
(1967) 01 MP CK 0011

In the Madhya Pradesh High Court

Case No : Misc. Petition No. 350 of 1966

Kamta Prasad

APPELLANT

Vs

Registrar, Co-operative Societies and Another

RESPONDENT

Date of Decision : 19-01-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1967 MP 211 : (1970) ILR (MP) 585 : (1967) JLJ 385

Hon'ble Judges : P.V. Dixit, C.J;R.J. Bhav, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; K.K. Dubey and A.R. Choubey, Govt. Advs., for the Respondent

Final Decision : Dismissed

Judgement

Dixit, C.J.—By this application under Articles 226 and 227 of the Constitution the petitioner Kamta Prasad seeks a writ of certiorari for quashing an order passed by the Registrar, Co-operative Societies, on 31st May 1966 expelling him from 14 Co-operative Societies registered under the Madhya Pradesh Cooperative Societies Act, 1960. , An appeal preferred by the petitioner against the order of the Registrar was rejected by the State Government and a writ of certiorari has been sought for quashing also this order of the Government.

2. The material facts are that till the passing of the impugned order the applicant was a member of 14 Co-operative Societies. He was a primary member of some of the Cooperative Societies and also President or Chairman of some of them. In other Co-operative Societies, he was a member of the managing committee. Of the Co-operative Societies in which the petitioner was a member, some are banking Co-operative Societies and others are marketing Co-operative Societies. The Bhopal Printers and Publishers Co-operative Press Ltd., Bhopal, of which the petitioner was the President, used to publish a Hindi weekly "Kisan Rajya".

In the issues of the paper dated 26th January 1965, 10th February 1965 and

18th March 1965 certain articles and news items appeared having a bearing on matters which were sub judice in a prosecution against Bishambhar Dayal and others in respect of offences under Sections 420, 465, 471, 477A, 201 and 120B of the Indian Penal Code pending in the Court of the Judicial Magistrate, Kanpur. Bishambhar Dayal and other accused persons moved the Allahabad High Court for punishing the petitioner Kamta Prasad and the printer and publisher of the paper "Kisan Rajya" for contempt of Court in respect of the objectionable publications. In these contempt of Court proceedings the Allahabad High Court found the applicant Kamta Prasad guilty of contempt of Court and imposed on him a fine of Rs. 1,000 or in default to suffer one month's simple imprisonment.

In the judgment finding Kamta Prasad guilty of contempt of Court, the learned Judge of the Allahabad High Court who decided the contempt case observed:

"I have also had occasion to watch the demeanour of Kamta Prasad when he was in the witness-box on various dates. In my judgment he is a liar, a trickster and a wholly unreliable person, who has fruitlessly tried to snare M. Dayal into this case. His evidence and other material on record show that he has instituted a criminal case against M. Dayal at Bhopal, which is still pending. It is obvious that Kamta Prasad has tried to involve M. Dayal in this case out of his pique and animosity towards the latter, by shifting major responsibility on him. I, therefore, find that there is no evidence against M. Dayal (respondent No. 7) to fasten any responsibility on him regarding the impugned printing and publication in various issues in the "Kisan Rajya".

In the end, the learned Judge also said:

"Before parting with this case I am constrained to remark that Kamta Prasad respondent has intentionally given wrong deposition and has also fabricated false evidence in the course of these proceedings, as discussed above. Hence for the eradication of the evil of perjury and fabrication of false evidence and in the interest of justice it is expedient that Kamta Prasad be prosecuted for the offence u/s 193 of the Indian Penal Code. The Registrar of the High Court is directed to forward a complaint against Kamta Prasad to a Magistrate of the first class having jurisdiction to try the same, setting forth the facts of the case and pointing out the evidence, which is false and fabricated, in the light of my observations contained in this judgment."

When this judgment came to the notice of the Registrar, Co-operative Societies, Madhya Pradesh, the Registrar wrote a letter to Kamta Prasad suggesting that in view of the strictures passed against him by the Allahabad High Court in the contempt matter, it would be in his own interest as well as in the interest of the Cooperative Societies of which he was a member to resign voluntarily from the membership of those bodies. The applicant was first inclined to accept this suggestion. Later on, when he showed his reluctance to adopt the course suggested by the Registrar, the Registrar issued a notice to him on 10th March 1966 under Rule 18 of the Madhya Pradesh Co-operative Societies Rules, 1962,

asking him to explain why he should not be expelled from the membership of the Co-operative Societies enumerated in the annexure to the notice.

