
(1961) 01 MP CK 0031

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 168 of 1960

Dukhooram Gupta Hari Prasad Gupta

APPELLANT

Vs

Co-operative Agricultural Association Ltd. and Others

RESPONDENT

Date of Decision : 06-01-1961

Acts Referred:

Constitution of India, 1950 — Article 12, 311

Citation : AIR 1961 MP 289 : (1961) 3 FLR 357 : (1961) ILR (MP) 673 : (1961) JLJ 786 : (1962) 1 LLJ 353

Hon'ble Judges : T.C. Shrivastava, J;S.P. Bhargava, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; A.R. Choubey, for Respondent Nos. 1 to 3, H.L. Khaskalam and R.J. Bhawe, Addl. Govt. Advs., for the Respondent

Final Decision : Allowed

Judgement

Shrivastava, J.—By this petition under Articles 226 and 227 of the Constitution, the petitioner Dukhooram Gupta challenges the order of suspension, dated 30-5-1980, passed by the Cooperative "Agricultural Association, Kawardha (respondent No. 1). Respondents 2 and 3 are respectively the Managing Committee and Secretary of the Association and respondent No. 4 is the Registrar, Co-operative Societies.

2. The petitioner was appointed as Manager by the Association with the sanction of the Registrar on 14-3-1952 and was confirmed on the above post on 13-10-1952. In 1955, the Registrar inspected the work of the Association and found several items of defalcation and irregularities. On his direction, the petitioner was suspended on 19-3-1955 and a departmental enquiry was started against him. The petitioner applied to the High Court for quashing the order of suspension and succeeded in Misc. Petition No. 269 of 1956, decided on 28-2-1959.

The Association took the matter in Letters Patent Appeal; but while that appeal

was awaiting decision, it dismissed the petitioner on 8-8-1958. The Letters Patent Appeal was hence dismissed. Another petition challenging the dismissal was then filed by the petitioner (Misc. Petition No. 314 of 1958) which was allowed on 9-12-1959. The decision is reported in *Dukharam Gupta Vs. Co-operative Agricultural Association Ltd. and Others*, . After this, the Registrar directed Ms reinstatement; but the Association did not do so. On 29-5-1960, the Managing Committee of the Association again passed a resolution suspending him with retrospective effect from 19-3-1955. It is this order which is challenged before us.

3. The petitioner contends that the Association has no power to suspend him at all; much less with retrospective effect. The order of suspension is further challenged on the ground that the Registrar's sanction has not been obtained. Several other grounds are stated in the petition; but we need not refer to them, as they were not raised in arguments.

4. No return was filed on behalf of any of the respondents. Shri A. R. Choubey for respondents 1 to 3 raised a preliminary objection that no writ can be issued in matters between a cooperative society and its servants and the petition is hence untenable. He further controverted the points which were pressed on behalf of the petitioner.

5. We shall first take up the question whether a dispute between a co-operative society and its servants, like the present one, is amenable to writ jurisdiction of the High Court. Shri Choubey draws a distinction between corporations which are directly incorporated by a statute and those which are merely registered under a statute. According to him, the latter class of corporations are like Joint Stock Companies and are not different from private individuals. No writ can therefore issue against a co-operative society.

6. Support is sought from the decision in *Ramnath Sharma Vs. State of M.B. and Others*, . Krishnan, J. after discussing that: statutory commercial corporation owned by State are amenable to writs observed in that case:

"They are not departments of Government, or statutory corporations, but are private juristic-persons, subject certainly to the laws and regulations applicable. They might enter into various contracts for employment or for commercial activities that are obviously subject to the general and special laws. These bodies form, as it were, a three tier system. There are employees or other contracting parties with a nexus with the corporate bodies that is purely contractual.

It is for the courts to decide upon the legality or otherwise of the contracts, and to award the appropriate remedies under the general law. Then there are corporations themselves. Thirdly, there are controlling authorities empowered to enforce the special law on the corporations. The Joint Stock Companies, for example, are subject to the control of the Registrar, and of the High Court for certain purposes. A co-operative society or bank is similarly subject to the Registrar of Co-operative Societies; but then there is no nexus between these

controlling authorities on the one hand and on the other, those who might be dealing with these corporations".

