
(2000) 12 AHC CK 0018
In the Allahabad High Court
Case No : C.M.W.P. No. 22036 of 1989

Prem Shankar Chaturvedi

APPELLANT

Vs

District Administrative Committee (Co-operative Societies)
and Another

RESPONDENT

Date of Decision : 13-12-2000

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Essential Supplies (Temporary Powers) Act, 1946 — Section 3
General Clauses Act, 1897 — Section 3(51)

Citation : (2002) 5 AWC 3775

Hon'ble Judges : Sudhir Narain, J;A.K. Yog, J

Bench : Division Bench

Advocate : B.N. Asthana and P.K. Asthana, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order dated 4.9.1989 passed by the District Administrative Committee (Co-operative Societies), Basti, Respondent No. 1, terminating the services of the Petitioner.

2. The Petitioner was working as Secretary, Sadhan Sahkari Samiti, Bargaon, District Basti. The Administrative Committee took disciplinary proceedings against him on the charges of misappropriation of funds of the Samiti and passed order of suspension on 16.3.1988 and attached him at Head Office of the Samiti. It appointed Additional Co-operative Officer, Khalilabad as Enquiry Officer. The enquiry officer is alleged to have sent charge-sheet to the Petitioner. As the Petitioner did not appear before the enquiry officer, the proceedings were taken ex parte against him. The enquiry officer submitted report stating that the charges against the Petitioner have been proved. Respondent No. 1 acting upon the report of the enquiry officer passed a resolution on 28.8.1989 to terminate the services of the Petitioner. The Secretary, Administrative Committee communicated the decision of the Administrative Committee on 4.9.1989 to the

Petitioner. This order has been challenged in the present writ petition.

3. Sri B. N. Asthana, learned senior counsel for the Petitioner, urged that the Petitioner was not served with any notice alleged to have been sent by the enquiry officer to the Petitioner and, therefore, he could neither put his defence before him nor lead evidence to show that the charges against him were totally false. The question as to whether the Petitioner was served with a notice or not involves question of fact. The Petitioner had alternative remedy of filing appeal before the appellate authority under Regulation 60 on U.P. Primary Agricultural Co-operative Credit Societies Centralised Service Regulations, 1978.

4. The next submission of the learned Counsel for the Petitioner is that the Petitioner was not given subsistence allowance after the suspension order was passed and this has materially prejudiced him as he could not submit reply to the charge-sheet and adduce evidence before the enquiry officer. He has placed reliance upon the decision in *State of Maharashtra v. Chandrabhan* 1983 (2) SLR 493 (SC) , wherein the Supreme Court relying upon the decision in *Ghanshyam Das Shrivastava Vs. State of Madhya Pradesh*, , held that any departmental enquiry made without payment of subsistence allowance is violative of Article 311(2) of the Constitution. In *Ghanshyam Das Shrivastava's* case (supra) the Court had found that due to non-payment of subsistence allowance, the Appellant therein could not attend the enquiry proceedings. He had no other source of income except the pay and on the facts of that case it was held that on account of non-payment of subsistence allowance he could not get a reasonable opportunity to defend himself in the enquiry proceedings. The relevant observation on the facts of that case is as follows:

The High Court has found the following facts: The hearing of the case started before the enquiry officer at Jagdalpur in February, 1965. The case was heard on February 10, 11 and March 13, 1965. It appears that a part of the evidence for the Government was recorded on those dates. On March 20, 1965, the Appellant received Rs. 312 as subsistence allowance for the months of November and December, 1964 and January, 1965. Further evidence for the Government was recorded on April 3, 6 and 15, 1965. A second payment of Rs. 213 as subsistence allowance was made to the Appellant on May 13, 1965. As already stated, the enquiry officer submitted his report to the Government on May 28, 1965. These facts plainly show that a part of the evidence had already been recorded before the first payment of subsistence allowance was made to the Appellant. Nevertheless, the High Court has held that he was not unable to appear before the enquiry officer on account of the non-payment of his subsistence allowance.

