

(1993) 04 KL CK 0004
In the High Court Of Kerala
Case No : O.P. No. 3091 of 1993

M.M. Abdul Rahiman and others

APPELLANT

Vs

Joint Registrar and others

RESPONDENT

Date of Decision : 15-04-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1993) 2 KLJ 197

Hon'ble Judges : G.H. Guttal, J

Bench : Single Bench

Advocate : T.P. Babu Kelu Nambiar, P.G. Rajagopalan Varghese and P. Parameswaran Moothath, for the Appellant; Cyriac Joseph Addl. Govt. Advocate General and D. Somasundaram, Pleader, for the Respondent

Final Decision : Dismissed

Judgement

G.H. Guttal, J.—The petition under Article 226 of the Constitution of India, by the Cochin Co-operative Hospitals Society Limited and members of its committee, raises an interesting question. The question is whether denial of access to administrative reports which constitute the source of information on which the notice inviting objections to the proposed supersession of a co-operative society, issued u/s 32 of the Kerala Co-operative Societies Act, is based, is a violation of the principles of natural justice. Indira Gandhi Co-operative Hospital, Cochin, is run by the petitioner No. 6, the Cochin Co-operative Hospital Society Limited, hereinafter referred to as the Society, which is registered under the Kerala Co-operative Societies Act, hereinafter referred to as the Act. The petitioner Nos. 1 to 5 are members of the managing committee of the society which is also known as the Board of Directors. The petitioners impugn the validity of the order No. 7160/1992 dated 25th February, 1993 (Ext. P9 to the petition), whereby the Joint Registrar of Co - operative Societies, Government of Kerala, the respondent No. 1 herein, in exercise of his power u/s 32 of the Act, removed the managing committee of the society and appointed the Asst. Registrar of Co - operative

Societies, Kanayannur, the respondent No. 3, as the Administrator of the society for a period of six months.

2. The respondent No. 1 served on the petitioners notice No. HM 7160/92 dated 2-12-1992 (Ext. P1). In this notice he listed 17 irregularities allegedly committed by the committee. The notice calls upon the petitioners to state their objections as envisaged by sub section (1) of Section 32 of the Act. The notice refers to the inspection reports dated 22-8-1992, 20-10-1992 and 26-11-1992 by the Assistant Registrar of Co-operative Societies and a report dated 15-7-1992 by the District Co-operative Bank Limited. While the "opportunity" to state its objections" was given by the notice dated 2-12-1992 (Ext. P1), copies of these reports were not supplied to the petitioners in spite of repeated requests. The petitioners urge that the denial of access to these reports which is the source of information on which the "opportunity to state its objections" is based, is a violation of the principles of natural justice.

3. The opportunity to state its objections" is related to specific allegations of irregularities made in the letter dated 2-12-1992 (Ext. P1). In order to understand what the petitioners were called upon to object, to, a summary of the irregularities allegedly committed by the petitioners is given below.

Payment of exorbitant interest of Rs. 2,85,577.92 to architects, running the hospital without a competent chief executive in breach of byelaw No. 31(3), appointment of staff in breach of Rule 80 and the Registrar's circular dated 28-11-1989, keeping the ambulance van purchased with Government aid of Rs. 94,651.47 in a condition of disrepair while continuing to pay salary to the driver, purchase of air conditioner from a sole trader, of laproscope at a price higher than sanctioned by the committee, sale of dental chair at a loss, purchase of image intensifier for Rs. 9,61,000/- privately, against a tender for Rs 7.75 lakhs, irregular acquisition of accommodation for a dispensary and unwarranted expenditure on its repairs, opening an account in a commercial bank in breach of rules which required such account to be opened in a co-operative bank, removal of living members on a statement by the President that they are dead and admission of members in breach of rules, are some of the accusations which the petitioners were called upon to meet.

4. The irregularities set out in the last paragraph are undoubtedly serious. The notice dated 2-12-1992 (Ext. P1) consists of 12 typewritten pages, containing the details such as the number and date of resolution where necessary names, of persons and places and value of properties and other particulars.

The petitioners in their letters dated 12-12-1992 (Ext. P3). 26-12-1992 (Ext. P5) and 24-12-1992 (Ext. P6) persistently (a) claimed that "effective and meaningful" objections could not be filed unless copies of the reports referred to in the notice dated 2-12-1992 (Ext. P1) were supplied to them and (b) asserted that no inspection was ever made and the reports referred to by the Joint Registrar are fictitious.

5. Whether the reports are real or fictitious is a matter of serious controversy. The fact, however, remains that the copies of the reports were not supplied to the petitioner. I will determine the question raised in this petition without entering into the controversy about the existence of the report.

