
(2006) 08 MP CK 0068

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 5739 of 2006

Nathuram Sen

APPELLANT

Vs

The District Central Co-operative Bank and Another

RESPONDENT

Date of Decision : 07-08-2006

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2006) 08 MP CK 0068

Hon'ble Judges : R.K. Gupta, J

Bench : Single Bench

Judgement

R.K. Gupta, J.—In the present petition, the petitioner has claimed a relief against the respondent No. 1, which is a Co-operative Society registered and governed under the provisions of the M.P. Co-operative Societies Act, 1960. The relief which the petitioner has prayed for is that a direction be given to the respondent No. 1 to reinstate the petitioner in service as UDC with all difference of allowances, back-wages and all pecuniary benefits with interest till the date of his reinstatement with seniority.

2. In the present case, return has been filed on behalf of the respondents. In the return, the respondents have stated that a dispute by the petitioner u/s 55(2) of the M.P. Co-operative Societies Act, 1960 has already been filed and is pending before the Deputy Registrar, Co-operative Societies, Tikamgarh. The said dispute was filed on 18-12-2002 by which the petitioner has prayed for the quashment of the order of punishment whereby a penalty of removal from service has been imposed.

3. Learned Counsel for the petitioner submitted that subsequent to the filing of the dispute, the Chairman of the respondent No. 1 Bank has already passed an order dated 14-12-2002, which is Annexure P-5. The said order is passed in the note-sheet and it has been stated by the Chairman that keeping in view the inquiry report which is submitted by the Inquiry Officer, charges against the petitioner are not (bund proved, as no fault of the petitioner has been found.

Accordingly, it has been directed to take back the petitioner into the employment along with back wages. Learned Counsel for the petitioner submitted that the aforesaid order in the note-sheet by the Chairman has been passed on the basis of the findings recorded by the Inquiry Officer and supplied to the petitioner by way of a covering letter, which is Annexure P-1, dated 4-7-2005.

4. Learned Counsel for the respondent No. 1 submitted that the inquiry report, which has been filed by the petitioner is a forged document. It is submitted that the correct inquiry report is filed by the respondent No. 1 along with the return, which is Annexures R-1/III and R-1/IV. It is also submitted by him that in the said inquiry report, petitioner has been held guilty. It is further submitted that the report which has been submitted by the petitioner as per Annexure P-1 is in fact a forged document and is not the report submitted by the Inquiry Officer.

5. On the basis of the aforesaid rival submissions of the learned Counsel for the parties, it is clear that in the present case, seriously disputed question of facts are involved as to which is the correct inquiry report. Such a disputed question of facts cannot be adjudicated upon by this Court exercising the writ jurisdiction under Article 226 of the Constitution of India. It is submitted that the petitioner since has already preferred a dispute u/s 55(2) before the Deputy Registrar, Co-operative Societies, Tikamgarh wherein the petitioner has claimed a relief of reinstatement, petitioner ought to have continued with the said proceedings rather than filing the present petition before this Court for the same set of relief.

6. On the basis of the aforesaid submissions, it is clear that the dispute preferred by the petitioner is already pending. The dispute as such has not been withdrawn by the petitioner, which he filed u/s 55(2) of the M.P. Cooperative Societies Act, 1960 and the same is still pending before the Deputy Registrar, Co-operative Societies, Tikamgarh. Petitioner before filing the present petition before this Court should have either withdrawn his dispute and then should have preferred the present petition before this Court or should have waited for the final outcome of the decision of the said dispute. But, during the pendency of the same set of relief which the petitioner has prayed in the present petition, particularly when the dispute u/s 55(2) of the M.P. Co-operative Societies Act, 1960 is already pending, petitioner should not have filed the present petition. Petitioner ought to have amended his dispute, which is already pending or should have brought all the facts to the notice of the authority rather than filing the present petition.

7. On the basis the aforesaid submissions, this Court is not inclined to interfere in the present petition at this stage.

8. Apart from the aforesaid, it may be seen that the petitioner was an employee of the respondent No. 1, which is a Co-operative Society registered and governed under the provisions of the M.P. Co-operative Societies Act, 1960. u/s 55(2) of the M.P. Co-operative Societies Act, 1960, the petitioner has his remedy to challenge his order of dismissal by filing a dispute which he has already filed and the said dispute is still pending.

9. Now, a question at this juncture is whether a writ can be issued against the Co-operative Society. The Full Bench of this Court in the case reported in 1993 MPLJ 786 Dinesh Kumar Sharma v. M.P. Dugdh Mahasangh Sahkari Maryadit and Anr. has already laid down that a writ petition against a Co-operative Society shall be maintainable only if in the petition the breach of any statutory rule or provision having the force of law is made out. The ratio of the said judgment is reproduced as under:

Even if the respondents/Societies cannot be characterised as "State" within the meaning of Article 12 of the Constitution and, as such, are not amenable to writ jurisdiction, if the Society or its officers act in violation of statutory provisions and/or fail to discharge statutory public duty, a writ would lie for enforcement of statutory obligations and public duty.

