
(2010) 11 CHH CK 0009
In the Chhattisgarh High Court
Case No : Writ Petition No. 3573 of 2003

Karam Singh

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 22-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2011) 1 CG.L.R.W. 275 : (2011) 1 MPHT 101

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Prafull Bharat, for the Appellant; P.K. Bhaduri, Panel Lawyer for the State, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, under Articles 226 and 227 of the Constitution of India, the petitioner assails the validity and legality of order dated 1-7-2003 (Annexure P-3) by which it was directed to recover an amount of Rs. 64,713/- from the petitioner. The petitioner also challenges the order dated 4-9-2003 (Annexure P-4) passed by the respondent No. 2 by which the said authority refused to entertain the appeal filed by the petitioner against the order dated 1-7-2003. The facts, in nutshell, as projected by the petitioner, are that the petitioner was working as Godown Keeper and was posted at Co-operative Marketing, Sakti. On the basis of the instruction of the Assistant Registrar, Co-operative Societies, the auditor submitted special report of 1984-85 by mentioning that the petitioner as well as other office bearers of the society caused loss to the society. After receipt of the audit report, the Deputy Registrar, by order dated 1-12-1988 appointed the respondent No. 3 as Enquiry Officer and directed him to make enquiry regarding the allegations levelled against the petitioner as well as other office bearers of the society. The respondent No. 3 submitted his enquiry report on 30-1-1992 (Annexure P-2). In the said report, it has been specifically mentioned that the allegations made in the audit report are

baseless and the same are based on conjunctures and surmises.

2. According to the petitioner, by memo dated 2-2-1995, the Registrar, Co-operative Societies directed the respondent No. 3 to reopen the case and consider the same on merits. Accordingly, the respondent No. 3, after issuing the notices to the parties, passed the order dated 1-7-2003 and fixed the liability on the concerned persons. Accordingly, the liability of the petitioner was fixed for a sum of Rs. 64,713/-. Against the said order, the petitioner preferred an appeal before the respondent No. 3, who, by order dated 4-9-2003, refused to entertain the same on the ground of lack of jurisdiction. Thus, this petition.

3. Shri Bharat, learned Counsel appearing for the petitioner, would submit that the order passed by the respondent No. 3 is illegal and arbitrary. The respondent No. 3 cannot sit over as a Disciplinary Authority and he cannot impose the penalty. In fact, the audit report was submitted against the petitioner and other persons without affording an opportunity of hearing. Shri Bharat would further submit that the respondent No. 3 failed to consider the fact that the petitioner was working as Godown Keeper and he has no role in the alleged loss caused to the society. The order passed by the respondent No. 3 is a non-speaking order, which has been passed in a mechanical manner and the same may be quashed.

4. Shri Bharat would further submit that the provisions of law under which the impugned order was passed stands deleted from the Act on 8-5-1994 and direction to re-open the matter on 2-2-1995, clearly goes to show that the order is completely illegal, as Section 63 of the Chhattisgarh Co-operative Societies Act, 1960 (hereinafter referred to as "the Act, 1960") stands deleted prior to passing of the order of re-opening of the case. He would further submit that in the enquiry conducted against the petitioner by the respondent No. 3 and other concerned officers, the petitioner was completely exonerate from the allegations levelled against him and as such, there was no reason to re-open the enquiry without assigning any reason.

5. On the other hand, Shri Bhaduri, learned Panel Lawyer appearing for the State, would submit that the respondent No. 3 is fully competent and empowered to pass the impugned order. Shri Bhaduri would further submit that the provisions of Section 63 of the Act, 1960 stands deleted on 8-5-1994. The Government of Madhya Pradesh, by a circular dated 2-2-1995 directed that proceedings which commenced prior to 8th May, 1994 would continue in accordance with the provisions Section 63 of the Madhya Pradesh Co-operative Societies Act, 1960 as the said section has not been deleted. Shri Bhaduri would further submit that the petitioner, as being posted as Godown Keeper, indulged himself in various irregular activities, which caused severe loss to the society and, as such, the order of recovery, as passed against the petitioner is just and proper.

6. I have heard learned Counsel appearing for the parties, perused the pleadings and documents appended thereto.

7. It is evident that on the basis of the audit report, the enquiry was directed to be conducted and respondent No. 3 was appointed as Enquiry Officer. Thereafter, the respondent No. 3, vide order dated 30-1-1992, submitted his enquiry report in which the petitioner along with other office bearers of the Society, was exonerated to the charges levelled against them, as the same was held as vague and baseless.

8. The observations in respect of the petitioner, made by the Enquiry Officer, in its report dated 30-1-1992 (Annexure P-2), are as under:-

9. Contention of learned Counsel appearing for the State that admittedly, provisions of Section 63 of the Act, 1960 was deleted w.e.f. 8-5-1994, which was continued by circular dated 2-2-1995, is unsustainable in the eyes of law. Deletion of the provisions of the Act can be saved only under the provisions of the Act and not by any circular. It is not the case of the respondent-State that by any provisions of law, earlier action taken under the provisions of Section 63 of the Act, 1960 was saved.

