(2009) 04 MP CK 0088

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5223 of 2008

Ramesh Sahu APPELLANT

Vs

State of M.P and Others RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Co-operative Societies Act, 1960 — Section 49E, 54, 69

Citation : (2009) 3 MPJR 106

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Judgement

Sanjay Yadav, J.

Appointment of respondent No. 4 as Incharge Managing Director, Madhya Pradesh Hathkargha Bunkar Sahkari Sangh Maryadit, Jabalpur by order dated 24.03.2008, is under challenge in this writ petition under Article 226/227 of the Constitution of India.

The petitioner, President Navdurga Hathkargha Vastrakala Avam Ruidhunkar Udyog Sahkari Samiti Maryadit, 901, South Miloniganj, Jabalpur, questions the appointment on the ground that the same is in violation of the provisions of Section 49-E of the Madhya Pradesh Cooperative Societies Act, 1960, (hereinafter referred to as the Act of 1960).

Madhya Pradesh Hathkargha Bunkar Sahkari Sangh Maryadit (hereinafter referred to as Apex Sangh) is a society registered under the provisions of the Act of 1960 and is an apex body of 491 primary Bunkar Sahkari Sangh and the petitioner is one such primary society.

The contention of the petitioner is that, presently Board of Directors of Apex Society is under supersession and its affairs are managed by an authorized officer, the respondent No. 2. It is contended that section 49-E of the Act of 1960 provides for an appointment of a Managing Director for every Apex Society where the State Govt. has contributed to its share capital or has given loans or financial assistance or has guaranteed the repayment of loans granted in any other form. It is urged that in the year 2004, the State Govt. vide order dated 14.07.2004 appointed one Shri Gar Singh Arya, Deputy Director, District, Handloom Office, Jabalpur, as the Managing Director. This appointment, it is urged, was in consonance to the provisions of section 49-E. However, subsequently, after his transfer, the petitioner, by virtue of impugned order was appointed as Managing Director, which as averred, is dehors the stipulations u/s 49-E which mandates that, a class-1 officer is to be appointed as Managing Director; whereas, the respondent No. 4 is not a Class-I Officer. It is further contended that, there are criminal cases pending against respondent No. 4 and therefore also he could not have been appointed as even incharge Managing Director. To substantiate his submissions the petitioner besides relying upon various complaints, report of preliminary enquiry, charge sheets and the note sheets which is being brought on record vide LA. No. 10769/08, also places reliance on the judgment in Gurdial Singh and others Vs. State of Punjab and others, ; wherein, it is urged that, an appointment having no sanction of law was held to be illegal. The petitioner thus seeks the quashment of appointment of the respondent No. 4.

The respondents No. 1, 2 and 5, while refuting the claim put forth by the petitioner, by filing a sketchy reply have to submit that, the respondent No. 4 who was working as incharge General Manager was given the additional charge of Managing Director as an interim arrangement, as section 49-E provides for constitution of committee at the State level for selection of Managing Director from the rank of Class-I Officer and pending such selection the interim arrangement has been made till a regular incumbent is appointed. These respondents do not deny the fact that respondent No. 4 is not a Class-I Officer and that "to the best of the information available some enquiry before Economic Offence Bureau is pending for investigation". The respondents have also brought on record, the correspondence dated 08.09.2008, 19.09.2008, and 27.09.2008, regarding the steps undertaken for appointing a regular Managing Director.

The respondents No. 3 and 4 on their turn besides justifying the order dated 24.03.2008, raised a preliminary objection as to maintainability of the petition. While justifying the impugned order it is urged by the learned counsel for the respondent No. 4 that, his is not an appointment but is only an assignment as incharge Managing Director and therefore the stipulations contained u/s 49-E are not attracted. Be it noted that this proposition of the respondent No. 4 that, the impugned order tentamouts to an assignment and not an appointment and therefore not covered by section 49-E is not supported by the State Govt. the author of order dated 24.03.2003. Moreover, the respondent No. 4 is unable to show any other provision than section 49-E providing for an appointment of incharge Managing Director. The contention of the respondent No. 3 that it is in exercise of its inherent power, the State Govt. has appointed the respondent No. 4 has no foundation of law and merits no consideration and therefore, rejected at the threshold.

Regarding the locus standi of the petitioner to maintain a writ petition under Article 226/227 of the Constitution of India it is urged that the petitioner is not a person aggrieved because he is not a claimant of the post of Managing Director, but is a busy body against whom action has been taken by the Apex body and thus has personal axe to grind against the action of respondents No. 3 and 4. Reliance is placed on the judgment tendered by the Apex Court in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, , Janata Dal Vs. H.S. Chowdhary and Others, and the order passed by this Court in Navdurga Readymade Handloom Vastrakala Avam Rui Dhunkar Udyog & another Vs. State of MP. and others W.P. No. 1445/2002 dated 19.03.2008. The respondent accordingly seeks dismissal of the petition.

