
(2016) 03 OHC CK 0042
In the Orissa High Court
Case No : W.P.(C) No. 9795 of 2015

Bikash Ranjan Mishra

APPELLANT

Vs

State of Odisha and others

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Orissa Co-operative Societies Act, 1962 — Section 33A

Citation : (2016) 122 CutLT 895 : (2016) LIC 2705

Hon'ble Judges : Dr. A.K. Rath, J.

Bench : Single Bench

Advocate : Mr. M.K. Mallick, Sr. Advocate & J.K. Khuntia, Advocate, for the Appellant; Mr. D.K. Pani, A.S.C, Mr. Asutosh Mishra, Advocate, Mr. P.K. Khuntia, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dr. A.K. Rath, J.—This petition challenges the order dated 7.5.2015 passed by the Deputy Registrar, Cooperative Societies, Balasore Division, Balasore-opposite party no.3, vide Annexure-8. By the said order, opposite party no.3 declared the appointment of the petitioner as null and void on the ground of his involvement in criminal and fraudulent activities and directed the management of Motto SCS to terminate the service of the petitioner from the post of Secretary and appoint Smt.Namita Sahu, opposite party no.6.

2. Shorn of unnecessary details, the short facts of the case of the petitioner are that the Management-in-Charge of the Motto Service Cooperative Societies (hereinafter referred to as "SCS") published an advertisement for appointment to the post of Secretary. The petitioner, who was otherwise eligible, applied for the said post. He was selected. His name found place at serial no.2. One Rajesh Kumar Sahoo, whose name appeared at serial no.1, was appointed as Secretary, but he resigned from the post on 19.9.2014. Thereafter, SCS moved to the ARCS Bhadrak Circle, opposite party no.4 to fill up the vacancy. By letter dated

29.10.2014, opposite party no.4 suggested to issue an order of appointment to the petitioner. Pursuant to the same, SCS issued the appointment letter to the petitioner. The petitioner joined the post on 10.11.2014. He discharged his duties to the utmost satisfaction of the authorities. While the matter stood thus, DRCS, Balasore Division, opposite party no.3 issued a notice on 24.4.2015, vide Annexure-6, asking him to show cause as to why action shall not be taken against him. The allegation against the petitioner is that Chandbali P.S. Case No.13 dated 7.2.2013 has been registered against him under Sections 341, 323, 354 and 34 IPC. Further though he was not the owner of the property appertaining to khewat no.1, PS-57, khata nos.821, 185, 549 and 509 of mouza-Balabhadra Pur Sasan, but he mortgaged the same in favour of the SCS. He filed the show cause on 29.4.2015 stating that in the G.R. case he has been falsely implicated. The property referred to in the show cause notice belongs to his grandfather and he has signed in the mortgage deed. By order dated 7.5.2015, DRCS came to declare the appointment of the petitioner as null and void and directed the SCS to terminate the service of the petitioner and appoint Smt.Namita Sahoo in the post of Secretary.

3. Pursuant to issuance of notice, a counter affidavit has been filed by opposite party no.3. It is stated that SCS is a Primary Cooperative Society registered under the provision of OCS Act, 1962 by the Circle ARCS Bhadrak. The Divisional DRCS is the sole authority to regulate the direction issued by the Government. The petitioner was appointed on 10.11.2014 as the Secretary of SCS. He produced the documents which were later found not genuine. He suppressed the fact that he was involved in a criminal case. When the same was brought to the notice of opposite party no.3, show cause notice was issued to the petitioner. The petitioner submitted its reply and denied the charges. Thereafter opposite party no.3 directed the President to take steps to terminate the service of the petitioner whose appointment was purely temporary.