6. In the course of his administrative function the Registrar may be called upon to resort to drastic steps like supersession of a committee. In such cases he is expected to act fairly and consider what the committee has to say. In view of the drastic character of the power and the consequence of its exercise sub - section (I) of Section 32 enjoins the Registrar to take such step "after giving the committee an opportunity to state its objections, if any." "Hear the other side" is the principle. This opportunity is a manifestation of the principle of natural justice applicable to this case. Since the statute has imposed on the Registrar the duty to observe the aforesaid principle of natural justice, a brief account of the general principles of law, is stated in paragraphs 8, 9 and 10 below.

7. Natural justice is universally accepted as a mandatory principle, the nonobservance of which invalidates the exercise of power. One of the principles of natural justice is that an authority entrusted with legal power could not validly exercise it without first bearing the person who was going to suffer.¹ The principle of a fair opportunity to present one's case, or of hearing before an adverse decision is taken is easy to understand. It is in its application that the principle presents difficulties. While it is obligatory that a party against whom adverse action is proposed must be heard, there is no universally accepted technique of such hearing by administrative authorities. What technique or method, an administrative authority should adopt thus depends upon the circumstances of the case and the nature of the authority. Secondly the right to be heard is often misunderstood as something close to the judicial method of formal testimony of witnesses, testing it by cross-examination and arguments. In "hearing the other side", the administrative authority is called upon to act within the frame work of the statute, and the administrative constraints. These limiting factors inevitably exclude elaborate procedure of the kind followed in the courts. It is therefore not right to judge whether a party had a fair opportunity of being heard "or" of "stating its objections", by applying the rules applicable to courts. This is particularly important in this case because copies of the reports are insisted upon. In the trial of a suit such a demand for documents like the reports is natural and no-one would deny it. But administrative inquiries made for the purpose of collecting information are different in their nature. They are not the result of statutorily compulsory inquiries. The Registrar could call upon the petitioners to state their objections without such reports. This character of the reports in question is important for a correct perception of its impact on the application of the principle of natural justice.

8. The question whether a party has a right of access to such reports has arisen in the past also. The principles laid down by judicial precedents which I will presently set out, place the matter in correct perspective. For instance, where

the Board of Revenue acting on a confidential report of the Deputy Commissioner granted liquor licence without supplying copies of the report to the rival claimants, it was held that the refusal to supply copies of the report did not violate rules of natural justice.² Again, it has been held that the stipulation that an opportunity to show cause against a proposed action does not mean that a copy of the report on which the notice is based should be supplied to the person against whom action is proposed.³

1. Administrative Law - H.W.R. Wade.

2. Bishnu Ram Borah and Another Vs. Parag Saikia and Others,

Chingleput Bottlers Vs. Majestic Bottling Company,

3. Ram Kristo Mandal and Another Vs. Dhankisto Mandal, .

9. The principle that emerges is that supply of reports which may contain facts necessitating a notice to show cause against the proposed action is not an essential component of the rule of natural justice expressed by the words "hear the other side." However, fairness of procedure being the essence of natural justice, what must always be ensured is that the opportunity of raising objections to or showing cause against the proposed action must be fair. Consider what the petitioners were called upon to meet. Seventeen serious irregularities suggesting mismanagement misuse of funds, wrongful admission and removal of members, causing loss to the society were pointed out. These accusations fairly confront the petitioners with the facts they had to explain, disprove correct or repudiate. They were based on certain reports Sub - section (1) of Section 32 of the Act employs the words "opportunity to state its objections." The opportunity is not in regard in what the reports contain. The opportunity has reference to "he facts about which the Registrar has to be "satisfied," If such facts are brought to the notice of the petitioners, the requisite opportunity is given - no matter from where the Registrar obtained those facts. The Registrar is required to be satisfied that the committee of a society (a) persistently makes default or is negligent in the performance of the duties imposed on it by the Act or the Rules or the byelaws or (b) commits any act which is prejudicial to interests of the society or (c) wilfully desobeys or wilfully fails to comply with any lawful order or direction issued under this Act or the Rules. Therefore, these three acts allegedly committed by the committee are the cause of the "satisfaction" of the Registrar. The opportunity to raise objections is related to these three acts. The specific mention of these three facts of which the Registrar is required to be satisfied before any action is taken, makes it plain that the statute conceives of the opportunity to state objections in regard to those facts which enter the Registrar's satisfaction. The opportunity is to explain, repudiate or disprove the facts on the basis of which the Registrar may be so satisfied. Such facts may come out of the records of the society, complaints made to the Registrar or the enquiries made by him, through his subordinates. There is no reference to any opportunity to raise objections with reference to the source of such information.

