

(2014) 08 MP CK 0029

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 5535/2012 and Writ Petition. Nos. 6234, 6170, 6126, 6124, 6122, 6120, 5537, 5532, 5530, 5451, 4978, 4977, 4975, 4945, 4944, 4943, 4941 and 4815/2012 (S)

Pravesh Kumar Shrivastava

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 04-08-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Madhya Pradesh Co-operative Societies Act, 1960 — Section 55(2), 80-A

Citation : (2014) 08 MP CK 0029

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Vivek Jain, Advocate for the Appellant; Nidhi Patankar, Govt. Advocate and Devendra Sharma, Advocate for the Respondent

Final Decision : Partly Allowed

Judgement

Sujoy Paul, J.—Since these petitions are arising out of similar orders and involving similar facts, on the joint request of the parties, matters are analogously heard and decided by this common order.

2. The facts are taken from Writ Petition No. 5535/2012 :

This petition is filed under Article 226 of the Constitution, challenging the order of Deputy Registrar, Cooperative Societies, dated 14.6.2012, whereby the petitioners' appointment is declared as void.

The petitioners were appointed by resolution dated 21.2.2010 by Board of Directors of respondent No. 3-society. Copy of this resolution is filed as Annexure P-2. It is contended that the procedure to appoint staff in the society is laid down in the order dated 13.8.2002, Annexure P/3. As per this order, the appointment has to be made by a committee comprising of-(i) President of the society (ii) Representative of Deputy/Assistant Registrar of the District (iii) Representative of

the Manager, District Central Cooperative Bank.

3. Shri Vivek Jain, learned counsel for the petitioners submits that the Assistant Registrar, during his camp at Dabra, nominated his representative by communication dated 22.6.2009 (Annexure P/5). The society, in turn, issued an advertisement in local newspaper, Annexure P/6. The petitioners submitted their candidature pursuant to the said advertisement and were duly considered by the committee and were appointed by resolution dated 21.2.2010. It is urged that the representative of the Bank as well as of the Registrar were present in the meeting and signed the relevant proceedings. The appointment orders are cumulatively filed as Annexure P/7.

It is further submitted by petitioners that the impugned order came as a bolt from blue to them. The Deputy Registrar has drawn proceedings suo motu for cancellation of resolution. The petitioners were not heard and their services were terminated. Shri Vivek Jain submits that this order needs to be interfered with because it is passed without affording any opportunity to the petitioners thereby violating the principles of natural justice, the power which has been exercised u/s 55(2) of M.P. Cooperative Societies Act, 1960 (for brevity, the "Act") does not satisfy the requirement of exercising those powers. He further submits that the Deputy Registrar has no authority and jurisdiction to entertain a complaint by a stranger, i.e., Shri Dayaram Yadav (respondent No. 4 herein). It is submitted by Shri Jain that complainant Dayaram Yadav is member of only one society, which is respondent in WP No. 5451/2012. The said member of a particular society had no locus to prefer complaint in relation to appointment in various societies in which he is not even a member. u/s 55(2) of the Act, the dispute between employee and employer (society) only can be gone into. The complaint preferred by member of society does not mean that it is preferred by the "society".

By taking this Court to section 55(2) and section 80-A of the Act, it is urged that the impugned order does not fulfill the requirement of the said provisions and, therefore, the order is without jurisdiction and authority. He relied on Mata Prasad Sahu Vs. State of M.P. and Others, and the order passed in Writ Appeal No. 540/2010 (Jitendra Singh vs. Rambabu and others), decided on 8.5.2012. By placing reliance on Committee of Management and Another Vs. Vice Chancellor and Others, it is contended that since principles of natural justice are violated, the writ petition can be entertained despite availability of alternative remedy.

4. Mrs. Nidhi Patankar, learned Government, on the other hand, supported the order. On a specific question from the Bench, she submits that the impugned order, Annexure P-1, is passed in exercise of powers u/s 55(2) of the Act. She submits that the petition is liable to be dismissed because of availability of alternative remedy. In addition, it is submitted that in the selection/appointment of petitioners due procedure was not followed. An enquiry was conducted in which it was found that no agenda was prepared showing financial status of the society, yet the appointments have been made. Shri M.K. Trivedi, who is said to have issued an authorisation letter from camp Dabra, did not issue any such

letter. It is submitted that as per record, the aforesaid letter of Shri M.K. Trivedi is not found and, therefore, it reveals that no representative was appointed in the selection process whereby the petitioners were appointed. It is submitted that entire selection process was vitiated. Therefore, the impugned order is rightly passed. She submits that on Dayaram's complaint decision was rightly taken. It does not warrant any interference. She relied on a State Government Notification dated 26.7.1999 to submit that Deputy Registrar, Cooperative Societies, is competent to exercise powers u/s 55(2) of the Act.

