
(2003) 11 MP CK 0058

In the Madhya Pradesh High Court

Case No : Writ Petition No. 27512 of 2003

Prafulla Kumar Jain

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 13-11-2003

Acts Referred:

Citation : (2004) ILR (MP) 259 : (2004) 1 MPHT 171

Hon'ble Judges : K.K. Lahoti, J

Bench : Single Bench

Advocate : R.K. Jaiswal, P.K. Jaiswal and Mohd. Kasim, for thr Intervenor-M.P.S.E.B, for the Appellant; Manish Chawra, for the Respondent Nos. 1 and 2 and Ranjeet Singh, for the Respondent No. 3, for the Respondent

Judgement

K.K. Lohoti, J.—Looking to the short point involved in the case, the matter is heard finally.

2. The grievance of the petitioner is that the petitioner was Ex-Chairman and Director of respondent No. 3-Society. The elections of the Society were not held for a considerable long period since 1995, so the petitioner filed a petition before this Court, which was registered as W.P. No. 1554/98 and was heard and decided vide order dated 3-7-98 (Annexure P-4). The following order was passed in W.P. No. 1554/98 :--

In this petition, the petitioner seeks a writ in the nature of certiorari for quashing the orders dated 1-6-95 and 2-6-95, as contained in Annexures P-4 and P-5, passed by the respondent Nos. 3 and 4 respectively and for issuance of a writ of mandamus directing respondent Nos. 2 to 4 to complete the election process for election of Director of the Board and President of the petitioner-Society.

Shri Rajendra Tiwari, Counsel for the petitioner, has contended that the election of the petitioner Society was to be held on 3-6-95 and 8-6-95, but it was stayed by the respondent No. 3 in the midst of election process.

Shri R.K. Gupta, Counsel for the respondent No. 3 has contended that the petitioner Society, along with certain other societies, was to under liquidation as per policy decision of the State Government. Therefore, elections of the petitioner Society was stayed for facilitating formation of a new Society. He further contended that the State Government has dropped the idea of liquidation of the society, and therefore, the respondent No. 2 had issued an order for holding fresh elections to the petitioner Society.

In response to this submission of Shri Gupta, Shri Rajendra Tiwari has contended that election of the petitioner society should proceed from the stage where it was left. He also placed reliance on *Rajendra Shukla Vs. A.B. Qureshi and Others*, and *Surendra Sohane v. Dr. Hari Singh Gour Vish-wavidyalaya* (1991 JLJ 307). The decisions relied upon by Shri Tiwari have no relevance to the facts of the present case.

In any case, elections can not be held from the stage where it was left, as several new members might have entered office and many old members might have retired in the intervening period. To order elections to take place from the stage where it was left, would amount to depriving new members from exercising their franchise. Therefore, election can not be permitted to take place from the stage where it was stayed. The only course open is to order new election.

For the reasons stated above, I do not find any merit in the petition. It is accordingly dismissed.

3. After the aforesaid order, petitioner again filed another petition before this Court, which was registered as W.P. No. 3098/2002. This petition was finally disposed of vide order dated 30th June, 2003. This Court held :--The grievance of the petitioner is that election of respondent No. 5, Rural Electric Cooperative Society, Pandhana, is not being held. Let the Registrar, Co-operative Society, examine the grievance of the petitioner and issue appropriate direction in the matter as may be considered necessary. This Court has not opined on merits of the claim of the petitioner. Let decision be taken by the Registrar by reasoned and speaking order within 6 weeks from the date of production of certified copy of this order. Writ petition is disposed of with the above direction.

4. Thereafter, petitioner in compliance of order dated 30th June, 2003 approached the Registrar for ventilation of grievance. The Registrar vide order (Annexure P-7) in place of issuance of direction for holding election of the Society directed that the Society be merged in M.P. State Electricity Board and consequential directions were issued. The contention of the petitioner is that the Registrar while issuing direction for merger has not followed the procedure u/s 16(3) of M.P. Co-operative Societies Act, 1960 (hereinafter referred to as "Act") and Rules 11, 7 and 8 of M.P. Co-operative Societies Rules, 1962 (hereinafter referred to as "Rules"). In absence of following the procedure envisaged u/s 16 and Rule 11, the entire order passed by the Registrar for the merger is bad in law and deserves to be quashed. Contending aforesaid, learned Counsel for the

petitioner submits that the order (Annexure P-7) be quashed and the Registrar, Co-operative Societies be directed to decide the matter in accordance with law as per the provision of Section 16 and Rule 11 of the Rules.