In his reply to this notice, the applicant questioned the jurisdiction of the Registrar to take the action that he had proposed and enquired whether any of the Co-operative Societies of which he was a member had asked the Registrar to take action against him under Rule 18 (2). He also expressed the desire that he should be heard personally and that he wanted to lead evidence to show that the action of expulsion intended to be taken against him was "actuated by ulterior motives and with a view to defame him." In his explanation he also suggested that "unwarranted action under Rule 18 (2) was being taken against him on account of political pressure exerted on the Minister by the vested interest and certain political circles".

3. This explanation of the petitioner did not impress the Registrar. In his opinion when the Allahabad High Court had described the petitioner as a "liar" and a "trickster" and directed his prosecution for the offence of perjury, it was clearly in the interest of the Societies of which the petitioner was a member that the petitioner should be expelled from those Societies. Accordingly, he passed the impugned order expelling the petitioner from the membership of the Co-operative Societies mentioned in the annexure to the order dated 31st May 1966.

4. The first sub-rule of Rule 18 contains provisions for expulsion of a member as a consequence of a resolution passed by the committee of a Co-operative Society in the member does any of the acts mentioned in Sub-rule (1). Rule 18 (2) runs as follows:--

"Notwithstanding anything contained in these rules or the byelaws of a society, where "it appears to the Registrar to be necessary or desirable in the interest of the society to expel a member from the society he may call upon such member and the society, to explain within a period to be specified by him why such member should not be expelled from the society. If the member or society fails to furnish his or its explanation within the time specified or after considering the explanation, if received, the Registrar may pass an order expelling the member from the society."

The third sub-rule lays down that no member of a Society who has been expelled under Sub-rule (1) or Sub-rule (2) shall be eligible for re-admission as a member of the Society for a period of one year from the date of such expulsion.

5. It will be seen from Sub-rule (2) of rule 18 that the said sub-rule overrides other rules and the byelaws of a Co-operative Society and gives to the Registrar the power to expel a member from a Co-operative Society if it appears to him necessary or desirable that the member should be expelled in the interest of the Society. The expulsion under Sub-rule (2) can only be after giving to the member concerned an opportunity to explain why he should not be expelled from the Society of which he is a member. In the present case as has been stated by the Registrar in the impugned order, it became necessary for him to initiate action

against the applicant under Rule 18 (2) inasmuch as the petitioner himself was not willing to resign voluntarily from the Co-operative Societies of which he was a member after the pronouncement of the judgment of the Allahabad High Court in the contempt case in which the applicant was found guilty and as the Cooperative Societies of which the petitioner was a member were also not willing to expel him in the exercise of their powers under Rule 18 (1). By the notice dated 10th March 1966 the petitioner was given an opportunity to explain why he should not be expelled from the Societies of which he was a member. In response to the notice, the applicant gave his explanation in writing. The Registrar did not give the applicant a personal hearing as, in his opinion, it was not obligatory for him to give a personal hearing to the petitioner or to record the evidence that he intended to lead in his defence.

6. Shri Dharmadhikari, learned counsel appearing for the petitioner, contended that under Rule 18 (2) the action of expulsion against a member could be taken only if it was necessary or desirable in the interest of the Society; that the Registrar expelled the petitioner from several Societies of which he was a member without applying his mind to the question whether the action of expulsion of the petitioner from a particular Society was necessary or desirable in the interest of that Society." It was said that the judgment of the Allahabad High Court finding the petitioner guilty "of contempt of Court and the observations made therein against him had no bearing whatsoever on the question of the interest of any Co-operative Society or on the question of the desirability or otherwise of the petitioner continuing to be a member of any Co-operative Society and could not, therefore, be made the foundation for expelling the petitioner from the Co-operative Societies from which he was expelled by the Registrar's order.

