
(2010) 04 AHC CK 0312
In the Allahabad High Court
Case No : C.M.W.P. No. 16087 of 2008

Ranpal Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Citation : (2010) 4 AWC 3784

Hon'ble Judges : Sabhajeet Yadav, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sabhajeet Yadav, J.—Heard Sri R. C. Gupta, learned Counsel for the petitioner and Sri Siddharth for respondent No. 2 as well as Sri Maya Shanker Srivastava holding brief of Addl. Solicitor General of India for respondent No. 3.

2. By this petition, the petitioner has challenged the order dated 28.2.2008. passed by Managing Director, Uttar Pradesh Sahkari Avas Sangh Ltd.. Lucknow whereby while working on the post of Assistant Accountant at Ghaziabad Branch of the U. P. Sahkari Avas Sangh, he was placed under suspension with immediate effect in purported exercise of power under Regulation 85 of Uttar Pradesh Co-operative Societies Employees Service Regulation, 1975 by respondent No 2. Vide Misc. Application No. 23030 of 2009 further relief of staying the disciplinary inquiry initiated by respondents No. 2 and 3 and staying of show-cause notice dated 28.11.2008 issued by concerned respondent have also been sought for.

3. The brief facts leading to the case are that the petitioner was appointed as Assistant/Cashier in U. P. Sahkari Avas Sangh Ltd. and posted at Agra on 1.5.1987, after serving sometime at Agra he was transferred to several places during his service career and" on 28.5.2005 he was posted as Assistant Accountant at Ghaziabad Branch of Uttar Pradesh Sahkari Avas Sangh Ltd. While he was serving at Ghaziabad Branch, on a complaint made by Pyare Lal on 24.1.2008 a preliminary inquiry was held by Sri Om Prakash, Assistant General

Manager of Ghaziabad Branch thereupon he was placed under suspension and further disciplinary inquiry was initiated against him. In pursuant thereto a charge-sheet dated 1.8.2008 was served upon him. The petitioner had challenged the disciplinary inquiry initiated against him by filing Writ Petition No 66243 of 2008 before this Court but same was dismissed as withdrawn with liberty to challenge the same in the instant writ petition consequently the petitioner has moved the M.A. No. 23030 of 2009, challenging the said disciplinary inquiry initiated against him.

4. It is stated that Uttar Pradesh Sahkari Avas Sangh Ltd. was initially constituted and was registered as an Apex Society under U.P. Co-operative Societies Act, 1965 (hereinafter referred to as the "State Act") in the year 1969 mainly with the object of developing housing activities in the urban areas of State of Uttar Pradesh in Co-operative Sector. The aforesaid society was having large number of Primary Co-operative Housing Societies of the State as its members. Besides primary housing co-operative societies, large number of individuals of the State of Uttar Pradesh also became its members by subscribing to membership of Avas Sangh according to its Bye-laws. It is stated that from the date of enforcement of U.P. State Re-organization Act, 2000 w.e.f. 9.11.2000, the State of Uttar Pradesh was divided into two States. Hill area of State of Uttar Pradesh was carved out as a separate new State of Uttaranchal. It is stated that since the area of operation of Avas Sangh immediately before the date of reorganization of State was throughout the territory of State of U.P. and after its bifurcation and emergence of Uttaranchal as a new State the activities of Avas Sangh remained intact as such by virtue of the provisions of the Section 95 of the Multi-State Co-operative Societies Act, 1984 (hereinafter referred to as the Central Act, 1984.) the object of the U. P. Sahkari Avas Sangh Stood extended from one State to another State, consequently it became Multi State Co-operative Society. It is also stated that loaning and other activities of Avas Sangh was throughout operative in both the States, i.e.. State of U. P. as well as State of Uttaranchal. For conducting, controlling and regulating its business activities of Avas Sangh in State of Uttaranchal it had established two offices one at Haldwani and another at Dehradun and they are still functioning on the aforesaid places.