With respect, we find it difficult to share the view taken by the High Court. There is nothing on the record to show that he has any other source of income except pay. As he did not receive subsistence allowance till March 20, 1965 he could not, in our opinion, attend the enquiry. The first payment of subsistence allowance was made to him on March 20, 1965 after a part of the evidence had

already been recorded on February 9, 10 and 11, 1965. The enquiry proceedings during those days are vitiated accordingly. The report of the enquiry officer based on that evidence is infected with the same defect. Accordingly, the order of the Government dismissing him from service cannot stand. It was passed in violation of the provisions of Article 311(2) of the Constitution for the Appellant did not receive a reasonable opportunity of defending himself in the enquiry proceeding.

5. In Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, , the Supreme Court reiterated the above principle holding that if the subsistence allowance is not paid to the employee and he is not in a position to participate in the enquiry proceedings because he has no fund, the enquiry proceeding is vitiated.

6. The Petitioner herein has stated that he never received the charge-sheet alleged to have been sent to him and, therefore, he could not participate in the enquiry. It was not his case that he could not participate in the enquiry proceeding, as he had no fund to defend himself. The Petitioner, after suspension, was attached with the Head Office. It was for him to establish that due to non-payment of subsistence allowance he was unable to defend himself. He had not even submitted any reply to the charge-sheet. It has to be examined on the facts of each case as to whether an employee is prejudiced by non-payment of subsistence allowance. There is no material in this writ petition to come to the conclusion that the Petitioner could not participate in the disciplinary enquiry due to non-payment of subsistence allowance. He, on the other hand, alleged that he could not participate in the enquiry proceeding, as he was never served with any charge-sheet.

7. The last submission of the learned Counsel for the Petitioner is that Regulation, 1978 is not applicable to the employees appointed under the U.P. Primary Agricultural Co-operative Credit Societies Centralised Service Rules, 1976 (hereinafter referred to as the 1976 Rules). It is contended that Rule 30 of 1976 Rules delegates the power to an authority to frame regulations which is contrary to the provision of Section 122A of the U.P. Co-operative Societies Act, 1965 as it confers power on the State Government to make rules providing for creation of one or more services of the employees of Co-operative Societies or class of Co-operative Societies as the State Government may think fit, common to such Co-operative Societies and prescribe the method of retirement, appointment, removal and other conditions of service of persons appointed in such service but does not confer power upon the State Government to sub-delegate its own power. In this context it is necessary to refer to Sub-section (1) of Section 122A of U.P. Co-operative Societies Act, 1965 and Rule 30 of 1976 Rules which read as under:

Section 122A. Centralisation of Certain Services.--(1) Notwithstanding anything contained in this Act, the State Government may by rules provide for the creation of one or more services of such employees of such co-operative societies or class of co-operative societies as the State Government may think fit, common

to such Co-operative Societies and prescribe the method of recruitment, appointment, removal and other conditions of service of persons appointed to any such service.

Rule 30. Miscellaneous.-

(1) Subject to the provisions of these rules, the authority shall frame regulation with the prior approval of the Registrar, Co-operative Societies, U.P. for the members of Centralised Service on their service matters which may, inter alia include:

- (i) Method of promotion, appointment probation, confirmation and termination ;
- (ii) Service records, seniority, reversion, retrenchment and resignation ;
- (iii) Pay scales, allowances, increment, joining time, leave, efficiency bar, etc. ;
- (iv) Conduct and discipline, penalties, disciplinary proceedings and appeals ;
- (v) Provident fund, gratuity, security and advance.

(2) So long as the regulations referred to in Sub-rule (1) are not framed, all or any matters referred therein shall be governed by such orders or directions as may be issued by the authority with the approval of the Registrar.

(3) Any matter not covered in these rules, shall be governed by such directions as may be issued by the authority with the approval of the Registrar.

(4) If any doubt or dispute arises in the application of these rules, the reference shall be made to the Registrar whose decision shall be final and binding on all concerned.

8. The expression "authority" referred to under Rule 30 of the 1976 Rules has been defined under Rule 2 (a) of the rules as "authority" means "State cadre authority for Primary Agricultural Co-operative Societies". It has been conferred power to frame regulations with the prior approval of the Registrar Co-operative Societies for the members of the Centralised Service on their service matters referred to under Rule 30.