Learned counsel further said that the provision in Sub-rule (3) that a member expelled from a Society was ineligible for re-admission as a member for a period of one year indicated that the ground or grounds on which a member could be expelled under Sub-rule (2) could be only such as to show that the person concerned was not temporarily fit to be a member; if, therefore, any action of the member or his character was such as to render him unfit to be a member for all time, then no action could be taken against him under Sub-rule (2). It was said that the necessary implication of the Allahabad High Court's observation that the petitioner was a "liar" and a "trickster" was that there was a defect of a permanent nature in the petitioner's character. :

7. It was further submitted that the Registrar should not have given one omnibus notice under Rule 18 (2) for the petitioner's expulsion from several Societies but a separate notice in respect of each of the Societies from which the petitioner's expulsion was to be made. It was also suggested that Sub-rule (3) of Rule 18 which imposed a disqualification albeit for a period of one year was ultra vires the Act. It was also submitted that the action taken by the Registrar was mala fide and the petitioner should have been given an opportunity to adduce

evidence to show that his expulsion from the several Co-operative Societies was on account of "ulterior motives and political pressure."

8. In our judgment, there is no force in any of those contentions. It is quite true that action under Sub-rule (2) can be taken against a member having regard to the interest of the individual Society of which he is a member, and the necessity or desirability of the expulsion of a member from the Society has to be determined from the standpoint of the interest of that Society and not from the point of view of the person who is to be expelled. A notice under Sub-rule (2) must, therefore, be with reference to the interest of the particular Society from which a member is sought to be expelled. The interest of a Society requiring the expulsion of a member thereof may vary from Society to Society. But where it appears to the Registrar that the person concerned is by reason of defect of character or by reason of any action of his unfit to be a member of any Co-operative Society, then a distinction between the interest of one Co-operative Society or that of another in regard to the matter of expulsion of the member cannot be drawn so as to invalidate an omnibus notice issued by the Registrar to the person concerned to explain why he should not be expelled from the Co-operative Societies specified in the notice of which he is a member.

If a member of a Co-operative Society is a "liar" or a "trickster" or a "swindler" or a "cheat" and if this renders his expulsion necessary -or desirable in the case of one Society, then it stands to reason to hold that his expulsion from other Societies of which he is a member is equally necessary and desirable. There cannot be different standards of morality and character for different Societies when a member's expulsion is sought to be based on the ground that he is not fitted by character to be a member. Here, the petitioner's expulsion was founded solely on the ground that the Allahabad High Court had described him as a "liar" and a "trickster" and directed his prosecution for perjury. If this ground of expulsion is valid in the case of any one Society, it would be valid in the case of all Societies. Therefore, the contention that the Registrar should have given separate notices to the petitioner in respect of each of the Societies from which he was to be expelled and that the omnibus notice that he issued was invalid cannot be accepted.

9. Turning to the question whether the petitioner could at all be expelled from any Society on the basis of the observations made by the Allahabad High Court in regard to him, it is futile to contend that the Registrar should have ignored those observations as of no bearing and consequence on the question of the applicant's membership of any Society. The Registrar could not have sat in judgment over the decision of the Allahabad High Court and examined for himself the correctness of the observations of the Allahabad High Court made; in regard to the petitioner. He was bound to accept them and then to determine for himself whether in view of those observations the applicant should be allowed to continue to be a member of the Co-operative Societies or whether he should be expelled therefrom. This the Registrar did. He observed that it is the duty of the

Registrar to see that "the purity and moral stature of the movement are maintained and if he considers that this purity and moral stature are being seriously compromised by any person remaining in the movement, he can act under this rule (Rule 18 (2)) to remove him from the movement."

That a member can be expelled from a Co-operative Society if it appears to the Registrar that he is a liar, trickster and inclined to give false evidence is obvious enough. The cooperative movement is both a theory of life and a system of business. It is a form of voluntary association where individuals unite for mutual aid in the production and distribution of wealth upon principles of equity, reason and common good. It stands for distributive justice and asserts the principle of equality and equity ensuring to all those engaged in the production of wealth a share proportionately commensurate with the degree of their contribution. It provides as a substitute for material assets, honesty and a sense of moral obligation and keeps in view the moral rather than the material sanction. The movement is thus a great moral movement. Such being the nature of the co-operative movement, there is no place in any Co-operative Society for any member who is not honest and who, as the Allahabad High Court observed in regard to the applicant, is a "liar", "trickster" and inclined to give false evidence. It is clearly in the interest of the Society that such a member should be expelled therefrom. In our opinion, having regard to the observations of the Allahabad High Court in regard to the petitioner, the Registrar rightly acted under rule 18 (2) in expelling him from the various Co-operative Societies of which he was a member.