5. It is stated that the Central Registrar of the Multi-State Co-operative Societies had also registered the Avas Sangh as Multi-State Co-operative Society vide order dated 14.2.2001. under the provisions of Central Act, 1984. The said registration certificate is on record as Annexure-2 of the writ petition. It is stated that after becoming U.P. Sahkari Avas Sangh Limited as Multi-State Co-operative Society u/s 95 of the Central Act, 1984, in a specially convened meeting of General Body held on 3.7.2001 it was decided to change its name from U.P. Sahkari Avas Sangh Ltd. to Uttar Bhartiya Sahkari Avas Nigam Ltd. and amended its bye laws as per provisions of the Central Act, 1984. As per request of the Board of U.P. Sahkari Avas Sangh Ltd. the Central Registrar issued another certificate of registration on 15.10.2001 u/s 11(2) of the Central Act, 1984, whereby the name of U. P. Sahkari Avas Sangh Ltd. was changed as Uttar

Bhartiya Sahkari Avas Nigam Ltd., Lucknow. A true copy of amended certificate of registration dated 15.10.2001 is on record as Annexure-3 of the writ petition. It is further stated that since the bye laws of Avas Sangh registered under the State Act became inconsistent or irrelevant in some respect, therefore, it was decided by its General Body to frame bye laws consistent with the provisions of Central Act, 1984 accordingly, in a special General Body meeting the bye laws as framed for the purpose was adopted as bye laws of Uttar Bhartiya Sahkari Avas Nigam Ltd. and same was submitted to the Central Registrar who thereupon approved and registered the same.

6. It is further stated that the Avas Sangh has its own service regulations for regulating the service conditions of its employees. These regulations were earlier framed under the provisions of the State Act and Rules. However after the emergence of institution as a Multi-State Co-operative Society new service rules consistent with the Central Act, 1984 were framed by Avas Nigam in exercise of its power u/s 42(2) (d) and (e) of the said Act. Thereafter, the Multi-State Co-operative Societies Act, 2002, hereinafter referred to as the new Central Act, 2002, came into force w.e.f. 19th August, 2002. By virtue of provisions of Section 126(1) of the New Central Act, 2002, the Multi-State Co-operative Societies Act, 1984 was repealed and by virtue of Sub-sections (2) and (3) of Section 126 of the New Central Act, 2002, any notification, rule, order, registration, certificate, notice, decision, direction, approval, authorization etc. made, issued, given or done under the Multi-State Co-operative Societies, 1984 if were in force, are made continued to be in force and have effect as made, issued, given or done under the corresponding provisions of the New Central Act, 2002 and any Multi-State Co-operative Society existing immediately before commencement of the New Central Act, 2002, which was registered under old Central Act, 1984 is deemed to be registered under corresponding provisions of the New Central Act, 2002 and the bye laws of such Society shall in so far as they are not inconsistent with the provisions of the New Central Act, 2002 or Rules are made to be continued in force until altered or rescinded. In this view of the matter it is stated that with effect from the date of commencement of the New Central Act, 2002 the Avas Nigam stood automatically registered under the corresponding provisions of the New Central Act, 2002.

7. It is further stated that after enforcement of the New Central Act, 2002 it was felt by Avas Nigam that some amendment be made in bye laws to make it consistent with the provisions of the New Central Act, 2002, accordingly, in the specially convened General Body meeting of Avas Nigam held on 20.7.2003 it was resolved to amend the bye laws in the manner and to the extent mentioned thereunder. The amendments were duly notified to the Central Registrar by letter dated 28.7.2003, despite thereof the respondent No. 3 on instruction of Managing Director has given charge-sheet to the petitioner under the provisions of the State Act and thereafter additional charge-sheet was given on 11.9.2008 under the same Act. The same are on record as Annexures-3 and 4 of the affidavit filed in support of misc. application. After receiving the charge-sheet as

