

(1987) 03 MAD CK 0024
In the Madras High Court

Ramanathapuram District Consumers' Co-operative
Wholesale Stores Ltd.

APPELLANT

Vs

S. Balasubramanian and Another

RESPONDENT

Date of Decision : 06-03-1987

Acts Referred:

Citation : (1987) 100 LW 861 : (1987) 2 MLJ 274

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—This appeal arises out of a suit filed by the respondents for a declaration that the orders of suspension passed by the

appellant against them on 7.1.1984 were without jurisdiction, null and void and for an injunction restraining the appellant from enforcing the said

order or prevent the respondents from performing their duties as Junior Assistants of the Stores belonging to the appellant.

2. The plaintiffs were Junior Assistants working in the stores belonging to the appellant. On 29.11,1982 they found the locks of the stores broken,

doors opened and goods worth about Rs. 1,43,464/- stolen. They made a report to the Superintendent who in turn made a complaint to the police

regarding the alleged theft. The police made a report that the complaint was false and in the report, they seem to have referred to certain materials

against the respondents. The report as such is not exhibited in these proceedings. Based on the report of the police, the Registrar of Co-operative

Societies passed an order on 28.12.1983 directing the Special Officer of the Appellant-Society to suspend the respondents pending further

investigation. This order was received by the Special Officer on 6.1.1984 and he passed an order on 7.1.1984 suspending the respondents from

service with effect from the forenoon of 7.1.1984. It has to be noted that the orders of suspension passed by the Special Officer do not make any reference to the order of the Registrar of Co-operative Societies, but it makes a reference to the police report. It is stated in the said orders that the suspension is made pending further investigation. Challenging the validity of the orders of suspension, the plaintiffs filed the suit for the reliefs stated above.

3. In the plaint, it was alleged that the orders of suspension were illegal and without jurisdiction as they were not made in accordance with the bye-laws. The plaint refers to bye-law Nos. 13(h) and (i). It was also stated in the plaint that before suspending an employee, there should be a disciplinary enquiry pending against him and as there was no enquiry, the order of suspension was bad. In the written statement filed by the Society, a specific reference was made in paragraph 4 thereof to the order of the Registrar dated 28.12.1983. A plea was raised that the order of suspension was made by the Special Officer only pursuant to the said direction given by the Registrar and that the Special Officer was bound to obey the same. The written statement proceeded to deny the correctness of the interpretation placed upon bye-law 13(h) in the plaint. The maintainability of the suit was also challenged in the written statement. The defendant also raised a plea that the jurisdiction of the Civil Court was barred by virtue of Section 100 of the Cooperative Societies Act. The plaintiffs filed a reply statement in which they stated that they had no knowledge of the order of the Registrar and that the same was not served on them. They had also entertained an apprehension that the order of the Registrar might have been brought about subsequent to the suit. The reply statement proceeded to state that the order of the Registrar was not in conformity with the provisions of Section 70 of the Co-operative Societies Act and was, therefore, not valid.

4. On these pleadings, the trial Court held that the order of suspension was not in conformity with bye-law 13(h) as there was no enquiry pending actually at the time of the order of suspension. According to the trial Court, before passing an order of suspension, there should be a pending enquiry. The trial Court relied upon a decision of the Supreme Court in P.R. Nayak Vs. Union of India (UOI), . The trial Court also held that

Section 100 of the Co-operative Societies Act did not bar the jurisdiction of the Civil Court as the order of suspension was not in conformity with

the mandatory provisions of the Rules. Consequently, the trial Court granted a decree in favour, of the plaintiffs as prayed for by them.

Subsequently, the learned Principal Subordinate Judge, Madurai confirmed the decree of the trial Court. During the pendency of the first appeal,

an additional document was filed on behalf of the plaintiffs and it was marked as Ex. A10. The said document happens to be the order of the Chief

Judicial Magistrate, Madurai, dated 10.7.1985. The learned Subordinate Judge, while referring to the order of the Registrar dated 28.12.1983,

expressed a doubt that it could have been brought into existence after the suit, though he did not choose to give any specific finding on that matter.