10. Another judgment passed by the Apex Court, which is reported in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, , is also applicable in the present case. It was a case where the Apex Court was considering the question whether any writ against a Co-operative Society can be entertained and ultimately it was held that no writ against a Co-operative Society can be issued and the petition could only be entertained subject to that if any complaint made by the incumbent approaching the Court with regard to non-performance of the public duty or breach of any statutory provision.

11. In the present petition, the petitioner's prayer is that a writ of mandamus against the respondent No. 1 be issued for his reinstatement. It is not a writ, where the petitioner has come forward to pray for a writ of mandamus against the respondent No. 1 for the performance of its public duty. Therefore, the nature of writ and the prayer so made by the petitioner in the present petition, cannot be termed to be in the nature of mandamus seeking a direction against the Co-operative Society for the performance of any public duty where the society has failed to perform the function as imposed upon it under the Statute, i.e., M.P. Co-operative Societies Act, 1960.

12. Learned Counsel for the petitioner relied upon the judgment passed by this Court as reported in Ram Raj Maran and Others Vs. Disaster Management Institute and Another, and submitted that a writ against a Society shall be maintainable. It may be seen that in the aforesaid case, the Society which was involved was not a Society which was governed under the provisions of the M.P. Co-operative Societies Act, 1960. It was a Society which was known as "Disaster Management Institute, Bhopal. The performance for which the society was constituted, itself, indicates that the said society was constituted for giving the relief to the Bhopal gas tragedy victims. Therefore, this Court held that a writ against such Society shall be maintainable.

13. At the first instance, it may be seen that the aforesaid judgment passed by the learned Single Judge does not take into consideration the judgment passed

by Full Bench of this Court in 1993 MPLJ 786 (supra). Therefore, even assuming that the said judgment shall have the application to the petitioner in the present case but in view of the Full Bench judgment of this Court as reported in 1993 MPLJ 786 (supra), which has not been considered by the learned Single Judge in the case cited by the petitioner, the said judgment is distinguishable. In view of the aforesaid, the petitioner, cannot get any help of the aforesaid judgment.

14. Learned Counsel for the petitioner also relied upon another judgment passed by the Apex Court, which is reported in Federal Bank Ltd. Vs. Sagar Thomas and Others, It was the case where the Apex Court was considering the question with regard to maintainability of the petition against the body performing any function or duty of a public character In the aforesaid case, the Apex Court has laid down a principle in Para 18 of this judgment:

18. From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Government); (ii) an authority; (iii) a statutory body; (iv) and instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature; and (viii) a person or a body under liability to discharge any function under any statute, to compel it to perform such a statutory function.

The Apex Court has further held in Para 31 of its judgment that:

The other case which has been heavily relied upon is Andi Mukta. It is no doubt held that a mandamus can be issued to any person or authority performing public duty, owing positive obligation to the affected party. The writ petition was held to be maintainable since the teacher whose services were terminated by the institution was affiliated to the university and was governed by the ordinances, casting certain obligations which it owed to that petition. But it is not the case here. Our attention has been drawn by the learned Counsel for the appellant to Paras 12, 13 and 21 of the decision (Andi Mukta) to indicate that even according to this case no writ would lie against the private body except where it has some obligation to discharge which is statutory or of public character.

15. This Court is considering the judgment passed by the Apex Court in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, , where the Apex Court has directly dealt with the question about the power of the High Court to issue a writ under Article 226 of the Constitution of India against a Co-operative Society. The question, since has directly been dealt with by the Apex Court in the aforesaid judgment, therefore, in the present case the ratio of the judgment cited by the petitioner, i.e., Federal Bank Ltd. Vs. Sagar Thomas and Others, , shall have no application and keeping in view the facts and circumstances of the present case, the ratio of the judgment passed by the Apex Court in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, , shall have full application. It may further be seen

that the judgment passed by the Apex Court as reported in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, , does not seem to have any consideration by the judgment relied upon the learned Counsel for the petitioner.