well as additional charge the petitioner requested the respondent No. 3 to supply certain documents relating to the said charge-sheet so that he can establish his innocence in the pending disciplinary inquiry. Such letters given by the petitioner to the respondents on 21.8.2008, 5.9.2008, 9.9.2008, 20.9.2008, 15.10.2008 and 14.11.2008, are collectively filed as Annexure-5 of the affidavit filed in support of misc. application. It is stated that the petitioner was constantly informing the Inquiry Officer as well as higher authorities regarding the fact that no disciplinary inquiry can be initiated by the respondents under the State Act, but utter surprise to the petitioner an ex parte disciplinary inquiry was held against the petitioner and a show-cause notice was served upon him on 1.12.2008. A photostat copy of show-cause notice dated 28.11.2008 contained in Annexure-6 of the affidavit filed in support of misc. application shows that it was issued under the provisions of U.P. Co-operative Societies Employees Service Regulations, 1975. However, the petitioner has replied the said show-cause notice but the documents asked by the petitioner were not supplied by the respondents. The petitioner has challenged the entire disciplinary proceeding including the order of suspension passed against him on the ground that the provisions of State Act and Regulations framed thereunder are not applicable in respect of disciplinary inquiry held against him and action taken thereunder by respondent authorities is wholly erroneous and is beyond the scope of authority under law.

8. The submission of learned Counsel for the petitioner in nutshell are that the petitioner was Assistant Accountant in Ghaziabad Branch of Uttar Pradesh Sahkari Ayas Sangh Ltd. which was an Apex Co-operative Society registered under the provisions of the State Act. The area of operation of the aforesaid Co-operative Society immediately before the commencement of U. P. State Re-organization Act, 2000, was throughout the territory of erstwhile State of Uttar Pradesh, and on emergence of new State of Uttaranchal the area of operation of society was remained intact and automatically stood extended in both the States, by virtue of provisions of the Section 95 of the Central Act 1984, and the Uttar Pradesh Sahkari Ayas Sangh, from the date of reorganisation of State of U. P. became a Multi-State Co-operative Society and further it was deemed to be a Multi-State Co-operative Society registered under the corresponding provisions of the Central Act, 1984. The bye laws of said society in so far as they were not inconsistent with the provisions of the Central Act, 1984 were made continued to be in force until altered or rescinded. It is further submitted that under the provisions of Section 42(2) (d) and (e) of the Central Act, 1984, the Board of society was empowered to frame its own regulations regulating the appointment of employees, scale of pay, allowances and other conditions of service including disciplinary action against such employees and the society in question has also framed such regulation in respect of its employees. It is further submitted that although the provisions of aforesaid. Central Act, 1984 have been repealed by new Central Act, 2002, w.e.f. 19.8.2002 but by virtue of provisions of Section 126 of the New Central Act, 2002 any thing done under the old Central Act, 1984

has been saved and continued to be in force as if the same has been done under the corresponding provisions of the New Central Act, 2002.

9. In the wake of the aforesaid statutory provisions and facts and circumstances of the case learned Counsel for the petitioner has submitted that on re-organization of State of Uttar Pradesh w.e.f. 9.11.2000 since the earlier existing co-operative society namely U.P. Sahkari Avas Sangh has become Multi-State Co-operative Society, therefore, U.P. Co-operative Societies Employees Service Regulations, 1975 framed under the provisions of the State Act have no application in respect of employees of U.P. Sahkari Avas Sangh Ltd. which became Multi-State Co-operative Society as the said regulations framed under State Act have become inconsistent to the provisions of Central Act, 1984 and 2002, and the new regulations under the provisions of the Central Act, 1984 has already been framed by Avas Sangh governing the conditions of service and disciplinary action in respect of employees of Avas Sangh, as such any action taken under the provisions of regulation framed under State Act is beyond the scope of authority under law and is null and void ab initio. Accordingly, the order of suspension passed by the concerned respondent and disciplinary inquiry held against the petitioner under the provisions of Regulation 85 of 1975 Regulations is without any authority of law, and is liable to be struck down by this Court. In support of his submission learned Counsel for the petitioner has also placed reliance upon a recent decision of Hon"ble Apex Court rendered in Naresh Shankar Srivastava Vs. State of U.P. and Others, wherein the Hon"ble Apex Court had occasion to consider similar controversy as involved in instant case.

10. Contrary to it learned Counsel for respondents have made attempt to defend the impugned action taken against the petitioner but could not place any justification for impugned action.

11. Having regard to the aforesaid submissions, the questions which arise for consideration are as to whether on reorganisation of State of U. P. under U. P. State Re-organization Act, 2000, w.e.f. 9.11.2000 the Uttar Pradesh Sahkari Avas Sangh Ltd., Lucknow, has automatically become Multi-State Co-operative Society by virtue of Section 95 of the Central Act, 1984? If so, as to whether the action taken against the petitioner under the provisions of Regulation 85 of U. P. Co-oprative Societies Employees Service Regulations, 1975 is beyond the scope of authority under law?

