
(1968) 12 OHC CK 0003
In the Orissa High Court
Case No : O.J.C. No. 129 of 1964

Paili Narayan Rao

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 04-12-1968

Acts Referred:

Orissa Co-operative Societies Act, 1951 — Section 131, 132

Citation : (1969) 35 CLT 214

Hon'ble Judges : Barman, C.J; Acharya, J

Bench : Division Bench

Advocate : P.V. Ramdas, for the Appellant; Govt. Advocate and Y.S.N. Murty, for the Respondent

Final Decision : Allowed

Judgement

Acharya, J.—The Petitioner prays for the issue of appropriate Writ quashing the decision dated 19-2-1964 of the Registrar, Co-operative Societies in Revision Case No. 45 of 1963, and the order dated 5-6-1964 of the Secretary to the Government of Orissa, Co-operation and Forestry Department, Bhubaneswar on the revision preferred by the Petitioner against the aforesaid order of the Registrar.

2. The learned Counsel for the Petitioner attacked the aforesaid order of the Registrar, Co-operative Societies mainly on the ground that the said order was not passed in accordance with law, and/or in accordance with principle of natural justice, as the Petitioner against whose interest the order was passed did not have an opportunity to present his case, and as such the said order is illegal, void and inoperative, and is liable to be quashed.

3. The Registrar while finally disposing of the matter on 19-2-1964, in the absence of the Petitioner, began his order by stating as follows:

The Petitioner was present. None of the Respondents were present in spite of notices served on them on 6-2-1964. There have already been two adjournments

and it is not considered necessary to adjourn the case again....

4. The Registrar's decision to take up the matter on the said date without granting further adjournment in the matter was, therefore, based on two considerations : (1) That the notices were served on the Respondents on 6-2-1964, and (2) that there were already two adjournments in the said case, and it was not necessary to adjourn the cases once again.

5. With regard to the Registrar's above-mentioned first point for consideration; it is seen from the office note in the order-sheet, and also from the draft copy of the notice at page 25 of the original records of the Revision Case, which are now before us, that the copies of the Registrar's order fixing the date of hearing to 19-2-1964 were sent from Bhubaneswar to different persons concerned on 6-2-1964. The Petitioner, who was the Respondent before the Registrar, belongs to Padampur in the Parlakhemundi Taluk in the district of Ganjam, in which address the said notice of bearing was sent. The notice having been posted on 6-2-1964, at its earliest, at Bhubaneswar, could not, obviously, have been served on the Petitioner on the same date. The envelope addressed in the name of the Petitioner, sent by post from the Registrar's office shows the postal mark of Garabandha Post Office, bearing the date 10-2-1964. In any case, therefore, the notice of the date of hearing of the above Revision had not been, and could not have been, served on the Petitioner on 6-2-1964. Obviously, therefore, the learned Registrar did not bestow careful attention to see if the notice intimating the date of hearing was really served on this Respondent, who was primarily concerned, in the decision of the matter.

6. The Petitioner asserts on affidavit that the said letter received at Garabandha Post Office on 10-2-1964 was re-directed to Galldahati Post Office, and was delivered to the Petitioner in his village on 19-2-1964, the date fixed for hearing; and that the Petitioner immediately came to Bhubaneswar and filed an affidavit before the Registrar on 21-2-1964, (not 20-6-1964 as incorrectly typed In Annexure-D), stating therein that the said notice was received by him only on the 19th of February, 1964 in his village, due to which he could not attend the hearing of the Revision at Bhubaneswar on the same date, nor was it possible for him to pray for an adjournment by wise. In the said affidavit, on the above basis, he submitted that he should he given an opportunity to place his case, and should not be made to suffer for no fast of his.

7. Regarding the Registrar's above mentioned second point we find from the order-sheet of the Revision Case that the said Revision was fixed for bearing for the first time on 14-2-1963 at Berhampur, an which date it could not be taken up as the Registrar was otherwise engaged in urgent work. On 5-2-1964 the Registrar, of his own accord, and obviously in the absence of the parties, recorded an order to the effect that the case would be taken up for hearing on 19-2-1964 at Bhubaneswar. So the Registrar was not correct when he stated on 19-2-1964 that by then there were already two adjournments in the said case.

We, therefore, find that both the above premises on which the Registrar proceeded to finally hear and dispose of the Revision on 19-2-1964 were incorrect.

8. u/s 131 of the Orissa Co-operative Societies Act, 1951 (Orissa Act 11 of 1952) (hereinafter referred to as the Act, it, is provided that the Registrar while disposing of a revision filed before him may revise the impugned order on giving the parties concerned an opportunity of being heard. The Registrar, in fact without affording an opportunity to the Petitioner of being heard, set aside the order of the Deputy Registrar by his ex parte order dated 19-2-1964, which in effect is detrimental to and against the interest of the Petitioner. This being so, on the provisions of Section 131 of the Act, and on the principles of natural justice, an effective opportunity to the Petitioner should have been given to be heard, before the revision was disposed of, reversing the order of the Deputy Registrar. The salutary provisions of Section 131 of the Act, and the well pronounced requirements of natural justice have thus been violated in this case.

9. It is also specifically asserted that the question of non-service and/or inadequate service of notice was also taken up by the Petitioner before the Secretary (O.P. No. 3), who disposed of the Revision u/s 132 of the Act; but there is nothing in the Secretary's order to show that he considered this aspect of the matter while disposing of the same. This being so, we are satisfied that the Petitioner did not have an adequate opportunity to place or represent his case before the matter was finally disposed of on merits.

10. We therefore quash and set aside the orders of the Registrar, Co-operative Societies dated 19-2-1964, in Revision Case No. 45/63, and that of the Secretary dated 5-6-1964 (as at Annexure-E), and direct the Secretary of the concerned Department to finally decide the matter afresh in accordance with law, on giving the Petitioner an effective opportunity to place and represent his case in the bearing of the matter on merits.

The records be sent back to the concerned authorities at once.

The petition is accordingly allowed, but there would be no order as to costs.

Barman, C.J.

11. I agree.