
(1958) 12 MP CK 0020

In the Madhya Pradesh High Court

Case No : Civil Miscellaneous Case No. 56 of 1955

Ramnath Sharma

APPELLANT

Vs

State of M.B. and Others

RESPONDENT

Date of Decision : 30-12-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : AIR 1959 MP 218 : (1959) 1 LLJ 618 : (1960) 5 MPLJ 715

Hon'ble Judges : H.R. Krishnan, J;A.H. Khan, J

Bench : Division Bench

Advocate : Puttulall Dubey, for the Appellant; Mungre, for the Respondent

Final Decision : Dismissed

Judgement

H.R. Krishnan, J.

This is an application under Article 226 of the Constitution, by the Manager of the Gird District Co-operative Bank Ltd., who was removed by the order of the Registrar Co-operative Societies, under Rule 52(2) of the Gwalior Co-operative Societies Rules, Sm. 1997 framed u/s 78 of the Gwalior Co-operative Societies Act, 1997, continuing at the time to be in force, as being deemed to have been made under the corresponding Section 82 of the Madhya Bharat Co-operative Societies Act, 1.955,

The questions for consideration are:

(1) Whether, in general, the High Court will entertain applications under Article 226 of the Constitution by the employees of a Bank or a Corporation (other than a statutory corporation created by statute),

(2) Whether on the principles of natural justice the High Court can insist on such a corporation following the Article 311 of the Constitution in dealing with its employees, and

(3) Whether powers of executive direction given by statute to the Registrar Co-

operative Societies to check abuses and secure the proper function of co-operative banks, are subject to the High Court's supervision or direction exercised by writs under Article 226 of the Constitution.

The facts of the case are simple. The applicant used to be the manager of the Gird District Co-operative Bank Ltd. Sometime towards the end of 1955 the Bank's affairs were found to be in unsatisfactory state, and the Registrar, Co-operative Societies, made certain investigations. On 1-10-1955 he wrote to the Vice-Chairman (the Chairman being ex-officio the Collector) who is the person in charge of the day-to-day working of the Bank, regarding irregularities noticed in the transactions or the Bank's Branch at Dabra.

The Registrar held the Manager as well as the Agent responsible, and wanted to know of the action the Board (of the Bank) was taking or had taken against him. No time limit was fixed for the Board's reply, which obviously meant that it should be immediate or early; the Registrar, in fact, was already camping at Gwalior to see the matter through. Besides this, he wanted certain loans to be recovered and the losses made good and threatened to hold the Board itself responsible. For this he gave time till the 5th November.

I am mentioning this particularly, because one argument of Shri Dubey, counsel for the applicant, was that the 5th November was the date fixed for the Board's explanation of what it was doing in regard to the management; that is not correct. The Registrar waited for a week; as no reply was given by the Board, he wrote to the Vice-chairman on the 7th October holding the Manager and the Agent to be responsible for the irregularities and directing under Rule 52(1) of the Gwalior Co-operative Societies Rules, 1997 that these employees, being unfit to hold any responsible post under the Bank, should be removed from service. He wanted a compliance report by 9-10-55.

The Bank, however, was not anxious to obey the order of the Registrar. On the contrary. it entered into a lengthy correspondence and comments indicating that it was not prepared to obey the Registrar. Rule 52 has provided for such a contingency also. Normally, after investigating and hearing the bank, if it has anything to say, the Registrar will order it to remove the offending employee.

But if it happens, as here, that the bank or the society contumaciously refuses to obey, the Registrar himself can order under Rule 52(2) that the employee is removed. A pertinaciously bad society or bank can be dealt with, by the supersession of the Board. In fact, we are told the Board has been superseded, and that another application has been filed by it. But that is another matter.

The first question in all such cases is, whether, generally speaking, it would be proper for a High Court to issue a writ or direction on a company or a cooperative society, for "any purpose other than the enforcement of fundamental rights." Though raised from time to time in the courts, and before the Supreme Court itself in *The Nagpur Electric Light and Power Co., Ltd. and Others Vs. K. Shreepathirao*, no straight answer has yet been given.

However, the considerable body of case law that has already developed, gives unmistakable indications. Unlike Article 32, Article 226 is not restricted to the enforcement of fundamental rights alone, and in theory enables the issue of writs and directions on any person or authority including any Government for "any other" purpose as well. Interpreted literally, it may even come to mean that the High Court can issue a writ or direction in regard to any dispute of whatever nature, between any persons whomsoever, prescribing it as the most universal and general remedy, for each and every conceivable dispute and criminal charge.

