

(1959) 12 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 314 of 1958

Dukhram Gupta

APPELLANT

Vs

Co-operative Agricultural Association Ltd. and Others

RESPONDENT

Date of Decision : 09-12-1959

Acts Referred:

Citation : AIR 1960 MP 273 : (1959) ILR (MP) 840 : (1960) 5 MPLJ 433

Hon'ble Judges : P.V. Dixit, C.J;N.M. Golvalkar, J

Bench : Division Bench

Advocate : R.K. Pandey, for the Appellant; A.R. Choubey, Rama Gupta for Respondents 1 and 2 and H.L. Khaskalam, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C.J.

In this application under Articles 226 and 227 of the Constitution of India, the petitioner prays that a writ in the nature of certiorari be issued for quashing an order of the opponent No. 1, the Cooperative Agricultural Association Ltd., Kawardha, dismissing him from service.

According to the petitioner, he was appointed as a manager of the Co-operative Agricultural Association Ltd., Kawardha, (hereinafter referred to as the Association), on 14th March, 1952 with the approval of the Registrar under bye-law No. 38 and was confirmed in the appointment with effect from 13th October 1952; that on 19th March, 1955 the Secretary of the Association, opponent No. 2 communicated to him an order of the Assistant Registrar, Co-operative Societies, Raipur Circle, suspending him with effect from 19th March, 1955; and that at his request he was informed on 13th December, 1955 of the reasons for his suspension, which were, inter alia, that he had disobeyed an order of the Secretary of the Association, that he had misused the contingency amount and the property of the Association, that he had made a false report to the Police

against President, Secretary and members of the Association, that he had sold on credit goods belonging to the Association without permission, and that he had withdrawn the amount of his share in the Association without obtaining the sanction of the Managing Committee.

On 20th July, 1956, the applicant filed a petition under Article 226 of the Constitution of India *Dukhram v. Co-operative Agricultural Association Ltd.*, M. P. No. 269 of 1956, D/- 28-2-1958 (MP), challenging the validity of his suspension. Bhutt, J. (as he then was), who heard the petition, took the view that the order suspending the petitioner was by way of punishment, and that it was bad inasmuch as the petitioner was not given an opportunity to show cause against it. That petition was accordingly allowed and the order suspending the petitioner with effect from 19th March, 1955 was set aside. Thereafter, the Association filed a Letters Patent appeal against the order of the learned Single Judge quashing the order of the petitioner's suspension.

During the pendency of the appeal, the applicant was dismissed from service by the opponent No. 3, the Officer on Special Duty, approving a resolution passed on 3rd August, 1958 by the Managing Committee of the Association recommending the dismissal of the applicant. The Division Bench, consisting of Hidayatullah, C. J. and Tare, J., before whom the Letters Patent appeal came up for hearing, therefore, passed the following order disposing of the appeal :

"The suspension order has now got merged in the order of dismissal. The result therefore is that the order of learned Single Judge becomes inoperative and must be discharged. We do so. At the same time there is no need for us to proceed to decide the appeal except to discharge the order of the learned Single Judge. Liberty is reserved to the respondent No. 1 to challenge the order of the dismissal and inter alia the order of suspension."

The petitioner has now filed this application challenging the validity of his dismissal from service as well as the order suspending him with effect from 19th March, 1955.

The petitioner contends that the order passed by the Association dismissing him from service was ultra vires and invalid for the reasons that (i) the resolution did not receive previous approval of the Registrar as required by bye-law No. 38, (ii) the meeting of the Managing Committee, at which the resolution was passed, had not been convened in accordance with the relevant bye-laws, (iii) there was no requisite quorum at the meeting, and (iv) the members, who were present at the meeting, were disqualified as on the material date they were defaulters.

