

(1981) 04 OHC CK 0023

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1473 of 1980

Parameswar Bagh and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-04-1981

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1981 Ori 154 : (1981) 51 CLT 553

Hon'ble Judges : R.N. Misra, C.J.;J.K. Mohanty, J

Bench : Division Bench

Advocate : L. Rath, for the Appellant; Additional Government Advocate and R. Patnaik, for the Respondent

Judgement

Misra, C.J.—This application under Article 226 of the Constitution is by the erstwhile members of the Board of Directors of Hindustan Aeronautics Employees' Co-operative Credit Society Limited at Sunabeda (hereafter referred to as the "Society") challenging the supersession of the Board of Directors by the Assistant Registrar of Co-operative Societies (opposite party No. 2) in exercise of powers u/s 32 of the Orissa Co-operative Societies Act (hereafter referred to as the "Act") and appointment of opposite party No. 3 as administrator of the Society.

2. The Society was registered under the Act in December, 1979. Opposite party No. 2 issued a notice on 9-6-1980 to the petitioners to show cause as to why the Board may not be superseded. The Koraput Central Co-operative Bank Limited at Jeypore, happens to be the financing bank of the Society. Cause was shown as directed on 22-6-1980. In the notice (Annexure-1) opposite party No. 2 had fixed 24-6-1980 for personal hearing. Petitioners allege that they attended the office of the opposite party No. 2 for personal hearing on the date indicated, but as he was absent from the office, personal hearing was not given. Petitioners had applied for fixing another date for hearing as alleged in paragraph 9 of their writ petition. On 27-6-1980, the Executive Committee of the financing bank resolved

agreeing to supersession and on 28-6-1980 that fact was duly communicated to opposite party No. 2. The Board of Directors of the financing bank confirmed the action of the Executive Committee on 6-7-1980. On 24-7-1980, the Board of Directors was superseded by order under Annexure-2. This writ application was filed on 18-9-1980 challenging the order of supersession mainly on the ground that consultation u/s 32 (4) of the Act had not been made prior to issue of the notice and reliance was placed on a Bench decision of this Court in the case of Sarat Chandra Panda Vs. State of Orissa and Others, . in support of the contention.

3. A counter-affidavit was filed by opposite parties 1 and 2 jointly by opposite party No. 2 denying all the allegations and supporting the action taken. Petitioners filed a rejoinder to the counter-affidavit while opposite party No. 2 filed an affidavit in opposition to the assertions in the rejoinder. Further affidavits were filed on either side thereafter.

4. Mr. Rath for the petitioners raised three contentions at the hearing in support of the application, namely-

(i) Initiation of action u/s 32 of the Act without complying with the requirements of that section is ultra vires and the order of supersession, therefore, is vitiated;

(ii) The Bank has really not been consulted, inasmuch as the original letter was addressed to the Secretary of the Bank and the Executive Committee had approved the proposal of supersession without any authority and, therefore, no valid order of supersession has been made; and

(iii) Petitioners were entitled to a personal hearing in terms of the notice issued under Annexure-1 and they had appeared on 24-6-1980. but the opposite party No. 2 was not present in his office to hear them. There has, therefore, been denial of natural justice to the petitioners.

5. So far as the allegation in paragraph 9 of the writ petition is concerned about failure of natural justice. in paragraph 7 of the counter-affidavit dated 9-10-1980, it has been alleged :--

"The contention raised in paragraph 9 of the writ petition is not correct. The Board of Directors was given an opportunity of personal hearing by the Assistant Registrar of Co-operative Societies on 24-6-1980. It appears from the relevant records that on the date fixed none of the members appeared nor did they apply for time. It is not correct to say that any member attended the office of the Assistant Registrar of Co-operative Societies on 24-6-1980. There is nothing on record to show that the petitioners filed any petition for fixing another date. The allegation of the petitioners that they had filed the petition for fixing another date is disputed."

There have been allegations and counter allegations about this fact in further affidavit and counter-affidavit, but there is no material available from which we can hold that on the 24th of June. 1980, petitioners had appeared, but the

Assistant Registrar was not available. Petitioners must, therefore, be held to have failed to establish that on the 24th of June, 1980, they had appeared but as the opposite party No. 2 was absent, the petitioners could not be personally heard.

As already indicated, a copy of Annexure-1 was forwarded to the financing Bank with a request to offer views within fifteen days. The Executive Committee of the financing Bank agreed to the supersession of the Committee of Management as alleged in paragraph 5 of the affidavit of opposite party No. 2. Annexure-A/1 is the resolution of the Executive Committee of the financing Bank which indicated that the Bank was agreeable for supersession. This fact was duly communicated under Annexure-C/1 to the Assistant Registrar. The Board of Directors of the financing Bank confirmed the action of the Executive Committee by their decision on 6-7-1980. as would appear from Annexure-B/I and that was also duly communicated to the Assistant Registrar. The order of supersession is dated 24-7-1980. According to Mr. Rath for the petitioners, the initial notice was not sent to the Bank but to its Secretary. The consent was of the Executive Committee and not of the Bank and in these circumstances, it cannot be said that the Bank had been consulted and had agreed to supersession. We do not think any importance should be attached to this contention particularly because the Bank acting through the Board of Directors ultimately ratified the action of the Executive Committee. If the Executive Committee was not competent to resolve in the manner it has the Board of Directors would certainly not have ratified such decision. Nothing has been shown by Mr. Rath for the petitioner apart from assertion in the affidavit that the Executive Committee was not competent to resolve in the way it is said to have. There is no dispute that ultimately the Board of Directors of the Bank had approved the action. We must, therefore, hold that before the actual order of supersession had been passed, there was a valid consultation and agreement of the Bank for the action proposed.

We shall now come to the main contention. Section 32 (4) of the Act provides :--

"Before taking any action under subsection (1) in respect of a society, the Registrar shall consult the financing Bank to which it is indebted and consider the opinion, if any, received from such Bank."

In the reported decision of this Court, it has been held that consultation of the financing Bank of a co-operative society is a condition precedent not only when the final step of supersession of the society is contemplated but even for issue of notice to the society to show cause against its supersession. Admittedly, before the notice was issued, consultation had not been made and by forwarding a copy of the notice to show cause to the Bank, the process of consultation was initiated. In *Sarat Chandra Panda Vs. State of Orissa and Others*, challenge had been laid before this Court against a notice and the validity of the notice in the absence of consultation came for consideration. It was in that background that the Division Bench of this Court held that consultation was a condition precedent and when there was no consultation, the notice was invalid. In the present case,

challenge has been laid after the order of supersession has been made and there is sufficient material to show that by the time supersession was ordered, the Bank had been consulted and its consent had also been obtained. While we agree that consultation is a condition precedent as held by this Court, we are not prepared to accept Mr. Rath's submission that the order of supersession must fall as the notice was defective at the preliminary stage. In the absence of satisfaction of the condition precedent, as held in Sarat Chandra's case (supra) the initiation of the proceeding was bad, but in view of what has happened later and in view of the satisfaction of the conditions under Sub-section (4) of Section 32 before the impugned order of supersession has been made, we are inclined to agree with learned Additional Government Advocate that the defects at the initial stage were no more important so as to warrant interference. Relief under Article 226 of the Constitution is discretionary and in the background indicated. we do not think, it would be appropriate to interfere with the order of supersession.

We may further point out here that the impugned order has been challenged in a regular appeal under the statute and the appeal is yet to be heard. Our refusal to interfere in the writ application may not be taken as a pronouncement against the challenge to the validity of the action of supersession.

We make no order as to costs.

J.K. Mohanty, J.

I agree.