12. In order to appreciate the aforesaid controversy it would be useful to refer the relevant provisions of the Central Act, 1984. Section 95 of the Central Act, 1984 deals with the matter relating to societies which become Multi-State Co-operative Societies consequent upon re-organisation of States. The provisions of Section 95(1) are extracted as under:

95. Co-operative Societies functioning immediately before re-organisation of States.-(1) Where by virtue of the provisions of Part II of the State Reorganisation Act, 1956, or any other enactment relating to reorganisation of

States any co-operative society which immediately before the day on which the reorganisation takes place had its objects confined to one State becomes, as from that day, a Multi-State Co-operative Society, it shall be deemed to be a Multi-State Co-operative Society registered under the corresponding provisions of this Act and the bye laws of such society shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force until altered or rescinded.

13. From a plain reading of Section 95(1) of Central Act, 1984 it is clear that by virtue of the provisions contained therein any co-operative society which immediately before the day on which reorganisation of State takes place, had its object confined to one State, becomes, as from that day a Multi-State Co-operative Society on account of reorganisation of States. Not only this but such Multi-State Co-operative Society shall also be deemed to be registered under the corresponding provisions of Central Act, 1984 and the bye laws thereof, shall in so far as they are not inconsistent with the provisions of Act, 1984 continue to be in force until altered or rescinded. Thus, by operation of provisions of Section 95(1) of Central Act, 1984 the co-operative society which Was operative in one State immediately before the reorganisation of State becomes Multi-State Co-operative Society from the date of reorganisation of States and the object of such co-operative society which had confined to one State, stands automatically extended to another State created due to such reorganisation of States. Such Multi-State Co-operative Society even does not require formal registration under the Central Act, 1984, rather the provisions of Section 95(1) of the Act itself creates legal fiction by employing deeming provisions therein for such registration of such Multi-State Co-operative Societies under the corresponding provisions of Central Act, 1984 Act.

14. In this connection, it would be useful to extract few passage from the Legislation and Interpretation (4th Edition pages 307 to 311) by late Sri Jagadish Swarup, former Solicitor General of India, wherein the learned author has explained the meaning and import of the legal fiction created by deeming provision under a statute as under:

Legal fictions are created only for some definite purpose; they should be limited to the purpose for which they are created and should not be extended beyond that legitimate field. The Bengal Immunity Company Limited Vs. The State of Bihar and Others, Braithwaite and Co. (India) Ltd. Vs. The Employees' State Insurance Corporation, Commissioner of Wealth Tax, Andhra Pradesh Vs. Raja Velugoti Sarvagna Kumar Krishna Yachendra Bahadur and Others, The Commissioner of Income Tax, Bombay City I, Bombay Vs. Amarchand N. Shroff, by his heirs and Legal Representatives, and Commissioner of Income Tax, Madras Vs. Express Newspapers Ltd., Madras, The only limit on the power of a Legislature to create a fiction is that it should not transcend its power by its creation. Chandrana and Co. Vs. State of Mysore,

A legal fiction is one which is not an actual reality but which the law requires the

Court to accept it as a reality. Therefore, in case of legal fiction, the Court believes something to exist which, in reality, does not exist. In other words, it is nothing but a presumption of the existence of a State of affairs which in actual reality is non-existent. When viewed from this context there is not much difference between a legal fiction and presumption. However, it cannot be said that legal fiction and a presumption are wholly identical in all respects. A presumption may be conclusive or it may be rebuttable. A presumption gives rise to a legal fiction. It is conclusive, if no evidence can be permitted to be led to deny it. In case of a presumption which is rebuttable, unless the contrary is established, fictitious state of affairs is presumed to exist as if it is an actual reality.

A deeming provision creates a legal fiction. The effect of such a legal fiction is that a position which otherwise would not obtain is deemed to obtain under certain circumstances.

The deeming fiction cannot be introduced by construction and it is the exclusive privilege of the Legislature to apply a deeming fiction in a given case.

