(1972) 03 MP CK 0005

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition Case No. 62 of 1971

Hastimal Bheroolal APPELLANT

Vs

The State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 30-03-1972

Acts Referred:
Madhya Pradesh Land Revenue Code, 1959 — Section 7(2)

Citation : AIR 1972 MP 214 : (1972) JLJ 1049 : (1972) 17 MPLJ 660 : (1972) MPLJ 660

Hon'ble Judges : S.R. Vyas, J;S.P. Bahrgava, J;G.L. Oza, J

Bench : Full Bench

Advocate : A.M. Mathur, for the Appellant; S.L. Dube Govt. Advocate and U.N. Bachawat, for the Respondent

Judgement

Oza, J.

This reference has been made by a Division Bench and the question referred to is-- .

"Whether the State Government was denuded of its power to hear second appeals after the notification delegating powers to hear second appeals u/s 77 to the Board of Revenue was issued and consequently, the exercise of power to hear the second appeal by the State Government alter the notification was without jurisdiction and thus illegal?"

The relevant facts giving rise to this reference are that the Slate Pencil Producers'' Marketing Co-operative Society Ltd., Mandsaur, which is a co-operative society registered under the Madhya Pradesh Co-operative Societies Act. 1960, (hereinafter called the Act), was served on 3rd December 1966 with a notice of supersession u/s 53(2) of the Act by the Registrar of Co-operative Societies. An order was made on the same day u/s 53(10) of the Act directing that no order or resolution passed by the Working Committee of the Society would be effective unless it was approved by the Senior Co-operative Inspector attached to the office of the Assistant Registrar, Co-operative Societies, Mandsaur. The Society was ultimately superseded on 24th May 1967. In between 3rd December 1966 and 24th May 1967 the Working Committee of the Society passed a resolution (Resolution No. 33) deciding to raise the capital of the Society, and allotting shares to the members of the Working Committee. The respondents Nos. 7 and 8. Shri Mohammad Rafiq and Shri Hussain Khan, were also allotted shares by this resolution. The Society filed an appeal against the order of its supersession. But that appeal was rejected. Shri G. P. Tiwari was made the Officer-in-charge of the Society, and he was managing the Society after its supersession. By an order dated the 27th March 1968, Shri Tiwari cancelled the allotment of shares made by the Committee of the Society in favour of its members. In its place, the Officer-in-charge allotted one share each to the present petitioner and nineteen other persons who were members of the Slate Pencil Mazdoor Karkhana -- a unit of the Society. The respondents Nos. 7 and 8 thereupon raised a dispute u/s 64 of the Act challenging allotment of shares to the petitioner and nineteen other persons by the Officer-in-charge of the Society.

While this dispute was pending, the respondents Nos. 7 and 8 moved the Assistant Registrar for suspension of the aforesaid order of the Officer-in-charge. The Assistant Registrar granted an ex parte stay of the operation of the order of the Officer-in-charge dated the 27th March 1968. This order was passed by the Assistant Registrar on 30th April 1968. Being aggrieved by this interim order, the petitioner filed an appeal before the Joint Registrar, Co-operative Societies, Bhopal. who, by his order dated the 5th February 1969, set aside the order of the Assistant Registrar. The respondents Nos. 7 and 8 then went up in revision before the State Government u/s 80 of the Act. By its order dated the 28th March 1969 the State Government stayed the operation of the order of the Joint Registrar dated the 5th February 1969. This order of the State Government was challenged before this Court in M. P. No. 38 of 1969. The High Court allowed the petition and the order passed by the State Government was quashed. It was also found in its decision by the High Court that the order of the Joint Registrar was not justified as before passing these orders the State Government and the Joint Registrar had not noticed the persons interested in the matter and the order was obtained behind their back. The High Court, therefore, quashed the orders of the Joint Registrar and the State Government and sent back the matter to the Assistant Registrar to hear and decide the matter afresh after notice to all the parties concerned.

The Assistant Registrar, on receiving the matter back from the High Court, issued notices to the petitioner and nineteen others, and after hearing them confirmed the stay-order passed earlier. Against this order, an appeal was preferred before the Joint Registrar, who vacated the stay order granted by the Assistant Registrar. The respondents Nos. 7 and 8 thereupon filed a second appeal before the State Government u/s 77 of the Act. By its order dated the 1st May 1971. the State Government set aside the order of the Joint Registrar and restored the one passed by the Assistant Registrar. Mandsaur, resulting in the suspension of the order passed by the Officer-in-charge. Against this order of the State Government, a writ petition was preferred wherein the present reference has been made.

