

(2013) 10 MP CK 0322

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7742 of 2012

Madhya Pradesh Cricket Association, Holkar Stadium

APPELLANT

Vs

Shri B.S. Solanki, The Assistant Registrar, Firms and Societies
and Dr. Leeladhar Paliwal

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2013) 4 MPLJ 663

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : A.K. Chitale, Mr. Sumit Samvatsar, in W.P. No. 7742/2012, Mr. G.M. Chaphekar, Mr. S.C. Bagadia, Ms. Vandana Kasrekar, Mr. D.K. Chhabra and Mr. Ajay Bagadia, in Connected Writ Petitions, for the Appellant; Deepak Rawal, Learned Counsel for the Respondent/State, Shri A.K. Sethi, Learned Senior Counsel and Shri Harish Joshi, Learned Counsel for the Complainant/Respondent No. 3/Dr. Leeladhar Paliwal, for the Respondent

Final Decision : Allowed

Judgement

Prakash Shrivastava, J.—This order will also govern the disposal of W.P. Nos. 7723/2012, 7727/2012, 7728/2012, 7729/2012, 7736/2012, 7742/2012, 7743/2012, 7744/2012, 7745/2012, 7746/2012, 7751/2012, 7754/2012, 7755/2012, 7756/2012, 7757/2012, 7769/2012, 7770/2012, 7771/2012, 7772/2012, 7969/2012 and 7970/2012, since it is stated by learned counsel for both the parties that all these writ petitions involve the same issue on the similar fact situation. These writ petitions have been filed against the order of the Assistant Registrar dated 27.7.2012, by which the Assistant Registrar has held that the membership granted by the Petitioner M.P. Cricket Association (MPCA) to its new members between the period 2008-09 to 2011-12 was contrary to its registered bylaws and was void. W.P. No. 7742/2012 is at the instance of MPCA whereas the other connected writ petitions are at the instance of aggrieved members of MPCA.

2. For convenience, facts have been noted from W.P. No. 7742/2012 filed by the MPCA.

3. The petitioner is a society registered under the M.P. Society Registrkaran Adhiniyam, 1973 (Act No. 44 of 1973) (for short "the Act"). It had inducted certain members between the period 2008-09 to 2011-12. The respondent No. 3 Dr. Leeladhar Paliwal on 23.2.2012 had made a complaint to the Assistant Registrar, Firms and Societies (for short "Assistant Registrar") objecting to the induction of 16 new members in the MPCA. The Registrar on 27.2.2012 had issued notice, which was replied by the MPCA. Thereafter, notice dated 5.5.2012 was again issued by the Assistant Registrar to MPCA which was replied on 15.5.2012 followed by another reply dated 5.6.2011. The Assistant Registrar, vide communication dated 11.6.2012, had sought certain information from MPCA which was replied on 21.6.2012 followed by another communication from the side of the MPCA dated 17.7.2012. The Assistant Registrar thereafter had passed the impugned order dated 27.7.2012 holding that the members were inducted between the year 2008-09 to 2011-12 in the MPCA contrary to its bylaws and their membership, was void.

4. Shri A.K. Chitale, learned counsel appearing for the petitioner-MPCA in W.P. No. 7742/2012 has submitted that the Registrar has illegally assumed the jurisdiction u/s 32 of the Act, because neither the complaint was made as per the requirement of the section nor the Registrar had exercised suo motu power. He has submitted that when Registrar was given power to do certain thing in a certain manner, he was required to exercise the power in the manner prescribed. He has also submitted that while passing the impugned order, proper opportunity of hearing was not given and the petitioner was only required to submit certain information, and on that basis alone the impugned order has been passed. He has further submitted that the action of the respondents suffer from malafides, since the entire action is at the instance of the Minister of Commerce Industries and Employment, under whom the Registrar of Societies is working and that the concerned Minister is a person interested in the MPCA.

5. Shri G.M. Chaphekar, learned senior counsel in W.P. No. 7723/2012 has referred to the documents on record and submitted that the impugned order has been passed on the basis of the complaint made by Dr. Leeladhar Paliwal, therefore, it is an order passed in purported exercise of power u/s 32(2) of the Act but the conditions mentioned therein are not satisfied. He has further submitted that the stand of the Assistant Registrar that the impugned order was passed in exercise of the suo motu power, is not correct because the contents of statutory order can not be supplemented by subsequent pleading. He has also submitted that when two alternate modes are available, the authority/court can select only one and not both, therefore, having passed the order on complaint of Dr. Leeladhar Paliwal, the Registrar can not take the stand that the order was passed in exercise of suo motu power. He has further submitted that since the impugned order has been passed in violation of the principles of natural justice

without giving any opportunity of hearing to the petitioner, therefore, the alternate remedy will not act as a bar in exercise of writ jurisdiction by this Court.

