
(2013) 02 MP CK 0088
In the Madhya Pradesh High Court
Case No : Writ Petition No. 96 of 2012

Pratap Wahini Samaj Kalyan Sansthan	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 19-02-2013

Acts Referred:

Citation : (2013) 5 MPHT 107 : (2013) 2 MPLJ 390

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sujoy Paul, J.—This petition filed under Article 226 of the Constitution is directed against the order, Annexure P-1, dated 22.12.2011 passed by respondent No. 3. Respondent No. 3, Asstt. Registrar, Firms and Societies, has invoked section 32(1) of the Madhya Pradesh Society Registrikaran Adhiniyam, 1973 (for short, the "Adhiniyam") and appointed himself as enquiry officer u/s 32(3) of the Adhiniyam. This order is called in question by the society in the present petition. Although there is a chequered history of litigation between the parties, relevant facts necessary for lawful adjudication of this matter are as under:-

(i) The petitioner is a society registered under the provisions of the Adhiniyam. The registration certificate is Annexure P-2. Respondent No. 4 preferred a representation dated 27.4.2011 (Annexure P/8 of WP No. 7144/2011) before the respondent No. 3. The respondent No. 3 did not take any action on the said representation. Then, respondent No. 4 filed WP No. 7144/2011 (Jai Narayan Chokse vs. State of MP and others) before this Court. The said petition was disposed of on 25.11.2011 by this Court. This Court directed the petitioner to resubmit his representation dated 27.4.2011 before respondent No. 3 herein, and, in turn, the said authority was directed to consider and decide in accordance with law expeditiously. This Court made it clear that no view on merits is expressed.

(ii) In turn, respondent No. 3 has passed impugned dated 22.12.2011. The said order reads as under:-

I deem it proper to dispose of this petition with following directions:-

(i) Petitioner shall resubmit his representation (Annexure P/8) dated 27.4.2011 before respondent No. 3 alongwith the certified copy of this order.

(ii) In turn, the said authority shall consider and decide it in accordance with law as expeditiously as possible. The outcome of the said representation shall be communicated to the petitioner.

(iii) It is apt to mention that Review Petition No. 331/2011 is filed by the present petitioner before this Court for seeking review of the order passed in W.P. No. 7144/2011 dated 25.11.2011. The main contention of the review petitioners was that they were not impleaded as party respondent in W.P. No. 7144/2011 and in the representation Annexure P-8 which was directed to be decided by this Court in W.P. No. 7144/2011 incorrect averments were made and it amounts to suppression of material facts. To elaborate, the case of present petitioners in the review petition is that Annexure P/8 dated 27.4.2011 contains a pleading in para 10 that the State Government by order dated 7.11.2009 has accepted that there exists a membership dispute. It is stated that the said order of State Government dated 7.11.2009 was already set aside by this Court in W.P. No. 6019/2011 and, therefore, by giving incorrect impression Jai Narayan Choksey succeeded in getting an order from this Court in W.P. No. 7144/2011.

(iv) Although this Court in para 5 of the order passed in Review Petition No. 331/2011 opined that the writ petitioner in writ petition No. 7144/2011 has made an effort to misrepresent his case and did not disclose about the judgment of this Court, whereby the order of the State Government dated 7.11.2009 was quashed, ultimately, the interference was not made because the order dated 22.12.2011 was already challenged in the present petition (W.P. No. 96/2012). Accordingly, the review petition was disposed of with the liberty to the parties to assail the order dated 22.12.2011 in the present petition.

(v) Writ Appeal No. 74/2012 was filed by the present petitioner against the order passed by this Court in the earlier round of litigation in W.P. No. 7144/2011 and review petition No. 331/2011. The Division Bench did not interfere in those orders.

2. Shri R.N. Singh, learned senior counsel with Shri Vinod Bhardwaj, learned Senior Counsel, submits that factual backdrop of the matter shows that the respondent No. 4 is not even a member of the society. He admittedly misrepresented before this Court and by the said misrepresentation obtained the order in W.P. No. 7144/2011. Learned Senior Counsel submits that the impugned order Annexure P-1 is an example of non-application of mind. The respondent No. 3 has neither shown application of mind nor his satisfaction about existence of any material to invoke Section 32 of the Adhiniyam. By taking this Court to

