

(1951) 03 MAD CK 0033

In the Madras High Court

Case No : Civil Miscellaneous Petition No. 13219 of 1950

Kandinella Ramayya

APPELLANT

Vs

The Madras State

RESPONDENT

Date of Decision : 07-03-1951

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1951 Mad 1003 : (1951) 64 LW 643 : (1951) 2 MLJ 96

Hon'ble Judges : Govinda Menon, J;Chandra Reddy, J

Bench : Division Bench

Advocate : C.A. Vaidhyalingam, T. Venkatadri and K. Ramachandra Rao, for the Appellant; Vepa P. Sarathi, for State Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—This is an application for the issue of a Writ of Certiorari under Article 226 of the Constitution for the calling up of the records in R.C. No. 129516/50 F dated 5th December 1950 passed by the Registrar of Cooperative Societies, Madras, superseding the Sripuram Co-operative Society, to quash the order of the Registrar and for passing such other orders as this Court deems fit.

2. As a result of complaints regarding the unsatisfactory working of the Co-operative society resulting from acts of mismanagement committed by the Board of Directors, the Deputy Registrar of Co-operative Societies on 21-10-1950 directed the Sub-Registrar of Co-operative Societies to conduct an enquiry into the constitution, working and financial conditions of the society. The Sub-Registrar on the same date issued a notice to the President of the Cooperative Marketing Society u/s 38 of the Madras Co-operative Societies Act of 1932 stating that he had been ordered by the Deputy Registrar to conduct an enquiry and therefore requesting the President to produce the account books of the Society, cash balance and other properties on 23-10-1950 at 9 a.m. at Sripuram Society's office to enable him to conduct the enquiry. He further requested the President to be present during the enquiry or depute such other person who can

given him information that may be required during such an enquiry. On the 22nd, the President wrote a letter to the Sub-Registrar asking him to postpone the enquiry to the 28th or 29th of October when either himself or his secretary would be available to take part in the proceedings. As a result of the report submitted by the Sub-Registrar which was forwarded to the Registrar of Co-operative Societies by the Deputy Registrar, a notice u/s 43 of the Co-operative Societies Act dated 4th November 1950 was issued to the Society detailing the various grounds of maladministration and stating that the Registrar proposed to supersede the committee and to appoint a nominee to manage its affairs during the period of supersession. The notice gives as reasons that the President of the Society sold the tractor trailer and ploughs for a sum of Rs. 10,500 to the society and that was not in working condition even at the time of the sale and therefore the amount spent on its maintenance is a waste. It was further suggested that the President was retaining heavy cash balance in his hand without remitting them into the banks as and when received. A further objection was that the accounts of the Society have not been written after 30-6-1950. It was further alleged that the factory belonging to the Society was sold to a person who was none other than the brother-in-law of the President and thereby the society incurred a heavy loss. In the counter affidavit filed in this Court, Mr. J. C. Rayan the Registrar of Co-operative Societies, states that on the receipt of a petition dated 24-9-1950, from 14 members of the society alleging mismanagement of the society by its ex-president the Co-operative Sub-Registrar, Guntur, enquired into the petition and submitted his report to the Deputy Registrar of Co-operative Societies, Guntur, who recommended in his report dated 25-10-1950, the supersession of the committee of the society. It is further stated that the facts reported by the enquiring officer provided ample evidence to warrant the supersession of the committee of the society and therefore he ordered the supersession of the committee on 5-12-1950 for a period of six months from 10-12-1950 and appointed a special officer to conduct the business of the society. Before issuing the order of supersession, the Registrar says that he considered all the relevant materials which were before him relating to the affairs of the society and formed an opinion that the committee was not functioning properly. The main reason on which the petitioner seeks to have the orders of supersession quashed is that the Registrar had not followed the procedure laid down in the Madras Co-operative Societies Act because, according to the petitioner, before superseding, the Registrar must hold an enquiry or direct some person authorised by him by order in writing or on his behalf¹ to hold an enquiry into the constitution, working and financial conditions of the society. It is only after the holding of such an enquiry that the supersession of the society can be made. It is further stated that the Registrar did not act judicially in passing the order of supersession. With regard to the allegation contained in the affidavit in support of the petition that no opportunity was given to the society to show cause why a supersession should not be ordered and that the society was not allowed enough time to place its representations and explain the charges made against it in the report of the Sub-Registrar, Mr. Rayan in his counter states that