6. Shri S.C. Bagadia, learned senior counsel in W.P. No. 7727/2012 and connected writ petitions has submitted that in the impugned order the Assistant Registrar has only recorded prima facie finding, therefore, it can at best form the basis for initiating enquiry u/s 32 of the Act, but can not be treated as final order. He has further submitted that the proceedings were initiated by the Assistant Registrar u/s 32(2) of the Act but the pre-conditions mentioned in that section are not satisfied. He has also submitted that the impugned order has been passed in violation of the principles of natural justice and that under bylaw 55 of the bylaws of the Society, the Assistant Registrar can not exercise the power dehors Section 32 because Assistant Registrar being a statutory authority can exercise the power under the statute only. He has also submitted that bylaw 11 has been wrongly interpreted by the Assistant Registrar and since the issue of jurisdiction and natural justice is involved, therefore, alternate remedy will not act as a Bar. He has also submitted that the letter of the MPCA terminating the membership has subsequently been withdrawn on 2.8.2012.

7. Shri Ajay Bagadia, learned counsel appearing in W.P. No. 7754/2012 and W.P. No. 7746/2012 has submitted that before passing the impugned order, no opportunity of hearing was given to the petitioners though their induction as member has been held to be illegal. He has further submitted that bylaw 11 and 12 of MPCA have been wrongly interpreted by the Assistant Registrar.

8. Learned counsel for the State appearing for respondent no. 2 has submitted that the impugned order has been passed by the Assistant Registrar in the suo motu exercise of power u/s 32. He has further submitted that opportunity of hearing to newly inducted members of MPCA was not necessary, because the order passed by the Registrar is binding on all parties u/s 32(4) of the Act. He has further submitted that opportunity of hearing was given to MPCA before passing the impugned order. He has also submitted that under bylaw 40 the Registrar has power to interpret the bylaws and exercising the said power, bylaw 11-b of the MPCA has rightly been interpreted by the Registrar.

9. Shri A.K. Sethi, learned senior counsel appearing for the complainant Dr. Leeladhar Paliwal has submitted that the information was given to the Assistant Registrar by way of complaint but the Assistant Registrar has exercised the suo motu power u/s 32. He has further submitted that the Assistant Registrar was empowered to interpret the bylaw, therefore, he has rightly interpreted bylaw 11-b. He has further submitted that there is no violation of the principles of natural justice because notice was given to the MPCA which had produced the record and since the resolution of the MPCA was challenged, therefore, only MPCA was required to be heard. He has further submitted that by the impugned order only prima facie findings have been recorded u/s 32(4) of the Act and no order of terminating the membership of newly inducted members has been passed. He has further submitted that against the impugned order appeal lies to the

Registrar u/s 40(2) of the Act, and to the State u/s 40(1) of the Act and, therefore, the writ petition is liable to be dismissed on the ground of availability of alternate remedy.

10. I have heard the learned counsel for the parties and perused the record. The original record of the Assistant Registrar produced by the counsel for the State has also been perused.

11. The first objection of the respondents is about availability of alternate remedy of appeal u/s 40 of the Act. Since in the present matter order passed by the Assistant Registrar has been challenged on the grounds that he has wrongly assumed the jurisdiction u/s 32 of the Act and that there is violation of principles of natural justice and allegation has also been made that the minister of commerce industries and employment controlling the concerned department of Registrar of Firms and Societies is personally interested in the matter (See Para 5.16 to 5.21 & 6.25 to 6.27 of W.P. No. 7742/2012), therefore, I do not think it proper to dismiss the writ petition on ground of availability of alternate remedy. The bar of alternative remedy is a self imposed restriction and it is not a fit case to direct the writ petitioners to avail the alternate remedy, specially when they have raised jurisdictional issue, alleged violation of principles of natural justice and have also given reasons as to why the alternate remedy is not effective and efficacious. [See: The State of Uttar Pradesh Vs. Mohammad Nooh, , Mariamma Roy Vs. Indian Bank and Others, and Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others,].

12. In view the above, the objection relating to the availability of the alternate remedy is rejected.

13. Petitioners have questioned the impugned order of the Registrar mainly on the ground that the Registrar had wrongly assumed the jurisdiction u/s 32 of the Act on the complaint of a single member, though the pre-conditions mentioned in the Section for exercise of the jurisdiction are not satisfied. Section 32 of the Act reads as under:-

Section 32 -Enquiry and settlement of disputes.-(1) The Registrar may, on his own motion or on an application made under sub-section (2) either by himself or by a person authorised by him, by order in writing, hold an enquiry into the constitution, working and financial conditions of a society.

(2) An enquiry of the nature referred to in sub-section (1) shall be held on the application together with an affidavit in support of its contents of-

(a) a majority of the members of the governing body of the society; or

(b) not less than one-third of the total number of members of the society.

