(2001) 04 OHC CK 0028

In the Orissa High Court

Case No : O.J.C. No. 10111 of 2000

Padma Lochan Panda and others APPELLANT

Vs

State of Orissa and others RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 92 CLT 355 : (2001) 2 OLR 144

Hon'ble Judges : Pradipta Ray, J

Bench : Single Bench

Advocate : M/s Pitamber Acharya, S.R. Pati and O.P. Dash, for the Appellant; Mr. K.P. Nanda, for the Respondent

Final Decision : Dismissed

Judgement

Pradipta Ray, J.—The petitioners, the elected President and eleven other elected Directors of the Board of Management of Balasore District Central Co-operative Bank Ltd., a Central Society, within the meaning of the Orissa Co-operative Societies Act have filed this writ petition challenging an order of supersession passed by the Registrar of Co-operative Societies by order No. 15624 dated October 4, 2000.

2. A proceeding u/s. 32(1) of the Orissa Co-operative Societies Act, 1962 was initiated against the Committee of Management of the Balasore District Central Co-operative Bank Ltd. (hereinafter referred to as the ''Bank''). The charge-sheet was issued. The petitioners submitted their reply to the charge-sheet. The petitioners were represented by an Advocate before the Registrar. They were allowed to inspect the necessary documents and to take note of the same under the supervision of the Registrar, Civil Courts, Bhubaneswar in accordance with the direction of this Court. Upon hearing the learned Advocate for the writ petitioners and considering their submissions the Registrar passed the impugned order dealing with each allegation contained in the charge-sheet. The Registrar considered the explanation submitted and recorded his findings on each of the

charges. It is well settled that this Court in Constitutional writ jurisdiction cannot sit in appeal over the findings of fact recorded by the Registrar in the proceeding unless the same is without any basis or perverse, This Court has carefully read the order passed by the Registrar and does not find any thing perverse or absurd to interfere with. Some of the allegations particularly the allegation relating to sanction of loan in favour of one M/s. Utkal Construction Crusher Unit and deposit of the same in the account of Satya Sai Trust of which petitioner No. 1 was one of the trustees is really serious in nature. Accordingly this Court is not inclined to interfere with the findings recorded by the Registrar.

3. The impugned order was passed on October 4, 2000. On the same date, i, e. October 4, 2000 the Registrar removed all the members of the Committee of Management of the Bank forthwith from the date of issue of the said order and appointed a Committee of Management to manage the affairs of the Bank for a period of six months. Mr. Acharya appearing for the petitioners has submitted that u/s 32(1) of the Act an order of removal of the Committee can be passed only after consulting the financing Bank of the Society. Mr. Acharya has pointed out that the order of removal/supersession having been passed on the same date there was and could not be any consultation with the financing Bank and as such the said order could not be made effective.

4. It has been pointed out by the opp. parties that on April 10, 2000 the Registrar sought the opinion of the financing Bank being the Orissa State Cooperative Bank Ltd. on the proposal to proceed against the Bank u/s. 32(1) of the Act and to take action u/s. 32(7) of the Act. The Managing Director of the financing Bank sent an extract of the proceeding of the Meeting of the Managing Committee of the financing Bank held on June 13, 2000. By a resolution adopted in the said meeting the Managing Committee of the financing Bank resolved that the Registrar may take a decision basing on the observation/findings of the inspection/audit report as deemed proper. It is submitted on behalf of the opp. parties that in view of such decision of the financing Bank no further consultation was necessary before superseding the committee of management. By an additional affidavit affirmed by the Deputy Registrar of Cooperative Societies (Credit) another communication dated October 23, 2000 of the Managing Director of the financing Bank has been disclosed. It appears from the said letter (Annexure-A/2) that the Managing Director intimated that the financing Bank had no objection to whatever action was taken by the Registrar against the Committee of Management of the Bank.

5. Section 32(1) of the Act has conferred on the Registrar the power and authority to remove the Committee of any Cooperative Society after giving the said committee a reasonable opportunity of being heard and after consulting the financing Bank of the Society. It is thus clear from the language of section 32(1) that before removing the Committee of Management financing Bank is to be consulted. As already held by this Court in Sri Rama Chandra Khera and others v. State of Orissa and others reported in 1997(11) O.L.R. 32 that consultation with

the financing Bank is not mere formality, but there should be a real and effective consultation. Although the provision of the Act have been amended since the decision in Sri Ram Chandra Khera (supra) whereby the necessity of consultation with the financing Bank before issuing notice u/s. 32(1) of the Act has been done away with the necessity of consultation before removal of the Managing Committee has been retained. For the purpose of complying with the said requirement the Registrar is required to send a copy of the enquiry report along with the relevant materials to the financing Bank for obtaining its opinion on proposed removal of the committee. In the present case, the Registrar took the decision to remove the committee and immediately gave effect in it on the same date. It is thus obvious that before removal there was no consultation with the financing Bank as required u/s. 320) of the Act. Consultation with the financing Bank is a condition precedent before giving effect to the decision of the Registrar. The opinion or the views obtained at the time of initiation of the proceeding cannot be treated as consultation for the purpose of taking the final decision. The consultation with the financing Bank for the purpose of removal must be after the enquiry report and before taking the final decision.

6. The consultation is to be made with the financing Bank. The financing Bank, a Cooperative Society, takes decisions through resolutions adopted in the meeting of its Managing Committee. The Committee of Management of the financing Bank is to consider enquiry report and other materials forwarded to it and to take a decision on the proposal of the Registrar. The opinion of the Managing Director of the Bank is not the opinion of the Bank for the purpose of consultation within the meaning of section 32(1) of the Act. In the present case there was no consultation with the financing Bank after the submission of the enquiry report and before giving effect to the order of removal. The letter dated October 28, 2000 (Annexure-A/2) does not indicate that after October 4, 2000 the Managing Committee of the financing Bank had taken any decision on the proposed action.

7. Sub-section (4) of section 32 contains a deeming provision. According to the said sub-section, if the financing Bank of the Society does not tender its opinion within 30 days of reference made to it, it shall be deemed that it has no objection if the committee is removed. In the present case, the Registrar forwarded the enquiry report and his order to the financing Bank by Memo No. 15628 dated October 4, 2000. The letter of the Managing Director of the financing Bank dated October 28, 2000 cannot be regarded as the opinion of the Bank and thus the financing Bank did not render its opinion in writing within 30 days of the reference made to it. Section 32(4) of the Act came into play and there was deemed no objection to the Registrar''s proposal to remove the committee. It is correct that the Registrar committed illegalities in giving effect to the order of removal on October 4, 2000 without obtaining the opinion of the financing Bank, but there deemed no objection ultimately came to be attracted when no opinion of the Bank was forwarded within 30 days from the date of reference.

8. For the forgoing reasons, this Court does not find any reason to interfere with the order of removal of the petitioners.

The writ petition is thus fails.

9. writ petition dismissed.