in reply to the society's request for an interview, the then Acting Registrar of Co-operative Societies informed the ex-president of the society on 21-11-1950 that he was willing to receive a deputation at Guntur during the session of the Andhra Provincial Co-operative Conference. The ex-president of the society met the Acting Registrar and represented that it would not be convenient for him to meet the Registrar there and suggested that some other date might be fixed. On 22-11-1950 the ex-president was informed that he might meet the Registrar at 3 p.m. on 3-12-1950. But the ex-president or the secretary failed to turn up on that date. Therefore the order of supersession was passed after taking into consideration the written explanation dated 13-11-1950 submitted by the then President. Even as regards the submission of the written explanation the society had asked for time and by a telegram dated 13th November the time was extended till the 17th November. It cannot therefore be said that on the materials placed before this Court there was no opportunity for the society to place its explanation before the Registrar.

3. But the main argument of Mr. Venkatadri, learned counsel for the petitioner is that when once the Registrar after the issue of notice under Sections 38 and 43 of the Co-operative Societies Act received an explanation from the society regarding its working, then the Registrar becomes a judicial functionary and should conduct thereafter as a judicial officer and follow the procedure laid down for judicial enquiries. According to the learned counsel, "natural justice" required that the Registrar should allow the party against whom the order u/s 43 was to be passed to explain the circumstances which have been alleged against such a party and prove by evidence that the allegations are unfounded. So far as the enquiry u/s 38 is concerned, all that the statute lays down is that the Registrar may of his own motion and shall on the request of the Collector or on the application of a majority of the committee or of not less than one-third of the members hold an enquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial condition of a registered society. It is admitted in this case that not less than one-third of the members of the society petitioned to the Registrar for holding such an enquiry and the Deputy Registrar who has all the powers of the Registrar under the Act ordered the Sub-Registrar to hold an enquiry. With regard to the supersession of the committee, Section 43 states that if in the opinion of the Registrar, the Committee of any registered society is not functioning properly, he may, after giving notice to the committee to state its objections, if any, by order in writing, dissolve the committee and appoint a suitable person to manage the affairs of the society for a specified period not exceeding two years. We have absolutely no reason to doubt the correctness of all the averments contained in the counter affidavit filed by such a responsible officer of Government as Mr. Rayan, Registrar of Co-operative Societies, and if we accept the statements contained therein it is clear that as a result of the receipt of the recommendation from the Deputy Registrar containing the report of the Sub-Registrar, the Registrar was satisfied that the society was not functioning

properly. It is the subjective satisfaction of the Registrar that is contemplated u/s 43 and the satisfaction is not certainly to be an objective one. The satisfaction after considering the materials placed before him is a matter which cannot be questioned in a Court of law unless it is shown that such satisfaction was not a real one but was the result of caprice, partiality or prejudice. When once the bona fides of the Registrar are not questioned, even though the materials placed before him may not satisfy a Court of law, it cannot be said that if the Registrar after taking into consideration the facts and circumstances placed before him came to a conclusion, then his satisfaction is liable to be questioned as not a proper one. When, therefore, he is satisfied that the society is not functioning properly, the next step for him is to give an opportunity to the committee to state its objections in writing. It is not suggested that no such opportunity was given. In fact the order of the Registrar dated 4th November 1950 enumerates in sufficient detail the reasons why he is satisfied that the society is not functioning properly and after much elaboration the order states that the President of the society is requested to state before the 8th November 1950 any objections to the proposal regarding supersession. So the words of the section regarding the giving of an opportunity have been satisfied; and if we accept, as we have already stated we do, the averments contained in the affidavit that time was given to the committee of the society to meet the Registrar, then it cannot be said that any portion of Section 43 has been violated. The question whether such opportunity was sufficient or not is again a matter of opinion of the Registrar. We have no reason to doubt that sufficient opportunity was given. If the Court is satisfied that the giving of opportunity was only a make-believe and a sham affair but as a matter of fact the opportunity given was such that it could not be legally considered an opportunity, then the provisions of Section 43 have been violated. The duration of the time for the submission of the explanation, the place at which such explanation should be submitted are all matters of detail which are left to the bona fide discretion of the Registrar to fix. In the circumstances of this case we are of opinion that the Registrar had given an ample opportunity to the committee to state the objections.