(3) The Registrar or the person authorised by him under sub-section (1) shall for the purpose of an enquiry under this section have the following powers, namely:-

(a) he shall at all times have free access to the books, accounts, documents,

securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession, or responsible for the custody of any such books, accounts documents, securities, cash or other properties to produce the same, if they relate to the head office of the society at any place at the headquarter thereof and if they relate to any branch of the society, at any place in the town wherein such branch thereof is located or in his own office;

(b) he may summon any person who he has reason to believe has knowledge of any of the affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof or in his own office and may examine such person on oath; and

(c) (i) he may notwithstanding any regulation or byelaw specifying the period of notice for a general meeting of the society, require the officers of the society to call a general meeting of the society at such time at the head office of the society or at any other place at the headquarter of the society and to determine such matters as may be directed by him and where the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself;

(ii) any meeting called under sub-clause (i) shall have all the powers of a general meeting called under the regulations or byelaws of the society and its proceedings shall be regulated by such byelaws.

(4) when an enquiry is made under this section the Registrar shall communicate the result of the enquiry to the society and may issue appropriate directions to the society, which shall be binding on all parties concerned.

14. Under the definition clause Section 3(c) of the Act, term "Registrar" includes Additional Registrar when exercising or performing any of the powers or duties of Registrar.

15. u/s 32(1) of the Act two modes have been prescribed for the Registrar to initiate an enquiry into the constitution working and financial conditions of the society i.e. on his own motion or on an application made in accordance with Section 32(2). For initiating enquiry on an application, the conditions mentioned in Section 32(2) need to be satisfied.

16. In the present case, the submission of the petitioners is that the Assistant Registrar has passed the impugned order on the basis of the complaint/application of Dr. Leeladhar Paliwal which did not satisfy the requirement of Section 32(2), therefore, Assistant Registrar had no jurisdiction to conduct the enquiry on such an application. As against this, the stand of the respondents is that the Assistant Registrar has exercised suo motu power u/s 32(1) of the Act. Hence, in this regard following two questions arise for consideration in the matter:-

(1) Whether the Assistant Registrar while passing the impugned order had exercised suo motu power u/s 32(1) of the Act?

(2) If not, whether the Assistant Registrar could assume jurisdiction u/s 32(1) and pass the impugned order on the complaint by the single member Dr. Leeladhar Paliwal?

17. So far as the first question is concerned, no material has been produced by the respondents before this Court to show that the Assistant Registrar had initiated the enquiry in the matter in exercise of the suo motu power. The original record of the proceedings conducted by the Assistant Registrar, also does not reveal that Assistant Registrar had initiated the enquiry in the matter on his own motion. On the contrary the record reveals that the proceedings were initiated by the Assistant Registrar on the basis of the complaint dated 23.2.2012 made by the respondent no. 3 Dr. Leeladhar Paliwal (one of the life member of the MPCA) alleging illegality in inducting 16 life members in the MPCA. The Registrar had sought explanation from MPCA vide communication dated 27.2.2012, 5.5.2012 and 11.6.2012 referring to the complaint received from Dr. Leeladhar Paliwal, which also reveals that the enquiry was conducted by him to decide the complaint of Dr. Leeladhar Paliwal. The MPCA in its reply dated 15.5.2012 and 21.6.2012 had raised the objection before the Assistant Registrar that the enquiry initiated at the instance of a single member of the society was not well founded in law, but the said objection was ignored by the Assistant Registrar. The opening paragraph of the impugned order itself indicates that the enquiry was initiated on the complaint. In the order it has been mentioned that the notice was issued to MPCA on the basis of the complaint and even in the concluding paragraph of the order it has been mentioned that the complaint made by Dr. Leeladhar Paliwal was found to be prima facie correct and a copy of the impugned order has also been endorsed to complainant Dr. Leeladhar Paliwal. By this order the Assistant Registrar has decided the complaint of Dr. Leeladhar Paliwal. This conclusively establishes that the Assistant Registrar had not initiated the enquiry on his own motion but he had initiated the enquiry on the complaint of Dr. Leeladhar Paliwal, and had enquired the said complaint resulting into passing of the impugned order.

