(1954) 10 OHC CK 0001

In the Orissa High Court

Case No : O.J.C. No. 45 of 1953

Mirza Yusuf Baig APPELLANT

Vs

The State of Orissa and Others RESPONDENT

Date of Decision : 19-10-1954

Acts Referred:

Bihar and Orissa Co-operative Societies Act, 1935 — Section 32, 44, 44(3), 44(5), 56
Constitution of India, 1950 — Article 227

Citation : (1954) 20 CLT 729

Hon'ble Judges : Panigrahi, C.J;Mohapatra, J

Bench : Division Bench

Advocate : B. Mohapatra, for the Appellant; B.M. Patnaik, Asst. Govt. Advocate, for the Respondent

Judgement

Panigrahi, C.J.—This is an application under Article 227 of the constitution, praying for the issue of a writ on the opposite parties quashing the orders made by the opposite party No. 2, on the 29th May, 1950 and 24th September 1950, calling upon the Petitioner to pay Rs. 2838-7-6 and Rs. 4385-3-6 respectively, towards contribution for the shortage of moneys found in the Puri Public Servant Cooperative Stores Ltd.

2. The admitted facts are that the aforesaid co-operative society was ordered to be wound up by a Notification of Government dated the 7th January 1950, and opposite party No. 2 was appointed its liquidator. Opposite party No. 2 decided that the above sums should be recovered from the Petitioner who was the Secretary of the Society and the Petitioner''s attempts to have this order revised by the Registrar, or to be permitted to file an appeal before the District Judge having proved futile, the present application invoking our jurisdiction under Article 227 has been filed.

3. The facts disclosed in the petition reveal a lamentable state of affairs in the once of the Liquidator and to a certain extent in the Cooperative Department. The Liquidator purported to determine the liability of the Petitioner under Sub-

clause (a) of Sub-section (3) of Section 44 of the Bihar and Orissa Cooperative Societies Act, 1935. That section says that the Liquidator shall have power to determine from time to time, subject to the provisions of Section 32, the contributions to be made by the members or past members to the assets of the society and to, realise such contributions. Sub-section (3) contains a number of Clauses (a) to (b) and is governed by a proviso which reads a follows:

Provided that the Liquidator shall not determine the contribution, debt, or assets to be recovered from any person unless an opportunity of being heard has been given to each person.

4. It has been conceded at the Bar by learned Counsel appearing for the opposite parties that no format notice as contemplated in the above provision was issued or served on the applicant. But it is contended that this is only an irregularity which does not affect the jurisdiction of the Liquidation to determine the contribution payable by him. Before disposing of this contention I think it necessary to refer to a few facts revealed by the documents filed by the Petitioner, which will show how the Liquidator has conducted himself in these proceedings. After the demand notice has been served the Petitioner wrote a letter to the Liquidator (Annexure C) asking for a copy of his "finding or decision fixing the above liability" so that the Petitioner "may have a chance to explain the matter before it is finalized". There was no response to this letter and therefore another application (Annexure D) was sent to the Liquidator praying that "a complete copy of the finding on the basis of which I have been made liable to pay the above amount may kindly be supplied to me." This application also met with the same fate as its predecessor. Then he made a third application (Annexure E) on the 26th September 1951 asking for time till 31st October 1951 "to file my explanation against the notices served on me for certain amounts." Ultimately the Petitioner moved the Registrar, by his letter (Annexure F) dated 31st January 1952, complaining against the indifferent attitude shown by the Liquidator and his refusal to supply him with copies of his orders. He alleged therein that the Liquidator had given him to understand that copies would be supplied ''only if the Registrar so directs'' and prayed to the Registrar to issue necessary instructions to the Liquidator of the society "to supply me copies of the grounds and charges famed against me and of the orders of contribution so that I may have a chance to ventilate my grievances before you". The Registrar, by his letter dated 26th February 1952, directed the Liquidator to grant a copy of the papers to the Petitioner after realising the necessary copying fee. On the 5th August, 1952 the Petitioner applied to the Registrar by his letter (Annexure G) for granting him permission to go on appeal before the appropriate authorities under Sub-section (5) of Section 44 of the Act. The Registrar then directed the Petitioner to report when he received the order of assessment from the Liquidator. In replying to this communication the Petitioner said that no official communication had been made to him about the final order, if any, according to the provisions of the Act. Finally the Registrar by his order dated 13th September, 1952 refused permission to the Petitioner saying that he "found no

reason to give such permission under the circumstances of this case. Thereafter the Petitioner again moved the Registrar under Sections 56 and 57 of the Act praying for revising the order of the Liquidator This was dismissed by the Registrar on the ground that it was a very old case and that the Petitioner had not taken recourse to the protection conferred upon him by law.

5. It is unfortunate that the Registrar failed to appreciate the grievance ventilated by the Petitioner from time to time. It will be noticed that the only grievance of the Petitioner was that be had not been given an opportunity to be heard before the Liquidator decided about his liability for the contribution. After going through the papers the impression left on my mind is that the authorities of the Co-operative Department were resorting to every possible device to defeat the claim of the Petitioner and were driving him from pillar to post time and again.

6. The Liquidator had clearly no jurisdiction to determine the contribution payable by the Petitioner without a strict compliance with the provisions of the law as laid down in Section 44 of the Bihar & Orissa Co-operative Societies Act. As I read that Section the Liquidator gets the jurisdiction to determine the liability of a member to contribute, only after giving him an opportunity of being heard. That is the very foundation of his jurisdiction and his provision has to be strictly complied with. Learned Counsel''s argument that this is only a formality and that its non-observance is no more than an irregularity ignores the emphatic language used by the Legislature in the proviso to Sub-section (3) of Section 44. That proviso says that the Liquidator shall not determine the contribution unless an opportunity of being heard has been given to the person concerned. This only means that the opportunity to be heard should precede the exercise of the power vested in the Liquidator. Accordingly we have no opinion but to hold, in the circumstances of this case, that the order passed by the Liquidator calling upon the Petitioner to make contributions is without jurisdiction. The Petitioner was consequently under no obligation to seek the permission of the Registrar for going up in appeal under Sub-section (5) of that section. I am unable to understand why the Liquidator took up such an attitude unless it be that he wanted o prevent the Petitioner from having recourse to the provisions of the Act and questioning he legality of his order. It seems that the Petitioner''s repeated applications were not heeded to, only with this purpose.

7. In the result we set aside the orders of the Liquidator dated 29th May, 1950 and 24th September, 1950 calling upon the Petitioner to make contributions, as being without jurisdiction. We are informed that certain proceedings are pending before the Collector for realization of those amounts under the Public Demands Recovery Act. As we have declared be demands to be illegal, these proceedings before the Collector are also here by quashed. We further direct that the Liquidator, owing to whose mis-handling the Petitioner has been driven to take recourse to this Court, should pay the costs of this application. We assess the bearing fee at Rs. 150/- (one hundred and fifty only). This amount should be

borne by the Liquidator personally and the Society should not be made to bear the cost.

Mohapatra, J.

8. I agree.