If this is acted upon, cases, law suits, and proceedings before the courts and tribunals will become special remedies while the writ or direction will be the general one. Certainly, this was not the Intention of the framers of the Constitution, nor the practice of the High Courts. Quite on the contrary, it has been the practice to treat this as an extraordinary remedy, for very special cases, and one against either a government or other authority of public importance.

Though there is nothing in the wording of Article 226 preventing the court in issuing a writ or direction in regard to a purely private dispute on contract or tort, courts never issue it, for the very simple reason that there is another judicial machinery competent to deal with it. In the enforcement of the fundamental rights, the position is simple; but even there, it will be inconceivable that an authority other than the State as defined in Article 12 will be directed by writ.

This is because, for one thing, most fundamental rights are to be respected expressly by the State, to another, any breach or invasion of a fundamental right, by private individual or body, will, by its very nature, turn out to be either a penal offence or one of the nature of tort, for which there are remedies under the general law.

In addition to the departments of the governments and local authorities, there are a number of corporations created by statute, statutory corporations properly so called often owned by government, and almost invariably subject to the considerable control of a State Government or the Union Government. These may be commercial or trading corporations, or non-commercial ones like Universities. Broadly speaking they partake of the nature of State as defined in Article 12; they have been treated as amenable to the writs and similar directions.

There are, on the other hand, a number of Banks or banking or commercial corporations not created by statute, but incorporated or registered under it, and subject to it, and such rules and regulations as might be made under it. The Joint Stock companies are a genus by themselves; other genera are the societies registered under the Societies Registration Act, and Cooperative Bodies constituted and working under different State enactments.

They are not departments of government, or statutory corporations, but are private juristic persons, subject certainly to the laws and regulations applicable.

They might enter into various contracts for employment or for commercial activities that are obviously subject to the general and special laws. These bodies form, as it were, a three tier system. There are employees or other contracting parties with a nexus with the corporate bodies that is purely contractual.

It is for the courts to decide upon the legality or otherwise of the contracts, and to award the appropriate remedies under the general Law. Then there are corporations themselves. Thirdly, there are controlling authorities empowered to enforce the special law on the corporations. The joint Stock Companies, for example, are subject to the control of the Registrar, and of the High Court for certain purposes. A co-operative society or bank is similarly subject to the Registrar of Co-operative Societies; but then there is no nexus between these controlling authorities on the one hand and on the other, those who might -be dealing with these corporations.

These controlling authorities are "State" as defined in Article 12 and, if they abuse their powers or violate any provision of the law, the aggrieved corporation can seek a remedy by way of a writ; but the employee or a third party contracting with the corporation cannot seek the remedy of a writ against it, because the offending corporation is not State as defined in Article 12 of the Constitution and exercises no public functions.

Let us take the case of a Co-operative Society. Often does the State Government exercise considerable control over it that is much more than that over joint stock companies, and on the societies registered under Societies Registration Act. In return, the, co-operative societies and banks for their part receive various concessions and advantages and guarantees which are not available to joint stock companies.

All the laws and regulations relating to co-operative societies are thus a code enacted or made for the benefit of the public in general and in particular the rural agricultural community, which forms a very considerable proportion of the citizens. Whether any particular control provision in the statute or the rules is valid or ultra vires, is certainly a question that can be raised under Article 226, either on the ground of repugnancy to a fundamental right, or on the ground of violation by the State of the principles of natural justice.

It is also conceivable that the controlling authority can be called upon under Article 226 to justify any order it might have passed or any step it might have taken. But such is not the position when the society itself deals with somebody with whom it has a purely contractual nexus. Theoretically, it is possible that a contract between a society and an employee Of other person, is void for repugnancy to one of the statutory provisions; in such cases the contracting party is not likely to have any remedy even in the ordinary law courts. Normally, on the basis of contract that is good and not repugnant to any law there will be a remedy in these courts.

I find, therefore, the powers under Article 226 can be exercised only for the

enforcement of a fundamental right, or where a government or an authority coming under the definition of State in Article 12 has to be directed to stop an illegality or abuse of power, against which the aggrieved party has no other practicable remedy. A joint stock company or a co-operative society or bank, not being State under Article 12 cannot be so directed. The aggrieved party has to seek its remedy in the ordinary law courts.

The second question here is, how far the applicant is entitled to the benefit of the procedure laid down in Article 311 of the Constitution, The applicant has assumed this as an axiom, but I am unable to see where at all he gets it from. The constitution does not say and cannot obviously say that whenever any individual or company within the territories of India chooses to employ somebody it should give him all the benefit of this Article; that would be to bring all social and commercial life to a virtual stand-still. It is for contract inter partes and as long as any employment contract does not offend the law, the courts will enforce it.