Therefore the source of the facts which enter the Registrar's satisfaction or the origin of the information on which such facts are based is not a component of the rule of natural justice manifested by the words "opportunity to state its objections." The essence of fair opportunity in Administrative actions was stated by the House of Lords in these words: The administrative authority "can obtain information in any way they think best, always giving a fair opportunity to those who are panics in the controversy for correcting or contradicting anything prejudicial to their View".⁴ It is clear, therefore that all that need be ensured is that the petitioners have been given the opportunity to correct or contradict the facts stated in the notice dated 2-12-1992 (Ext. P1). Neither the statutory language nor the general principles of natural justice create any right beyond this. The opportunity is against the facts about the existence of which the Registrar is satisfied and not against the source of the information. The reason is simple. The proposed action is based on the facts stated in the notice which may enter the satisfaction of the Registrar and not on the reports which are merely vehicles of such facts. However, I must caution that the reports in this case should not be confused with the reports which by themselves affect the rights of citizens. An example of such report is report of disciplinary authority holding the delinquent guilty of misconduct In Aldridge⁵ the House of Lords upheld the department's action in not disclosing the report of the inspector although it was the principal document in the appeal.

10. Therefore, the opportunity which the petitioners are entitled to cannot be equated with the proceedings of a trial of a suit involving interrogatories, discovery, inspection and so on. How the petitioners shall be given the opportunity to place their case before the Registrar depends Upon the nature of the authority of the Registrar, the urgency of the proposed action, the time at the disposal of the Registrar and so on. In my opinion, therefore, the reports referred to in the notice dated 2-12-1992 (Ext. PI) were intended to collect information about whether one or more of the three circumstances referred to in sub-section (1) of Section 32 exist. The reports are mere vehicles of the facts reported by them. As already stated, the petitioners have received an elaborate meticulous account of the defaults/irregularities committed by them, their negligence in the performance of duties, the prejudicial character of the acts and disobedience of the directions issued under the Act and the Rules. The facts setting out these elements were brought to the notice of the petitioners in a very precise and meticulous manner. This fully Satisfies requirement of "the opportunity to state its objections." I see no breach of the principle of natural justice embodied in sub-section (1) of Section 32 of the Act, or of any other principle of natural justice.

4. Board of Education v. Rice (1911) A.C. 179).

5. Local Government Board v. Aldridge ((1915) A.C. 120), 12. On the basis of the judgment of the Full Bench of the Madras High Court in P.S. Rajagopal⁶ learned counsel for the petitioners urged this point. Under the scheme of Sections 65 and 66 which are identical with Sections 64 and 65 of the Madras Co-operative

Societies Act and related provisions of the Kerala Co-operative Societies Act, the only way in which the Registrar is empowered to collect information for the purpose of his satisfaction under sub-section (1) of Section 32 of the Act is to inquire into the affairs of the society u/s 65 of the Act inspect and supervise the society u/s 66 of the Act. The facts revealed in the reports of such inquiry and inspection alone can form the jurisdictional basis for the action under sub-section (1) of Section 32 of the Act. Since no such inquiry under Sections 65 and 66 of the Act preceded the notice dated 2-12-1992 (Ext. P1) the supersession of the petitioner - society is without the authority of law. However, the Supreme Court⁷ overruling the judgment of the Full Bench of the Madras High Court negated the above submission.

The effect of the Supreme Court's judgment on the question urged by the petitioners is that the Registrar can be "satisfied" that the committee of any society committed the acts set out in sub - section (1) of Section 32 of the Act without following the procedure of Sections 65 and 66 of the Act. The submission made by learned counsel for the petitioners is therefore not valid.

11. In my opinion therefore, the Registrar did give to the petitioners the "opportunity to state its objections" envisaged by sub - section (1) of Section 32 of the Act. The petitioners, instead of facing the charges of irregularities stated in the notice dated 2-12-1992 (Ext. P1) persisted in demanding copies of the reports. They failed to raise any objections in regard to the allegations made against them. They did not explain, repudiate, correct or attempt to disprove the facts stated in the notice. The Registrar has completely complied with the requirements of sub-section (1) of Section 32 of the Act. He was within his authority in making the order dated 25-2-1993 (Ext. P9) superseding the committee and appointing the Administrator.

12. No other point was urged on behalf of the petitioners. For these reasons the petition is dismissed.

6. The Joint Registrar of The Joint Registrar of Co-operative Societies, Madras and Others Vs. P.S. Rajagopal Naidu and Others, .

7. The Joint Registrar of Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others, .