
(1959) 12 MP CK 0010
In the Madhya Pradesh High Court
Case No : C.M.A. No. 5 of 1955

Rewati Prasad Trilokchand and another	APPELLANT
Vs	
Morena Central Co-operative Bank Ltd.	RESPONDENT

Date of Decision : 24-12-1959

Acts Referred:

Gwalior State Land Acquisition Act — Section 45(1)

Citation : (1960) JLJ 234 : (1959) MPLJ 621

Hon'ble Judges : Shiv Dayal, J; A.H. Khan, J

Bench : Division Bench

Advocate : Patankar, for the Appellant; R.K. Dixit, for the Respondent

Final Decision : Dismissed

Judgement

Shiv Dayal, J.

This is a petition under Article 227 of the Constitution for quashing a judgment and award of the Development Officer and Assistant Registrar, Co-operative Societies, Morena.

The Morena Central Co-operative Bank Ltd., is a Co-operative Bank registered under the Co-operative Societies Act, Gwalior State, Samvat 1997 (hereinafter called "the Act"). On January 22, 1952, firm Phoolchand Padam Chand drew a hundi for Rs. 1,500 on themselves in favour of the said Bank. The money was repayable on March 22, 1952. Another hundi was similarly executed by the said firm in favour of the Bank on January 28, 1952, for Rs. 1,500, repayable on March 28, 1952, and a third hundi was likewise executed on February 11, 1952, for Rs. 1,500, repayable on April 12, 1952. Thus the total amount repayable was Rs. 4,500. Since the money due on these hundies was not repaid, the Bank started proceedings against the Petitioners before the Development Officer and Assistant Registrar Co-operative Societies Morena, under the provisions contained in the Act for such recovery. The Petitioners resisted the proceedings on several grounds. But we are concerned with only one of them as Shri

Patankar learned counsel for the Petitioners has confined his arguments to that point.

It is urged on behalf of the Petitioners that the Development Officer had no jurisdiction to take steps for the recovery under the Act. This objection was not precisely taken by the Petitioners before the Development Officer. There it was asserted that the civil Court alone had jurisdiction. However, it seems that it was orally agitated at the hearing but it was overruled. An appeal was taken to the Deputy Registrar of Co-operative Societies Madhya Bharat, Northern Circle, but it was dismissed.

It will be useful to set out in the beginning the provisions in the Act under which the impugned proceedings took place. Section 79 of the Act provides a machinery for the realization of loans advanced by a Society established under the Act. That section lays down that such unpaid loans may be recovered in the same manner as arrears of land revenue. Then the jurisdiction is provided in these words:

The Government Inspector Co-operative Societies is authorised to attach and sell subject to the procedure laid down in the rules in this behalf, the borrowers' property on the request of the Committee of Management or of any person authorized by them in this behalf.

Section 78 empowers the Government to make rules. In exercise of those powers, rules were framed by the then Government of His Highness the Maharaja Scindia. These rules (as also the Act) continue to be in force in those territories of Madhya Bharat which formed the erstwhile Gwalior State. Rule 46 provides:

On the request of the Committee or a Society.....the Government Inspector Co-operative Societies, shall realize the dues as the arrears of land revenue, provided that the Government Inspector, Co-operative Societies, shall not keep the defaulter in custody....

A detailed procedure is laid down in this rule and in the rules that follow it. Then Clause (3) of Rule 50 runs thus:

The powers vested in the Government Inspector Co-operative Society, according to the provisions of Sections 73 and 79 and under these rules shall be exercised by the District Inspectors Co-operative Society in each District or by an officer whom the Registrar may authorize by a special or general order which shall be published in the Gwalior Government Gazette.

(Section 73 is not material for our purposes).

The argument advanced on behalf of the Petitioners is that the delegation by the Government in favour of the Registrar to authorize an officer by a special or general order to exercise powers u/s 79 is illegal and ultra vires and since the present proceedings were taken before the Development Officer, who was

authorized by the Registrar by virtue of Rule 50 (3) by notification published in the M. B. Gazette dated December 30, 1950, the Development Officer had no jurisdiction.

The Learned Counsel for the Petitioners does not call in question the validity of Rule 50 (3) as such; what he challenges is the delegation to the Registrar of the power vested in the Government to appoint District Inspectors. In my opinion, the contention cannot be accepted for reasons more than one.

Section 78 (1) empowers the Government to frame necessary rules for the purpose of carrying out the aims and objects of the Act and it is then declared in the section:

The rules so framed shall be as binding as the provisions of the Act.