The learned Judge held that the vires of any statute or rule and also the action of a controlling authority can be challenged under Article 226, but concluded that no writ could issue against a co-operative society. He expressed thus in paragraph 9:

"I find, therefore, the powers under Article 226 can be exercised only for the enforcement of a fundamental right, or where a Government or an authority coming under the definition of State in Article 12 has to be directed to stop an illegality or abuse of power, against which the aggrieved party has no other practicable remedy. A joint stock company or a co-operative society or bank, not being State under Article 12 cannot be so directed. The aggrieved party has to seek its remedy in the ordinary law courts".

Khan J-, who was the other Judge constituting the Division Bench, did not express any views on this point, but agreed that the petition should be dismissed, as the petitioner had no case on merits.

7. In Article 12 of the Constitution "State" has been defined for the purposes of Part III as including "all local or other authorities"". The meaning of the expression "other local authorities" was considered in *Bramadathan Nambooripad v. Cochin Dewaswom Board*, (S) AIR 1956 TC. 19 and it was held that the expression referred to any authority or body of persons exercising the power to issue rules, byelaws or regulations having the force of law.

A co-operative society under the Co-operative Societies Act, 1912, with which we are concerned in the instant case, has power to make byelaws. We shall refer to the relevant provisions of the Act and the byelaws later. These byelaws are binding on it as well as the public coming within the ambit of the byelaws. A society registered under the Act would thus fall within the meaning of "State" as defined in Article 12 and Chapter III would thus have application to such a society.

8. The real point in the case before us does not, however, relate to a fundamental right enforceable under Chapter III of the Constitution. It is whether a writ can issue to the society to keep it within the limit of its powers under the byelaws framed by it. This aspect did not come for consideration in *Ramnath Sharma Vs. State of M.B. and Others*, .

9. It is rightly contended by Shri Choubey that a writ cannot issue against a private individual. In *Jamalpur Arya Samaj v. Dr. D. Ram* AIR 1954 Pat 297 the question of issuing a writ against a private Association was considered. The matter arose in the context of a writ of certiorari; but the observations are helpful as they apply generally to all writs. Their Lordships observed in paragraph 6 as follows:

"As a matter of history the Court of the King's Bench was held to be "coram rege

ipso" and was required to perform quasi-governmental functions. The theory of the English law is that the King himself superintends the due course of justice through his own Court preventing cases of usurpation of jurisdiction and insisting on vindication of public rights and personal freedom of his subjects. That is the theory of the English law and our Constitution makers have borrowed the conception of prerogative writs from the English law. The interpretation of Article 226 must, therefore, be considered in the background of English law and so interpreted it is obvious that the remedy provided under Article 226 is a remedy for the vindication of a public right".

At another place, their Lordships said:

"It is manifest that the jurisdiction of the domestic tribunal of the nature of the Arya Samaj is founded upon a contract, implied or expressed, and in such a case the proper procedure for the party aggrieved is to file a suit and not to apply for a writ under Article 226, Constitution of India. The reason is that the remedy provided under Article 226 is a constitutional remedy which is meant for the vindication of a constitutional right".

10. However, a co-operative society having the power to make byelaws is not an "individual" in the context of the administration of byelaws. We may consider here the nature of a byelaw framed by such a society. This is what we find in Halsbury's Laws of England. Volume 9, paragraph 77 (Third Edn.) on the point:

"All regulations made by a Corporation and intended to bind not only itself and its officers and servants, but members of the public who come within the sphere of their operation, may properly be called "byelaws", whether they are valid or invalid in point of law; but the term may also be applied to regulations binding on the corporation, its officers and servants.""

The following passage from Craies on Statute Law (Fifth Edition, 1952), pages 296-297, may be usefully quoted:

"Lord Russell of Killowen, C. J., gave this definition of a municipal byelaw--"an ordinance affecting the public or some portion of the public imposed by some authority clothed with statutory powers ordering something to be done or not to be done and accompanied by some sanction Or penalty for its non-observance. Further, it involves this consequence; that if validly made it has the force of law within the sphere of its legitimate operation". So the term byelaw, as now generally understood, applies to the local laws or regulations made by public bodies of a municipal kind, or concerned with local government, or by corporations, or societies formed for commercial or other purposes, including gas, water, and railway companies, trade unions and friendly, industrial and building societies".