16. It may be seen that the judgment so referred in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrugan Nishad and Others, , has further been considered by the Apex Court in its judgments as reported in Supriya Basu and Others Vs. West Bengal Hsg. Board and Others, ; Binny Ltd. and Another Vs. V. Sadasivan and Others, (Binny Ltd. and Anr. v. Sadasivan and Ors.) The ratio so passed has already been relied upon by the Apex Court in the subsequent judgments. The Apex Court in Supriya Basu and Others Vs. West Bengal Hsg. Board and Others, , in Para 8 has held:

The rival stands need consideration on the core issue of maintainability of the writ petition, though several other issues were raised by learned Counsel for the appellants. It is undisputed that the respondent Society is a Co-operative Society constituted on agreement between members thereof who had agreed to abide by the provisions of the West Bengal Co-operative Societies Act, 1983, the Rules framed thereunder or the bye-laws framed by the Society. The Society is undisputedly not a department of the State and is also not a creature of a statute but merely governed by a statute. Only if it is established that a mandatory provision of a statute has been violated, could a writ petition be maintainable. Before a party can complain of an infringement of his fundamental right to hold property, he must establish that he has title to that property and if his title itself is in dispute and is the subject-matter of adjudication in proceedings legally constituted, he cannot put forward any claim based on the title until as a result of that enquiry he is able to establish his title. It is only thereafter that the question whether the rights in or to that property have been improperly or illegally infringed could arise. The dispute as noted by the High Court essentially related to the claims of two rival groups of private individuals in relation to common car parking spaces. The learned Single Judge gave certain directions, which even touched upon the legality of the sale deeds. It was not open to be dealt with in a writ petition. As observed by this Court in U.P. Stale Coop. Land Development Bank Ltd. v. Chandra Bhan Dubey in relation to the question whether a writ petition would lie against a Co-operative Society the question to be considered is what is the nature of the statutory duty placed on it and the Court is to enforce such statutory public duty. The question as to entitlement of the members was to be discussed in the annual general body meeting. The writ petitioners could not have questioned the decision of the Society to discuss the matter in the annual general body meeting. We, therefore, find no merit in this appeal. The society is free to convene a general body meeting and to discuss the rival claims regarding entitlement. We make it clear that we have not expressed any opinion on that aspect of the matter. The appeal fails, but without any order as to costs.

The Apex Court in *Binny Ltd. and Another Vs. V. Sadasivan and Others*, , in Para 27 observed the following:

Another decision on the same subject is *G.M., Kisan Sahkari Chini Mills Ltd. v. Satrugan Nishad*. The appellant was a Co-operative Society and was engaged in the manufacture of sugar. The respondents were the workers of the appellant and they filed various writ petitions contending that they had to be treated as permanent workmen. The appellant challenged the maintainability of those writ petitions and applying the principles enunciated in *VST Industries case*, it was held by this Court that the High Court had no jurisdiction to entertain an application under Article 226 of the Constitution as the mill was engaged in the manufacture and sale of sugar which would not involve any public function.

Further in Para 22 of the aforesaid judgment, the Apex Court has relied upon and explained the judgment of *Federal Bank*, as relied upon by the learned Counsel for the petitioner, which is reproduced as under:

In *Federal Bank Ltd. v. Sagar Thomas* the respondent was working as a Branch Manager of the appellant Bank. He was suspended and there was a disciplinary enquiry wherein he was found guilty and dismissed from service. The respondent challenged his dismissal by filing a writ petition. The learned Single Judge held that the Federal Bank was performing a public duty and as such it fell within the definition of "other authorities" under Article 12 of the Constitution. The appellant Bank preferred an appeal, but the same was dismissed and the decision of the Division Bench was challenged before this Court. This Court observed that a private company carrying on business as a scheduled bank cannot be termed as carrying on statutory or public duty and it was therefore held that any business or commercial activity, whether it may be banking, manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money which do have an impact on the economy of the country in general, cannot be classified as one falling in the category of those discharging duties or functions of a public nature. It was held that the jurisdiction of the High Court under Article 226 could not have been invoked in that case.

17. In view of the aforesaid law laid down by the Apex Court where the question about the jurisdiction to issue a writ against a Co-operative Society has directly been dealt with, therefore, the judgments so relied upon by the petitioner shall have no application in the present case.

18. Learned Counsel for the petitioner submitted that he may not be entitled to a writ against a Co-operative Society but the petitioner would be entitled to a writ against the respondent No. 2 which is an adjudicating authority u/s 55 (2) of the M.P. Co-operative Societies Act, 1960 to adjudicate upon the dispute filed before it. It is submitted by him that the said dispute is still pending before the respondent No. 2 since 2002 and there had been no progress in the matter.

19. Keeping in view the facts and circumstances of the case, it is directed that

the petitioner shall be free to amend his pleadings before the respondent No. 2 and the respondent No. 2 shall dispose of the said dispute within a period of six months from the date the certified copy of this order is presented by the petitioner to him. Both the parties since are present before this Court, therefore, the parties shall necessarily appear before the respondent No. 2 on 21st August, 2006 and thereafter the respondent No. 2 shall proceed further to adjudicate upon the dispute and shall decide the dispute finally within six months. Accordingly, this petition is disposed of.