However, the learned Judge upheld the interpretation placed by the plaintiffs on bye-law 13(h) as well as Section 100 of the Co-operative

Societies Act. In this second appeal by the defendant, two questions arise for consideration, namely, (1) whether the orders of suspension are in

accordance with the statutory provisions and the bye-laws? and (2) whether the jurisdiction of the Civil Court is barred by virtue of Section 100 of

the Co-operative Societies Act?

5. With regard to the first question, the relevant bye-law is 13(h). It reads as follows:

The Chief Executive viz., the Managing Director or the Secretary, Chief Executive Officer as the case may be shall have the powers to suspend

any member of the establishment pending enquiry on the charge of acts of misconduct or misappropriation or negligence of duty, etc....

The relevant words are ""pending enquiry on the charges of acts of misconduct or misappropriation or negligence of duty, etc"". The contention

urged on behalf of the plaintiffs is that unless an enquiry is commenced, the officer concerned has no jurisdiction to pass an order of suspension. I

am unable to agree with the same. I am of the opinion that the normal rule prevailing in Service Jurisprudence that an order of suspension can be

made pending a contemplated enquiry will apply and it has not been excluded specifically by the wording of the bye-law. In the present case, it is

seen that the stock in the stores were said to have been verified on 30.11.1983 and a deficiency of articles to the value of Rs. 47,461/- was said to

have been discovered. It is also seen that when the police referred the complaint made by the society as false initially, some allegations seem to

have been made as against the respondents. In these circumstances, the Registrar thought it fit to direct the suspension of the plaintiffs. Even though

the order of suspension as such does not refer to the order of the Registrar, it is seen that the order of the Registrar has been received by the

Special Officer of the Society on 6.1.1984 and the order of suspension is made on 7.1.1984. Having regard to the proximity of the dates, there

can be no doubt that the order of suspension was made by the Special Officer only pursuant to the directions issued by the Registrar. Even

assuming for a moment that the Special Officer took action against the plaintiffs independently without any direction from the Registrar, he has

referred to the report of the Deputy Commissioner of Police which contained allegations against the plaintiffs. Based on such report, if the Special

Officer had thought that a further investigation or enquiry was necessary against them till such an enquiry was completed, such enquiry would

certainly fall under bye-law 13(h). It is not necessary for the Special Officer to institute and initiate an enquiry in the first instance and then pass an

order of suspension thereafter. A similar rule was considered by the First Bench of this Court to which I was a party, in *M. Swaminathan v. the*

Chairman and Managing Director, Tamil Nadu Small Industries Development Corporation Limited and *Onr. Writ Appeal No. 22 of 1987*,

judgment dated 21.1.1987. There, Rule 6.18 of the Service Rules of the Tamil Nadu Small Industries Development Corporation Limited was in

the following terms:

The competent authority may place an employee under suspension

(a) Where a disciplinary proceeding on grave charges against him is contemplated or is pending, or

(b) where a case against him in respect of criminal offence is under investigation inquiry or trial.

The Bench held that it was not necessary for the competent authority - to make a preliminary enquiry and come to a prima facie conclusion against

the concerned officers and pass an order of suspension thereafter. It was held that an order of suspension could be made under that rule even

when there were materials before the competent authority which would warrant

the making of such an order. It was also held in that decision that in matters of suspension pending or in contemplation of the disciplinary proceedings, Courts should not entertain petitions against such orders of suspension unless the orders were invalid in law for want of competence on the part of the authority making the same or for violation of any specific rule. That case arose under Article 226 of the Constitution of India and the observation referred to was made in that context.

6. As pointed out already, in the present case, there were some materials on which the Special Officer was satisfied that he should pass an order of suspension as against the plaintiffs. It is not for this Court or for the Courts below to consider whether the materials available to the Special Officer were sufficient or not in order to pass an order of suspension. That is beyond the purview of the jurisdiction of the Civil Court. On an interpretation of bye-law 13(h), there can be no doubt that the order of suspension made by the Special Officer has not contravened any specific rule or provision of the Act.