The petitioner further says that he was not given a reasonable opportunity of meeting the charges levelled against him in that he was not allowed to see the record, no evidence in support of the charges against him was recorded in his presence or after due notice to him, no notice to show cause against the punishment of dismissal was served on him, and the Secretary of the Association, who conducted the inquiry, was not competent to do so as he

himself had filed a criminal complaint against the petitioner. It is also said that in any case the order of dismissal could not be given retrospective effect and made operative from the date of the order of his suspension from 19th March, 1955.

The petition has been opposed by all the opponents. In the return filed on behalf of the opponents Nos. 1 and 2, it has been averred that the meeting of the Managing Committee held on 3rd August, 1958 was convened in accordance with bye-law No. 20 after due notice; that out of seven members of the Committee, four members including the President were present and the resolution dismissing the petitioner was approved by the Registrar, Co-operative Societies, Madhya Pradesh; that no member was a defaulter, and even if "any one was. then having regard to bye-law No. 37 the resolution of the Committee did not become illegal; that the Secretary of the Association was asked by the Committee to hold an enquiry against the petitioner; that merely because he filed a criminal complaint against the petitioner in his capacity as Secretary, it could not be said that he was incompetent to hold the departmental enquiry; that the petitioner was informed of the charges against him on 13th December, 1955 as also on 7th February, 1957; that on 11th July, 1958 he was served with a notice asking him to present himself on 24th July, 1958 before the Enquiry Officer to produce his witnesses and to give his own evidence, if he wished to; that he was allowed to see and inspect the record of the proceedings against him but that he failed to appear before the enquiring authority; and that it was not necessary to serve a notice on the applicant asking him to show cause against the punishment of dismissal.

(5) The reply of the opponent No. 3, the Officer on special duty, is that the sanction for the dismissal of the applicant was given by the Joint Registrar, who approved the resolution of the Managing Committee on 23rd August, 1958; that the Joint Registrar was invested with all the powers of the Registrar under Notification No. 1203-627-XXIV, dated Nagpur the 13th June, 1956.

The main question that arises for consideration on the arguments addressed before us by the learned counsel for the parties is as to the validity of the resolution passed by the Managing Committee dismissing the petitioner. On this question, it is first necessary to refer to bye-laws Nos. 20, 37 and 38 material thereto. Bye-law No. 20 deals with holding of meetings of the Managing Committee and prescribes the procedure to be followed at the meeting. Under that bye-law the Managing Committee is required to meet at least once a month or as often as may be necessary and fifty per cent constitutes a quorum. No business other than that published in the notice calling the meeting can be transacted at any meeting of the Managing Committee. Bye-law No. 37 says that any action taken by the Managing Committee shall not be deemed to be illegal even if any member of the Committee is subsequently found to be disqualified or any defect is found in his election or appointment. The bye-law dealing with the powers of the Managing Committee to appoint and dismiss a manager for the association is bye-law No. 38, which runs as follows :

"A manager for the association may be appointed by the Managing Committee subject to the approval of the Registrar He shall perform such duties as may be allotted to him by the Managing Committee or any office-bearer. He shall be liable to be removed at any time with one month's notice or pay in lieu thereof by a resolution of the Managing Committee, but such removal shall have the previous approval of the Registrar."

It will be seen from this bye-law that a manager for the association can be appointed by the Managing Committee with the approval of the Registrar. As the power of dismissal is incidental to the power of appointment and goes with that power, it follows that a manager can be dismissed by the Managing Committee subject to the approval of the Registrar. But this does not mean that previous approval of the Registrar for the passing of a resolution by the Managing Committee dismissing the manager is necessary.

The provision in the bye-law that the manager shall be liable to be removed at any time on one month's notice or pay for that period by a resolution of the Managing Committee and that such removal shall have the previous approval of the Registrar relates to the termination of services of the manager in the ordinary course. It has no bearing when the manager has to be dismissed.

Now, here, as has been stated by opponents Nos. 1 and 2, the meeting of the Managing Committee, at which the resolution dismissing the petitioner was passed, had been convened in accordance with bye-law No. 20 after due notice and four out of seven members of the Committee were present. This statement of the opponents has not been challenged by the petitioner by filing a counter-affidavit, and must, therefore, be accepted. On that statement it must be held that the meeting at which the resolution was passed was held in accordance with bye-law No. 20.

