judicial or quasi-judicial decisions. In some cases the resultant order is also considered as belonging to the class of delegated legislation having force of law but that does not obliterate the distinction between the "rule" and the "order". This distinction is also apparent in the language of section 55(1) itself. The second part of this provision gives power to the Registrar to issue orders "in this behalf. The words "in this behalf" were interpreted by the Division Bench in Hemant Kumar Gupta''s case (supra) to mean that the order must be in the context of terms and conditions of employment laid down by the Rules. According to the Division Bench, "The object of conferring on the Registrar the power to issue orders to the societies appears to be to enable him to see that the rules relating to these terms and conditions of the employment are complied with." (Para 5). The aforesaid reasoning not only appears to be just and proper but is in line with the judicial thinking and cannot be called in question. It must, therefore, be held that powers vested in the Registrar by the second part of section 55(1) of the Act to issue orders to the societies are the powers to secure compliance of Rules made in exercise of powers conferred upon him by the earlier part of the section. It is also clear that the two powers are separate and for different purposes. Though rule making powers of first part is legislative in nature the order making authority of the Registrar is intended to secure compliance of the Rules and is therefore administrative or executive in nature. Under the circumstance, though the principles of natural justice would not be attracted while making a rule under the first part of section 55, the principles of natural justice may be attracted in the process of issuing order to secure compliance of the Rules under the second part of section 55. It must as a logical corollary, be held that the powers vested in the Registrar to issue order to secure compliance of Rules made by him cannot be used to amend, modify, or repeal the rules. It is the settled law that to bring about an effective amendment or cancellation of a rule, the rule effecting amendment or cancellation must be made in the same manner in which the original rule was made. This is also the purport of section 21 of the M.P. General Clauses Act, 1967.

The aforesaid interpretation of section 55(1) of the Act knocks down the very bottom of the respondent''s case. That the selection and appointment of respondents Nos. 5 to 57 are not in accordance with 1977 Rules is not disputed. What has been stated is that the order dated 25-2-1978 which purports to have been made u/s 55(1) substitutes 1977 Rules in so far as these societies are concerned. The argument, in view of the aforesaid analysis of section 55(1), must be rejected without hesitation. The Rules have been framed in exercise of statutotry powers and are part of the Act. Having been validly framed, they remain binding even upon the Registrar. Indeed, the second part of section 55(1) obliges the Registrar to issue order to secure their compliance. The order dated 25-2-1978 cannot therefore, be accepted as an amending exercise of 1977 Rules. The Rules in spite of the order dated 25-2-1978 (Annexure.R-11) remained valid and binding. It is implicit in the second part of section 55(1) that an order has to be in accordance with the rules and not in violation thereof. Even on general principle of law a statutory rule cannot be amended or superseded by an executive order, Babulal Chowdhary Vs. Editor and Publisher of Local Hindi Daily Nav Bharat and Others, . Since the order dated 25-2-1978 (Annexure. R-2,) is in violation, of the Rules and hence the selection and appointment of respondents (sic) to 57 made in pursuance of this order and in contravention of the Rules, cannot be sustained. These appointment must, therefore, be declared illegal.

in view of the aforesaid discussion, it is not necessary to, discuss specific violation complained of by the petitioners. It must however be observed that Rule 10 of these Rules regarding notification of vacancies to the Employment Exchanges remain substantially complied with in the instant case inasmuch as requisition has been sent to the Employment Exchange concerned. Ruled 22(4) regarding written test for selecting candidates to appear before the Selection Committee secures better talents in an impartial manner and therefore lays down a very salutary provision. There is no reason why the Registrar should not follow this provision and require selection to be, made by holding written test. Rule regarding "quota" for direct recruitment is also intended to be followed. There is no reason why the Registrar should not follow this Rule. What has not been appreciated by the respondent Registrar as the fact that, he is the Executive head of the co-operative movement which is intended to provide strength to the worker sections of the community and is based on contribution through an open door policy. The Registrar is supposed to be the "friend, philosopher and guide" and is required to see that the movement remains within the prescribed limits. This nature and/principle governing the co-operative movement has been fully stated by this Court in Brij Gopal Denga and Others Vs. State of Madhya Pradesh and Another, , and it should be the obligation of the Registrar to see that the movement gains strength and becomes effective instrument of removing economic disparities and help development of the State. The wisdom, for this purpose, lies in giving effect to the policy laid down in the Act and the Rules made thereunder, and not in ignoring them. This Court hopes and, believes that the respondent Registrar would spare some of his valuable time logo through not only this order but also the other relevant decisions of this Court and see that his functions, at least in future, are regulated by the law as clarified by these decisions.

The next and important question is about the relief to be granted to the petitioner. Since selection and appointment of respondents Nos. 5 to 57 has been held to be illegal, it should be the obligation of this Court to quash these appointments. This would necessarily create a vacuum in the administrative setup of the societies, and therefore, their interests Would be adversely affected. This, however, can be safeguarded by continuing the respondents on the present posts on ad hoc basis without conferring any benefit upon them. In the meantime the respondent Bank may be required to invite application from eleigible candidates, select suitable candidates for being appointed and appoint such candidates in accordance with law.

The petition consequently succeeds and is allowed. Though the appointment of respondents 5 to 57 are quashed, they are permitted to continue on their present position on ad hoc basis for a period of six months during which the respondent Bank is directed to hold fresh selection and fill vacant posts in accordance with law, No order as to costs. The outstanding amount of security deposit, if any, shall be refunded to the petitioner.