It may here be noted that "friendly societies" and other societies referred to in the passage above are very much like the co-operative societies here.

11. It is true that statutory rules and bye-laws differ in important aspects. A rule

tramed under a statute is a part of the statute, while bye-laws are not so. Byelaws can be impugned on the ground of unreasonableness. All the same, byelaws are also framed on the authority of law and cannot be treated as mere contracts. Consent is the foundation of all contracts; but third parties are bound by byelaws without any such consent on their part. Byelaws thus answer the tests of "laws" and stand on the some footing as a statutory rule so far as enforcement is concerned. For that reason, it appears to us that if an authority acts in excess of, or refuses to exercise, or abuses, the power granted to it, a writ can issue to correct its action and this would be so, even if a co-operative society is like an individual in some respects. We may refer to paragraph 170 in Halsbury's Laws of England, Volume 11, on page 90:

"An order of mandamus will be granted ordering that to be done which a statute requires to be done and for this rule to apply it is not necessary that the party or corporation on whom the statutory duty is imposed should be a public official or an official body".

12. Shri Choubey states that the terms and conditions of employment are a matter of contract between the society and its servants and reliefs arising out of contracts cannot form the subject-matter of prerogative writs. This contention is correct where the relation between the master and servant is a matter of contract alone. The position is, however, different where in addition to the contract, there is a specific byelaw on the point. The byelaw gives a legal right to the servant apart from the contract and both the society and the servant are bound by it- In our opinion, the enforcement of such a legal right forms an appropriate subject-matter for the issue of a writ under Article 226 of the Constitution.

13. We shall now take up the contentions raised on behalf of the petitioner in support of the petition. Before we do so, we may refer to the relevant provisions of the Co-operative Societies Act and the Rules thereunder. Section 8 of the Act provides for the registration of societies. Sub-section (3) of that section requires that a copy of the proposed byelaws of the society shall be filed along with the application.

Section 43 (2) (c) gives power to the State Government to frame rules prescribing "the matters in respect of which a society may or shall make byelaws".

It will thus be seen that the subject-matter of the byelaws has been completely left to the State Government to be prescribed by Rules.

Acting on this power, the State Government has learned Rules which are published in Volume I of the Co-operative Societies Manual on page 26 and onwards. Rule 11 specifies the matters on which the initial byelaws of the society shall make provision. Item 9 of this rule is as follows;

"the appointment of a committee and other officers of the society, the procedure

at meetings of a committee, the powers and duties of the committee and other officers and the suspension and removal of officers of the society."

It will be apparent from this rule that the matter of appointment, suspension and removal of officers of the society has to be provided in the bye-laws of the society. The byelaws of the Co-operative Agricultural Association have not been filed by the petitioner; but both the parties agreed before us that the standard byelaws (Serial No. 27, printed on page 187 and onwards of Vol. III of the Manual of Co-operative Societies in Madhya Pradesh apply to the Association. On page 195, we find byelaw No. 21, which prescribes duties and powers of the managing committee. Under item (13) of this byelaw, the managing committee is authorised "to appoint, dismiss, suspend or otherwise punish any servants paid by the association." Byelaw No. 38 provides for the appointment of a manager by the managing committee subject to the approval of the Registrar.

14. Shri R. K. Pandey for the petitioner contends that the co-operative society has no power to deal with its officers in the matter of appointment, dismissal or suspension except as provided in this byelaw. From the use of a word "suspend" in collocation with the words "or otherwise punish" in item No. (13) it is clear that the power of suspension given to the society is attracted only when suspension is given as a part of punishment. There is no power under the bye-laws to order suspension pending enquiry.

15. Shri A. R. Choubey contends that apart from the byelaws, a master has a right to make inquiries into the conduct of his servant and to suspend the contract of service while the enquiry is pending. This question was considered by this Court in *District Council, Amraoti v. Vithal Vinayak* ILR (1942) Nag 343 : (AIR 1941 Nag 125) and it was held :

"It is to my mind clear that an ordinary master not given special powers by statute or by some rule or law flowing from a statute has no power to suspend a servant. He can either dismiss him or continue him in service on fresh terms. In either case the servant is entitled to be paid up to the date of dismissal in the one case or of continuance in service in the other. This rule is enunciated in *Secretary of State Vs. Surendra Nath Goswami*, and *Kamini Kumar v. Rebati Raman Das* AIR 1921 Cal 346 . Reliance was also placed on *Tikaram v. Gendalal* 30 Nag LR 173 : (AIR 1933 Nag 247)".