Under Section 77 of the Act, the State Government has power to hear second appeals. Section 77(2) provides as under-

"(2) A second appeal shall He against any order passed in first appeal by the Registrar, Additional Registrar or Joint Registrar to the State Government on any of the following grounds and no other, namely-

(i) that the order is contrary to law; or

(ii) that the order has failed to determine some material issue o.f law; or

(iii) that there has been a substantial error or defect in the procedure as prescribed by this Act which may have pro-duced error or defect in the decision of the case upon merits".

Under this provision, the State Government has been empowered to hear second appeals. In the present case, respondents Nos. 7 and 8 had filed a second appeal before the State Government. Section 95(2)(hh) of the Act provides for the framing of rules. It is as under--

"95. (1) The Government may, for the whole pr any part of the State and for any society or class of societies make rules for the conduct and regulation of the business of such society or class of societies and for carrying out all or. any of the purposes of this Act.

(2) In particular and without preiudice to the generality of the foregoing power. such rules may-

***** (hh) prescribe i''n the case of appeals lying to the State Government the authority to which power of hearing appeals may be delegated".

Under this provision, the State Government has power to frame rules and provide for the authority to which the power of hearing appeals may be delegated. Rule 61 of the M. P. Co-operative Societies Rules, 1962, (hereinafter called the Rules) has been framed under these powers and it provides that the power of hearing appeals under this Act which lie to the State Government may be delegated by the State Government to the Board of Revenue, Madhya Pradesh, by a notification issued in this behalf. The State Government has also powers u/s 7(2) of the M. P. Land Revenue Code, 1959, to confer powers on the Board of Revenue for hearing appeals. Such a notification was issued by the State Government which reads thus-

"No. 4327-CR-271-VII-N-I-- In exercise of the powers conferred by subsection (2) of Section 7 of the Madhya Pradesh Land Revenue Code. 1959. (20 of 1959) and in supersession of this Department''s Notifications No. 1818-135-VII-N-I, dated the 23rd March 1963 and No. 1421-CR-123-VII-N-I dated the 16th May 1967, the State Government hereby confers upon the Board of Revenue, Madhya Pradesh, the powers-

(1) to hear appeals under clause (b) of sub-section (1) of Section 77 and second appeals under sub-section (2) of Section 7T against the orders passed in first appeal against the original order passed by the Registrar, Additional Registrar, or Joint Registrar, under Sections 17 55(2). 62. 66. 67(3), 68, 71 and 84; and

(2) to hear appeals against the orders passed by the Registrar or any offices subordinate to him invested with the powers of Registrar under sub-section (3) of Section 63;

of the Madhya Pradesh Co-operative Societies Act, 1960 (17 of 1961) assigned to the State Government by the later Act".

This notification indicates that so far as the power of hearing first appeals is concerned, it has been confined to matters arising out of Sections 17, 55{2), 66. 62, 67(3), 68, 71 and 84. It appears that so far as the power of hearing second appeals is concerned, no such restriction has been placed. It is the power pertaining to hearing of second appeals that is the question on which this reference has been made.

A Division Bench of this Court in Gangadhar v. Laxmanprasad, 1971 MP LJ 80 has held that the appeal could not be decided by the State Government as the jurisdiction to hear second appeals whether they arose u/s 77 or Section 85 vested in the Board of Revenue. A second appeal against any order passed in first appeal by the Registrar, Additional Registrar, or Joint Registrar which was before the date of the notification to be heard by the State Government, would be required to be heard by the Board of Revenue after the notification.

In the present case, in spite of the aforesaid notification, the State Government heard the second appeal and decided it. Therefore, the question that arose was as to whether the State Government had jurisdiction to hear the second appeal. In view of the decision of the Division Bench of this Court referred to above, the State Government will have no iurisdiction to hear a second appeal after the issuance of the notification reproduced above.

There is a Full Bench decision of this Court in Achchelal Lohar Vs. Janpada Sabha and Another, where Dixit. C. J. observed as under-

"The word ''delegation'', as generally used, does not imply a parting with powers by a person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself".

In this decision, reliance w.as placed on Huth v. Clarke (1890) 25 QBD 391. The view taken in Gangadhar''s decision 1971 MPLJ 80 (supra) appears to run contrary to this decision of the Full Bench. It is in these circumstances that this reference has been made.

