
(1981) 08 OHC CK 0006

In the Orissa High Court

Case No : Original Jurin. Case No. 730 of 1981

Durga Shankar Kar

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 21-08-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1982 Ori 20 : (1981) 52 CLT 402

Hon'ble Judges : P.K. Mohanti, J;B.N. Misra, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanti, J.—The petitioner challenges the order dated 30-3-1981 (Annexure-1) passed by opposite party No. 2 u/s 32(1) of the Orissa Co-operative Societies Act, 1962 (hereinafter called "the Act") superseding the Committee of Management of Kalahandi Wholesale Consumers Stores (hereinafter referred to as "the Society" and appointing the Sub-Divisional Officer (Civil), Bhawanipatna as Administrator of the Society u/s 32(1) (b) of the Act.

2. The Society is a "Central Society" within the meaning of Section 2(h-2) of the Act. Petitioner is the President and opposite parties 2, 4, 5, 6 and 7 are the Directors of the Committee of Management of the Society. It is alleged that the opposite party No. 2 N. Madhav Rao, who is Assistant Registrar and not Dy. Registrar of Co-op Societies, Bhawanipatna, issued a notice u/s 32(1) of the Act on 23-1-1981 calling upon the members of the Committee to show cause as to why the Committee should not be superseded on the ground of mismanagement. On service of notice the petitioner submitted his show cause contending, inter alia, that the charges of mismanagement Were grossly mala fide and outcome of political vendetta and had been issued at the behest of the Minister in charge of Co-operation in the Government of Orissa. The petitioner prayed for being given

an opportunity of personal hearing. It is contended that without giving an opportunity of personal hearing the opposite party No. 2 passed the impugned order on 30-3-1981. The impugned order is attacked mainly on the following grounds:

(1) that the financing bank (O. P. No. 5) Was not consulted by O. P. No. 2 before initiating action u/s 32(1) of the Act. (2) that no opportunity of personal hearing was given, though specifically asked for.

"(3) that opposite party No. 2 N. Madhav Rao had no jurisdiction to issue the show cause notice. (Annexure-2) and to pass the impugned order (Annexure-1), because firstly, he is a Director of the Committee of Management and the alleged laches are attributable to him also and in any event, He is incompetent to remove himself which he has purported to do under Annexure-1, anti secondly, he is Assistant Registrar of Co-operative Societies, Bhawanipatna, and, air such, cannot act u/s 32 on behalf of the Registrar as delegation of power u/s 32 has been made to the Deputy Registrars only.

3. In the counter-affidavit filed by opposite parties 1 to 4 it is maintained that the show cause notice, was served on the petitioner on 24-1-1981 and the impugned order was passed on 30-3-1981 and the financing bank had been consulted on 14-1-1981, that is, before the issue of show cause notice, and the financing bank had given its written consent on 13-2-1981, that is, before the impugned order was passed. It is also maintained that opposite party No. 2 has been given the power of the Deputy Registrar by the Government of Orissa and the said opposite party No. 2 acting as the Deputy Registrar of Co-operative Societies, Bhawanipatna, has passed the impugned order. It is further maintained that the show cause filed by the petitioner was duly considered along with the relevant records of the Society and the impugned order was passed giving detailed reasons for supersession and it was not felt necessary to give a personal hearing to the petitioner.

4. The first contention is that initiation of action u/s 32 of the Act without complying with the requirements of Subsection (4) thereof is bad in law and consequently the order of supersession is vitiated. Reliance is placed on a decision of this Court reported in Sarat Chandra Panda Vs. State of Orissa and Others, .

Sub-section (4) of Section 32 of the Cooperative Societies Act runs as follows:

"Before taking any action under Sub-section (1) in respect of society, the, Registrar shall consult the financing Bank to which it is indebted and consider the opinion, if any, received from such Bank." In the case cited above, it was the notice to show cause against supersession which was challenged on the ground of absence of consultation. It was held that consultation with the financing bank of a Co-operative Society is a condition precedent not only when the final step of supersession of the Society is contemplated but even for issue of notice to the Society to show cause against its supersession. In the present case, challenge