15. Now applying the aforesaid proposition of law in given facts of the case, I find that it is not in dispute that Uttar Pradesh Sahkari Avas Sangh was an apex co-operative society registered under the provisions of State Act. It is also not in dispute that the area of operation of said co-operative society was immediately before the reorganisation of State of U. P. under the provisions of U. P. State Reorganization Act, 2000 throughout the territory of erstwhile State of Uttar Pradesh and on emergence of another new State of Uttaranchal the area of operation of said co-operative society was remained intact, therefore, by virtue of provision of Section 95 of Central Act, 1984 the area of operation of said co-operative society stood automatically extended in both the States. Consequently, the Uttar Pradesh Sahkari Avas Sangh Ltd. has automatically become a Multi-State Co-operative Society from the date of reorganisation of State of U. P. In my opinion the society in question was deemed to be a Multi-State Co-operative Society registered under the corresponding provisions of Central Act, 1984, by legal fiction created by deeming provisions of Section 95(1) of the Central Act, 1984. In wake of such statutory provisions creating legal fiction for registration of such society, there can be no scope for doubt to hold that formal registration for becoming Uttar Pradesh Sahkari Avas Sangh Ltd. a Multi-State Co-operative Society was also, not required under the Central Act, 1984. The view taken by me hereinbefore also finds full support from law laid down by Hon"ble Apex Court in Naresh Shanker Srivastava's case (supra).

16. Section 3(a) of the Central Act, 1984, defined the expression, "Board" to mean the Board of Directors or the governing body of Multi-State Co-operative Society by whatsoever name called, to which the direction and control of the management of the affairs of the Society is entrusted. Section 32 of the said Act, provided that subject to provisions of said Act and Rules, there shall be a Board of Director for every Multi-State Co-operative Society consisting of such number

of members as may be provided for under the bye laws. Section 42(2) (d) and (e) of the said Act deals with the powers and functions of the Board which includes the power to make regulation regulating the appointment of employees and other conditions of service including the disciplinary action against such employees. The relevant provision of Section 42(2) (d) and (e) is extracted as under:

42. Powers and functions of the board.-(1) The board may exercise all such powers as may be necessary or expedient for the purpose of carrying out its functions under this Act.

(2) Without prejudice to the generality of the foregoing power, such power shall include the power:

(a)

(b)

(c)

(d) to appoint a Chief Executive and such other employees of the society (out of the list of persons referred to in Section 50) as are not required to be appointed by the Chief Executive,

(e) to make provisions for regulating the appointment of employees of the Multi-State Co-operative

Society and the scales of pay, allowances and other conditions of service of, including disciplinary action against such employees.

17. From a plain reading of the aforesaid provisions of the Central Act, 1984 it is clear that the Board of Co-operative Society constituted u/s 32 of the Central Act, 1984 was empowered to make regulations u/s 42(2) (d) and (e) of the Central Act, 1984. regulating the appointment and other condition of service including disciplinary action against the employees of such Multi-State Co-operative Societies. As indicated in the writ petition, while exercising the powers conferred under the aforesaid provisions of the Central Act, 1984 the Board of Uttar Pradesh Sahkari Avas Sangh, which was subsequently transformed into Uttar Bhartiya Sahkari Avas Nigam Ltd. has already framed such regulation, which has also been approved by the Central Registrar of Multi-State Co-operative Societies. Therefore, the U.P. Co-operative Employees Service Regulations, 1975 framed under State Act would be rendered inconsistent to the provisions of Central Act, 1984 as such, as contended by the learned Counsel for the petitioner, cannot be pressed into service to deal with the disciplinary inquiry of the petitioner, who has already become employee of the Multi-State Co-operative Society namely Uttar Bhartiya Sahkari Avas Nigam.

18. At this juncture, it is to be noted that although the Central Act, 2002 has repealed the Central Act, 1984, but the provisions contained u/s 42 and Section 95 of the old Central Act. 1984 have been re-enacted u/s 49 and Section 103

respectively of the new Central Act, 2002 in same terms and by virtue of saving clauses u/s 126 of the new Central Act, 2002, any thing done under the old Central Act, 1984 which was in force at the commencement of new Central Act, 2002 has been saved and treated to have been done under the said Central Act, 2002. The provisions of Sub-sections (1), (2) and (3) of Section 126 of the Central Act, 2002 are extracted as under:

126. Repeal and saving.-(1) The Multi-State Co-operative Societies Act, 1984 (51 of 1984) is hereby repealed.

(2) Without prejudice to the provisions contained in the General Clauses Act, 1897 (10 of 1897) with respect to repeals, any notification, rule, order, requirement, registration, certificate, notice, decision, direction, approval, authorisation, consent, application, request or thing made, issued, given or done under the Multi-State Co-operative Societies Act, 1984 (51 of 1984) shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provisions of this Act.

