

(2019) 04 CHH CK 0009

In the Chhattisgarh High Court

Case No : Writ Petition (Art. 227) No. 431 Of 2013

Managing Director And Anr

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 29-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 32, 226
Chhattisgarh State Cooperative Marketing Federation Service Rules, 2007 — Rule 11(e)
Chhattisgarh Co-Operative Societies Act, 1960 — Section 3(2), 9, 55, 55(1), 77, 78,
78(1)(a), 78(1)(b)

Citation : (2019) 04 CHH CK 0009

Hon'ble Judges : Sanjay K. Agrawal, J

Bench : Single Bench

Advocate : Dr. N.K. Shukla, Ajay Lakra

Final Decision : Allowed

Judgement

1. The petitioners herein are Managing Director and Secretary of the Chhattisgarh State Cooperative Marketing Federation Limited, which is an apex cooperative society registered under Section 9 of the Chhattisgarh Co-operative Societies Act, 1960 (for short, 'the Act of 1960'). The said Society had already promulgated the Chhattisgarh State Cooperative Marketing Federation Service Rules, 2007 (for short, 'the Rules of 2007') with the order and approval of the Registrar, Cooperative Societies, Chhattisgarh. The said Society in its meeting dated 16-2-2013, proposed amendment in Rule 11(e) of the Rules of 2007 and that amendment in the Rules of 2007 in shape of Rule 11(e) was approved by the Registrar, Cooperative Societies, Chhattisgarh, on 5-3-2013 exercising power under Section 55(1) of the Act of 1960 and thereafter, in accordance with the amended Rules, the petitioner Society advertised the posts on 1-5-2013 for filling up the vacancy on the post of Accountant and Field Assistant. Respondents No.3 to 9 herein preferred appeal before the State Government under Section 77 of the Act of 1960. The State Government acting through the Hon'ble Minister by its impugned order dated 11-6-2013, set aside the amendment in the Rules duly

approved by the Registrar under Section 55(1) of the Act of 1960 leading to filing of this writ petition by the petitioners questioning the order passed by the State Government dubbing the order as illegal and contrary to law.

2. Dr. N.K. Shukla, learned Senior Counsel appearing on behalf of the writ petitioners, would submit that the amendment made in the Rules of 2007 of the petitioner Society in shape of Rule 11(e) of the Rules of 2007 was legislative in character and the said amendment was approved by the Registrar, Cooperative Societies and thus, the order passed by the Registrar is in the nature of legislative power and the function of the Registrar in the said amendment in the Rules was legislative in character, therefore, interference in the said Rules could have been made by the State Government only when the statutory provisions have been contravened by amending the said Rules. The State Government has interfered with the order of the Registrar only on the ground that such an amendment is prejudicial to the interest of the private respondents herein who were at the relevant point of time working as daily-wagers. Such an order passed by the State Government is contrary to law. He would further submit that with effect from 13-2-2013, the amendment has been incorporated and by virtue of the provisions contained in Section 78 of the Act of 1960, against the order passed by the Registrar, appeal would lie to the Tribunal, as such, the order passed by the State Government is even incompetent. Therefore, the impugned order is liable to be set-aside.

3. Learned State counsel would support the order of the Registrar that the Registrar has rightly exercised the power under Rule 11(e) of the Rules of 2007.

4. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

5. It is not in dispute that the petitioner Society is a registered Society under the Act of 1960 and the Rules duly approved i.e. known as the Chhattisgarh State Cooperative Marketing Federation Service Rules, 2007 which are in force in which Rule 11(e) was proposed to be amended by the Board of Directors in its meeting dated 16-2-2013. Relevant portion of the proposed amendment states as under: -