the impugned order, it is argued that in a mechanical manner, the respondent No. 3 has passed the impugned order. A bare perusal of the order shows that he passed the said order merely on filing of the representation whereas there is no such order to accept the representation in a stereotype manner. To elaborate, Shri R.N. Singh, learned Senior counsel submits that Section 32 of the Adhiniyam can be invoked when necessary ingredients for the same are existing or satisfied. In absence thereto, it cannot be invoked. By referring to Section 32(2) of the Adhiniyam, he submits that the application demanding enquiry should be preferred by - (a) a majority of members of the governing body of the society (b) not less than 1/3rd of the total number of the members of the society. He submits that application should be supported by an affidavit, is also a statutory requirement. Reverting back to application Annexure P-8, Shri Singh submits that it is neither supported by an affidavit nor has support of 1/3rd members or the majority of governing body members. Accordingly, as per the contention of the petitioner, the said application was not tenable and on the basis of this application, no proceedings could have been initiated by respondent No. 3. It is also argued that respondent No. 3 has not recorded any satisfaction in the order that there exists any material to invoke Section 32(1) of the Adhiniyam. It is also argued that the impugned order nowhere shows that respondent No. 3 has exercised his "suo motu" powers. Learned Senior counsel for the petitioner has relied on the judgments of Supreme Court in Shri Arun B. Khanjire Vs. The Ichalkaranji Urban Co-op. Bank Ltd. and Others, ; Maharshi Dayanand University Vs. Surjeet Kaur, ; Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, ; and, Shri Mudhu Venkat Narayan Rao Memorial School Society Vs. State of C.G. and Others, .

3. Learned senior counsel further submits that for the first time along with the return the note-sheet dated 15.12.2011 is filed wherein it is stated that respondent No. 3 has exercised his "suo motu" powers. However, by placing reliance on Arun B. Khanjiri (supra) it is argued that the matter was not taken up by respondent No. 3 "suo motu" but it was so done on the basis of application which was filed by the respondent No. 4 and, therefore, the power so exercised cannot be termed as "suo motu" power. By relying on Maharshi Dayanand University (supra) it is argued that the courts cannot issue a direction contrary to law and therefore direction issued by this Court in W.P.NO.7144/2011 has to be read as direction to act in accordance with law, more so, when in the same order it was made clear that the Court has not expressed any opinion on the merits of the case. Bhavnagar University (Supra) is pressed into service on the ground that if a method is prescribed in a statute, action has to be taken as per the said method and other methods are forbidden. Shri Muddu VNR Memorial School Society (supra) is relied on the ground that the requirement of preferring an application with adequate number is a mandatory requirement and in absence thereof, the application cannot be entertained.

4. Lastly, Shri R.N. Singh, learned senior counsel, submits that the note sheet dated 15.12.2011 shows that the respondent No. 3 has examined the amended

byelaws of the society and decided to conduct an enquiry to examine what was the justification in amending the bye-laws by keeping one party into dark. He submits that there exists a provision which permits amendment in the Adhiniyam. Amendment in the byelaws was allowed way back on 09.05.2007 by the competent authority [Assistant Registrar, Firms and Societies, Gwalior]. The same authority cannot review the said byelaws by invoking Section 32(1) of the Adhiniyam. In nut-shell, it is stated that Section 32(1) of the Adhiniyam is invoked contrary to and beyond the scope for it under the Adhiniyam.

5. Per Contra, Shri Rohit Arya, learned Senior Counsel for respondent No. 4 assisted by Shri Purushottam Rai, Advocate, supported the order Annexure P-1.

6. Shri Praveen Newaskar, learned Deputy Government Advocate for respondents No. 1 to 3 submits that the powers are exercised by respondent No. 3 u/s 32(1) of the Adhiniyam and not u/s 32(2) of the Adhiniyam. Since powers are not exercised u/s 32(2) of the Adhiniyam, the necessity of support of 1/3rd membership or majority of members etc. was not a necessary requirement. He submits that even filing of affidavit was not the requirement in support of the application of respondent No. 4 because the note sheet makes it crystal clear that action is taken u/s 32(1) of the Adhiniyam, which within it contains "suo motu" powers of the Registrar. He submits that no fault can be found in the order, Annexure P-1. It is the common stand of the respondents that Annexure P-1 is based on a valid notification of the State Government dated 21.2.2011, by which the powers were delegated to respondent No. 3. By taking this Court to the said notification, it is stated that powers to invoke section 32 were delegated to various Assistant Registrars by the State Government including the present respondent No. 3. It is further argued that the impugned order merely contains a direction to conduct enquiry and, therefore, it is open for the present petitioner to participate in the enquiry and put forth his defence therein. It is stated that the impugned order, Annexure P-1, is in consonance with the object and scheme of the Adhiniyam and more particularly with section 32 of the Adhiniyam. It is argued that u/s 32 of the Adhiniyam, the respondent No. 3 can enquire about constitution, working and financial condition of the society. It is stated that he is doing the same and has not travelled beyond the scope of those powers. Lastly, it is argued that the order Annexure P-1 passed u/s 32 is appealable u/s 40 of the Adhiniyam before the prescribed appellate authority and, therefore, this petition is not entertainable.