has been laid after the order of supersession was made. The financing Bank (O. P. No. 5) was consulted on 14-1-1981 which is evident from the minutes of discussion held on that date between the Deputy Registrar of Co-operative Societies and the financing bank (O. P. No. 5) vide Annexure A. The written consent of the financing bank for supersession of the Society was obtained on 13-2-1981 vide Annexure B. The order of supersession was made on 30-3-1981 vide Annexure 1. It is contended on behalf of the petitioner that Annexure A has been manufactured for the purpose of this case. It is pointed out that the copy of the notice (Annexure 2) was . forwarded to O. P. No. 5 on 23-1-1981 and the opp. party No. 5 was requested to state its objections on or before 5-2-1981. It is accordingly urged that there was no consultation with opp. party No. 5 on 14-1-1981 as alleged. It appears, however, that there was a discussion between O. ,Ps. 3 and 5 with reference to a copy of the visit note on the working of the Co-operative Stores and in the minutes of discussion (Annexure A) it is mentioned that in (he opinion of the financing bank the management of the Kalahandi Wholesale Consumers Co-operative Stores ought to be superseded in the best interest of the said Stores. It is also mentioned therein that the financing bank would be issuing the written consent in due course. Thus, it appears that though the copy of the notice u/s 32(1) of the Act was forwarded to O. P. No, 5 on 23-1-1981, yet there was consultation with the O. P. No. 5 during the discussion held on 14-1-1981. Even assuming that there was no consultation with the financing bank before issue of notice, yet , the written consent of O. P. No. 5 having been obtained on 13-2-1981, the order of supersession made on 30-3-1981 is not open to attack. Sarat Chandra's case was considered in a recent decision of this Court in the case of Parameswar Bagh v. State of Oriasa, O. J. C. No. 1473 of 1980 decided on 22-4-1981: (reported in Parameswar Bagh and Others Vs. State of Orissa and Others, at p. 156) and it was held as follows :

".....In Sarat Chandra's case (AIR 1979 Orissa 143) (supra) challenge had been laid before this Court against a notice and the validity of the notice in the absence of consultation came for consideration. It was in that background that the Division Bench of this Court held that consultation was a condition precedent and when there was no consultation, the notice was invalid. In the present case, challenge has been laid after the order of supersession has been made and there is sufficient material to show that by the time supersession was ordered, the Bank had been consulted and its consent had also been obtained. While we agree that consultation is a condition precedent as held by this Court, we are not prepared to accept Mr. Ra.th's submission that the order of supersession must fall as the notice was defective at the preliminary stage"

We accordingly hold that the order of supersession was duly made after consultation with the financing bank and it is not vitiated on account of any defect in the notice.

5. The next contention is that the order of supersession is vitiated as no opportunity of personal hearing was given to the petitioner. Section 32(1) of the

Act provides as follows :

"32. Supersession of committee and power to disqualify officers of the society :--

(1) If, in the opinion of the Registrar, the Committee of any Society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the Rules or the bye-laws or commits any act which is prejudicial to the interests of the society or its members, or is otherwise not functioning properly, the Registrar may, after giving the committee an opportunity to state its objections, if any, by order in writing, stating reasons therefor, remove the committee; and"

The statute provides for giving an opportunity to the committee to state its objections, if any. It does not require the Registrar or any other officer exercising the powers of the Registrar u/s 32(1) to hear the members of the committee of management in person before passing final orders u/s 32(1) of the Act. In Sub-section (2) of Section 67 of the Act which deals with surcharge, provision has been made for giving the person concerned an opportunity of being heard. But Section 32(1) provides for giving the committee an opportunity to state its objections. Thus, it appears that where the Legislature intended to confer a right of being heard it has said so as in Sub-section (2) of Section 67. The expression used in Section 32(1) is opportunity to state its objections and not "opportunity of personal hearing." The Court cannot supplant a particular rule of natural justice so as to nullify the legislative provision. In the present case, the petitioner was given an opportunity of stating his objections to the charges mentioned in the notice and he has availed of that opportunity by filing his objections. A mere denial of opportunity of personal hearing will not vitiate the proceedings. The opportunity given to the petitioner to state his objections is, in our opinion, sufficient compliance with the rules of natural justice. We are fortified in this view by high authorities.

6. In the case of *Local Govt Board v. Arlidge*, 1915 AC 120 decided by the House of Lords it was held that personal or oral hearing is not a sine qua non of the principles of natural justice.