8. A similar question arose before the Andhra Pradesh High Court, and in Appeal Committee Anakapalli Municipality Vs. Commissioner, Anakapalli Municipality and Another, , placing reliance on (1890) 25 QBD 391, it was observed as under :--

"Applying the principles of this decision to the facts of the instant case, it emerges that the Municipal Council by delegating its power of hearing tax appeals to the Appellate Committee did not part with those powers or denude itself of them. Even during the subsistence of the delegation, it is open to it to exercise the power of hearing tax appeals. But good sense would certainly require that it should avoid a conflict of decision "or jurisdiction with its delegate''"."

The question of delegation has come up for consideration in many English cases. In Gordon. Dadds & Co. y. Morris. (1945) 2 All ER 616, the following observations made in the judgment of Coleridge, C. J. in (1890) 25 QBD 391 were quoted with approval-

"But delegation does not imply a denudation of power and authority; the 6th schedule of the Act (that is the Act. with which he was dealing) provides that, the delegation may be revoked or altered and the powers resumed by the executive committee. The word ''delegation'' implies, that powers are committed to another person or body which are as a rule always subject to resumption by the power delegating, and many examples of this might be given".

In the same decision, the following observations of Wills, J. in (1890) 25 QBD 391 (supra) were also quoted with approval-

"Delegation, as the word is generally used, does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself".

The case of (1890) 25 QBD 391 (supra) was a case pertaining to delegation of legislative and taxing powers. The same principle was. however, followed in the Andhra Pradesh decision where the question was about the delegation of quasi-iudicial powers.

Shri A. M. Mathur for the petitioner contended that the principle applicable in the case of delegation of legislative powers would be of no application in a case of delegation of judicial powers, and in that context he referred to the decisions in Cooper v. Wilson (1937) 2 All ER 726; Vine v National Dock Labour Board, (1956) 3 All ER 939 and Barnard v. National Dock Labour Board (1953) 1 All ER 1113. No doubt in these cases the question about delegation of judicial powers has been considered. But in none of these decisions, the view has been taken that in cases where judicial powers are delegated and there is a specific provision authorizing such a delegation the authority delegating the power will have no power left in it. These cases consider the question whether quasi-judicial and judicial powers can be delegated in the absence of a specific provision authorizing such a delegation. In (1953) 1 All ER 1113 it was observed as under--

"While an administrative function can often be delegated, a judicial function rarely can be. No judicial tribunal can delegate its functions unless it is enabled to do so expressly or by necessary, implication".

Shri Mathur also referred to Bombay Municipal Corporation Vs. Dhondu Narayan Chowdhary, where also the question before the Supreme Court was about the delegation of judicial functions and it was observed as under--

"It goes without saying that judicial power cannot ordinarily be delegated unless the law expressly or by clear implication permits it."

Consequently it cannot be doubted that the powers of hearing appeals can be delegated by the State Government as it has been specifically provided u/s 95(2)(hh). The decisions referred to by the learned counsel dp not come to the point which is at issue in the present case.

It cannot, therefore, be doubted that where the State Government by issuing a notification u/s 7 of the M. P. Land Revenue Code confers power on the Board of Revenue to hear second appeals, it did not part with its own powers. In fact, the notification u/s 7 of the M. P. Land Revenue Code talks of conferral of powers and not of delegation. Section 7(2) of the M. P. Land Revenue Code is as under--

"(2) The State Government may subject to such conditions as it may deem fit to impose, by notification, confer upon, or entrust to the Board or any member of the Board additional powers or functions assigned to the State Government by or under any enactment for the time being in force".

Consequently, when the Government, which had authority u/s 95(2)(hh) of the Act, read with Rule 61 of the Rules, conferred powers on the Board of Revenue u/s 7 of the M. P. Land Revenue Code to hear second appeals by the issue of a notification as quoted above, it cannot be said that the State Government deprived itself of all powers to hear appeals which u/s 77 of the Act could be heard by it. In Gangdhar v. Laxmanprasad (1971 MPLJ 80) it appears that this aspect of the matter was not specifically raised and the question of delegation of powers not having been considered the Division Bench took the view that once the State Government by a notification has delegated its power of hearing second appeals to the Board of Revenue it had no jurisdiction to hear second appeals. In our opinion, this does not appear to be a correct view.

Consequently even after the issue of the notification conferring powers on the Board of Revenue to hear second appeals u/s 77 of the Act the State Government still has jurisdiction to hear second appeals u/s 77. Therefore if the State Government has heard a second appeal after the issue of a notification, it could not be said that the State Government acted beyond its jurisdiction. The question is therefore, answered accordingly.

It was also contended that in this view of the matter, a situation may arise where there may be conflict of jurisdiction. But we may only say what the Andhra Pradesh High Court has said--

"But good sense would certainly require that it should avoid a conflict of decision or jurisdiction with its delegate".