5. Shri Devendra Sharma, learned counsel for respondent Dayaram Yadav by filing written submissions submits that the selection process was vitiated because-(i) requirement of employee has not been shown, (ii) financial condition of the society is not reflected, (iii) the condition of giving employment to the extent of bearing capacity of the society has not been followed, (iv) the meeting of selection committee has not been called after issuance of agenda, (v) inscription of the proceedings separately, not in the proceeding register makes it suspicious, (vi) for the meeting as per representative of Deputy/Asstt. Registrar, Cooperative Development Officer was not appointed and when the enquiry was made in relation to appointment of representative, it has been found that the letter was not issued from the office and original copy was not produced by the society.

It is further submitted that the petitioners are back-door entrants and their selection is void ab initio. In support of the submissions, he relied on Union of India (UOI) and Another Vs. Guwahati Carbon Ltd., . Reliance is also placed on Nathuram Sen Vs. The District Central Co-operative Bank and Another

6. No other point is pressed by learned counsel for the parties during arguments.

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

8. I deem it proper to reproduce Section 55(2) of the Act, which reads as under:-

"55(2)-Where a dispute, including a dispute regarding terms of employment working conditions and disciplinary action taken by a society, arises between a society and its employees, the Registrar or any officer appointed by him not below the rank of Assistant Registrar shall decide the dispute and his decision shall be binding on the society and its employees.

Provided that the Registrar or the officer referred to above shall not entertain the dispute unless presented to him within thirty days from the date of order sought to be impugned.

Provided further that in computing the period of limitation under the foregoing proviso, the time requisite for obtaining copy of the order shall be excluded."

9. The first contention is regarding applicability of principles of natural justice. In the present case, it is not in dispute that an advertisement was issued in the newspaper (Annexure P/6). The petitioners submitted their candidature and

thereafter they were appointed. The case of respondents is that in the selection process there were certain procedural infirmities. In these circumstances, it is to be seen whether principles of natural justice needs to be followed. As per Government" stand, the impugned order is passed in exercise of powers u/s 55(2) of the Ac. No doubt, section 55(2) nowhere prescribes the manner in which principles of natural justice are to be followed. However, the law on this point is well settled. A Five Judges Bench of Supreme Court in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, held as under:-

"It is now well settled that the "audi alteram partem" rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party in question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally."

10. In Basudeo Tiwary Vs. Sido Kanhu University and Others, the Apex Court held as under:-

"In order to impose procedural safeguards, requirement of natural justice has been read into many situations when the statute is silent on this point. Omission to impose the hearing requirement in the statute under which the impugned action is being taken does not exclude hearing-it may be implied from the nature of the power-particularly when right of a party is affected adversely."

11. A Division Bench of this Court in Mata Prasad Sahu (supra), held that the respondents terminated the services of the petitioners on the ground that the appointments were illegal. The appointments could not have been terminated without affording opportunity of hearing. The termination in that case was set aside and direction was given to provide hearing to the petitioners. This Court opined that requirement of fairness is an essential attribute of justice. After considering the law laid down by Supreme Court in catena of judgments, its opined that the termination without following the principles of natural justice is bad in law.

12. Shri Devendra Sharma relied on the judgment in Guwahati Carbon Limited (supra). In the said case the Apex Court followed the earlier view and opined that the High Court can exercise its power under Article 226 of the Constitution where the statutory authority (i) has not acted in accordance with the provisions of the enactment in question, or (ii) has acted in defiance of fundamental principles of judicial procedure, or (iii) has resorted to invoke provisions which are repealed, or (iv) when an order has been passed in total violation of principles of natural justice.

13. If the present case is examined on the anvil of aforesaid Supreme Court judgments, it will be clear that the impugned orders are passed without affording

any opportunity to the petitioners. The enquiry if any was conducted, it was conducted behind the back of the petitioners. They were not given any opportunity to participate in the proceedings. They were not made aware as to what are the allegations against them or what are the specific deficiencies in the recruitment process. If petitioners would have been put to notice, they could have raised objections regarding maintainability of dispute u/s 55(2) of the Act, they could have raised objections about locus standi of Dayaram Yadav, etc. In my view, the principles of natural justice are required to be read into the provision, i.e., section 55(2) unless it is expressly excluded by the provision.

14. In the opinion of this Court, the impugned order is liable to be interfered with on this score alone. Thus, the order dated 14.6.2012 is set aside. Liberty is reserved to the respondents to proceed against the petitioners in accordance with law. It shall be the duty of the respondents to provide adequate opportunity to the petitioners in accordance with the principles of natural justice.

15. Petitions are allowed to the extent indicated above. It is made clear that this Court has not expressed any opinion on the merits of the case.

16. Registry is directed to keep a true copy of the order in connected petitions decided today by this common order. No cost.