13

विपणन संघ

सेवानियम 11(ई) में

संशोधन बाबत

प्रस्ताव।

13

विपणन संघ में सीधी भर्ती किये जाने हेतु कर्मचारी सेवा नियम

की कंडिका 11 (ई) में संशोधन प्रस्ताव से समिति अवगत हुई, जो
निम्नानुसार है-
कंडिका
क्रमांक
वर्तमान सेवानियम की
षब्दावली
सेवानियम में
प्रतिस्थापन की
षब्दावली
प्रतिस्थाप
न का
कारण
खण्ड-दो
कंडिका
-11 (ई)
सीधी भर्ती हेतु
समाचार पत्र तथा
रोजगार कार्यालय से
नाम आमंत्रित किये
जाएंगे। निर्धारित
अवधि में प्राप्त
आवेदनों/नामों
को एक पंजी में दर्ज
किया जाएगा तथा
प्राप्त आवेदनों/ नामों
की मेरिट लिस्ट तैयार
करने के आधार
निम्नानुसार होगा:-

(1) न्यूनतम

बैक्षणिक अर्हता की

परीक्षा में प्राप्तांकों

2.5 प्रतिशत अंकों

को 1 अंक देते हुए

अधिकतम 40 अंक।

(2) प्रबंधकीय पद

हेतु प्रबंधकीय

स्नातक/डिप्लोमा

तथा अन्य पदों हेतु

कम्प्यूटर

स्नातक/डिप्लोमा

25 अंक। प्रबंधन

/कम्प्यूटर में

स्नातकोत्तर

डिग्रीधारी को 25

अंक मिलेंगे, जबकि

स्नातकोत्तर

डिप्लोमाधारी को

अधिकतम 15 अंक

मिलेंगे।

(3) कार्यानुभव

संघ के बाहर कार्यों

को 15 अंक तथा

संघ में किये गये

कार्यों हेतु 20 अंक।

पेश 15 अंक

साक्षात्कार हेतु नियम

होंगे। साक्षात्कार के
लिये एक रिक्त पद के
विरुद्ध 3 उम्मीदवार,
षैक्षणिक अर्हता,
प्रबंधकीय /कम्प्यूटर
अर्हता तथा कार्यानुभव
के अंकों के आधार पर
बुलाए जाएंगे।
लेखापाल एवं क्षेत्र
सहायक संवर्ग में
सीधी भर्ती हेतु
समाचार पत्र अथवा
रोजगार कार्यालय से
पदोन्नति सोपान
अनुसार निर्धारित
न्यूनतम षैक्षणिक
अर्हता धारित
उम्मीदवारों के
आवेदन आमंत्रित
किये जाएंगे।
निर्धारित अवधि में
प्राप्त आवेदनों
को एक पंजी में दर्ज
किया जाएगा।
प्राप्त आवेदनों के
आधार पर चयन हेतु
मेरिट लिस्ट तैयार
कर नियुक्ति की

कार्यवाही की
जावेगी।
पेश पदों के
लिए सेवानियम की
कंडिका -11 (ई) के
प्रावधान में सीधी
भर्ती हेतु समाचार
पत्र अथवा रोजगार
कार्यालय से आवेदन
आमंत्रित किये
जायेंगे, यह संशोधन
करते हुए कंडिका
की पेश प्रावधान
यथावत रहेंगे।
सीधी भर्ती
में
पारदर्शिता
लाने हेतु।

6. The aforesaid amendment was sent to the Registrar, Cooperative Societies and on 5-3-2013, the learned Registrar exercising power under Section 55(1) of the Act of 1960, approved the same in the terms proposed by the Board of Directors. Order dated 5-3-2013 provides as under: -

कार्यालय पंजीयक, सहकारी संस्थाएँ, छत्तीसगढ़

(विवेकानंद काम्प्लेक्स, विवेकानंद नगर, पेंशनबाड़ा चौक, रायपुर)

(दूरभाष नं. 4002022, 244630, सेन्ट्रैक्स 2252, फैक्स 4002029)

क्रमांक / विपणन-1/2013/1675

रायपुर, दिनांक 5 मार्च, 2013

:: आदेश ::

छ०ग० राज्य सहकारी विपणन संघ मर्या० रायपुर के पत्र क्र/स्था.वि/5814 दिनांक 21/2/2013 द्वारा विपणन संघ के स्वीकृत विभागीय सेटअप में सीधी भर्ती के पदों पर नियुक्ति हेतु कर्मचारी सेवानियम की कंडिका-11(ई) में सीधी भर्ती