Even in the case of statutory corporations or local authorities Article 311 does not apply ipso facto; but often the law and regulations have provided for a similar procedure. In the case of a co-operative society the employment contract would be interpreted as it stands, without the introduction of the principle of Article 311 of the Constitution. It is also obvious that the manager or other employee of a co-operative society is not a member of the civil service of the State or of the Union. Thus, the applicant can make no grievance of the absence in his dismissal, of the preliminary ritual prescribed by Article 311.

In this case, arguments have been directed against the measures taken by the Registrar of Cooperative Societies under two sub-rules of Rule 52. This is a statutory rule originally made u/s 78 of the Gwalior Co-operative Societies Act; that Act has been repealed by the M. B. Co-operative Societies Act, 1955. In the new Act there is a rule making Section 82 exactly on the same lines of Section 78 of the Gwalior Act. No rules have been made under the now Act, at any rate, had not been made at the relevant time, the older rules under the repealed Act, therefore, continue to be operative under Sections 4 and 83 of the M. B. Co-operative Societies Act, 1955. There is no allegation in this case that the Rule 52 itself is ultra vires of the Constitution, or illegal for any other reason. The grievance is about the manner of its application.

As already noted, the co-operative societies and banks are a particular genus of joint ventures, which in the interest of the public in general, get, on the one hand, certain concessions from the Government, and on the other, are subject to its control. One form of control is inspection, guidance, and direction, by the Registrar. If on inspection the Registrar comes to certain conclusions about the manner in which the society or the bank is functioning, it is entirely his look-out and not the business of the High Court. If he is dissatisfied he is empowered to take different steps. Rule 52(1) for example, runs thus:

"Expulsion or removal of a member or an officer.

(1) Notwithstanding anything contained in these rules or the bye-laws of a society, the Registrar may, by an order in writing, require a society to expel any member or to remove any officer from his office within such time as he may specify in such order, if such expulsion or removal appears to him to be necessary or desirable in the interest of the society."

For acting under Sub-rule 1 he need alone pass orders requiring that an officer should be removed.

In case, he feels that the matter is urgent and the offending officer is likely to do mischief he could order immediate removal. He is not at all bound to ask the society (that is its managing board) to show cause. In fact, the inspection which he would hold would be the inquiry; & he is not bound to make a second inquiry. Like all executive power it has necessarily to be exercised promptly and without any dilatory proceedings, if at all it is to be effective.

In course of the argument something like "natural justice" has been mentioned; I do not see how natural justice has been offended here. The Registrar finds that the society or bank, is going the hard way, and considers that it is desirable and necessary in the interest of the society itself, that a particular officer should be removed. He is not convicting anybody for a criminal offence nor is he in this proceeding calling upon anybody to make good the losses. For that there will be separate proceedings. Actually the Registrar was even in this case giving about a week for the Board to give its explanation. That was not necessary under the rule and was a special concession.

Sub-rule (2) runs thus:

"If such society fails to comply with such order within the time specified therein, the Registrar may, after giving the society an opportunity of being heard, and consulting the Bank. If any, financing (sic) issue an order expelling the said member from the society or removing the said officer from his office and the said member or the said officer shall be deemed to have been expelled from the society or removed from his office from the date of such order".

This is a mere drastic provision and provides for an opportunity to the society to show cause. In fact, this sub-rule comes in when the society is, as it were, guilty of contumacious conduct. The opportunity was given in this case. The society thought, however, that this opportunity could be converted into an occasion for endless discussion, while retaining the offending employees all the time. The Registrar, however, refused to be side tracked. He considered the cause for what it was worth, and then himself removed the officer under Sub-rule (2).

Certainly, this court cannot go into the merits of the Registrar's order.

We cannot, for example, try to find out whether the society's affairs were really as bad as found by the Registrar, or whether the manager was really responsible

for this state of affairs as found by him, and whether after all, the Registrar should not have entered into the endless discussion and verbiage in which the Society's Managing Board was wallowing. I find nothing in the orders passed by the Registrar under both the sub-rules, they could not be made under Rule 52 of the Gwalior Co-operative Rules or repugnant to any section of the Madhya Bharat Co-operative Societies Act, 1955, as for that matter.

In the result this application is dismissed, costs to the contesting non-applicant (government) No. 3 and pleader's fee of Rs. 100/-.

A. H. KHAN. J: Considering the case on merits, a discussion of which is to be found in the order proposed by my learned brother. I am of the opinion that this is not fit case for invoking the extraordinary powers under Article 226 of the Constitution. I agree that the petition be dismissed as ordered above.