

(1993) 07 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 4114 of 1993

Gupta Prasad Das

APPELLANT

Vs

Registrar, Co-operative Societies and Another

RESPONDENT

Date of Decision : 08-07-1993

Acts Referred:

Citation : (1993) 2 OLR 323

Hon'ble Judges : D.M. Patnaik, J;A. Pasayat, J

Bench : Division Bench

Advocate : Pradeep Mohanty, B.P. Ray, A.K. Dalai and A. Mohanty, for the Appellant; A.N. Misra, Additional Government Advocate, for the Respondent

Judgement

A. Pasayat, J.—The petitioner calls in question the legality of notice issued by the Registrar, Co-operative Societies, Orissa, in purported exercise of powers conferred u/s 32(1) of the Orissa Co-operative Societies Act, 1962 (in short, the "Act") requiring the Committee of Management of Koraput Central Co-operative Bank Limited, Jeypore to show cause as to why the committee shall not be received from office. Shri Gupta Prasad Das, the President of the committee has filed this writ application on behalf of the committee and the committee is described as the petitioner hereinafter.

2. According to the petitioner, the notice is outcome of non- application of mind. Our attention is drawn to the language of Section 32(1) which stipulates that if the committee of any society persistently makes default or is negligent in the performance of the duties imposed on it by the Act or the Rules or the bye-laws, or commits any act which is prejudicial to the interest of the society or its members, or is otherwise not functioning properly, the Registrar may, after giving the committees notice shall take steps as are prescribed therein. It is highlighted in the writ application as well as in the further affidavits filed before us that there was no default much less persistent. On the contrary the financial position has improved after the present management assumed charge on 30-12-1969. A detailed reply has been submitted wherein various factual

statements have been made. For example, it has been stated that recovery climate was vitiated right from the year 1988-89 because of implementation of Debt Relief Schemes by the Government of Orissa. The management has also taken interest to review the operational expenditure from time to time and the expenditure Incurred by the bank was within the budgetary limits and never exceeded the budgetary approvals. The advances which were outstanding were mostly more than five years old and the present management has initiated steps for realisation in the right earnest, and a portion of the advances has been collected. It has been stated that if there was any financial insecurity, that was on account of the previous management and the financial position has improved as indicated above after the present management came into office. It is also stated that the ranking given by the auditor clearly shows that it has been classified as "A" class, while for the previous periods the ranking was "C class. AH these, according to the learned counsel for petitioner, show that the notice is not bona fide, and therefore, we should set aside "he notice and nullify the same.

It is also stated that requisite consultation with the financing bank has not been done, and it vitiates the initiation of the proceeding. Reference is made to S.V. Narayana Vs. Assistant Registrar of Co-operative Societies and Others, . Since the petitioner has submitted a show-cause reply, we are sure, the Registrar shall deal with the same in accordance with law. If really there is no material to show , any persistent default, and if materials which are germane to the subject-matter in dispute have been left out of consideration, certainly the Registrar shall consider the same in proper perspective and take an appropriate decision. The learned counsel for the petitioner says that the show-cause notice shows that the financial position as it stood prior to the petitioner coming to office has been considered to be of consequence, while issuing notice and the sub- sequent periods have not been considered. Those are aspects which the Registrar shall consider while dealing with the show cause reply. We find that by amendment of Section 32(1) by Orissa Act 28 of 1991, a new provision relating to grant of reasonable opportunity of being heard has been provided; but that provisions has not yet become operative. It the petitioner prays for a personal hearing in the matter, the Registrar shall consider the same and if he feels that grant of such opportunity, notwithstanding absence of any specific provision in the statute, will be in the interest of all concerned, he shall grant such opportunity.

The learned counsel for petitioner says that a representation shall be made before the Registrar by the petitioner with a copy of our order for personal hearing. Let it do so, if so advised. The learned counsel says that the representation shall be filed within ten days from today. The said representation relating to desirability to grant personal hearing shall be disposed of first before finalisation of the proceeding, as we have directed the Registrar to consider desirability of grant of such opportunity. Apart from persistent defaults, there are other situations which may necessitate action u/s 32(1). The Registrar shall consider whether the case of the petitioner is encompassed by any of the other situations enumerated in the provision.

3. We find that the petitioner has submitted an elaborate reply to the show-cause notice. The position of law relating to action u/s 12(1) particularly where the question is of persistent default has been stated by this Court in a series of cases, one of them being Sri Rama Chandra Khera and Ors. v. State of Orissa and Ors. : 1991 (11) OLR 32.

The writ application is disposed of. The order be communicated to the Registrar, Co-operative Societies, Orissa by special messenger the cost of which shall be assessed and deposit made by tomorrow.

D.M. Patnaik, J.

I agree.