4. Opposite party no.5 has also filed a counter affidavit. It is stated that SCS is a Primary Society. It is the member of the Balasore-Bhadrak Central Cooperative Bank. The society has its own Bye-laws. The elected committee has been dissolved by the Government. The Register of the Cooperative Societies, Orissa, Bhubaneswar-opposite party no.2 has framed service rule on 7.2.2011. In accordance with the said rule, advertisement was issued for recruitment to the post of Secretary. Three persons were selected. Rajesh Kumar Sahoo, whose name found place at serial no.1, was appointed to the post, but latter he resigned. ARCS instructed the committee to appoint the petitioner. Accordingly, the petitioner was appointed on 5.11.2014 and he submitted his joining report on 10.11.2014. It is further stated that DRCS is not an authority under the Service Rule framed by RCS. DRCS has no power to act as disciplinary authority.

5. Opposite party no.6 has also filed a counter affidavit. It is stated that since the alternative remedy is available, the writ application is not maintainable. The Cooperative Tribunal has jurisdiction to decide the dispute. The writ application is

premature inasmuch as DRCS directed the management of SCS to terminate the service of the petitioner but till yet the order of termination has not been passed. Further the petitioner has played fraud and prepared mortgage deed of the land in his name, which stands in the name of his grandfather. Chandbali P.S. Case No.13 dated 7.2.2013 has been initiated against the petitioner and in the meantime, charge-sheet has been submitted.

6. Heard Mr. M.K. Mallick, learned Sr. Advocate along with J.K. Khunita, learned counsel for the petitioner, Mr. D.K. Pani, learned counsel for opposite parties 1 to 4, Mr. Asutosh Mishra, learned counsel for opposite party no.6 and Mr. P.K. Khuntia, learned counsel for the intervenor.

7. Learned counsel for the opposite parties argue that since alternative remedy is provided under the Odisha Cooperative Societies Act and Rules framed thereunder, the writ application is not maintainable.

8. Before delving deep into the matter, it is appropriate to consider the submissions advanced by the learned counsel for the opposite parties.

9. In Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others, (1998) 8 SCC 1, the Supreme Court in paragraphs 15 and 20 of the report held as follows:

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of caselaw on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

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"20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

10. Thus alternative remedy is not a bar to entertain a writ application under Article 226 of the Constitution in at least three categories mentioned in Whirlpool

Corporation (supra), namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

11. On the anvil of the decisions cited supra, the case of the petitioner may be examined.

12. In exercise of its power conferred under Section 33-A of the Odisha Co-operative Societies Act, 1962, the Registrar Cooperative Society, Orissa, Bhubaneswar, opposite party no.2 framed a rule for governing the appointment and other conditions of service of the employee of the Primary Agricultural Cooperative Society on 7.2.2011. Rule 5(i) provides that the managing committee shall be the appointing authority of all employees. Sub-rule (iii) of Rule 5 provides that the managing committee shall make appointment of employees on the recommendation of the appointment committee. Rule 20 prescribes authority for disciplinary proceedings. In case of Grade III employees, the Secretary is the authority to impose minor punishment and the Managing Committee is the authority to impose major punishment. So far as Grade I and Grade II employees, the President is the authority to impose minor punishment and the Managing Committee for major punishment. Rule 22 prescribes the procedure for imposition of penalties. Rule 23 provides appeals. Depending upon the penalties imposed by the disciplinary authority, name of the appellate authority has been prescribed. Under the four corners of the said Rule, DRCS, Balasore, opposite party no.3 is not the authority to initiate disciplinary proceeding. Thus, DRCS de hors the jurisdiction in initiating the proceeding against the petitioner.

13. In view of the discussions made above, this Court has no option but to quash the order dated 7.5.2015 passed by the Deputy Registrar, Cooperative Societies, Balasore Division, Balasore-opposite party no.3. Accordingly, the same is quashed. Since the order dated 7.5.2015 is quashed on the ground that DRCS has no jurisdiction to initiate the proceeding, it is open to the authorities prescribed under the Rule to proceed against the petitioner in respect of the charges levelled against him and conclude the same after affording opportunity of hearing to the petitioner.

14. The petition is allowed. No costs.