
(1995) 05 OHC CK 0016

In the Orissa High Court

Case No : Original Jurisdiction Case No. 7613 of 1994

Chandra Naik

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 08-05-1995

Acts Referred:

Citation : (1995) 2 OLR 46

Hon'ble Judges : G.B. Patnaik, Acting C.J.; D.M. Patnaik, J

Bench : Division Bench

Advocate : P. Acharya, for the Appellant; Government Advocate and J.K. Tripathy, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, A.C.J.

1. The Notification issued by the State Government in exercise of power u/s 123 of the Orissa Co-operative Societies Act (hereinafter referred to as the "Act") dated 26th October, 1991, exempting the Orissa State Co-operative Spinning Mills Federation Limited from the provisions of Sub-section (3) of Section 31 of the Act and directing that the provision of Sub-section (1) of Section 28-A of the Act shall apply to the aforesaid Federation with the modification as specified in the said Notification, is being challenged in this writ application. In view of the aforesaid Notification, the Chairman of the Board of the Federation is nominated by the State Government, The petitioner's case in nut-shell is that the aforesaid Notification in purported exercise of power u/s 123 of the Act is a mala fide exercise of power and is contrary to the very object of the Act and, therefore, should be struck down. It is alleged that by such notification, the features of co-operative democracy have been destroyed and the basic structure enshrined in Section 28-A of the Act is also destroyed.

2. A counter affidavit has been filed on behalf of opp. party No. 1 and the stand taken therein is that the conferment of power on the State Government u/s 123

can neither be held to be arbitrary nor any decision taken thereon can be interfered with so long as the same is bona fide.

3. u/s 28-A of the Act, as it stood prior to its amendment election of the President as well as members of the Committee of a Society was being held and conducted in the prescribed manner. Section 28-A (1) prior to its amendment by Amendment Act of 1991, read thus :

"Subject to the following provisions, the election of the President and the members of the Committee of a society shall be held and conducted in the prescribed manner;..."

The prescribed manner is as indicated in Rule 30-B of the Orissa Co-operative Societies Rules (hereinafter referred to as the "Rules") which provided that immediately after the election of the Committee members and the receipt of the Government nomination, if any the Election Officer shall arrange to convene a meeting of the Committee for election of the president of the Society with the assistance of the Secretary or the Executive Officer of the Society. Thus the President of the Society was being elected from amongst the Committee members. By virtue of the impugned Notification issued by the State Government in purported exercise of power u/s 123 of the Act, the President is now being nominated by the State Government. The provision of Section 123 of the Act is in pari materia with Section 60 of the Madras Co-operative Societies Act and the said provision came up for consideration before the Supreme Court in the case of *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, . Their Lordships of the Supreme Court upheld the validity of the provision on the ground that there are numerous provisions in the Act which are not capable of meeting the extensive demands of the complex situations which may arise in course of the working of the Act and the formation and the functioning of the societies and for that purpose, the Legislatures have conferred power in favour of the executive authority to exempt a society from the provisions of the A with view to meeting certain contingencies not covered by the provisions of the Act. This being the law laid down by the Supreme Court, the provision of Section 123 cannot be held to be invalid. But at the same time, there must be ample justification for the State Government for exercising power u/s 123 as the power is by its very nature a very drastic one and entails far-reaching and serious consequences. A Bench of this Court considered the aforesaid provision in the case of *Sri Purna Chandra Misra and Ors. v. The State of Orissa and Ors.* 1933 (II) OLR 557 and held that the power u/s 123 should be cautiously and sparingly exercised in extraordinary circumstances. It may be noticed that the provision for election of the President contained in Section 28-A of the Act has been amended and under the amended provision, the President of the Committee is to be directly elected in the manner prescribed, by and from amongst the General Body members of the society qualified for the purpose. The amended provision itself indicates the legislative intent of having the president of the society elected by members of the General Body to reinforce the democratic

process in the matter of election of members of the society and its President. This amendment has a significant bearing in considering the justifiability of the notification issued u/s 123 of the Orissa Co-operative Societies Act. From the counter affidavit filed on behalf of the opposite parties, it is not discernible as to meet which contingency that is not covered by the provisions of the Act, or for smoothening the function of the society on account of difficulties created, the State Government exercised the power u/s 123 by issuing the impugned notification and modified Section 23-A of the Act so far as it relates to election of the President of the Society. In the absence of any justification and reasons for exercise of such power, the conclusion is irresistible that the power has been whimsically exercised. In the facts and circumstances of the present case, we are of the considered opinion that the executive Government has issued the Notification under Annexure-1 without examining the consequences of such notification and without examining the impact of such notification on the democratic set-up of the co-operative organisation and, in fact, no extraordinary circumstance has been indicated for justifying the issuance of the notification in question. By virtue of such notification in Annexure-1, the legislative intent engrafted in the amended provision of Section 28-A of the Act is being given a go-by. For the foregoing reasons we quash the Notification under Annexure-1 and direct that steps be taken for election of the President of the Society in accordance with the amended provisions of the Act.

The writ application is accordingly allowed. There will, however, be no order as to costs.

D.M. Patnaik, J.

4. I agree.