
(1995) 07 MP CK 0022

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1117 of 1994

Chambal Ghati Shiksha Prasar Samiti

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Societies Registrikaran Adhiniyam, 1973 — Section 33, 40

Citation : (1995) 40 MPLJ 969 : (1995) MPLJ 969

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : N.K. Modi, for the Appellant; P.L. Dubey, for the Respondent

Final Decision : Allowed

Judgement

T.S. Doabia, J.

The brief facts for the purposes of this Writ Petition are as under:

An elected governing body of Chambal Ghati Shiksha Prasar Samiti, society registered under the M. P. Societies Registrikaran Adhiniyam Act, 1973 (hereinafter referred to as the Act) District Morena passed a resolution, on 5th of November, 1989. By this, it was decided that no new member would be inducted and the election is to be conducted on the basis of membership as it was on 5th of November, 1989. It is the further case of the petitioner, that the election was in fact held and new body was elected on 10th of December, 1989. A copy of the proceedings have been placed on record as annexure P/V

The further fact is that there was some dispute as to whether the election held on 10th of December, 1989 was rightly held or not. An enquiry was held by the Registrar. On 18th of June, 1990, it was concluded that the elected body was rightly elected. An order to this effect was passed by the Registrar. Copy of this is Annexure P/VII vide order, Annexure P/VIII decision P/VH was set aside by order. This happened on 21st of October, 1991. Directions were given to hold fresh

enquiry. Order, Annexure P/IX was passed in this regard. The competent authority came to the conclusion that the election held on 10th of December, 1989 was rightly held. This order was challenged in this Court. This Court in writ petition No. 363/1992 passed an order copy whereof is Annexure P/X. This Court came to the conclusion that fresh election should be held. A direction was also given to appoint ad hoc committee. This order was passed on 4th of March, 1992. In pursuance of order, Annexure P/X, the Block Development Officer was appointed as Administrator. This has happened on 30th of April, 1992. As the order dated 4th of March, 1992 was passed without hearing certain parties, a review petition was filed. This review petition was allowed by order dated 8th of May, 1992. A direction was given to the Collector, Morena that if ad hoc committee is formed, parties concerned be heard. The relevant portion of the order reads as under :

"In the circumstances aforesaid, we have thought proper to dispose of this petition in terms of a direction to the Collector, Morena that if and when any representation is made to him, either for changing the constitution of the ad hoc Committee or for the so-called present Committee incharge of the Institution to be allowed to continue in office, he shall hear parties and make appropriate order to serve the purpose of the order we passed on 4-3-1992. We were merely anxious to see that during the interregnum between the date when the existing committee had vacated office under the impugned order and the new Committee taking Office after election, the Institution's interests do not suffer and the students and those who give instructions in the Institution are not left in the lurch. We were anxious to see that the property of the Institution is duly looked after and studies of the students do not suffer till the fresh elections are held. Accordingly, we direct that the Collector, Morena, while disposing of the representation made, shall take care of that situation and pass appropriate orders, accordingly. We also direct that within one month, the final election shall be held and in that regard necessary steps shall be taken by the Collector, Morena."

Accordingly, fresh elections were held on 25th of September, 1992. These were held by the Sub-Divisional Officer. Copy of the proceedings is Annexure P/XIII. This election was notified and Registrar i.e. Respondent No. 2 passed an order in this regard. Appointment of Committee consisting of twelve members was taken note of. An order copy whereof is Annexure P/IV was passed on 8th of March, 1994. Thereafter, the same functionary, who passed the order Annexure P/XIII, passed another order, annexure P/XVI. An ad hoc committee of seven members was constituted. It is against, this order, the present writ petition has been filed.

The learned counsel for the respondent has raised the following preliminary objections :

(i) that, alternate remedy of appeal is available and therefore, this remedy should have been availed of. Reliance is being placed on Section 40 of the Act.

(ii) that, order, Annexure P/XVI deals with three parts and each are separable and. therefore, a part which is separable if it is held to be bad then only that part should be quashed and not the entire order; and

(iii) that, the petition involve disputed questions of facts.

It may be seen that the question as to whether the Registrar was competent to appoint ad hoc body as has been done in order annexure P/XVI has not been raised in this petition. This point was put across to the learned counsel for the parties when the petitioner was heard on 4th of July, 1995. The matter was again taken up on the next date. This is purely legal point. It has been permitted to be urged by the learned counsel for the petitioner. The learned counsel for the parties have addressed detailed arguments on this aspect of the matter also.

The preliminary objection with regard to the availability of alternate remedy be examined.

The petitioner has placed reliance on C.A. Abraham, Uppoottil, Kottayam Vs. The Income Tax Officer, Kottayam and Another, and Jai Singh v. Union of India, AIR 1977 SC 898. There is no dispute with the proposition that when an alternate remedy is available then normally aggrieved party should be relegated to his ordinary remedy provided under the statute. But there is another well known principle of law enunciated by the Supreme Court. In L. Hirday Narain Vs. Income Tax Officer, Bareilly, the Supreme Court has held in categorical terms that if a petition is entertained and during the pendency of the petition the remedy for seeking alternate remedy expires then the petitioner should be heard on merits and the parties should not be relegated to remedies under the statute. This precise question was dealt with in para 12 of the judgment and the relevant observation reads as under :

"If the High Court had not entertained his petition Hirday Narain could have moved the Commissioner in revision, because at the date on which the petition was moved the period prescribed by Section 33-A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income Tax Officer u/s 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits."

In view of the above, the preliminary objection taken on behalf of respondents is overruled.