10. The argument of learned counsel for the applicant that as a member's expulsion under Sub-rule (2) only makes him ineligible for readmission as a member of the Society for a period of one year from the date of expulsion, therefore, expulsion under that provision can only be for a reason rendering the person concerned temporarily unfit to be a member, cannot be accepted. The acceptance of the argument would result in an absurdity, namely, that a person who is unfit by character to be a member of a Co-operative Society at any time can continue to be a member, but a person who does not suffer from any such infirmity of character and has only committed a minor lapse cannot be allowed to remain a member. Such a result is clearly not contemplated by Sub-rules (2) and (3) of Rule 18. A person who is not fitted by character to be continued as a member of a Co-operative Society, if expelled, no doubt becomes ineligible for re-admission as a member for a period of one year. But it is left to the good sense of the Society to decide whether such a person should be re-admitted as a member if and when he applies for re-admission. Ordinarily, a Co-operative Society interested in maintaining its reputation and in retaining the confidence of the public in its working would not re-admit such a person. Therefore, this is a matter for the Co-operative Society to decide for itself.

11. The petitioner's contention that the Registrar should have given him a personal hearing cannot be accepted. The principles of natural justice no doubt

require that a decision adverse to a party should not be taken without giving him an effective opportunity of meeting any relevant allegations or material against him. This principle has been recognised by Rule 18 (2) by providing that the member intended to be expelled should be called upon to explain within the specified period why he should not be expelled from the Society.

The opportunity of "explaining" given by Rule 18 (2) need not necessarily be by personal hearing. It can be by written representation. Here, the applicant gave his explanation in writing and in the facts and circumstances of the case it was not necessary for the Registrar to give him a personal hearing. The petitioner as well as the Registrar had to accept the correctness of the observations of the Allahabad High Court made in regard to the petitioner. After accepting those observations, all that the Registrar had to decide was whether having regard to them the petitioner should be allowed to continue as a member of any Co-operative Society. Thus, there was no question of the petitioner being given any opportunity for rebutting by personal hearing or otherwise any material against him.

12. It may be mentioned that learned counsel for the parties stated before us that the petitioner sought special leave from the Supreme Court for, appeal against the decision of the Allahabad High Court. Leave was, however, not granted. The suggestion that the action which the Registrar took against the petitioner under Rule 18 (2) was mala fide does not merit any consideration. Apart from the fact that the petitioner has not placed any material to show that in expelling him the Registrar acted on account of ulterior motives and political pressure", it is difficult to see how there can be any room for attributing bad faith to the Registrar who gives logical effect to the observations made in regard to a person by a High Court. It may be that some persons brought the judgment of the Allahabad High Court to the notice of the Minister concerned and the Registrar and pointed out to them the undesirability of the petitioner being allowed to continue as a member of the various Co-operative Societies; but from that it does not follow that the Registrar was prompted by any bad faith in expelling the applicant from the various Cooperative Societies.

On the other hand, the impugned order of the Registrar clearly shows that he acted bona fide. He gave credit to the petitioner for the "useful service he had rendered to the Cooperative movement" and said that he was constrained to take the action that he did against the petitioner when he did not voluntarily resign his membership of different co-operative Societies. He observed:--

"I will not deny that he has rendered useful service to the Co-operative movement and was an important figure of that movement. It was for this reason that it was my desire that Shri Kamta Prasad, as a true servant of the Co-operative movement, should set a healthy precedent by voluntarily resigning from all important posts held by him in the Co-operative movement. But when it was found that he was not willing to do so, I had no alternative but to take action under Rule 18 (2) of the M, P. Co-operative Societies Rules to expel him from

those institutions."

This clearly shows that the Registrar did not act mala fide.

13. The question whether Rule 18 (3) is ultra vires the Act does not at all arise in the present case. It is not the petitioner's case that after expulsion he wanted to become a member of any Co-operative Society again but that he was prevented from being re-admitted because of the provisions contained in Rule 18(3).

14. For the foregoing reasons, our conclusion is that this petition is devoid of any substance and must be dismissed. The application is dismissed with costs of the respondents. Counsel's fee is fixed at Rs. 250.