(2012) 02 MP CK 0147

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7449 of 2011

Rajiv Kumar Jain APPELLANT

Vs

Elected Representative, Veerendra Narain Mishra and Others RESPONDENT

Date of Decision : 02-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 96
Madhya Pradesh Co-operative Societies Act, 1960 — Section 18, 50A, 50A(2), 78, 95

Citation : (2012) 2 MPHT 352

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : Raghvendra Dixit and Mr. Ravindra Dixit, for the Appellant; M.P.S. Raghuvanshi and Mr. N.S. Kirar, Advocates for the Respondent No. 3, for the Respondent

Final Decision : Allowed

Judgement

1. Heard.

The petitioner has filed this petition against the judgment of the Co-operative Tribunal, dated 1-11-2011 (Annexure P-2) passed in First Appeal No. 83/2011 and also against the order dated 24-10-2011 (Annexure P-1), by which, the Tribunal rejected the application of the petitioner filed under Order I Rule 10 of CPC for permitting the petitioner to contest the appeal.

The election to the post of Board of Directors of the respondent No. 3 Bank was held on 15-10-2007. The petitioner was elected as Board of Director. The respondent No. 1 was also elected as Board of Director. Earlier, he had been elected as a representative to the respondent No. 3 Bank from Primary Agriculture Credit Society, Ramnagar, Block and Tehsil Chanderi, District Ashoknagar. Subsequently, the petitioner and other Board of Directors resigned from the post alleging some illegalities. The petitioner submitted complaint against the President of respondent No. 3 Bank and further stated that the respondent No. 1 was not eligible to continue as Board of Director of the Bank, because his parent society had become defaulter of the Bank. A question in the Assembly, i.e., Question No. 723/2010 was also raised to this effect. Thereafter, the Deputy Registrar conducted the enquiry and he opined that Primary Agriculture Credit Society, Ramnagar was defaulter of the Bank and being a representative of the society, the respondent No. 1 was not eligible to continue as Board of Director of the Bank.

2. A show-cause notice dated 12-1-2011 (Annexure P-3) of the petition was issued to respondent No. 1 mentioning the fact that why the respondent No. 1 be not declared disqualified to the post of Director of respondent No. 3 Bank on account of fact that the society from which, the respondent No. 1 had been elected as representative of the Bank had become defaulter of the Bank. The copy of the notice was also issued to the society and District Co-operative Bank. The respondent No. 1 did not file reply before the Joint Registrar, however, on his behalf an Advocate appeared before the authority. He had been given time to file reply. When reply was not filed, the Joint Registrar in exercise of powers conferred u/s 50A (2) of the Madhya Pradesh Co-operative Societies Act, 1960 (hereinafter referred to as "the Act of 1960") read with Rule 45 of the Madhya Pradesh Co-operative Societies Rules, 1962 (hereinafter referred to as "the Rules of 1962"), declared the respondent No. 1 disqualified from the post of Directors of the Bank and also declared the post of Director of the Bank vacant, which was occupied by the respondent No. 3. Against the aforesaid order, the respondent No. 1 preferred an appeal before the Co-operative Tribunal. In the aforesaid appeal, the petitioner filed an application under Order I Rule 10 of CPC mentioning the fact that he wants to oppose the appeal, because the order passed by the Joint Registrar is in accordance with law and on his complaints, the enquiry was conducted against the respondent No. 1. That application was rejected by the Tribunal vide Annexure P-1 and thereafter vide impugned judgment (Annexure P-2), the Tribunal set aside the order passed by the Joint Registrar.

3. Learned Counsel for the petitioner has contended that the order passed by the Tribunal is arbitrary and illegal. The petitioner is an aggrieved person, hence, he has right to contest the appeal. Learned Counsel further submits that the parent society from which the respondent No. 1 had elected as representative of the Bank and thereafter he was elected as a Director of the Bank had become defaulter, hence, the respondent No. 1 could not continue as Board of Director of the Bank on account of disqualification. In support of his contentions, learned Counsel relied on a judgment of the Division Bench passed in the case of Basant Kumar Mishra Vs. Assistant Registrar, Co-operative Societies, Jabalpur, and others,

4. Contrary to this, learned Counsel appearing on behalf of respondent No. 3 has contended that the petitioner has already resigned from the post of Board of Director of the Bank and his resignation has been accepted, hence, he has no locus standi to challenge the order of the Tribunal. Learned Counsel further

submitted that the provisions of Section 48-AA of the Act of 1960 have not been followed by the authority before declaring the respondent No. 1 as disqualified, hence, the order passed by the Tribunal is in accordance with law.