7. I have heard learned counsel for the parties and perused the record.

8. Impugned order, Annexure P-1 produced herein above shows that the respondent No. 3 has not chosen to disclose that he has exercised his "suo motu" powers. He just reproduced the operative portion of the order passed by this Court in WP No. 7144/2011 and then opined that in the light of above he is exercising his powers u/s 32(1) of the Adhiniyam and, in turn, appointed himself as enquiry officer. Along with the return of respondents No. 1 to 3, the relevant note sheet dated 15.12.2011 is filed. Admittedly, the impugned order is founded

upon this note sheet. This note sheet reads as under:-

9. It is not in dispute between the parties that byelaws of the society were amended by the society and the Asstt. Registrar, Gwalior Division, has approved the said amended byelaws. Shri Newaskar, learned Deputy Government Advocate, has produced the Order No. Krimank/Sanshodhan/2007/681/07 dated 9.5.07, issued by the Asstt. Registrar, Gwalior to the petitioner-society which shows that the byelaws were duly approved by the said authority. Sections 10 and 11 of the Adhiniyam provides the method of amendment of byelaws and power of Registrar to amend the byelaws/regulation of a society. A bare perusal of section 32(1) of the Adhiniyam shows that the Registrar is equipped with the power to direct an enquiry and settlement of dispute on his own motion or on an application preferred under sub-section (2). However, said exercise has to be done within the purview of the powers provided u/s 32(1) of the Adhiniyam. The enquiry, as per said provision, can be conducted into the constitution, working and financial condition of the society. A microscopic reading of the note sheet dated 15.12.2011 shows that the respondent No. 3 had perused the original record, which contains amended byelaws dated 9.5.2007. On perusal of this amended byelaws which is admittedly duly approved by the competent authority, the respondent No. 3 posed a question as to what was the justification in amending the byelaws, which deals with operation of bank accounts. He stated in the note sheet that it is required to be gone into as to why one set of members were kept in dark. Important question before this Court is whether this reason assigned by the respondent No. 3 for invoking section 32(1) falls within the ambit of his powers to enquire about constitution, working and financial condition of a society. Shri Rohit Arya, learned senior counsel submits that it falls within the powers of respondent No. 3 because said amended byelaws were with regard to operation of bank accounts and, therefore, it is within the ambit of "financial condition" mentioned in section 32(1) of the Adhiniyam.

10. Pausing here for a moment, it is profitable to quote The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others, . A five Judges Bench of the Apex Court opined as under:-

The words, "reason to believe" or "in the opinion of" do not always lead to the construction that the process of entertaining "reason to believe" or "the opinion" is an altogether subjective process not lending itself even to a limited scrutiny by the Court that such "a reason to believe" or "opinion" was not formed on relevant facts or within the limits or within the restraints of the statute as an alternative safeguard to rules of natural justice where the function is administrative.

Even if it is passed in good faith and with the best of intention to further the purpose of the legislation which confers the power, since the Authority has to act in accordance with and within the limits of the legislation, its order can also be challenged if it is beyond those limits or is passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite

under the legislation. In any one of these situations it can well be said that the authority did not honestly form its opinion or that in forming it, it did not apply its mind to the relevant facts.

(Emphasis Supplied)

11. In view of this judgment, it is clear that even if there are suo motu powers with respondent No. 3 to conduct an enquiry, his action must satisfy that it is passed in good faith and it is in accordance with and within the limits of the legislation/power which has been invoked. Thus, in my opinion, the pivotal question in the facts and circumstances of this case and particularly considering the language of Annexures P-1 and note sheet is whether the exercise of power is within the scope and limits of the powers described u/s 32 of the Adhiniyam.

12. Section 10 of the Adhiniyam reads as under:-

10. Amendments of Memorandum or regulation or byelaws of registered society.-

(1) No amendment of the memorandum of association or regulations of a registered society shall be valid until the amendment has been registered under this Act.

(2) Every proposal for such amendment shall be forwarded to the Registrar in such form together with such fee as may be prescribed and if the Registrar is satisfied that the amendment is not contrary to this Act or the rules made thereunder, he may, if he thinks fit, register the amendment.

(3) Where an amendment is registered under subsection (2), the Registrar shall issue to the society on payment of a fee specified in section 29 a copy of the amendment certified by him, which shall be conclusive evidence that the same is duly registered.