(3) Every Multi-State Co-operative Society, existing immediately before the commencement of this Act, which has been registered under the Co-operative Societies Act, 1912 (2 of 1912) or under any other Act relating to co-operative societies in force, in any State or in pursuance of the provisions of the Multi-unit Co-operative Societies Act, 1942 (6 of 1942), or the Multi-State Co-operative Societies Act, 1984 (51 of 1984) shall be deemed to be registered under the corresponding provisions of this Act, and the bye laws of such society shall, in so far as they are not inconsistent with the provisions of this Act, or the Rules, continue to be in force until altered or rescinded.

19. Thus, from a careful reading of the aforesaid provisions of Section 126 of the Central Act, 2002, it is clear that although by Sub-section (1) of said section the Central Legislature has repealed the Central Act, 1984, but by virtue of Sub-sections (2) and (3) of Section 126 without any prejudice to the provisions contained in the General Clauses Act, with respect to repeals, any notification, rule, order, registration, certificate, decision, direction, approval, authorisation or thing made, issued, given or done under Central Act, 1984, if were in force at the commencement of Central Act, 2002, are made continued to be in force and have the effect as if made, issued, given or done under the corresponding provisions of Central Act, 2002. Not only this but every Multi-State Co-operative Society existing immediately before the date of commencement of new Central Act, 2002, which has been registered under either of Acts referred in Sub-section (3) of Section 126 including under the Central Act, 1984 has been deemed to be registered under corresponding provisions of Central Act, 2002 and bye laws of such society in so far as they are not inconsistent with the provisions of Central Act, 2002 or the Rules, are made continued to be in force until altered or rescinded.

20. Now coming to the facts of the case again it is to be noted that the Uttar

Pradesh Sahkari Avas Sangh Ltd. was existing Multi-State Co-operative Society immediately before the commencement of new Central Act, 2002. The said Co-operative Society was deemed to be registered under old Central Act, 1984 and formal registration thereof was also effected by Central Registrar of Multi-State Co-operative Societies on 14.2.2001, as such by virtue of provisions of Sub-section (3) of Section 126 of Central Act, 2002 the said Co-operative Society shall be deemed to be registered under corresponding provisions of this new Central Act, 2002. Not only this but since the U. P. Sahkari Avas Sangh after becoming Multi-State Co-operative Society had already framed regulations u/s 42(2) (d) and (e) of the Central Act, 1984, for regulating the terms and conditions of services of its employees and were in force at the commencement of new Central Act, 2002, as such they are made continue to be in force by virtue of Section 126(2) of the Central Act, 2002, as if they are made in the said Central Act, therefore, the provisions of Regulation 85 of U. P. Co-operative Societies Employees Service Regulations, 1975 framed under State Act have no application in respect of employees of petitioner's Co-operative Society which is a Multi-State Co-operative Societies and action taken by respondents under the said Regulation against the petitioner is beyond the scope of authority under law and is void ab initio.

21. In view of foregoing discussions, the order of suspension passed against the petitioner by the concerned respondents and entire disciplinary inquiry held against him cannot be sustained and are liable to be quashed. Accordingly, the same are hereby quashed. In the result, the petitioner is reinstated in service with all consequential benefits of service including arrears of salary as back wage from the date of suspension till the date of such reinstatement. He shall further be paid his salary regularly month to month ignoring the order of suspension passed against him.

22. However, it shall be open for the competent authority under the provisions of Central Act, 2002 and Regulations framed thereunder to take any disciplinary action against the petitioner in respect of the charges levelled against him, if so warranted.

23. In this view of aforesaid observations and directions, writ petition succeeds and is allowed to that extent.

24. There shall be no order as to costs. The parties shall bear their own costs.