In regard to locus standi of the petitioner:

5. It is an admitted fact that the petitioner was elected as a Board of Director of the Bank, subsequently, he had resigned on the ground of illegalities committed by the Chairman of the Bank. The petitioner also made complaints against the Chairman of the Bank and also made complaints to the Register in regard to illegality in continuing the respondent No. 1 as Board of Director of the Bank.

6. Section 78 of the Act of the 1960 provides provision of appeal. The aforesaid provision is as under:--

78. Appeals before the Registrar and Tribunal. -- (1) Save where it has been otherwise provided, an appeal shall lie from every original order under this Act or the rules made thereunder:--

(a) if such order is passed by any officer subordinate to Registrar, other than Additional Registrar or Joint Registrar, whether or not the Officer passing the order is invested with the powers of the Registrar, to the Registrar;

(b) if such order is passed by the Registrar, Additional Registrar of Joint Registrar, to the Tribunal.

From the aforesaid provision, it is clear that Section 78 prescribes an appeal to the Tribunal against the order passed by the Additional Registrar. There is no mention to the fact that who can file an appeal.

7. The Hon''ble Supreme Court in the case of Smt. Jatan Kumar Golcha Vs. Golcha Properties (P) Ltd., has held as under in regard to right to file an appeal:--

It is well settled that a person who is not a party to the suit may prefer an appeal with the leave of the Appellate Court and such leave should be granted if he would be prejudicially affected by the judgment.

8. Hon''ble the Supreme Court in the case of State of Punjab (Now Haryana) and Others Vs. Amar Singh and Another, has held as under:--

83. There is nothing in the Act or the Rules framed thereunder or in the Tenancy Act saying as to who can file an appeal or revision against the decision or order of the Collector exercising jurisdiction u/s 18. But in view of the long array of judicial decisions including that of the Financial Commissioner, there can be no doubt that the State Government or its Department can, if aggrieved, or prejudiced by such a decision, go in appeal or revision against it.

84. Firstly, there is a catena of authorities which, following the doctrine of Lindley, L.J., In re: Securities Insurance Co., (1894) 2 Ch 410 , have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by

the order or is aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person who might have been made ex nominee a party-- See: The Province of Bombay Vs. Western India Automobile Association, ; Heersingh and Others Vs. Veerka and Another, and Shivaraya Vs. Siddamma and Another, ; Executive Officer, Sri Padmanabhaswamy Temple Vs. Raghavan Pillai and Another, In re B, an Infant, (1958) QB 12; S. Govinda Menon Vs. K. Madhavan Nair and Others,

Hence, it is clear from the aforesaid judgments of Hon''ble the Supreme Court that an aggrieved person can file an appeal even though he was not a party in the original proceedings.

9. Hon''ble the Supreme Court in the case of Maharaj Singh Vs. State of Uttar Pradesh and Others, has held as under in regard to person aggrieved:--

18. Aside from this stand, it is easy to take the view that the 1st plaintiff, is a person aggrieved and has the competent to carry an appeal against the dismissal of the suit. Of course, he who has a proprietary right, which has been or is threatened to be violated, is surely and ''aggrieved person''. A legal injury creates a remedial right in the injured person. But the right to a remedy apart, a larger circle of persons can move the Court for the protection or defence or enforcement of a civil right or to ward off or claim compensation or a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the lies and the plaintiff need not necessarily be personal, although it has to be more than a wayfarer''s allergy to an unpalatable episode. ''A person aggrieved'' is an expression which has expanded with the larger urgencies and felt necessities of our times. Processual jurisprudence is not too jejune to respond to societal changes and challenges:

Law necessarily has to carry within if the impress of the past traditions, the capacity to respond to the needs of the present and enough resilience to cope with the demands of the future. A code of law, especially in the social fields, is not a document, for fastidious dialectics; properly drafted and rightly implemented it can be the means of the ordering of the life of a people.

19. The classical concept of a ''person aggrieved'' is delineated in Re: Sidebotham ex p. Sidebotham, (1880) 14 Ch D 258. But the amplitude of ''legal grievance'' has broadened with social compulsions. The State undertakes today activities whose beneficiaries may be the general community even though the legal right to the undertaking may not vest in the community. The State starts welfare projects whose effective implementation may call for collective action from the protected groups or any member of them. New movements like consumerism, new people''s organs like harijan or mahila samajams or labour unions, new protective institutions like legal aid societies operate on the socio-legal plane, not to beat ''their golden wings in the void'' but to intervene on behalf of the weaker classes. Such burgeoning of collective social action has, in turn, generated gradual Processual adaptations. Test suits, class actions and

representative litigation are the beginning and the horizon is expanding with persons and organisations not personally injured but vicariously concerned being entitled to invoke the jurisdiction of the Court for redressal of actual or imminent wrongs.