Even if some members of the Committee were disqualified, as alleged by the petitioner, on account of their being defaulters, that cannot render the resolution illegal. Under bye-law No. 37, the resolution would still be valid. The attack on the validity of the resolution resting on the irregularity in the holding of the meeting, the absence of quorum, and disqualifications of some members is, therefore, without any substance.

The real and substantial ground of attack against the validity of the resolution is that under bye-law No. 38 the resolution required the approval of the Registrar but the resolution passed by the Managing Committee on 3rd August, 1958 dismissing the petitioner was approved not by the Registrar but by opponent No. 3, the Officer on Special Duty, who was the Joint Registrar. It is not now disputed by the opponents that the resolution was approved by the Joint Registrar and not by the Registrar.

But the contention advanced on behalf of the opponents is that the approval of the resolution by the Joint Registrar was valid for the purposes of bye-law No. 38 inasmuch as u/s 3 of the Cooperative Societies Act, 1912, the State Government

has power to appoint persons to assist the Registrar and to confer on them by general or special order all or any of the powers of the Registrar under the Act; that by the notification alluded to above in paragraph 5 of the Joint Registrar was invested with all the powers of the Registrar under the Act and the Rules framed thereunder; and that the bye-laws are a part of the Act.

We are unable to accede to the contention that the Joint Registrar was competent under bye-law No. 38 to accord approval to the resolution of the Managing Committee dismissing the petitioner. Under the said bye-law, the approval has to be of the Registrar. In the bye-laws of the Association, there is no provision permitting the Government or the Registrar to delegate to any other authority the power of the Registrar under bye-law No. 38. It is true that u/s 3 of the Co-operative Societies Act, 1912, it is open to the State Government to appoint a Joint Registrar to assist the Registrar and to confer on him all or any of the powers of the Registrar under the Act. The section speaks of the conferment of powers of the Registrar under the Act only and not under the bye-laws framed u/s 43(2)(c) of the Act. The notification, which was issued by the State Government on 13-6-1956, also conferred on the Joint Registrar all the powers of the Registrar under the Act and the rules framed thereunder. It did not proceed to confer on him the powers of the Registrar under the bye-laws. There is a distinction between an Act, the rules framed thereunder and the bye-laws framed by an authority by virtue of the power conferred on it by the Act. We shall not attempt to define a bye-law or to indicate the limits of its operation. Several statutes give to the local authorities the power to enact bye-laws for good rule, administration and government. They cover enormous variety of subjects. But all the bye-laws derive their authority from the statute or the rules made thereunder which give power to the local authority to make them. Bye-laws are thus orders and regulations made by some authority clothed with the necessary statutory power for the regulation of its actions and concerns. They are rules of a corporation or an association or an authority for its administration and government. In *Kruse v. Johnson* 1898 2 QB 91, Lord Russell C. J., pointed out the characteristics of a bye-law made by a public body such as a County Council under the Local Government Act, 1888. He described a bye-law made by a County Council prohibiting any person from playing music or singing in any public place as an ordinance affecting the public, or some portion of the public to impose 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. He added that a bye-law, if validly made, has the force of law within the sphere of its legitimate operation.

Bye-laws made under a power conferred by a statute are not parts of the statute. A statute is a sort of Constitution Act conferring on the body or authority the power to make bye-laws in respect of certain matters. There are certain essentials for the validity of a bye-law. It must be intra vires the authority who makes it, not repugnant to the law of the country, certain in its terms, and positive and reasonable: (see Halsbury's Laws of England, 3rd Edn., Vol. IX, pp.