So far as the jurisdiction of the Registrar to pass an order of the nature which was passed, copy whereof is annexure P/XVI be examined. There is no statutory provision which enables him to do so. The powers which have been conferred upon the Registrar u/s 32 of the Act deal with other aspects. This section only confers power on the Registrar to hold an enquiry into certain matters but it does not confer power to appoint an ad hoc committee. An elected body can be superseded u/s 33 of the Act. This power is however, vested with the State

Government. The Registrar is not competent to supersede the Governing Body. Sections 32 and 33 of the Adhiniyam be noticed. These read as under :

"32. Enquiry and settlement of disputes - (1) The Registrar may, on his own motion or on an application made under sub-section (2) either by himself or by a person authorised by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a society.

(2) An enquiry of the nature referred to in sub-section (1) shall be held on the application of -

(a) A majority of the members of the governing body of the society; or

(b) not less than one-third of the total number of members of the society.

(3) The Registrar or the person authorised by him under sub-section

(1) shall for the purpose of an enquiry under this section have the following powers, namely :-

(a) he shall at all times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession, or responsible for the custody of any such books, accounts, documents, securities, cash or other properties to produce the same, if they relate to the head office of the society at any place at the head-quarter thereof and if they relate to any branch of the society, at any place in the town wherein such branch thereof is located or in his own office;

(b) he may summon any person who he has reason to believe has knowledge of any of the affairs of the society to appear before him at any place at the head-quarters of the society or any branch thereof or in his own office and may examine such person on oath; and

(c)(i) he may notwithstanding any regulation or byelaw specifying the period of notice for a general meeting of the society, require the officers of the society to call a general meeting of the society at such time at the head office of the society or at any place at the headquarter of the society and to determine such matters as may be directed by him and where the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself;

(ii) any meeting called under sub-clause (i) shall have all the powers of a general meeting called under the regulations or byelaws of the society and its proceedings shall be regulated by such byelaws.

(4) When an enquiry is made under this section the Registrar shall communicate the result of the enquiry to the society. The decision of the Registrar shall be binding on all parties concerned.

Supersession of governing body. - (1) If, in the opinion of the State Government, governing body of any State aided society :

(a) persistently makes default or is negligent in the performance of the duties imposed on it by or under this Act, regulations or byelaws of society or by any lawful order passed by the State Government or Registrar, or is unwilling to perform such duties; or

(b) commits acts which are prejudicial to the interest of society or its members; or

(c) is otherwise not functioning properly;

the State Government may, by order in writing, remove the governing body and appoint a person or persons to manage the affairs of the society for a specified period not exceeding two years in the first instance :

Provided that where it is proposed to remove the governing body of the society exclusively on the ground that elections to the governing body were not held in accordance with the provisions of this Act or the regulations or byelaws made thereunder, no action shall be taken under this sub-section unless the Registrar or an officer authorised by him in this behalf has convened a meeting of General Body for conducting the election thereto in accordance with the provisions of this Act, or the Regulations or byelaws made thereunder but has failed to get the new governing body elected :

Provided further that the Registrar or the officer authorised by him shall, for the purpose of conducting election, have all the necessary powers under the Act or the Regulations or byelaws made thereunder :

(2) No order under sub-section (1) shall be made unless the governing body has been given a reasonable opportunity of showing cause against the proposed order and representation, if any, made by it, is considered.

(3) The period specified in the order under sub-section (1) may, at the discretion of the State Government, be extended from time to time :

Provided that no such order shall remain in force for more than three years in the aggregate.

(4) The person or persons so appointed shall, subject to the control of the Registrar and to such instructions as he may from time to time give, have power to exercise all or any of the functions of the governing body or of any officer of the society, and to take all such actions as may be required in the interest of the society.

(5) The State Government may fix the remuneration payable to the person or persons so appointed. The amount of such remuneration and other costs, if any, incurred in the management of the society shall be payable from its funds.

(6) The person or persons so appointed shall at the expiry of the period of his or their appointment arrange for the constitution of a new governing body in accordance with the regulations of the society.

(7) If there is a difference of opinion between the general body of the society and person or persons appointed under sub-section (1) in respect of any matter it shall be referred to the Registrar for decision and his decision thereon shall be final.

(8) During the period between the issuance of notice and the passing of an order removing the governing body may be required by the State Government to function under the supervision and with the approval of such authority as the State Government may specify in this behalf and no order made or resolution passed or any other act performed by the governing body, shall be effectual unless it is approved by such specified authority."

Thus it becomes apparent :

(i) That Registrar has no power to appoint ad hoc committee.

(ii) Power to supersede an elected body vests in the State Government and it can appoint an administrator as well.

8A. It be seen that the elections were held to the society in pursuance of the order passed by this Court. Information regarding this was sent to the Registrar. Copy of this is annexure P/XIV. There is no provision under the Act which requires approval to be given. Once the Registrar was notified with information regarding to holding of the election, that was the end of the matter. Registrar as noticed above could not appoint ad hoc committee.

Apart from the fact that there is no power with the Registrar to pass the order contained in annexure P/XVI there is another infirmity. Order annexure P/XVI was passed without hearing the elected members. The propriety required that persons who were elected should have been given an opportunity of hearing. Thus there is no alternate but to quash order annexure P/XVI. Petition is allowed with costs. Costs awarded Rs. 1,000/-. The costs to be paid by the person, personally who passed the order annexure P/XVI.

The net result would be the elected body would come into existence. It will have its normal tenure. The period during which the elected body was kept out of office would not be counted for the purpose.