20. In this wider perspective, who is a person aggrieved? Bar Council of Maharashtra Vs. M.V. Dabholkar and Others, gives the updated answer:

The test is whether the words person aggrieved include ''a person who has a genuine grievance because an order has been made'' which prejudicially affects his interest", (p. 315 of SCR) = (at p. 2098 of AIR)

American jurisprudence has recognised, for instance, the expanding importance of consumer protection in the economic system and permitted consumer organisations to initiate or intervene in actions, although by the narrow rule of ''locus standi'', such a course could not have been justified (see p. 807 - New York University Law Review, Vo. 46, 1971). In fact, citizen organisation have recently been campaigning for using legal actions for protection of community interest, broadening the scope of ''standing'' in legal proceedings (see p. 403 - Boston University Law Review, Vol. 51, 1971).

In the well known case of Attorney General of the Gambia Vs. Peirra Serr N'' Jie, (161), Lord Denning observed about the Attorney General''s standing thus:--

...The word ''person aggrieved'' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busy body who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interest. (pp. 324-325 of SCR) = (at p. 2105 of AIR).

21. Where a wrong against community interest is done, ''no locus standi'' will not always be a plea to non-suit and interested public body chasing the wrong-doer in Court. In the case before us, Government, in the spacious sense of ''person aggrieved'' is comfortably placed. Its right of resumption from the Gaon Sabha, meant to be exercised in public interest, will be seriously jeopardised if the estate slips into the hands of a trespasser. The estate belonged to the State, is vested in the Gaon Sabha for community benefit, is controlled by the State through directions to the Land Management Committee and is liable to be divested without ado any time. The wholesome object of the Legislature of cautiously decentralised vesting of estates in local self-governing units will be frustrated, if the State, the watch-dog of the whole project, is to be a helpless spectator of its purposeful bounty being wasted or lost. It must act, out of fidelity to the goal of the statute and the continuing duty to salvage public property for public use. Long argument is otiose to make out a legal grievance in such a situation of perim and, after all, the star of processual actions pro bono publico has to be on the ascendant in a society where supineness must be substituted by activism if the dynamic rule of law is to fulfil itself. Locus standi has a larger ambit in current legal semantics than the accepted, individualistic jurisprudence

of old. The legal dogmas of the quiet past are no longer adequate to assail the social injustices of the stormy present. Therefore, the State, in the present case, is entitled to appeal u/s 96 of the Code of Civil Procedure.

10. On the basis of aforesaid principle of law laid down by the Hon''ble Supreme Court, in our opinion, the aggrieved person can file an appeal. In the present case, the petitioner was elected as Board of Director of the Co-operative Bank. Subsequently, he resigned as a member of the Bank. He also filed complaint before the Registrar in regard to continuance of the respondent No. 1 as Board of Director of the Bank. On his complaint, the enquiry was conducted and thereafter the order of disqualification of respondent No. 1 was passed. In such circumstances, in our opinion, the petitioner is an aggrieved person and he had a right to oppose the appeal before the Tribunal. He has also a right to file a petition before this Court against the judgment passed by the Tribunal. The Tribunal committed an illegality in rejecting the application of the petitioner.

In regard to merits of the case:

11. The Joint Registrar issued a show-cause notice to respondent No. 1 mentioning the fact that the Primary Agriculture Credit Society Ramnagar Block and Tehsil Chanderi, District Ashoknagar had become defaulter, because it had not paid the loan amount to the Bank. The details have been mentioned in the show-cause notice. The amount was not paid for more than a year. Hence, the society become defaulter. No reply was filed by the respondent No. 1 or respondent No. 3 controverting the aforesaid facts. The Joint Registrar again appreciated the fact and held that the society had become defaulter of the Bank. The aforesaid findings are in accordance with law.

12. Section 50-A of the Act of 1960 prescribes disqualification for being candidate or voter for election to Board of Director or representative or delegate of society. Proviso to Section 50-A (2) prescribes that a person elected to an office of a Co-operative Bank from a society shall cease to hold such office, if such society commits default for any loan or advance for a period exceeding three months, and the Registrar shall declare his seat vacant. The relevant provisions are as under:--

(2) A person elected to an office of a society shall cease to hold such office, if he is in default for a period exceeding 12 months to the society or any other society for any loan or advance taken by him, and the Registrar shall declare his seat vacant:

Provided that a person elected to an office of Co-operative Bank from a society other than Co-operative Credit structure, shall cease to hold such office, if such society commits default for any loan or advance or for a period exceeding three months, and the Registrar shall declare his seat vacant.