42-43, and Municipal Committee, Khurai v. Firm Kaluram Hiralal AIR 1944 Nag 73 : ILR (1943) Nag 740. The rules framed under an Act stand on an altogether different footing. They are parts of the Act and when they are made and published, they have effect as if enacted in the Act. They are governed by the same principles of construction as are applicable to the statute itself. A statutory rule cannot be challenged on the ground that it is unreasonable, whereas a bye-law is open to challenge on the ground that it is unreasonable. No doubt, when a statute enabling bye-laws and rules to be made is repealed, the rules as well as the bye-laws fall with the Act. But the bye-laws cease when the statute is repealed not because they are parts of the Act, but because the authority of the corporation or association to make bye-laws is revoked by the repeal of the Act. Merely because the bye-laws and the rules cease to be operative when the Act is repealed, it does not follow that a bye-law is, like a rule made under the Act, a part of it. The distinction between statutory rules and bye-laws has been, if we may say so, lucidly pointed out by Chagla C. J. in *Mulchand Gulabchand Vs. Mukund Shivram Bhide and Another*, . In that case he observed:

"There is a clear distinction between statutory rules and bye-laws. Bye-laws are usually framed by corporations under their inherent powers in order to carry out the purposes of the corporation or they are framed by public authorities set up by Parliament, and as it is left to the corporations or the public authorities to frame these bye-laws and carry out their purposes, the Courts have retained certain amount of control over the bye-laws by considering their reasonableness. But statutory rules stand on an entirely different footing. Parliament or Legislature, instead of incorporating the rules into the statute itself, ordinarily authorise Government to carry out the details of the policy laid down by the Legislature by framing the rules under the statute, and once the rules are framed, they are incorporated in the statute itself and become part of the statute, and the rules must be governed by the same principles as the statute itself. And, therefore, although a bye-law may be challenged on the ground that it is unreasonable, a statutory rule cannot be so challenged."

The fact that bye-laws made u/s 43(2)(c) are quite different from the rules made under the Act and are not part of the Act is placed beyond doubt by the terms of Sections 8(3), 9, 11 and 43(5) of the Act. u/s 8(3) the application for registration of a society under the Act has to be accompanied by a copy of the proposed bye-laws of the society; and it is provided by Section 9 that the Registrar may register a society, if, on examination of the bye-laws proposed by the society, he is satisfied that the bye-laws are not opposed either to the Act or to the rules made thereunder.

Section 11 of the Act prescribes a special procedure for amendment of the bye-laws. The amendment is required to be registered u/s 11. Section 43 deals with the power of the Government to make rules to carry out the purposes of the Act. Sub-section (2) of that section says *inter alia* that the rules may prescribe the matters in respect of which a society may or shall make bye-laws. Subsection (5)

of Section 43 lays down that all rules made under the Act, when published in the Official Gazette, shall have effect as if enacted in the Act.

The provisions about the application for registration of a society being accompanied by a copy of the proposed bye-laws of the society, about the amendment of the bye-laws and the registration of the amendments, and about the scrutiny by the Registrar for seeing whether the bye-laws are or are not contrary to the Act or to the Rules made thereunder, all indicate that bye-laws are not a part of the statute or the rules under which they are made. It is to be observed that Sub-section (5) of Section 43 only says that the rules made under the Act shall have effect as if enacted in the Act.

It does not provide that the bye-laws of any society shall be a part of the Act or the Rules. Indeed, it would be impossible to say so in the very nature of the bye-laws. Though societies generally adopt "model bye-laws", it is open to a society to have bye-laws different from any other society. Clearly, it cannot be contended that the uniform "model bye-laws" or the varying bye-laws made by different societies registered under the Act are all a part of the Act. They are no more parts of the Act than the various Acts enacted by the State Legislatures are parts of the Constitution.

If, as we think, the expression "under the Act" occurring in Section 3 of the Act cannot be read as meaning "under the Act and the bye-laws framed by the registered societies thereunder", then the investment of the Joint Registrar by the Government with all the powers of the Registrar under the Act and the notification issued on 13th June, 1956 cannot make the approval given by the Joint Registrar to the resolution of the Managing Committee a valid approval under bye-law No. 38. The resolution, in pursuance of which the petitioner was dismissed from service, must, therefore, be held to be illegal, and the order of dismissal of the petitioner must be held to be bad.