4. With regard to the construction of Section 43, our attention was invited to the judgment of this Court in "C. M. Ps. Nos. 6690 and 6691 of 1948" where the learned Chief Justice has held that the only condition necessary u/s 43 (1) of the Act before the Registrar can make an order under that section is that in his opinion the committee has not been functioning properly. If it appears on the face of the order that he did not form such an opinion, his order might be questioned. We are in entire agreement with the observations contained therein and, as we have stated, the formation of the opinion is a subjective one, and it is not open to the Court as if sitting in an appeal to find out whether on the same materials the Court would have come to a different conclusion, for, after all, the functions though not administrative and are quasi-judicial should be exercised by the Registrar by using his individual judgment after considering the materials placed before him. It is not open to the Court to substitute its judgment as a

Court of appeal for that of the Registrar.

5. With regard to the contention of Mr. Venkatadri that it is incumbent upon the Registrar to function as if he were a Court and that evidence tendered by the parties should be taken, our attention was invited to a number of decisions. In "Local Government Board v. Alridge, 1915 A C 120 the House of Lords had to consider what the duties of the Local Government Board in England were in hearing an appeal under the Housing and Town Planning Act of 1909 and their Lordships held that an appellant before the Local Government Board is not entitled as of right and as a condition precedent to the dismissal of his appeal either to be heard orally before the deciding officer or to see the report of the Board's Inspector upon the public local enquiry. The local Government Board there was an administrative body like the Registrar of Co-operative Societies here. At page 132 Viscount Haldane L. C. in his speech says that when the duty of deciding an appeal is imposed upon a body that body must act judicially. It should deal with the question referred to it without bias and must give each of the parties the opportunity of adequately presenting the case. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to meet out justice. But it does not follow that the procedure of every such tribunal must be the same. The Lord Chancellor referred to an earlier decision of Lord Lore-burn in "Board of Education v. Rice, 1911 A C 179 and concurred with that judgment in holding that the quasi-judicial body which is to determine such a matter was under a duty to act in good faith and to listen fairly to both sides, and if in doing such a matter that tribunal failed in its duty its order might be the subject of certiorari. There are other observations which show that if the quasi-judicial functionary gave an opportunity to both the parties to place their respective contentions before it and considered their contentions before passing an order then such an order cannot be questioned at all. It was clearly stated that such a tribunal was not bound to hear the parties personally, provided opportunities are given for the parties to place their case. We find similar observations in the speeches of the other Noble Lords. At page 138 Lord Shaw explains the meaning of the words "natural justice" in the following terms :

The words "natural justice" occur in arguments and sometimes in judicial pronouncements in such cases. My Lords, when a central administrative board deals with an appeal from a local authority it must do its best to act justly, and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be intimated; and lawyer-like methods may find especial favour from lawyers. But that the judiciary should presume to impose its own methods on administrative or executive officers is a usurpation. And the assumption that the methods of natural justice are "ex necessitate" those of Courts of justice is wholly unfounded. This is expressly applicable to steps of procedure or forms of pleading. In so far as the term "natural justice" means that a result or process should be just, it is a harmless though it may be a high-sounding expression; in

so far as it attempts to reflect the old "just naturals" it is a confused and unwarranted transfer into the ethical sphere of a term employed for other distinctions; and, in so far as it is resorted to for other purposes, it is vacuous.

At page 140 Lord Parmour says as follows :

The power of obtaining a writ of certiorari is not limited to judicial acts or orders in a strict sense, that is to say, acts or orders of a Court of law sitting in a judicial capacity. It extends to the acts and orders of a competent authority which has power to impose a liability or to give a decision which determines the rights or property of the affected parties. Where, however, the question of the propriety of procedure is raised in a hearing before some tribunal other than a Court of law there is no obligation to adopt the regular forms of legal procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice.

"In determining whether the principles of substantial justice have been complied with in matters of procedure, regard must necessarily be had to the nature of the issue to be determined and the constitution of the tribunal. The general tests to be applied have been expressed in two cases which come before the House *Spackman v. Plumstead Board of Works*, (1885) 10 A C 229 and "*Board of Education v. Rice*, 1911 A C 179. In the earlier case of "*Arthur John Spackman v. Plumstead Board of Works*, (1885) 10 A C 229 the question raised was whether the certificate of the superintending architect was conclusive in fixing the general line of building under the Metropolis Management Act, 1862. Lord Selborne, in the course of his opinion, states : "No doubt in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their views.