10. The Registrar, Co-operative Societies, vide memo dated 2-2-1995, directed the respondent No. 3 to reopen the case and decide the case on its own merits. The core issue that falls for consideration in the case is as to whether once a regular enquiry was conducted and the delinquent employee was completely exonerated from the charges by the Enquiry Officer, can the Disciplinary Authority without assigning any reason on his disagreement with the enquiry report direct fresh and further enquiry. The position of law with regard to disagreement of Disciplinary Authority with the finding of the Enquiry Officer is no longer res integra.

11. The enquiry report was submitted on 30-1-1992. Thereafter, after a period of three years, the Registrar, by order dated 2-2-1995 (Annexure R-3), directed to re-open the case without assigning any reasons. Re-opening of the case does not meant that the enquiry report ought to have been ignored completely. On the basis of above stated direction dated 2-2-1995, the Assistant Registrar, by order dated 1-7-2003, without examining the enquiry report or without assigning any reason for taking a contrary stand from the enquiry report, held the petitioner liable under the provisions of Section 63 of the Act, 1960 which was deleted w.e.f. 8-5-1994, by order dated 30-6-2003. Further direction to recover the said amount was passed. The appeal, thereagainst, to the Joint Director was dismissed on the ground that against the order passed u/s 63 or 58-B of the Act, 1960, the Registrar has no jurisdiction to entertain the appeal.

12. Section 77 of the Act, 1960 deals with appeal wherein it is clearly provided that the appeal shall lie from every original order under this Act to the Joint Registrar. There is no saving or exceptional clause to the effect that an appeal against the order passed by the Assistant Registrar under the provisions of Section 63 of the Act, 1960, is not available.

13. The Supreme Court, in Punjab National Bank and Others Vs. Sh. Kunj Behari

Misra, , the Supreme Court observed as under:--

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the Disciplinary Authority disagrees with the Enquiry Authority on any article of charge, then before it records its own finding on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer and opportunity to represent before it records its findings. The report of the Enquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the Disciplinary Authority records its findings on the charges framed against the officer.

20. The aforesaid conclusion which we have arrived at is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants. While agreeing with the decision of the Ram Kishan case we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena cases do not lay down the correct law.

14. In Canara Bank and Others Vs. Shri Debasis Das and Others, the Supreme Court, observed as under:--

19. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under the statute. What particular rule of natural justice should be implied and what its context should be in a given case, must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and non-pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

15. Further, in Ranjit Singh Vs. Union of India (UOI) and Others, , the Supreme Court observed as under:-

22. In view of the aforementioned decisions of this Court, it is now well settled that the principles of natural justice were required to be complied with by the Disciplinary Authority. He was also required to apply his mind to the materials on record. The Enquiry Officer arrived at findings which were in favour of the appellant. Such findings were required (sic sought) to be overturned by the Disciplinary Authority. It is in that view of the matter, the power sought to be

exercised by the Disciplinary Authority, although not as that of an Appellate Authority, but is akin thereto. The inquiry report was in favour of the appellant but the Disciplinary Authority proposed to differ with such conclusions and, thus, apart from complying with the principles of natural justice it was obligatory on his part, in the absence of any show cause filed by the appellant, to analyse the materials on record afresh.

16. For the reasons and analysis mentioned hereinabove, it is hereby held that:--

(a) The order of the Joint Registrar dated 4-9-2003 (Annexure P-4) to decline to entertain appeal on the ground that no appeal is maintainable u/s 63 or Section 58-B of the Act, 1960, is without any basis as it appears that the Joint Registrar has completely ignored the provisions of Section 77 of the Act, 1960.

(b) The decision of the Registrar dated 2-2-1995 (Annexure R-3) for reopening of the case without considering the fact that on the basis of enquiry report wherein the petitioner was completely exonerated, is bad in law and the action of the Registrar amounts to disagreeing with the enquiry report and passing an order, which could not have been done by Appellate Authority without assigning proper reason for disagreement and without affording an opportunity of hearing to the petitioner, as aforestated.

(c) The impugned order dated 1-7-2003 (Annexure P-3) of the Assistant Registrar, though it appears that notice was issued before passing of the said order, is not sustainable in the eyes of law as the order was passed on the basis of unjustified, illegal order, passed by the Registrar on 2-2-1995.

(d) Accordingly, the impugned orders dated 1-7-2003 (Annexure P-3) and 4-9-2003 (Annexure P-4) are quashed.

In view of the foregoing, the petition is allowed. No order as to costs. However, liberty is reserved to the authorities to take appropriate action, if so advised, in accordance with law.