5. Learned Counsel for the respondents raised a preliminary objection that the order (Annexure P-7) is appealable before the M.P. State Co-operative Tribunal and petitioner is having efficacious alternative remedy of filing appeal before the Tribunal. Learned Counsel for the intervenor submits that the Society was running in deficit and the Registrar, looking to the financial condition of the Society has rightly passed the order of merger with M.P.S.E.B. in which no fault can be found and this petition may be dismissed. Learned Counsel for respondent No. 3 has supported the petitioner. He submits that order (Annexure P-7) was passed without affording any opportunity of hearing to the Society, which is in violation of law. Contending aforesaid, learned Counsel for respondent No. 3 submits that while quashing the order (Annexure P-7), respondent No. 3 be allowed opportunity to submit his case before the Registrar.

6. To appreciate the contentions of learned Counsel for respondents, the first objection of the respondents is that the petitioner is having alternative remedy of filing appeal against the impugned order before the Tribunal is concerned, it is hereby noted that at present the aforesaid Tribunal is not working in absence of appointment of Chairman. In the circumstances, the petitioner is not having alternative remedy at present and this petition may be entertained by this Court. So far as the other objection raised by learned Counsel for respondents that the Society was running in loss and the Registrar has passed the order, which as justified in the facts and circumstances of the case is concerned, learned Counsel appearing for the petitioner and respondent No. 3 submit that without affording opportunity to the Society, the said order ought not to have been passed by the Registrar. The Registrar did not give opportunity to respondent No. 3 and the petitioner in this regard and without following the procedure envisaged u/s 16(3) and Rule 11 (7) (a), the order can not be passed.

7. To appreciate contention of learned Counsel for the petitioner relevant provisions may be seen.

Section 16(3):-- Notwithstanding anything contained in Sub-section (2) where the Registrar is satisfied that it is essential in the public interest of the members of the affected societies or necessary to secure the proper management of any society, he may direct that any society or societies shall reorganise itself or themselves in any one or more of the modes indicated in Sub-section (2):

[Provided that, in the case of a Co-operative Bank, the Registrar shall not issue any direction save with the previous sanction in writing of the Reserve Bank:

Provided further that before a final order under this Sub-section is passed by the Registrar every society concerned shall be given an opportunity of expressing its opinion on the reorganisation proposals.]

Rule 11 (7) (a):-- Before issuing any direction under Sub-section (3) of Section 16 for the amalgamation, transfer of assets and liabilities, division or conversion of any society or societies, the Registrar shall prepare a draft scheme of reorganisation in respect of such amalgamation, transfer of assets and liabilities, division or conversion stating in particular the manner in which the new committee or committees of the society or societies resulting from such amalgamation, transfer of assets and liabilities, division or conversion shall be constituted and shall send a copy of the draft of the direction proposed to be issued by him under Sub-section (3) of Section 16, to the society or each of the societies concerned calling upon it or them to invite objections or suggestions from any member or class of members thereof or from any creditor or class of creditors and to submit such objections or suggestions together with its own or their own opinion within a period to be specified by the Registrar.

8. From the perusal of rules, it is apparent that no order for merger can be passed without hearing the Society. The proviso of Sub-section (3) specifically provides that before final order, under Sub-section (3), any order is passed for reorganisation of the Society, the Registrar shall give an opportunity to the society of expressing its opinion of the reorganisation process. The aforesaid provision is not a mere formality, but it provides that before passing any order, Society should be afforded opportunity for expressing its opinion about the merger. The similar procedure is envisaged under Rule 11. Rule 11 (7) (a) specifically provides that before issuing any direction under Sub-section (3) and Section 16, and any order for amalgamation, transfer of assets and liabilities, division or conversion of any society or societies, the Registrar shall prepare a draft of reorganisation in respect of such amalgamation, transfer of societies and liabilities etc. The Registrar shall send a copy of the draft of the proposal to the Society calling upon them to file objections or to file suggestions, if any. If any member of the Society feels aggrieved or is interested in the aforesaid process, he may also submit his objections before the Registrar. The aforesaid rules specifically provide a duty on the part of the Registrar to follow procedure as envisaged in Sub-rule 7 (a). Without following procedure, Registrar can not pass any order for merger or amalgamation. The provision is mandatory in nature. In absence of following the procedure entire process vitiates. Order (Annexure P-7), which is passed without issuance of notice to the Society or affording an opportunity of hearing to the society is liable to be quashed, and accordingly, the order (Annexure P-7) is hereby quashed and the matter is remitted back to the Registrar to follow the procedure u/s 16(3) and Rule 11 of the Rules before passing final order. Parties present in the Court shall appear before the Registrar for hearing in the matter on 15-12-2003 and no fresh notice will be necessary for parties by the Registrar in this regard.

C.C. as per rules.