की योग्यता में संशोधन किए जाने हेतु संचालक मण्डल की सभा दिनांक 16/2/2013 के विषय एवं निर्णय क्रमांक-13 में प्रस्ताव पारित कर अनुमोदन हेतु इस कार्यालय को भेजा गया है।

छत्तीसगढ़ सहकारी सोसाइटी अधिनियम, 1960 की धारा 55(4) के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए मैं ए०के० टोप्पो, पंजीयक सहकारी संस्थाएं, छ०ग०, छ०ग० राज्य सहकारी विपणन संघ मर्या० रायपुर के कर्मचारी सेवानियम की कंडिका 11-(ई) में संलग्न परिशिष्ट-अ अनुसार संशोधन करता हूँ।

यह संशोधन आदेश जारी होने के दिनांक से प्रभावशील होगा।

सही/-

(ए०के० टोप्पो)

पंजीयक

सहकारी संस्थाएं, छत्तीसगढ़

7. The question for consideration would be, whether the State Government was justified in setting aside the amendment so directed and passed by the learned Registrar, Co-operative Societies, under Section 55(1) of the Act of 1960?

8. In order to consider the same, it would be appropriate to notice Section 55(1) of the Act of 1960 which reads as follows: -

"55. Registrar's power to determine conditions of employment in societies - (1) The Registrar may, from time to time, frame rules governing the terms and conditions of employment in a society or class of societies and the society or class of societies to which such terms and conditions of employment are applicable shall comply with the order that may be issued by the Registrar in this behalf."

9. In order to consider the question raised herein, it would be appropriate to trace out the nature of rule making power of the Registrar as provided under Section 55(1) of the Act of 1960. The said power could either be legislative or administrative.

10. Way back in the year 1987, Their Lordships of the Supreme Court in the matter of Union of India and another v. Cynamide India Limited and another (1987) 2 SCC 720 pointed out distinction between legislative, administrative and quasi-judicial power as under:-

"7. ... A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy". "Legislation is the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases." It has also been said: "Rule-making is normally directed toward the formulation of requirements having a general

application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situations". But, this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares rights and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of the future. The object of the rule, the reach of its application, the rights and obligations arising out of it, its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts. ..."

11. Delineating the nature of power exercised by the Registrar under Section 55 of the Act of 1960 and to issue orders, in the matter of Hemant Kumar Ganga Prasad Gupta v. President, District Co- operative Central Bank Ltd. And others 1983 M.P.L.J. 461, the Division Bench of the Madhya Pradesh High Court speaking through Hon'ble the Chief Justice G. P. Singh held as under:-

"9.....The power to make rules and issue orders under Section 55 conferred on the Registrar is in the nature of nature of a legislative power which is delegated to him by the Act....."

12. Similarly, in the matter of Bikal Bihari Soni and others v. State of M. P. and others 1986 M.P.L.J. 347, the Madhya Pradesh High Court has held that rule making function of the Registrar is legislative in nature. The report states as under:-

"Section 55(1) of the M.P. Co-operative Societies Act is in two parts. First part permits the Registrar to frame Rules from time to time governing the terms and conditions of employment in a society or class of societies. The second part requires the society or class of societies to which the rules are applicable, to comply with the Order that may be issued by the Registrar in this behalf. The first part is really the rule making authority conferred upon the Registrar whereas the second part is the Order making authority of the Registrar. Rule making function is legislative in nature. As far as the order making power is concerned such power is generally used to describe the exercise of executive power or to take judicial or quasi-judicial decisions. These two powers are separate and for distinct purposes."

13. Likewise, it has further been held by the Full Bench of Madhya Pradesh High Court in the matter of Sevaram Totaram Pargir v. Board of Revenue, M. P. , Gwalior and another 1983 M.P.L.J. 645 that the rules framed under Section 55(1) of the Act of 1960 are statutory in nature and they cannot be equated with the bye laws framed for internal management by holding as under:-

"3. ... In exercise of powers under Section 55(1) of the Act, Rules have been framed relating to the terms of employment and working conditions of

employees of the co-operative Central Bank of Madhya Pradesh. It is well settled that where a statute authorizes either the government or any other authority to frame rules and the rules are so framed, the rules would have the force of statute. They will be deemed to have been incorporated as part of the statute. The rules framed under Section 55(1) of the Act would, therefore, be statutory. ..."