In this view of the matter, it is really unnecessary to consider in detail the contention of the petitioner that he was not given a reasonable opportunity of meeting the charges levelled against him, and that the Secretary of the Association was not qualified to hold an enquiry that he did against him. It must, however, be said that this contention is without any substance. As is evident from the various annexures to the petition and the documents exhibited by the opponents, the petitioner was informed of the charges against him and was given ample opportunity to defend himself and to lead his evidence to rebut the charges.

He did not avail himself of the opportunity offered to him and did not appear before the enquiring officer. The Secretary of the Association had, no doubt, filed a criminal complaint against the petitioner. But he did so not in his personal capacity but by virtue of the office he held. It cannot, therefore, be maintained that the opponent No. 2, the Secretary of the Association, was in any way personally prejudiced against the petitioner and the enquiry held by him was

consequently biased. It was not necessary that the enquiry into the charges against the petitioner should have been held by the Managing Committee itself.

The Managing Committee, of course, could not delegate its function and duty of deciding upon the action to be taken against the petitioner. But it could delegate its administrative power of holding an enquiry to a responsible and competent official to enquire and report. It has been pointed out in *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, , that a functionary, who has to decide on a matter such as the dismissal of a member of the staff, can obtain the material on which he has to act in such manner as may be feasible and convenient, provided only the affected party has a fair opportunity to correct or contradict any relevant and prejudicial material; that the functionary cannot be said to have delegated his function merely by deputing a responsible or competent official to enquire and report, and that what cannot be delegated except where the law specifically so provides is the ultimate responsibility for the exercise of such power. Here, the ultimate decision of dismissing the petitioner was of the Managing Committee and not of the Secretary.

The petitioner raised the further subordinate contention that his suspension was illegal. No doubt, as the Division Bench hearing the Letters Patent appeal referred to above discharged the order of the learned Single Judge holding that the order suspending the petitioner was by way of penalty, it is open to the applicant to challenge the validity of his suspension. It would suffice to say that to us it appears that the applicant's suspension was clearly one made pending an enquiry. That "suspension" is an implied incidence of removal, and an employee can be suspended pending final determination of the charges was recognized by the Supreme Court in *Om Prakash Gupta Vs. The State of Uttar Pradesh*, .

The order of suspension lapsed with the order of the petitioner's dismissal. The suspension order is not revived with the declaration that the order of dismissal is illegal. The contention that if the order of dismissal was legal it could not be made effective from the date of the order of suspension is not sound. If an employee is suspended pending an enquiry into certain charges against him and if as a result of the enquiry an order of dismissal is passed against him, then as observed by the Supreme Court in *(S) Om Prakash Gupta Vs. The State of Uttar Pradesh*, , "the order of dismissal replaces the order of suspension," which then ceases to exist.

The word "replaces" is very significant and leads to the conclusion that in such a case the order of dismissal would be effective from the date of the order of suspension. After all, the practical importance of the date of effectiveness of an order of dismissal is with regard to the claim for salary or wages during the period of suspension. In *District Council, Amraoti v. Vithal Vinayak Bapat* AIR 1941 Nag 125 : ILR (1942) Nag 343, it was held that if the dismissal of a servant is justified, then he is not entitled to his wages or salary during the period of suspension preceding his dismissal.

Thus where an employee is ultimately found guilty of the charges and is dismissed from service, he is not entitled to salary for the period of his suspension and his dismissal is regarded as operative from the date of his suspension.

For all these reasons, we allow this application, and holding that the petitioner's dismissal from service was illegal, direct the opponents not to give any effect to the order made by the opponents dismissing the petitioner pursuant to the resolution passed on 3rd August, 1958 by the Managing Committee. The applicant Khali get his costs from opponent No. 1. Counsel's fee is fixed at Rs. 100/-. The outstanding amount of security deposited by the petitioner be refunded to him.