
(1991) 02 MP CK 0057
In the Madhya Pradesh High Court
Case No : M. P. No. 430 of 1991 (J)

Ram Dutt Kaushik

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 18-02-1991

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 53(1), 53(1)(c), 53(10), 53(2)

Citation : (1991) MPJR 204

Hon'ble Judges : S.K Jha, C.J;K.L. Issrani, J

Bench : Division Bench

Advocate : G.K. Tiwari, for the Appellant; S.L. Saxena, Addl. A.G., for the Respondent

Final Decision : Allowed

Judgement

S. K. Jha, C.J.

The petitioner in this writ petition is the Chairman of Chhatarpur District Wholesale Consumers' Co-operative Society Ltd. The aforesaid society is a registered co-operative society to which the provisions of the M. P. Co-operative Societies Act and Rules are applicable. The last part of the order purported to have been passed u/S. 53 (10) of the M. P. Co-operative Societies Act, 1960 thereafter referred to as the Act) by the Assistant Registrar. Co-operative Societies, Chhatarpur. dated 21-1-91, has been challenged as being not only illegal, but in excess of jurisdiction.

The impugned order is the last portion of the so called notice issued by the Assistant Registrar and is contained in Annexure "A" to the writ petition. It is worthwhile mentioning here that although Annexure "A" is in the form of a notice for removal (or supersession) of, the Committee pursuant to the provisions of Section 53 (2) of the Act, yet in effect, it is composite in nature. The first part of Annexure "A" has been rightly described as a notice u/S. 53 (2) of the Act as aforementioned, but the last portion of the so called notice is a substantive final

order purported to have been passed u/S. 53 (1) of the Act.

Section 53 (I) of the Act lays down that the Registrar may, by order in writing, remove the Committee of any society amenable to the provisions of the Act and appoint a person or persons to manage the affairs of the society for a specified period not exceeding two years in the first instance.

It is not necessary here to mention the various provisos to Section 53 (1) (c) of the Act for the purpose of deciding this case. Section 53 (2) enjoins that before any final order of removal or suspension as one may choose to call, cannot be passed unless the committee sought to be removed or superseded, is given a reasonable opportunity of showing cause against the proposed order and the representation filed by the committee, if any, must be considered before such a final order is passed u/S. 53 (1). It would bear repetition that the first part of Annexure "A" is such a notice which is mandatory under sub-section (2). Therefore, that part of it could not and has fairly not been challenged. Learned counsel for the petitioner submits and rightly so-which is also conceded by Shri Saxena, learned Addl. Advocate General appearing on behalf of the respondents, that the only relevant provisions which we are called upon to be examined and considered are those as engrafted in Section 53 (10), especially the provisos thereto, it is, therefore, again necessary to repeat that the subject matter of challenge in this writ petition is only the last part of Annexure "A" which not only in letter, but in substance also, is actually a final order purported to have been passed u/S. 53 (10) of the Act. It is, therefore, worthwhile to take notice of some of the provisions of Section 53 (10). Such provisions, as are contained in sub-section (10) empower the Registrar after the initiation of the proceeding u/S. 53 (1) (which must be taken to have been initiated on the date when a notice u/S. 53 (2) has been served) to pass an interim order having an effect even to the extent of suspending a committee from functioning while proceedings u/S. 53(1) are still pending disposal. Such an order of suspension, although interim in nature, prescribes in nutshell the maximum period of six months in the first instance which period may be extended from time to time under such circumstances as laid down in the subsequent provisos with which we are not concerned. The only question to be examined and considered is as to whether the impugned portion of Annexure "A" in the purported exercise of powers of the Registrar u/S. 53 (10), first proviso, resulting in interim suspension of the committee, can be sustained on any ground whatsoever or not.

It is worthwhile mentioning that the substantive part of Section 53 (10) speaks of the power of the Registrar to pass an order, interim in nature, to let the committee sought to be removed or superseded, to function under the supervision and with the approval of such authority as the Registrar may specify in that behalf, even during the pendency of the proceedings u/S. 53 (1) and no order made or resolution passed by the committee during the statutory period shall have any effect unless it has been approved by such specified authority.

The first proviso to Section 53 (10) is more pertinent and relevant in the present

context and although it is described as a proviso, it partakes of the nature of a substantive enactment, because it further empowers the Registrar while proceeding for removal or supersession of the committee is pending disposal in which such a final order is passed u/S. 53 (1), under certain circumstances which make it necessary in the interest of the society to so suspend it. We have laid stress on the first proviso aforementioned and treat the powers conferred on the Registrar under that proviso as substantive in nature, because in the circumstances mentioned therein, he is vested with a distinct power not thus far contained in any of the previous provisions of Section 53 (10), nor is it in substance cutting down the effect of the substantive provision contained in Section 53 (10), as hereinbefore mentioned.