7. Apart from bye-law 13(h), Section 119-A of the Co-operative Societies Act provides for: the issue of directions by the Registrar of Co-operative Societies from time to time under certain circumstances. Section 119-A(1) reads thus:

Subject to the rules made in this behalf, where the Registrar Is satisfied that in the public interest or for the purposes of securing proper implementation of co-operative production and other development programmes approved or undertaken by the Government, or to secure the proper management of the business of any class of registered societies generally, or for preventing the affairs of any registered society being conducted, in a manner detrimental to the interests of the members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of registered societies or to any registered society or registered societies in particular, he may, by order, issue directions to them from time to time, and all registered societies or the registered society concerned, as the case may be, shall be bound to comply with such directions.

It is clear from the section that the order of the Registrar has to be complied with by the officers of the Society. In the present case, I have already referred to the order of the Registrar dated 28.12. 1983. It is marked as Ex. B2.

Even though the plaintiffs filed a reply statement expressing a doubt as to whether the order was brought about subsequent to the suit, they did not raise any objection when the order was marked as an exhibit.

All the exhibits filed on behalf of the defendant were marked by consent. Even after the order of the Registrar was brought to the notice of the plaintiffs in the written statement which was filed as early as in March, 1984, the plaintiffs did not take any steps to implead the Registrar as a party or challenge the correctness of the said order by amending the plaint. In the lower appellate Court, the question whether the Registrar was a necessary party was raised and the learned Subordinate Judge has taken the view that he was not a necessary party. The reasoning of the learned Judge is that the Registrar had no power to suspend the plaintiffs directly and he could only give a direction to the Special Officer to make an order of suspension and in such circumstances, the Registrar was not a necessary party. The reasoning is, to say the least, wholly fallacious. When the Special Officer has passed an order, obeying the orders of the Registrar who is superior to him, the order of the Special Officer cannot be challenged to be invalid without proving before the Court that the order of the Registrar is not valid. It is, therefore, necessary for the plaintiff to challenge the validity of the order of the Registrar before attacking the order of suspension made by the Special Officer. For that purpose, the plaintiffs ought to have impleaded the Registrar as a necessary party, and included an appropriate prayer in the plaint. The plaintiffs have not chosen to do it in spite of the fact that the Registrar's order was brought to their notice by the written statement. It is really surprising that the learned Subordinate Judge makes an observation that the order of the Registrar could have been brought into existence subsequent to the suit particularly when the Registrar is not made a party. In the evidence of the 2nd plaintiff who is the only witness examined on behalf of the plaintiffs, there is no whisper that the order of the Registrar could have been brought into existence subsequent to the suit. As already pointed out, there was no objection for marking the order as an exhibit in this case. In such circumstances, it is not proper on the part of the learned Subordinate Judge to have made such an observation on the order made by a responsible official of the Government. It is seen from the order that it was received by the

Special Officer on 6.1.1984 and an entry to that effect has been made on Ex. B2. In the absence of any suggestion on the part of the plaintiffs that

this endorsement made by the Special Officer was false or fabricated, it is not open to the Court to say that Ex. B2 could have been brought into

existence subsequent to the suit.

8. As the Registrar has given a specific direction to the Special Officer to suspend the plaintiffs, the orders of suspension. made by the Special

Officer in pursuance of such a direction given by the Registrar cannot be challenged as illegal. It is contended by the learned Counsel for the

respondents that the order of the Registrar dated 28.12.1983 will not fall u/s 119-A of the Co-operative Societies Act, for the reasons that the

circumstances mentioned in Section 119-A of the said Act have not been set out in the said order and that the said order expressly refers to the

police report only. Section 119-A will apply if the Registrar is satisfied that in order to secure the proper management of the business of a

particular society and for the purpose of preventing the affairs of any registered society being conducted in a manner detrimental to the interests of

the members, or of the depositors or the. creditors thereof, he can issue appropriate directions. It is not necessary for the Registrar to set out all

those circumstances in the order by which he has given a particular direction to the Special Officer. Secondly when he has made a specific

reference to the police report dated 6.7.1983 which contained materials against the plaintiffs, that would be sufficient to warrant a personal

satisfaction or a subjective satisfaction on the part of the Registrar that the circumstances mentioned in Section 119-A of the Act existed. It can be

inferred from the order of the Registrar dated 28.12.1983 that he was satisfied as required by Section 119-A of the Act.