13. From the aforesaid proviso to Section 50-A (2) of the Act of 1960, it is clear that a person elected to an office of a Co-operative Bank from a society shall

cease to hold such office, if such society commits default. Admittedly, in the present case, the society, from which the respondent No. 1 had been elected as representative of the Co-operative Bank and thereafter he was elected as Board of Director of the Bank, became defaulter. In such circumstances, the Joint Registrar has rightly declared his seat vacant. The Division Bench in the case of Basant Kumar Mishra Vs. Assistant Registrar, Co-operative Societies, Jabalpur, and others, has held as under in regard to disqualification to hold a post in a society when a society disqualified to present the other society:--

It was then contended that disqualification for a delegate or representative are all provided in Rule 45 and unless it can be said that the delegate or representative of the member society in the Committee of another society has himself incurred the disqualification under Rule 45, the delegate or the representative does not loss his seat in the Committee. There is no substance in this contention. A society to be a member in the Committee of management of another society must not suffer from the disqualifications mentioned in Rule 44. As a society can only function in the committee of management through some individual, the society must elect one of its members as its delegate. But Rule 45 provides that the delegate or representative so elected should also not suffer from any of the disqualifications mentioned in Rule 44. Thus, the requirements of the Rules are two fold. The member society must not suffer from any disqualifications mentioned in Rule 44 and the delegate elected by it to represent it should also not suffer from any of the disqualifications. The delegate however, has no independent existence. He only represent the society which is the real member in the committee and if the society ceases to be a member of the committee because of a disqualification incurred by it, the delegate will automatically ceased to be delegate although he may not have himself incurred any disqualification under Rule 45.

14. Section 48-AA of the Act of 1960 prescribes disqualification for membership of Board of Directors and for representation. The relevant provision is as under:--

48-AA. Disqualification for membership of Board of Directors and for representation, -- No person shall be eligible for election as a member of the Board of Directors of a society, and shall cease to hold his office as such, if he suffers from such disqualification as may be prescribed, and no society shall elect any member as is representative to the Board of Directors of any other society or to represent the society in other society, if he suffers from such disqualification as may be prescribed.

From the aforesaid provision, it is clear that this disqualification is in regard to a person, if he suffers disqualification, however, in the present case, the society became disqualified to send a representative to the Bank being defaulter. Consequently, the respondent No. 1 ceases to be a representative and the member of Board of Directors of the Bank. In such circumstances, the Joint Registrar has rightly passed an order u/s 50-A (2) of the Act of 1960, because proviso of the aforesaid Section gives powers to the Joint Registrar to declare the seat vacant.

15. The State Government has framed Rules named as Madhya Pradesh Co-operative Societies Rules, 1962 (hereinafter referred to as "the Rule of 1962") in exercise of powers conferred by sub-sections (1) and (2) of Section 95 of the Madhya Pradesh Co-operative Societies Act, 1960. Rule 45 of the Rule of 1962 prescribes disqualification for representation. Rule 45 (3) prescribes the following disqualification:--

(3) No representative of the society shall be eligible for election as a member of the Committee of Co-operative Bank, Financing Bank, Federal Society or Apex Society and shall cease to hold his office as such if the society is or gets into default for a period exceeding twelve months in respect of any loan or loans taken by it from such Cooperative Bank, Financing Bank, Federal Society or Apex Society.

16. The respondent No. 1 disqualified to be a representative of the Bank from Primary Agriculture Credit Society, Ramnagar. Subsequently, he also became disqualified to be a Board of Director of the Bank, hence, the order passed by the Joint Registrar is in accordance with law.

17. The arguments advanced by the learned Counsel for respondent No. 3 that no notice was issued by the Joint Registrar to the Co-operative Society and respondent Nos. 2 and 3, is also not tenable, because from the perusal of the show-cause notice (Annexure P-3), dated 12-1-2011 issued by the Joint Registrar in regard to disqualification of the respondent No. 3, it is clear that copies were sent to respondent No. 1, Chief Executive Officer District Co-operative Bank and Manager Primary Agriculture Credit Society, Ramnagar. Thereafter, the case was listed before the Joint Registrar on 22-3-2011, 20-4-2011, 24-5-2011 and 20-7-2011. On behalf of respondent No. 1, Advocate Mr. Y.P. Singh appeared before the authority and his arguments were also heard. Nobody appeared before the Joint Registrar on behalf of Bank or Society. Before the Co-operative Tribunal, the Co-operative Society and District Co-operative Bank were heard and on behalf of them, the Counsel were appeared.

18. In this view of the matter, sufficient opportunity was given to respondent Nos. 2 and 3. Hence, in our opinion, the Tribunal has committed an error of law in allowing the appeal and also in rejecting the application filed by the petitioner under Order 1 Rule 10 of CPC.

19. Consequently, the petition is allowed. The impugned orders Annexure P-1, dated 24-10-2011 and Annexure P-2, dated 1-11-2011 are hereby quashed. Looking to the facts of the case, the respondent No. 3 is directed to pay a cost of Rs. 5000/- (Rupees Five Thousand only) to the petitioner.

