
(1988) 11 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1870 of 1988

Mangla	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 01-11-1988

Acts Referred:

Co-operative Societies Act, 1965 — Section 128

Citation : (1988) WLN 267

Hon'ble Judges : M.B. Sharma, J;Inder Sen Israni, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Under challenge is the order dated 18-6-1986 of the then Minister for Coopartive, Respondent No. 3, purported to have been made in exercise of powers of revision u/s 128 of the Co-operative Societies Act, 1965 (for short the Act). The main challenge to the aforesaid order of the then Minister is that u/s 128 of the Act, only the order of the officer subordinate to the Government could have been revised and because the then Chief Manager Shri R.L. Gupta of Bundi (respondent No. 2) was not subordinate to the Government the Minister for Co-operative could not have set-aside the order.

2. A bare perusal of Section 128 of the Act will show that before Government can exercise the powers of its revision, the order must be made by an officer subordinate to it. We do not intend to go into the question as to whether the order of the Minister is without jurisdiction or not and assuming for the of sake argument that the order of the Minister could have been made u/s 128 of the Act, we are of the opinion that the effect of setting-aside of the order of Minister shall be the restoration of the order of dismissal of respondent No. 4 which appears to have have been made in utter disregard of the principles of natural justice and in utter disregard of the provisions of Rule 16 of the C.C.A. Rules, 1958. We cannot do and should not do it. The view of the Court has been that if the effect of allowing of writ petition will be restoration of an illegal order then

this court should not exercise its power and in this connection a reference may be made to a Full Bench Decision of this Court in Jagan Singh v. S.T.A.T., Rajasthan and Anr., reported in ILR 1980 1. In the return filed on behalf of the respondent No. 4, many facts have been stated, which go to show that in making inquiry, the principles of natural justice have been violated and no rejoinder in respect of the aforesaid return appears to have been filed on behalf of the petitioner. A look at the return (Para 2 and onwards) will show that the charge also related to some incident said to have taken place in between respondent No. 4 and Shri R.L. Gupta, the then Chief Manager and still the order of dismissal was made by him. Some of the witnesses were examined in the absence of respondent No. 4 and he was not allowed any opportunity to cross-examine them. Some of the witnesses have been examined even before 16th Nov., 1985, when respondent No. 1 appeared for the first time and filed his objection Annexure 1. A bare reading of enquiry report Annexure 3 will show that the enquiry report is based not only on the evidence produced before the enquiry officer but also on some knowledge gathered by the enquiry officer on perusal of record at the back of respondent No. 4. Even some of the charges in respect of enquiry were not served on respondent No. 4. The documentary evidence which was neither tendered nor proved, was also considered by the enquiry officer and it was only on the basis of enquiry report, the order of dismissal was made. It will, therefore, be clear that in making an enquiry principles of natural justice were violated and the evidence recorded at the back of respondent No. 4, the evidence of the witnesses who were not allowed to be cross-examined by respondent No. 4, the documents which were not tendered and proved were relied upon. The enquiry report is also based on the material collected by the enquiry officer at the back of respondent No. 4. That being the position, it can be said that the order of dismissal was passed in utter disregard of principles of natural justice and the CCA Rules and if we now set-aside the order of the Minister, it will lead to restoration of the dismissal under the illegal order. Because the principles of natural justice were not followed that order can be said to be nonest. We may state that the Minister has only remanded the case for fresh enquiry and looking to the charges, including the charge of embezzlement of more than Rs. 30,000/-the matter is such which should be enquired.

3. Consequently, we decline to, set-aside the order of Minister for the reasons stated and hereby dismiss the writ petition. But it is hereby directed that the enquiry should be held for the alleged misappropriation of more than Rs. 30,000/- by the respondent No. 4 and other charges which may be of serious nature. The enquiry officer should be appointed as soon as possible but not later than six months and the enquiry report by him should be submitted to the disciplinary authority there after but in no case beyond six months after the submission of the enquiry report.

4. Costs made easy.