These observations of Bose J. clearly indicate that unless there is a Special contract between an employer and an employee, the employer has no power to suspend the employee pending an enquiry. He can either dismiss him or continue him in service on fresh terms. This view has been followed in *Co-operative Central Bank v. Trimbak Narayan* AIR 1945 Nag 183, *Debidutt v. Central India Electrical Supply Co. Ltd.*, Lahore AIR 1945 Nag 244 and *Municipal Committee, Buldana v. Dattatraya Sadashiv Karve* AIR 1946 Nag 347. In the first of these three cases it was held that an accountant was not an officer within the meaning of Section 43 of the Co-operative Societies Act and therefore the byelaws did not

apply to his case. Accordingly, it was held that the plaintiff could not be suspended by virtue of anything in the rules or the byelaws and as a power to suspend was no part of the general law of master and servant, he could not be suspended at all.

16. Barwell and Kar in the Law of Master and Servant (Volume I) have reviewed the English and Indian case law on the subject on pages 327-339 and formulated on page 339 the conclusions which can be deduced from the ease law. The learned authors state:

"(i) The power to suspend, in the sense of a right to forbid a servant to work, is not an implied term in an ordinary contract between Master and Servant;

(ii) Such a power, in any event, can only be the creature either of a statute governing the contract, or of an express term in the contract itself;

(iii) that it does not necessarily follow that even a power to suspend entitles the employer to withhold wages--the right to withhold which must itself depend either upon statute or upon an express term in the relative contract;" We find ourselves in agreement with these three conclusions and hold that under the normal law, a master cannot suspend his employee.

17. Accordingly, the Co-operative Agricultural Association must rely on some power granted by the byelaws to support the order of suspension of the petitioner. As we have already said, the relevant byelaw framed in this regard is limited to suspension by way of punishment and does not deal with suspension pending enquiry. We agree that the Association had no power to suspend the petitioner. Accordingly, the Order of suspension is without any jurisdiction and is liable to be quashed.

18. Further, in any "case, the order of suspension could not be retrospective. It has been held in Om Prakash Gupta Vs. The State of Uttar Pradesh, that the order of suspension pending enquiry merges into the order of dismissal which is passed at the termination of the enquiry; and if the order of dismissal is set aside by the Civil Court as illegal, the order of suspension cannot be revived. The order of suspension passed by the Co-operative Association in the instant case could operate only from the date on which it was passed. However, it is not necessary for us to consider this position, as we have held that the Co-operative Association has no power to suspend the petitioner at all. For the same reason, it is not necessary to consider whether sanction of the Registrar was necessary for ordering the suspension.

19. The last contention raised by Shri R. K. Pandey was that as a Division Bench of this Court quashed the order of dismissal (See Dukharam Gupta Vs. Co-operative Agricultural Association Ltd. and Others, , no further enquiry can be made by the Co-operative Association against the petitioner. It will be found from the order that it was quashed on account of a technical defect in the sanction of the Registrar. The dismissal was sanctioned by the Joint Registrar instead of the

Registrar and it was held that the notification authorising the Joint Registrar to exercise the functions of a Registrar referred only to the powers of the Registrar under the Act and the rules thereunder and did not extend to his powers under the byelaws, Accordingly, it was held that the Joint Registrar could not act for the Registrar in discharge of any functions entrusted to him under the bye-laws. Nothing in the decision affects the merits of the dismissal and the Co-operative Association is entitled to pass an order of dismissal after obtaining the proper sanction. We hold that the Association is not debarred from taking such action.

20. In the result, the petition is allowed and the order of the Co-operative Agricultural Association (respondent No. 1) passed on 30-5-1960 suspending the petitioner is quashed. Respondent No. 1 shall pay the costs of the petitioner. Hearing fee is fixed at Rs. 50/- only. The outstanding amount of security shall be refunded to the petitioner.