9. Reference is also made to Section 70 of the Act in order to point out that orders of suspension can be made as against the employees under

certain circumstances. Learned Counsel for the appellants did not contend that the order of the Registrar would fall u/s 70 of the Act. He invited

my attention to that section only for the purpose of showing that orders of suspension could be made even pending investigation without any actual

enquiry being initiated. The learned Counsel relied only on bye-law 13(h) and Section 119-A for contending that the orders of suspension in this

case are valid orders. However, learned Counsel for the respondents contended that the circumstances mentioned in Section 70 of the Act do not

exist in order to validate the order issued by the Registrar on 28.12.1983. It is also contended by the learned Counsel for the respondents that a

direction to suspend a particular servant of the Society could be issued u/s 119-A only when the circumstances set out in Section 70 of the Act

prevail. I do not agree with this contention. Section 19A does not restrict the scope of the directions which can be issued by the Registrar. u/s

119-A, the Registrar can issue any kind of direction which will protect the Interest of the Society whereas Section 70 is restricted to certain

circumstances specifically referred to therein. It does not mean that u/s 119-A, the Registrar cannot give a direction to suspend, except under the

circumstances mentioned in Section 70. Section 119-A is not in any manner controlled by the provisions of Section 70 of the Act. They are two

independent sections providing for different situations.

10. Reliance is placed upon the decision of the Supreme Court in P.R. Nayak Vs. Union of India (UOI), , but it will not apply to this case. That

direction turned on the specific language of the concerned rule. Hence I hold that the orders of suspension passed by the Special Officer as against

the respondents do not contravene any statutory rule or violate any mandatory provision of the Act or rules framed thereunder. The Special Officer

was the competent authority to make an order of suspension as against the respondents. The plaintiffs are not entitled to the reliefs prayed for by

them.

11. As I have held that the orders of suspension are quite valid and made in accordance with the rules, the suit has to fail on merits. Hence I am not

considering the question whether Section 100 of the Tamil Nadu Co-operative Societies Act ousts the jurisdiction of the Civil Court with regard to

the orders passed under the Act.

12. In the result, the second appeal is allowed and the judgments and decrees of the Courts below are set aside. There will be no order as to

costs.

13. It is brought to my notice that during the pendency of the Second Appeal, this Court passed an order on 16.4.1986 in C.M.P. Nos. 1282 and

3576 of 1986 directing the appellant to pay a sum of Rs. 5,000/- to the 1st

respondent and another sum of Rs. 3,000/- to the 2nd respondent within a particular time fixed therein. It is represented that the said amounts were paid to the respondents in accordance with the said direction.

Learned Counsel for the respondents prays, that his clients should not now be made to refund the amounts paid to them in accordance with the orders of this Court on account of the dismissal of the suit. In enquiry, I think it is proper to give a direction to the appellant not to recover any amount from the respondents at present. The respondents will certainly be entitled to subsistence allowance during the period of suspension. On account of the dismissal of the suit, the respondents are deemed to be under, suspension from 7.1.1984 till this date and they will continue to be under suspension till further orders are passed by the Society. The amount that will be due to the respondents by way of subsistence allowance is not known at this stage. If the respondents are entitled to more than Rs. 8,000/- by way of subsistence allowance as on this date, they may make a claim to the appellant for the difference. On the other hand if the respondents have been paid in excess and the amount due to them by way of subsistence allowance as on this date is less than Rs. 8,000/-, then the difference will be adjusted as against the future subsistence allowance which may be due to the respondents. Appropriate orders may be passed by the Society in this regard.