Regarding the objection of maintainability of writ petition on the ground that petitioner has no locus standi to maintain the same, the verdict by the Apex Court in M.S. Jayaraj Vs. Commissioner of Excise : (2007) 7 SCC 552 would be sufficient to maintain the present petition because of the facts involved in the case at hand indicates that, the stipulation mandated by the statute has been given a go bye in appointing respondent No. 4. Whereas, the facts in Navdurga Readymade Handloom were altogether different-in that case the question for consideration was whether the primary society can question the winding up of the Apex body u/s 69 of the Act of 1960 when admittedly the Apex body did not question such action. And the principle enunciated in Jashbhai Motibhai Desai (supra) was considered by the Apex Court in the subsequent judgment i.e., M.S. Jayaraj Vs. Commissioner of Excise (supra) in following terms:

12. In this context we noticed that this Court has changed from the earlier strict interpretation regarding locus standi as adopted in Nagpur Rice & Flour Mills Vs. N. Teekappa Gowda & Bros, and Jasbhai Motibhai Desai Vs. Roshan Kumar and a much wider canvass has been adopted in later years regarding a person''s entitlement to move the High Court involving writ jurisdiction. A four-Judge Bench in Jasbhai Motibhai Desai pointed out three categories of persons vis-a-vis the locus standi : (1) a person aggrieved; (2) a stranger, and (3) a busybody or a meddlesome interloper. Learned Judges in that decision pointed out that anyone belonging to the third category is easily distinguishable and such person interferes in things which do to not concern him as the masquerades to be a crusader of justice. The judgment has cautioned that the High Court should do well to reject the petitions of such busybody at the threshold itself. Then their Lordships observed the following (SCC P. 683, para 38)

The distinction between the first and second categories of applicants, though real, is not always well demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be persons aggrieved.

A recent decision delivered by a two-Judge Bench of this Court (of which one of us is a party-Sethi, J.) in Chairman, Railway Board Vs. Chandrima Das after making a survey of the later decisions held thus; (SCC pp. 478-79, para 17)

In the context of public interest litigation, however, the Court in its various judgments has given the widest amplitude and meaning to the concept of locus standi. In People''s Union for Democratic Rights Vs. Union of India it was laid down that public interest litigation could be initiated not only by filing formal petitions in the High Court but even by sending letters and telegrams so as to provide easy access to court. (See also Bandhua Mukti Morcha. Vs. Union of India and State of H.P. Vs. A Parent of a Student of Medical College on the right to approach the court in the realm of public interest litigation). In Bangalore Medical Trust Vs. B.S. Muddappa the Court held that the restricted meaning of aggrieved person and the narrow outlook of a specific injury has yielded in favour of a broad and wide construction in the wake a of public interest litigation. The Court further observed that public-spirited citizens having faith in the rule of law are rendering great social and legal service by espousing causes of public nature. They cannot be ignored or overlooked on a technical or conservative yardstick of the rule of locus standi or the absence of personal loss of injury. There has, thus, been a spectacular expansion of the concept of locus standi. The concept is much wider and it takes in its stride anyone who is not a mere ''busybody''.

In view of the law laid down vide above judgment, this Court is of the considered opinion that the present writ petition is maintainable at the instance of the petitioner and therefore the preliminary objection raised by the respondent No. 3 & 4 is hereby negatived.

The only issue which now remains for consideration is whether the appointment of respondent No. 4 is valid.

Section 49E of the Act of 1960 governs the appointment of Managing Director. It is in following terms :

49-E. Appointment of Managing Director and Chief Executive Officer in certain circumstances:

(1)(a) Notwithstanding anything contained in this Act or the Rules or byelaws made thereunder for every Apex Society where the State Government has contributed to its share capital or has given loans or financial assistance or has guaranteed the repayment of loans, debentures or advances or has given grants in any other form, there shall be a Managing Director not below the rank of Class I Officer to be appointed by the State Government.

(b) The Managing Director shall be ex-officio member of the committee.

(c) The Managing Director shall be the Chief Executive officer of the society and shall perform such duties and exercise such powers as may be prescribed.

(2) (a) Notwithstanding anything contained in this Act, or the Rules or byelaws made thereunder for every Central society where the State Government has contributed to its share capital or has given loans or financial assistance or has guaranteed the repayment of loans, debentures, or advances or has given grants in any other form, there shall be Managing Director or a General. Manager not below the rank of Class-II Officer who shall be the Chief Executive Officer of the society and ex-officio member of the committee.

(b) The Chief Executive Officer shall be appointed:

(i) from among the officers of the cadre maintained u/s 54 if such a cadre has been created;

(ii) in other cases with the prior approval of the Registrar.

(c) The Chief Executive Officer shall perform such duties and exercise such powers as may be prescribed.

The respondent No. 4 admittedly is not a Class-I Officer and thus is not eligible for appointment as Managing Director, that being so, the order of appointment being dehors the statutory provision is a nullity and is liable to be set aside and is accordingly set aside. The respondent/State shall forthwith take away the charge from the respondent No. 4.

The petition is allowed to the extent above. No costs.