We do not think it necessary to detain ourselves on this question as to whether the proviso can be treated as substantive provision or cutting down the scope of the general provision of the substantive enactment by way of an exception. In substance, Section 53 (10) confers upon the Registrar the power to appoint a supervisory authority while letting the committee sought to be superseded, functioning, but whose orders or resolutions can be effective only after the approval of such an authority and the first proviso to Section 53 (10) further confers upon the Registrar the jurisdiction to suspend the committee as a whole, under certain circumstances.

For determining the question at hand, therefore, it is only the 4th proviso which needs to be quoted in extenso. It reads thus :

"Provided also that no order of suspension shall be made unless the committee of the society has been given a reasonable opportunity of being heard."

This proviso found no place in the Act as originally enacted In the year 1960, or even in the first amending Act known as Madhya Pradesh Co-operative Societies (Amendment) Act, 1988 (Act No. 3 of 1988). The MP. Co-operative Second Amendment Act of 1988 (Act No. 25 of 1988) which received the assent of the Governor on 31-10-88 and was published in the M. P. Gazette Extraordinary, dated 1-11-88, therefore, came into effect from 1-11-1988. We have especially laid stress on the date from which the provisions of the 4th proviso hereinbefore extracted, only on account of the fact that Shri Saxena, learned Addl. Advocate General invited our attention to a Division Bench decision of this Court laying down that no notice for any interim order of suspension was necessary. The judgment of this Court which was being pressed upon us by the learned Addl. Advocate General, is in case of *Indrajeet Singh v. Joint Registrar Cooperative Societies Sagar* 1987 MPLJ 306. In view of the statutory provision already noticed by us hereinbefore in the shape of 4th proviso which was made effective (again a repetition), was brought on the statute book after the aforesaid judgment of this Court in *Indrajeet Singh's* case (*supra*) which was decided by this Court on 9-2-1987 on which date there was no such provision. In view of the fact that the new provision in the shape of 4th proviso to Section 53 (10) on which learned counsel for the petitioner has based his argument was, therefore,

not the subject matter of scrutiny at all, nor could there be any such, by the Division Bench deciding that case, nor was any question with regard to the nature of such a proviso whether it was directory or mandatory. If there be any such point raised on any appropriate occasion hereinafter, we want to make it clear here and now that it is not on the basis of the fundamental principle of audi alteram partem that the relief is sought in this case, but on the basis of specific statutory provision which has in law and in substance, adopted the mandatory nature of the principle of giving a party a reasonable opportunity of being heard before any final order is passed. Such a provision can, in our view, by no stretch of imagination, be treated as directive in nature. Even if such a decision were required in this case, we have no hesitation in saying that the provision of the 4th proviso to Section 53 (10), as it stands today, is mandatory in nature.

This being the only question to be determined in this case, and it being admitted at all hands, as asserted in the writ petition and accepted by the learned Addl. Advocate General that no such notice was even issued to the petitioner before the impugned order was passed. Apart from the assertion made in the petition and the admission of the learned Addl. Advocate General, it is apparent on a plain reading of Annexure "A" that while issuing the notice u/S. 53 (2), a final order has been passed simultaneously u/S. 53 (10), first proviso, before the passing of the order. We do not think it necessary to indicate that the technical formality of issuing any formal notice to any party respondent in this case is not required because all of them have already been represented by the learned Addl. Advocate General who has been heard at length on the only question to be decided in this case, which is a pure question of law.

Having heard, learned counsel for the parties and having taken note of the provisions of Section 53 (10) as a whole and the 4th proviso to Section 53 (10), especially in all their ramifications, we are of the considered view that the impugned order contained towards the end of Annexure "A" which is operative as a final order in nature, is in clear contravention of the mandatory and statutory requirement enjoined upon the Registrar before passing of such an order in terms of the first proviso to Section 53(10) which is not only illegal, but without jurisdiction. It, therefore, must be quashed and we do so at this stage of the petition itself.

This petition is accordingly allowed. The last portion of Annexure "A" suspending the committee during the pendency of the proceeding u/S. 53 (1) of the Act is quashed. Let a writ of certiorari to the respondents be issued to that effect.

It goes without saying that the respondents, if they are so advised or instructed, shall be at liberty to pass any fresh order as they or any of them may be so competent to do. may do so after complying with all the legal formalities as hereinbefore mentioned and in accordance with law. No order as to costs.