Sub-section (3) aforesaid makes it crystal clear that upon certification of amendment by the Registrar, it shall be a conclusive proof that it is duly registered. Section 11 deals with power of the Registrar to amend the memorandum or regulation or byelaws of the society. A methodology for the same is prescribed in this section. The legislature has chosen to prescribe a different provision for the purpose of amendment of byelaws, i.e., sections 10 and 11 of the Adhiniyam. Once byelaws are duly approved by the Registrar, it can be amended or modified only as per section 11 of the Adhiniyam. In the present case the byelaws were duly amended and approved by the Registrar which establishes that it is "duly registered". The law prescribes a method to nullify, modify or alter it as per section 11 of the Adhiniyam. Thus, it does not fall within the ambit of section 32 but falls within the ambit of section 11 of the Adhiniyam. Once the amended byelaws are duly approved, section 32 cannot be invoked under the garb of examining the financial condition of the society. The enquiry u/s 32 can be made to examine the constitution of the society, its working and financial condition as per the existing and approved byelaws. In other words, the conduct and activity of the society, its constitution and financial

condition can very well be enquired as per the existing approved byelaws. This power cannot be exercised to examine the byelaws which is already duly approved.

13. In *Barium Chemicals Ltd. (supra)*, Five Judges Bench of Supreme Court opined that the order passed under a statute can be challenged if it is passed de hors the powers or beyond those limits which are prescribed for exercising such power. It can be challenged on the ground that it is passed on grounds extraneous to the legislation or on the ground that there is no reason for passing it as per the limits of power given to the authority under the relevant provision.

14. In the light of aforesaid, in the opinion of this Court, the power u/s 32(1) of the Adhiniyam can be invoked only when the enquiry is in consonance with the requirement of section 32(1). If the reason for holding enquiry is beyond the scope and purview of powers u/s 32(1) of the Adhiniyam, the order is definitely liable to judicial review and interference. There is no unfettered discretion with the respondent No. 3 to direct an enquiry. Enquiry can be directed when it is within the purview of the powers u/s 32 of the Adhiniyam.

15. American Supreme Court in unique words opined as under:-

Law has reached its finest moments when it has freed man from the unlimited discretion. *United States vs. Wunderlich*, (1951) 342 US 98V .

This judgment is considered by Supreme Court in the case reported in *Shiv Sagar Tiwari Vs. Union of India and others*, .

16. In the light of the aforesaid analysis, in my opinion, the order Annexure P-1 runs de hors the powers. The byelaws which are duly approved at the relevant time cannot be subject matter of enquiry u/s 32(1) of the Adhiniyam. Thus, apparently the Registrar has exercised the power erroneously and on extraneous considerations.

17. Section 11 of the Adhiniyam prescribes a methodology and power of Registrar to amend the memorandum. This is settled in law that if a thing is required to be done in a particular manner under a Statute, it has to be done in the same manner or not at all. In other words, the other methods which are not in consonance with the Statute are forbidden. This view is consistently taken by Supreme Court in catena of judgments including *Bhavnagar University (supra)*.

18. On the basis of aforesaid analysis, in the considered opinion of this Court, the respondent No. 3 has erred in invoking section 32(1) of the Adhiniyam. At the cost of repetition, in the opinion of this Court, the said power cannot be exercised for examining the approved byelaws or the circumstances which were prevailing before approval of those byelaws for the purpose of examining the byelaws. In other words, I am unable to agree with the contention of Shri Rohit Arya, learned senior counsel that u/s 32(1) it was open for the respondent No. 3 to examine the circumstances in which amended byelaws were passed and approved. I am also unable to hold that such an exercise falls within the ambit

and scope of enquiry u/s 32(1) of the Adhiniyam. In my opinion, it does not fall within the ambit of "financial condition" as mentioned in section 32(1) of the Adhiniyam. Once byelaws are approved, it can be modified only in the manner prescribed u/s 11 of the Adhiniyam and section 32 cannot be invoked for this purpose. Thus, the order impugned cannot be permitted to stand. The respondent No. 3 has no jurisdiction to direct an enquiry beyond the powers given to him u/s 32(1) of the Adhiniyam. Exercise of power beyond the enabling provision amounts to exercise of power without jurisdiction. In that event, it is not always necessary to relegate the parties to avail the alternative remedy. This Court under Article 226 of the Constitution can entertain a petition when it challenges vires of any Act, Rules etc., when the order is contrary to principles of natural justice or it is passed by the authority who has no jurisdiction. Thus, the contention regarding alternative remedy advanced by the respondents is also rejected. Resultantly, petition is allowed. Impugned order dated 22.12.2011 (Annexure P-1) is set aside. No costs.