18. A reply has been filed by the respondent no. 1, who had passed the impugned order before this Court, but even in that reply he has not stated that he had exercised the suo motu power while passing the impugned order but he has only mentioned that he was empowered u/s 32 of the Act to exercise suo motu power. Even otherwise, it is the settled position in law that when a statutory functionary passes an order based on certain grounds, its validity must be judged by the reasons so mentioned and it can not be supplemented by fresh reasons in the shape of affidavit or otherwise. [See: Commissioner of Police, Bombay Vs. Gordhandas Bhanji, and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,]. The Assistant Registrar having conducted an enquiry on the basis of the complaint of Dr. Leeladhar Paliwal and having passed an order on the basis of said complaint, now can not contend before this Court that the order was passed in suo motu exercise of power. [See: Vivekananda Nidhi and others Vs. Asheema Goswami, : (2000) 10

SCC 23]. It is also well settled that if any decision is taken by the statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra vires. [See: Bahadursinh Lakhubhai Gohil Vs. Jagdishbhai M. Kamalia and Others,] Thus, the contention of the respondents that the Assistant Registrar had passed the impugned order on the basis of the suo motu enquiry, has no merit and is accordingly rejected.

19. The next question is if Assistant Registrar could assume jurisdiction and pass the impugned order on the complaint made by Dr. Leeladhar Paliwal? The issue is if the complaint of Dr. Leeladhar Paliwal was in accordance with Section 32(2) of the Act, which requires the application together with an affidavit in support of its contents by a majority of the members of the governing body of the society or not less than one-third of the total number of members of the society.

20. The complaint dated 23.2.2012, on the basis of which the enquiry was initiated, was a complaint made by the single member Dr. Leeladhar Paliwal. The complaint was not filed together with an affidavit in support of its contents of a majority of members of the governing body of the society or not less than one-third of the total number of members of the society. The complaint of the single member Dr. Leeladhar Paliwal did not satisfy the conditions mentioned in Section 32(2) of the Act, therefore, the Assistant Registrar was not competent to initiate an enquiry on such a complaint which did not fulfill the requirement of Section 32(2) of the Act. It is the settled position in law that where a power is required to be exercised by an authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. [See: AIR 1936 253 (Privy Council) , Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, and Ram Phal Kundu Vs. Kamal Sharma, .] Once the manner of assuming the jurisdiction for conducting an enquiry on the basis of the application satisfying certain conditions has been prescribed u/s 32(2) of the Act, then it was not open to the Assistant Registrar to deviate from it and conduct an enquiry on the basis of an application/complaint which did not satisfy those requirements. Thus, it is held that the complaint made by Dr. Leeladhar Paliwal, the single member of the MPCA, did not satisfy the requirements of Section 32(2) of the Act and the Assistant Registrar could not have conducted enquiry u/s 32 of the Act on the basis of that complaint.

21. An issue has also been raised before this Court by the respondents that the Assistant Registrar had exercised the power under bylaw 55 of the MPCA independent of any statutory power conferred under the Act. Such a submission can not be accepted because the Assistant Registrar is a statutory authority which can exercise the power only within the four corners of the statute. Even otherwise, under bylaw 55 the Registrar or any other officer authorized by him can take action, whereas in the present case the impugned order is neither by the Registrar nor any material has been filed before this Court showing that the Assistant Registrar was authorized by the Registrar to take action under Regulation 55.

22. The aforesaid analysis makes it clear that the Assistant Registrar has passed the impugned order in violation of the provisions contained u/s 32 of the Act and he had wrongly assumed the jurisdiction to conduct the enquiry on the basis of the complaint of a single member, which did not satisfy the pre-condition mentioned in Section 32(2).

23. The impugned order has also been challenged on the ground of violation of the principles of natural justice. It has not been disputed before this Court that none of the 20 members inducted between the period 2008-09 to 2011-12 whose membership have been held to be void by the impugned order, was given any show cause notice or given any opportunity of hearing by the Assistant Registrar. Record shows that even the MPCA was not given proper opportunity of hearing. Only notices were issued to the MPCA, which were responded by the MPCA. The original record reveals that the Assistant Registrar has not conducted proper enquiry, which he was required to do u/s 32(1). The grievance of petitioners that no enquiry as required by this Section was conducted nor any proper opportunity of hearing was given, is found to be correct.

24. u/s 32(3) of the Act wide powers have been given to the Assistant Registrar to conduct the enquiry but the Registrar has not exercised the said power. The Assistant Registrar was expected to act in a fair and transparent manner and comply with principles of natural justice while conducting the enquiry u/s 32 of the Act, which he has failed to do in the present matter. [See Shrawan Kumar Jha and others Vs. State of Bihar and others, and Hari Narayan Sakya Vs. State of M.P. and Others,].

25. The contention of the counsel for the State that u/s 32(4) of the Act the direction issued by the Registrar is binding on all parties concerned, therefore, no opportunity of hearing is required to be given, has no merit because mere binding nature of the order does not take away the requirement of compliance of principles of natural justice and acting in fair and transparent manner.

26. In view of the above analysis, the impugned order dated 27.7.2012 passed by the Assistant Registrar can not be sustained and is hereby set aside. Needless to say that the Registrar will be at liberty to initiate fresh action in accordance with law, if the need so arises. The writ petitions are allowed to the extent indicated above.

No costs.