In the case of *Union of India (UOI) Vs. Jyoti Prakash Mitter*, , Art. 217(3) of the Constitution of India came up for consideration before their Lordships and it was held as follows (at p. 1103):

"Article 217(3) does not guarantee a right of personal hearing. In a proceeding of a judicial nature, the basic rules of natural justice must be followed. The respondent was on that account entitled to make a representation. But it is not necessarily an incident of the rules of natural justice that personal hearing must be given to a party likely to be affected by the order. Except in proceedings in Courts, a mere denial of opportunity of making an oral representation will not, without more, vitiate the proceeding. A party likely to be affected by a decision is entitled to know the evidence against him and to have an opportunity of making a representation. He, however, cannot claim that an order made without

affording him an opportunity of a personal hearing is invalid."

(The underlining is ours) In that case the respondent repeatedly requested for being given an opportunity of oral hearing before the President of India and an opportunity to adduce evidence and to make submissions in support of his case. In reply, he was informed that the President would decide after considering the evidence whether any personal hearing was necessary, He was also informed that should the President decide that he should be heard in person, he will be informed in due course. It was contended before their Lordships that the respondent's request was granted and he remained under an impression that he would be given an oral hearing and the order made without granting him an opportunity of oral representation was contrary to the rules of natural justice. Their Lordships held (at p. 1103):

"..... The President is performing a judicial function when he determines a dispute as to the age of a Judge, but he is not constituted by the Constitution a Court. Whether in a given case the President should give a personal hearing is for him to decide. The question is left to the discretion of the President to decide whether an oral hearing should be given to the Judge concerned....."

In the present case, the opposite parties have taken the stand that the order of supersession was made after considering the objections filed by the petitioner along with relevant documents and it was not felt necessary to give a personal hearing. The materials on record amply support the contention that personal hearing was not necessary. The order of supersession was made after considering the visit note of the Deputy Registrar on the working of the society which revealed a lot of defects in the day to day management and serious irregularities committed by the members of the committee in contravention of the rules and bye-laws. The explanation submitted by the petitioner was duly considered along with other relevant documents and the order of supersession was passed giving detailed reasons for the same.

7. In the case of *State of Mysore Vs. S.S. Makapur*, it was laid down that domestic Tribunals are not Courts and that they are therefore not bound to follow the procedure prescribed for trial of actions in Courts. Nor are they bound by rules of evidence. Further unlike Courts they can obtain information from all sources and that all that is expected is that they should give fair opportunity to the party against whom such material is to be used, to explain it. It was added that what is fair opportunity will depend on facts and circumstances of each case.

8. In *New Prakash Transport Co. Ltd. Vs. New Suwarna Transport Co. Ltd.*, their Lordships observed that the rules of natural justice vary with varying constitutions of statutory bodies, and the rules prescribed by the legislature under which they have to act, and the question whether in a particular case they have been contravened must be judged not by any preconceived notion on what they may be but in the light of the provisions of the relevant Act. This principle was reaffirmed in *Nagendra Nath Bora and Another Vs. The Commissioner of Hills*

Division and Appeals, Assam and Others, .

9. Mr. R. Mohanty, the learned counsel for the petitioner relied on a decision in the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, in support of his contention that the impugned order is vitiated as no opportunity of personal hearing was afforded to the petitioner. In that case the passport of Smt. Maneka Gandhi was impounded by an order u/s 10(3) (c) of the Passport Act, 1967. The Passport Act does not provide for giving an opportunity to the holder of the passport of showing that the ground for impounding the passport does not exist. Smt. Gandhi filed the writ application challenging the order on the grounds, inter alia, that Section 10(3) (c) is void as conferring an arbitrary power since it does not provide for a hearing of the holder of the passport before the passport is impounded and that the provision is violative of Article 21 of the Constitution since it does not prescribe procedure within the meaning of that Article. It was found that the Central Government not only did not give an opportunity of stating her objections or of hearing to the petitioner after impounding her passport but even declined to furnish to the petitioner the reasons for impounding her passport despite request made by her. Their Lordships held that the Central Government was wholly unjustified in withholding the reasons for impounding the passport from the petitioner and this was not only in breach of the statutory provision, but it also amounted to denial of opportunity of hearing to the petitioner. Their Lordships observed that the power to impound a passport seriously interferes with the constitutional right of the holder of the passport to go abroad and entails adverse civil consequences. The fact that Smt. Gandhi was not given an opportunity of making a representation before or after the impounding of her passport introduced a serious infirmity in the order. It was held that the order impounding the passport of the petitioner was clearly violative of the rules of natural justice embodied in the maxim *audi alteram partem* and it was not in conformity with the procedure prescribed by the Passport Act, 1967,

It was further held :

"It is well established that even where there is no specific provision in a statute or rules made thereunder for showing cause against action proposed to be taken against an individual which affects the rights of that individual, the duty to give reasonable opportunity to be heard will be implied from the . nature of the function to be performed by the authority which has the power to take punitive or damaging action..... "

(Paragraph 32).