9. The State Cadre Authority with a prior approval of the Registrar has framed Uttar Pradesh Primary Agricultural Co-operative Credit Societies Centralised Service Regulations, 1978. Section 122A of the U.P. Co-operative Societies Act, 1965 does not put bar on the State Government to frame rules where it can confer power on a certain authority to frame regulations. Section 3(51) of the General Clauses Act, 1897 defines "Rule" as under:

Rule shall mean rule made in exercise of a power conferred by any enactment and shall include a regulation made under any enactment.

10. When power to make delegated legislation is conferred on different authorities by the same Act, the words "Rules" and "Regulations" may be utilised

to distinguish the source and to subordinate the later to the former.

11. The power of sub-delegation by an authority to exercise powers conferred by Section 3 of Essential Supplies (Temporary Powers) Act, 1946 was considered in *Harishankar Bagla and Another Vs. The State of Madhya Pradesh*, which reads as under:

3. (1) The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.....

The validity of this section was challenged on the ground that it empowers the Central Government to delegate its own power to make orders u/s 3 to any officer or subordinate to it or the Provincial Government or to any officer or authority subordinate to Provincial Government as specified in the direction given by the Central Government. The contention was that the delegate has been authorised to further delegate its power in respect of Section 3, the Court rejected the contention and upheld the validity of the power to sub-delegate on the ground that the delegation of the power is not invalid if the making of subordinate rules is within the prescribed limits and the determination of facts to which the policy is declared by the Legislature is to apply. This decision was followed in *Arnold Rodricks and Another Vs. State of Maharashtra and Others*. In this case the validity of Section 3(4) of Bombay Commissioners of Division Act, 1957 was attacked on the ground that it suffers from excessive delegation. Section 3 (4) of this Act, after amendment the words "appropriate Government" or the "Commissioner" was inserted. The Supreme Court upheld the validity of this provision with the following observation:

We see no difference in principle between the State Legislature inserting a section in an Act enabling the State Government to delegate its power to another authority and the Legislature in view of the change in the administrative set up conferring powers on the State Government to confer not only its own duties on Commissioners but also of other officers performing executive and revenue duties.

12. u/s 122A of the U.P. Co-operative Societies Act, 1965 the power has been conferred on the State Government to frame rules and while conferring such power, the State Government itself confers power on an authority to make regulations in respect of certain matters as enumerated under Rule 30 subject to the condition that it has obtained prior approval of the Registrar appointed under the provisions of U.P. Co-operative Societies Act. It has not conferred any arbitrary power to the authority defined under the rules.

13. Sub-section (1) of Section 122A of the Act may be taken in two parts. The first part provides that the State Government by rules may provide for the creation of one or more services for employees of co-operative societies or class

of co-operative societies and the second part confers power to prescribe method of recruitment, appointment, removal and other conditions of services of persons appointed to any such service. The second part must be read in the context of providing method of recruitment, appointment, removal and other conditions of service. The word "prescribe" has been defined under Clause (q) of Section 2 of the Act which means prescribed by rules. In the context of Section 122A of the Act, the word used "prescribed" here does not refer to the definition of prescribed under Clause (q) of Section 2 of the Act. The word "prescribe" in the context should be taken from the ordinary dictionary meaning. The meaning as disclosed in the Webster Dictionary is "to order with force of authority ... to lay down a rule. In the context of Section 122A of the Act, it means it can give direction or provide a mode in relation to the method of recruitment, appointment, removal and other conditions of service of persons appointed under the service of the Co-operative Societies.

14. Even otherwise if the contention of the Petitioner is accepted that no valid rule or regulation has been framed as contemplated u/s 122A of U.P. Co-operative Societies Act, disciplinary proceedings taken against the Petitioner shall be decided on the principles of natural justice. The order has been passed by Respondent No. 1 purporting to have afforded opportunity of hearing to him. If the Petitioner is to challenge the order that he was not afforded opportunity, it was for him to raise such a question before the same authority or seek such other appropriate remedy under law as may be available to him.

15. In view of the above, the writ petition fails and is hereby dismissed.