
(1973) 10 OHC CK 0006
In the Orissa High Court
Case No : O.J.C. No. 533 of 1971

Jagannath Pradhan and Another

APPELLANT

Vs

Registrar, Co-operative Societies and Others

RESPONDENT

Date of Decision : 22-10-1973

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227, 233, 233(1)

Citation : (1973) 39 CLT 1307

Hon'ble Judges : R.N. Misra, J;K.B. Panda, J

Bench : Division Bench

Advocate : Asok Das, G.S. Patnaik, S.N. Satpathy and A. Rath, for the Appellant; Standing Counsel for A.G., R.C. Ram and S. Mahatab, for the Respondent

Final Decision : Dismissed

Judgement

K.B. Panda, J.—The two Petitioners are respectively the Secretary and President of a Society registered under the Orissa Co-operative Societies Act, 1962, named "Kanti Seba Samabaya Sangha Samiti"(hereinafter called - Kanti Samiti). Petitioner No. 1 is said to have been appointed as its Secretary about 14 years back and in the meantime has undergone some training to manage the work of Secretary ship in a Co-operative Society (Annexure-1).

It is alleged in the petition that the Registrar of the Cooperative Societies, Orissa (opp. party No. 1) unauthorisedly drew up a scheme some time in 1970 (Scheme for common cadre of the Secretaries of the Primary Agricultural Credit Co-operative Societies and the Administrative Inspectors of the Central Cooperative Bank - Annexure-2). Under the said scheme the Central Co-operative Bank of the place, where Kanti Samati is situated, was empowered to appoint, transfer and dismiss from service Gr. I and Gr. II Supervisors and Administrative Inspectors are assigned a grade.

2. Opp. party No. 3 is the United Puri-Nimapara Central Co-operative Bank

Limited under which comes Kanti Samiti and opp. party No. 2 is the Secretary of opp. party No. 3. It is alleged in the petition that when the scheme was drawn up neither the Kanti Samiti was consulted nor was it a party thereto, and as such, the scheme is not binding on it. As provided under the scheme opp. party No. 2 issued a notice to Kanti Samiti on 24-3-1971 appointing one Shri B. Parida, Supervisor, Pipli Circle, as Secretary to Kanti Samiti in place of Petitioner No. 1 (Annexure-3). Kanti Samiti, however, did not accept the appointment, since it was very much satisfied with the work of its trained Secretary. Thereafter on 1-5-1971 another notice was issued to accept Shri P.K. Jena as the Secretary of Kanti Samiti, failing which disciplinary action was threatened against the Samiti (Annexure-4). Hence the Petitioners have come up with this application under Articles 226 and 227 of the Constitution of India for quashing the scheme (Annexure-2) as illegal and inoperative being contrary to the provisions of the Co-operative Societies Act and its rules and violative of Article 14 of the Constitution of India. Further issue of a writ of mandamus is also prayed for directing opp. parties not to appoint an outsider as Secretary to the Kanti Samith in place of Petitioner No. 1.

Opp. party Nos. 2 and 3 have filed a separate counter almost in line with the counter of opp. party No. 1. It is stated therein that the impugned scheme and the action taken there under are under the provisions of Section 33-A and 40 of the Orissa Co-operative Societies Act, 1962, and therefore perfectly valid and legal. The former section authorises the Registrar to classify the Co-operative Societies into different classes for fixing the number of employees to be appointed in each. It also empowers the Registrar to make rules regarding the classification, remuneration and allowances and other conditions of service of such employees Section 40 is a general provision that casts a duty on the State Government to take such steps as are necessary for the promotion of co-operative movement in the State. The impugned scheme has been drawn up in exercise of the powers of the State Government through its Registrar. A cadre has been created wherein the services of all Secretaries of the affiliated Societies have been enlisted.

The appointment in question in Kanti Samiti arose on account of the suspension of Petitioner No. 1 on 24-3-1973 from the Secretaryship on charges of misappropriation and falsification of accounts and from that date he ceased to function as such. Kanti Samiti being an affiliated Society to the United Puri. Nimapara Central Co-operative Bank comes within the scheme as also the subsidiary rules framed by the Bank; Kanti Samiti not having framed any subsidiary rules of business of its own. There is no provision whereby Kanti Samiti can appoint a Secretary of its own permanently. Even bye-law No. 11-D provides for appointment of Secretary subject to approval of the Registrar.

In pursuance of Order No. 2437 dated 24-3-1971 passed by the Assistant Registrar of the Co-operative Societies, Puri Circle, Petitioner No. 1 was placed under suspension. The Puri-Nimapara Central Co-operative Bank was requested

to post a person to act as Secretary of Kanti Samiti. So Shri B. Parida was deputed to act as Secretary until further orders. The suspension of the Petitioner No. 1 was for misappropriation caused by him and the Board of Management had no power to refuse or by-pass the order of suspension so passed. The order of the Assistant Registrar of the Co-operative Societies, Puri was passed u/s 65(3) of the Orissa Co-operative Societies Act, 1962 suspending Petitioner No. 1 on the report of the D.D.O. Pipli alleging misappropriation and manipulation of records of the Kanti Society by Petitioner No. 1 (Annexure-A).