6. In closing his speech the Noble Lord says that where a party had every fair opportunity of bringing his case before the determining tribunal, he has no substantial ground for complaint. When such a tribunal is said to function judicially it means that it must preserve judicial temper and perform its duties conscientiously with a proper feeling of responsibility in view of the fact that its acts affect the property and rights of individuals.

7. It is, therefore, clear from this very authoritative pronouncement of the House of Lords that in a matter like this it is not necessary that all the procedure that is generally expected to be followed in a Court of law should be observed by a quasi judicial functionary in deciding disputes between parties or in coming to a conclusion as to whether on the facts placed before him a certain decision has to be taken. In "*Errington v. Minister of Health*", (1935) 1 KB 249, the Court of appeal considered the dictum of Lord Loreburn in "*Board of Education v. Rice*, 1911 A C 179 and of Viscount Haldane in "*Local Government Board v. Arlidge*, 1915 A C 120. See also "*Denby (William) and Sons Ltd. v. Minister of Health*,

(1936) 1 KB 337. What such a functionary has to do in discharge of his duties is that he should be bound by the dictates of "natural justice". The enquiry must be one which is fair to all parties concerned.

8. Mr. Venkatadri further invited our attention to the decision in the "Queen v. London County Council, Ex parte Commercial Gas Co., 11 TWN 337" where Cave J. expressed the opinion that the report of the Chief Gas Examiner when it is received in evidence, such report being virtually a judgment and the proceedings being quasi-judicial, the rule that no evidence should be received on behalf of one party in the absence of the other should be applied. We do not think that the observations there can be of much help for the consideration of the present question.

9. Lastly he placed reliance upon a recent decision in "Stratford v. Minister of Health", 1946 1 KB 621. That was a case under the Housing Acts and the question was what procedure the Minister of Health should follow in deciding the appeal. The learned Judge, Charles J. held that the Minister of Health did not hear both the sides before he confirmed the order and he quoted the observations contained in "Board of Education v. Rice", 1911 AC 179 and "Local Government Board v. Abridge", 1915 A C 120. All these are cases where a quasi-judicial appellate authority had to decide the propriety and correctness of an order made by an administrative officer or body and in such cases it was held that though the appellate authority was not a Court of law it must, in deciding the appeal, follow the dictates of "natural justice" and must give an opportunity to both parties to place their case before the authority.

10. Mr. Venkatadri contended that the decision in "Local Government Board v. Abridge", 1915 AC 120, has not been accepted by the United States Supreme Court in "Morgan v. United States", 304 US 41, and has been the subject of severe comment at the hands of text book writers, especially of a recent writer Bernard Schwartz who in his book styled "Law and the Executive in Britain" (at page 236) strongly animadverts upon the correctness of the decision of the House of Lords referred to above. If we have to choose between the views expressed by the Book writer and the United States Supreme Court on the one side and the unanimous opinion of a strong body of House of Lords consisting of such very eminent legal luminaries and jurists like Lord Haldane, Lord Shaw and Lord Molton, our preference is certainly in favour of the opinion of the House of Lords. But for the decision of this case such an alternative has become unnecessary.

11. Recently the Court of Appeal in "Rex v. Northumberland Compensation Appeal Tribunal, Ex parte Shaw", 1951 WLN 35, considered certain earlier cases such as "Walsall Overseers of the Poor v. L. & N. W. Rly. Co.", (1879) 4 AC 30; "Race Course Betting Control Board v. Secretary of State for Air", (1944) Ch 114 and "Rex v. Natbell Liquors Ltd", (1922) 2 AC 128, and laid down the prerequisite conditions that should exist when a writ of certiorari should issue to quash the erroneous decision of a quasi-judicial tribunal. It is not necessary to

elaborate about these decisions because we feel that the correct principle has been laid down in "Local Government Board v. Abridge", 1915 AC 120. We are in entire agreement with what has been stated in this, decision. It seems to us therefore that there is nothing wrong in the procedure followed by the Registrar of Co-operative Societies and his order cannot be quashed by means of a writ.

12. On the merits, we have no hesitation in coming to the conclusion even if our powers were exactly those of a Court of appeal that the order of the Registrar is perfectly justified. We have perused the affidavit, counter affidavit and the reply and are fully satisfied on the materials placed that the society was being mismanaged and its supersession was justified. It is unnecessary for us to recapitulate the reasons. This petition is therefore dismissed with costs of Rs. 250.