14. The Full Bench decision in *Sevaram Totaram Pargir* (supra) has been followed with approval by the M.P. High Court in the matter of *Dinesh Kumar Sharma v. Madhya Pradesh Dugdha Mahasangh Sahakari Maryadit*, Bhopal and another 1994 M.P.L.J. 692 holding that Service Rules duly framed under Section 55(1) of the Act of 1960 by the Registrar, Co-operative Societies, have a statutory force and cannot be equated with the bye-laws of the Society, and thereafter, again followed by the M.P. High Court in the matter of *Balaghat Zila Sahkari Karmchari Sangh, Balaghat and another v. State of M.P. and another* 2004(1) M.P.L.J. 162 holding the rule making power of Registrar under Section 55(1) of the Act of 1960 to be *intra vires*.

15. The principle of law that emerges from the aforesaid judgments rendered by Their Lordships of the Supreme Court and the M.P. High Court, it is quite vivid that the rule making function of the Registrar under Section 55(1) of the Act of 1960 is legislative in character.

16. Now, the question would be, what is the scope of interference of the Court in the legislative power exercised by the Registrar under Section 55(1) of the Act of 1960, approving the amendment?

17. Scope of interference in the legislative function has been pointed out by the Supreme Court authoritatively in the matter of *Sundarjas Kanyalal Bhathija and others v. The Collector, Thane, Maharashtra* AIR 1990 SC 261, following statement of law of the report is relevant:-

"23. ... It must be noted that the function of the government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. In the present case the government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs"."

Thus, the scope of interference in the legislative function is extremely limited and only question to be examined while dealing with challenge to the legislative function is, whether statutory provisions have been complied with or not.

18. This Court in the matter of P.N. Upadhyay v. State of Chhattisgarh and others 2016(1) CGLJ 507, has taken the view following the aforesaid decisions (supra) which has been affirmed by the Division Bench of this Court in the matter of P.N. Upadhyay v. State of Chhattisgarh and others W.A.No.62/2016, decided on 1-8-2017.

19. Reverting to the facts of the present case in light of the nature of the power exercised by the Registrar under Section 55(1) of the Act of 1960 which is legislative in character, it is quite vivid that the said Rules have statutory force and further, the scope of interference in the said legislative function is very limited, as held by the Supreme Court in Sundarjas Kanyalal Bhathija (supra).

20. The Rules of 2007 as amended by the Registrar, Co-operative Societies by the impugned order as held by the Full Bench of the M.P. High Court in Sevaram Totaram Pargir (supra) have the statutory force. Therefore, the validity of rule having a statutory force cannot be questioned and examined in appeal under Section 77 of the Act of 1960. The constitutional validity of Rule 11(e) of the Rules of 2007 cannot be gone into in the said appeal preferred before the State Government. The constitutional validity of the said rule can only be challenged before the constitutional court by filing petition under Article 32 / Article 226 of the Constitution of India. The statutory appellate authority constituted under the statute is jurisdictionally incompetent to declare a statutory rule to be invalid and non est or unconstitutional.

21. Yet there is another reason for not upholding the order of the State Government, as the power of appeal conferred to the State Government under Section 78 of the Act of 1960 has been withdrawn and it has been conferred to the Chhattisgarh State Co-operative Tribunal with effect from 13-2-2013 under Section 78(1)(a) & (b) of the Act of 1960. Therefore, even otherwise, the State Government did not have the jurisdiction to entertain the appeal against the order of the Registrar passed under Section 55(1) of the Act of 1960. In the considered opinion of this Court, the order passed by the State Government setting aside the order passed by the Registrar on 5-3- 2013, is not only without jurisdiction, but also without authority of law and it is liable to be set-aside.

22. As a fallout and consequence of the aforesaid discussion, the impugned order passed by the State Government deserves to be and is hereby set aside and the order of the Registrar dated 5-3-2013 is restored.

23. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own cost(s).