3. Mr. Das, learned Counsel for the Petitioner contended that u/s 27 of the Orissa Co-operative Societies Act, 1962, the final authority of a Society vests in the general body or the Society, and the affairs of the Society are either to be managed by this general body or a small body set up by the general body itself. Besides, Kanti Samiti has a Board of Directors who carry on the day-to-day management of the Samiti according to the rules. Therefore, all outside interference is excluded u/s 27 of the Act. Consequently it was urged that the impugned scheme and placing a Secretary in place of Petitioner No. 1 are all without jurisdiction.

4. That the Kanti Samiti comes under the United Puri Nimapara Central Co-operative Bank Limited has not been challenged. Further, the positive assertion in the counter under Annexure-A that Petitioner No. 1 had to be suspended because of grave allegations of misappropriation of the Society's funds and manipulation of records is also not controverted which negatives the assertion in the petition that the affairs of the Kanti Samiti "are running smoothly and they are very much satisfied with the work of their trained Secretary". Factually, therefore, the allegations in the petition are untrue and incorrect. The continuance of Petitioner No. 1 as the Secretary of Kanti Samiti in this background can hardly be held to be in the best interest of the Society, however much the President may support him and join with him in filing this petition.

5. The next point that falls for consideration is if the drawing up of the scheme and replacing Petitioner No. 1 by another Secretary are within the competence of the Registrar (opp. party No. 1). There is no controversy that the management of the Society, as per Chapter IV of the Orissa Co-operative Societies Act, ordinarily vests on the general body of its members who are to act according to bye-laws u/s 27 of the Act. But according to the proviso thereunder nothing in this section shall affect any powers conferred on any committee or any officer of a Society by the rules or the bye-laws". u/s 28 every Society is to have a committee constituted in accordance with the rules and its bye-laws. The committee so constituted or shall exercise such powers and perform such duties as may be conferred or imposed by or under this Act. Section 33-A on which great emphasis has been laid in the counter provides:

The Registrar may classify the societies in the State into different classes and may:

(a) fix the number and designation of the employees to be employed by the different classes of societies; and

(b) make rules regulating the qualification, remuneration, allowances and other conditions of service of such employees.

6. From Section 33-A, it is clear that the Registrar is competent to classify the Societies in the State into different classes and make rules for appointment of its officers. The short point that now falls for consideration is, if the expression "other conditions of service of such employees" will include appointments and transfers also.

According to Mr. Das, the Registrar is nobody and the management of Kanti Samiti entirely rests on the general body of the members. We consider such a contention is barren of substance. Under Chapter VII a duty has been cast on the State to encourage and promote the co-operative movement in the State and to take such steps, in this direction, as may be necessary. It is, therefore, that the various works and activities of the Societies are being looked after by the State through the Registrar of Co-operative Societies (opposite party No. 1). The Kanti Samiti cannot claim a singular status of its own and remain in isolation beyond the authority of the Registrar. Section 33-A of the Orissa Co-operative Societies Act, 1962 unmistakably clothes the Registrar with various powers as enumerated therein. Whether the expression "conditions of service" would include appointments and transfers or not has been the subject matter of judicial pronouncements on several earlier occasions in different contexts. Their Lordships of the Supreme Court in the case of the State of Madhya Pradesh and Ors. v. Shardul Singh 1970 (2) S.C.J 442, have interpreted it thus:

The expression "conditions of service" in the proviso to Article 309 is an expression of wide import. The dismissal of an official is a matter which falls within "conditions of service" of public servants. The expression means all those conditions which regulate the holding of a post a person right from the time of his appointment till his retirement and even beyond it in matters like pension, etc. But for the incorporation of Article 311 in the Constitution even in respect, of matters provided therein, rules could have been framed under Article 309. The provisions in Article 311 confer additional rights on the civil servants.

Further in the case of Chandra Mohan v. State of U.P. AIR 1969 All, wherein several cases have been referred to it is stated:

The proviso to Article 309 confers powers to make rules to govern the conditions of service. The conditions of service mean and include various aspects like appointment, scale of pay, confirmation, seniority, promotion, payment of pension, etc. See The Accountant General, Bihar and Another Vs. N. Bakshi, , and The General Manager, Southern Railway Vs. Rangachari, . Article 233 deals with only one aspect of the conditions of service, namely, appointment to the post of the District Judge. That has to be made in consultation with the High Court. The rules did not comply with this condition. The rules relating to

appointment alone would be bad on that ground. Rules relating to other aspects of conditions of service having been validly framed under Article 309, would remain unaffected by the non-compliance with Article 233(1) of the Constitution.

7. From the above authorities, it follows that the Registrar is competent u/s 33-A to lay down the qualifications, remuneration, allowances and other conditions of service of the employees of the Societies and these powers include appointments and transfers also. The scheme is also for the better management and for promotion of co-operative movement in the State without which each Society will have its own way with the result that the progress of the co-operative movement would be frustrated. Factually also, as is seen in the instant case, the Secretary, has been discredited for alleged misappropriation and manipulation of records. He has been put under suspension and another man deputed in his place. Ordinarily such a step is to be appreciated and welcomed. But strangely enough the President is anxious to support the retention of such a Secretary.

8. In the result, we would hold that neither on facts, nor in law, Petitioner No. 1 has a good case justifying interference. The scheme as well as the deputation of another Secretary in place of Petitioner No. 1, who has been suspended, is quite justified in the circumstances.

9. The petition, therefore, fails and is hereby dismissed with costs. Hearing fee Rs. 50/- be paid by the Petitioners 1 and 2 to opposite party Nos. 2 and 3.

R.N. Misra, J.

10. I agree.