
(1959) 05 MP CK 0010
In the Madhya Pradesh High Court
Case No : M.P. No. 358 of 1958

Madan Mohan Sharma and another	Vs	APPELLANT
State of M.P. and another		RESPONDENT

Date of Decision : 09-05-1959

Acts Referred:

Co-operative Societies Act, 1912 — Section 38A(1)

Citation : (1960) JLJ 88 : (1959) MPLJ 777

Hon'ble Judges : G.P. Bhutt, C.J.; P.R. Sharma, J

Bench : Division Bench

Advocate : A.H. Saifi, for the Appellant; H.L. Khaskalam, Addl. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Bhutt, C.J.

This petition under Articles 226 and 227 of the Constitution of India has been filed by the Katni Co-operative Central Bank and the Chairman of the Board of Directors and is directed against the order passed by the Registrar, Co-operative Societies, Madhya Pradesh, Respondent No. 2, u/s 38-A (1) of the Co-operative Societies Act, 1912, dissolving the Board of Directors for a period of two years.

Section 38-A (1) of the Co-operative Societies Act is reproduced below:

If, in the opinion of the Registrar, the committee of any Registered Society persistently makes default or is negligent in the performance of the duties imposed on it by or under this Act or by the rules framed thereunder or by the bye-laws of the Society or by any lawful order passed by the Registrar or commits acts which are prejudicial to the interests of the Society or shareholders, he may, after giving an opportunity to the committee to state its objections, if any, by order in writing, dissolve the committee and appoint a suitable person or persons to manage the affairs of the Society for a specified period not exceeding two years. The period specified in such order may at the

discretion of the Registrar, be extended from time to time, provided that no such order shall remain in force for more than four years in the aggregate.

The above provision is evidently of a temporary and executive nature and if an opportunity was given to the Board of Directors to state its objections, the action of the Registrar, Co-operative Societies, in dissolving the Board of Directors for period not exceeding two years would not be justiciable.

In the present case, the Registrar, Co-operative Societies, initially served a notice on the Secretary, Katni Co-operative Central Bank on 24 January 1958 complaining of the neglect of duties by the employees of the Bank and requiring the removal of certain numbers of the staff. Subsequently, on 15/17 February 1958 he served a notice on him u/s 38-A (1) of the Co-operative Societies Act to show cause why the present Board of Directors should not be dissolved on the ground that they were not functioning properly and were committing acts prejudicial to the interests of the Bank. The Secretary of the Bank, while complaining of the short time that was given in the notice, stated a full case of the Bank in writing. The requirements of Section 38-A (1) of the Co-operative Societies Act for dissolving the Board of Directors were, therefore, duly complied with.

The contention of the Bank, however, was that the notice issued u/s 38-A (1) of the Co-operative Societies Act was merely colourable since, it appeared, the decision to dissolve the Board of Directors was already taken by the Registrar, Co-operative Societies before the notice was issued. That may or may not be so, but it cannot be a ground for challenging the action which is of an executive nature. The right of personal hearing is not provided in Section 38-A (1) of the Co-operative Societies Act. The principle of natural justice in respect of personal hearing can only be invoked where a Court or a tribunal or an authority exercising judicial functions passes an order which prejudicially affects the rights of party: see *Vishwanath Gopal Oil Mill Vs. S.C. Prashar and Another*, The present is not a case of that kind.

The normal procedure for dissolving a Co-operative Society begins with an enquiry by the Registrar, Co-operative Societies, u/s 35 of the Co-operative Societies Act and ends with an order of cancellation of the registration of the Society u/s 39 *ibid*. We were told that the enquiry contemplated by Section 35 of the Co-operative Societies Act is pending. The action contemplated by Section 38-A (1) of the Act is independent of the formal action that might ultimately be taken u/s 39. If there be any lacuna in the enquiry contemplated by Section 35, the Petitioners will have a separate remedy.

The result is that the petition fails and is dismissed; but, in the circumstances of the case, there shall be no order as to costs. The outstanding amount of the security deposit shall be refunded to the Petitioners.