10. Mr. R. Mohanty, the learned counsel for the petitioner also relied on a decision in the case of the President, the The President, the Commonwealth Co-operative Society Ltd., Ernakulam Vs. The Joint Registrar (General) of Co-operative Societies, Trivandrum and Another, . In that case an order for winding up the Cooperative Society was passed u/s 51(1) of the Travancore-Cochin Co-

operative Societies Act, 1951 without giving notice to the society. Their Lordships held that an adjudication of the facts without notice and an opportunity of being heard, when the adjudication will have serious civil consequences to the society is against the principles of natural justice and that even if the statute does not expressly provide for notice, the justice of the common law will supply the omission and would require notice and an opportunity of being heard. We fail to appreciate how that case is of any service to the petitioner in the present case.

11. It is urged that the doctrine of natural justice also consists of the rule *nemo debet esse iudex in propria causa* (no one shall be a judge in his own cause) and Shri Rao, who was undisputedly one of the Directors of the Co-operative Society and the alleged laches were also attributable to him, was incompetent to remove himself by superseding the entire committee of management including himself. We are unable to accede to this contention. Shri Rao was acting as the Deputy Registrar of the Society to whom the power has been delegated and he made the order of supersession in that capacity. There is nothing to show that he had any personal interest in the matter of supersession or that he was biased against the other members of the committee. His decision cannot be called in question merely because he was a member of the committee in his capacity as the Director of the Co-operative Society. There is absolutely no evidence to show that the members of the committee did not have a fair and impartial consideration of their objections at his hands. This contention is, therefore, without any force.

12. The last contention of the petitioner is that the O. P. No. 2 N. Madhav Rao is an Assistant Registrar of Co-operative Societies and as such cannot exercise the powers under Section 32 delegated by the Registrar to the Deputy Registrars. It is argued that O. P. No. 2 had no jurisdiction to pass the order of supersession as he was not a Deputy Registrar and there was no statutory delegation in his favour. It is not disputed that by a general order of the Registrar all Deputy Registrars have been authorised to exercise the power of supersession u/s 32 of the Act (vide Annexure D). It appears from Government notification dated 13th Nov., 1980 (Annexure C) that Shri B. P. Guru, the Deputy Registrar of Co-operative Society, Katakhandi proceeded on leave and O. P. No. 2 N. Madhav Rao, who was the Assistant Registrar, was allowed to remain in additional charge of the post of Deputy Registrar. Shri Rao was also allowed to act as drawing and disbursing officer in respect of the office of the Deputy Registrar of Cooperative Societies, Katakhandi. Officiating appointments and in-charge arrangements are well understood terms in civil service. When an officer is appointed to officiate in a higher post he is invested with the powers of the higher post. But when he is placed in charge of the current duties of a vacant post in a higher appointment he cannot exercise any of the statutory powers of the office. He can merely perform the day to day routine duty. The Government notification in Annexure C does not show that Shri Rao was placed in charge of the current duties of the Deputy Registrar. The notification clearly shows that he remained in additional charge of the post of the Deputy Registrar and was allowed to function as

drawing and disbursing officer in respect of the office of the Deputy Registrar. Thus, it appears that he was in full charge of the duties and functions of the Deputy Registrar and was, therefore, entitled to exercise the statutory powers of the Deputy Registrar. By virtue of the powers delegated to the Deputy Registrars, Shri Rao acting as the Deputy Registrar of the Co-operative Society for the time being issued the notice u/s 32(1) and passed the order of supersession. The petitioner filed his objection before Shri Rao in pursuance of the notice u/s 32(1) of the Act. He did not take the objection that Shri Rao (O. P. No. 2) had no jurisdiction to initiate the proceeding or to pass the order of supersession. We find no merit in the contention that the O. P. No. 2 had no jurisdiction to make the order of supersession.

13. In view of our foregoing findings, the writ application is devoid of any merit and it is accordingly dismissed, but in the circumstances without any order as to costs.

Misra, J.

I agree.