By virtue of this, Rule 50 (3) must be read as a part of the Act itself. If Section 50(3) had been embodied in the Act itself it could not be challenged as ultra vires. A distinction must be made between a rule which is enforceable because of a valid rule-making power, and a rule which is declared to be a part of the Act itself under which it is made. In the first case the rule can be enforced provided it does not come in conflict with any provision of the Act, and although it is made in exercise of the power conferred by the Act itself it has a separate entity. In that case, the ordinary rule of interpretation of statutes will apply, namely, that the rule which comes in conflict with a provision of the Act must be struck down. But in the latter case where the Act declares that the rules framed under the rule-making power shall be "as binding as the provisions of this Act", the rule cannot be struck down just for the reason that it is inconsistent with or repugnant to any provision of the Act. There the two provisions, namely, the rule and the section with which it conflicts shall be read together as two different provisions of the same statute. And the rule of interpretation to apply will be the one which governs contra-ty between two provisions of the same enactment.

The phrase "as binding as the provisions of this Act" is equivalent to the expression, "as if enacted in this Act". The latter is well-known, for it finds place in several English Statutes. In the leading case of *Institute of Patent Agents v, Lockwood* 1894 A.C. 347, Lord Herschell took that view and held that the effect of these words was to make the "subordinate legislation" as completely exempt from judicial review as the statute itself. To quote the passage:

My Lords, I have asked in vain for any explanation of the meaning of those words or any suggestion as to the effect to be given to them if, notwithstanding that provision, the rules are open to review and consideration by the Courts. The effect of an enactment is that it binds all subjects who are affected by it. They are bound to conform themselves to the provisions of the law so made. The effect of a statutory rule if validly made is precisely the same that every person must conform himself to its provisions, and, if in each case a penalty be imposed, any person who does not comply with the provisions whether of the enactment or the rule becomes equally subject to the penalty. But there is this

difference between a rule and an enactment, that whereas apart from some such provisions as we are considering, you may canvass a rule and determine whether or not it was within the power of those who made it, you cannot canvass in that way the provisions of an Act of Parliament....

I own I felt very great difficulty in giving to this provision, that they "shall be of the same effect as if they were contained in this Act", any other meaning than this, that you shall for all purposes of construction or obligation or otherwise treat them exactly as if they were in the Act. No doubt there might be some conflict between a rule and a provision of the Act. Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best you may. If you cannot, you have to determine which is the leading provision and which the subordinate provision, and which must give way to the other....

Although it is not necessary for the determination of this case to express an opinion upon it, yet, as the matter has been so much discussed, I think it only right to express the opinion which I entertain, that the words to which I have referred are really meaningless unless they have the effect which I have described, and they seem to me to be the apt and appropriate words for bringing about the effect which I have described. They are words, I believe, to be found in legislation only in comparatively recent years, and it is difficult to understand why they have been inserted unless with the object I have indicated.

Lockwood's case(1) was considered and distinguished in R. v. Minister of Health 1931 AC. 494 where Lord Dunedin said:

The confirmation makes the scheme speak as if it was contained in an Act of Parliament. But the Act of Parliament in which it is contained is the Act which provides the framing of the scheme, not the subsequent Act. If, therefore, the scheme, as made, conflicts with the Act, it will have to give way to the Act, the mere confirmation will not save it. It would be otherwise if the scheme had been, per se embodied in a subsequent Act, for then the maxim to be applied would have been "*posteriora derogant prioribus*."

In the case of Miler v. Birthman 1944 KB. 337, there appeared to be a repugnancy in the regulations, but there the difficulty was resolved into the fact that power was reserved to the Secretary of State to modify or extend by special regulation some of the provisions of the Act. Sir W. Graham Harrison has exhaustively reviewed Lockwood's case (1) and those cases in which it was cited. His own opinion is that these words are merely a survival of common form which may originally have served a useful purpose, but which, in view of the decisions of the Courts, has long ceased to serve any purpose at all (Notes on Delegated Legislation, page 66).

It is an uncontestible proposition that every rule made by a competent authority in exercise of power vested in it under a statute has the force of law. Therefore, if the expression "as binding as the provisions of this Act", merely connotes that

the rules so made shall be enforceable in a Court of law, it is unnecessary, superfluous and redundant. In particular it must be mentioned here that the Act was a piece of legislation of the erstwhile Gwalior State. It was not in all the laws of that State that this expression was invariably used in rulemaking provisions. For instance, Section 45(1) of the Gwalior State Land Acquisition Act is couched in these words:

The Government shall have power to frame rules from time to time for the guidance and instructions of officers for all matters relevant to this Act, but not inconsistent therewith and to amend such rules from time to time or add to them.

Other instances are the rule-making Section 44 of the Abkari Act, and the rulemaking Section 107 of the Excise Act, where the said expression or its equivalent was not employed. All this leads me to conclude that that phrase whenever used, it was used with a purpose, declaring thereby that the rules must be read as if they were embodied in a later part of the Act itself. On this analysis, I hold that the dictum of Lord Herschell must be applied here. I am also supported by the following discussion in *Emperor Vs. Abdul Hamid*, at p. 6:

Now "delegated" legislation falls under two main heads: first, rules, regulations and by-laws under the statute which provides that they shall have the same effect as if enacted therein, and secondly rules, regulations and by-laws made under the statute which does not in terms provide that they shall have the same effect as if enacted therein. The first usually consists of statutory rules, by-laws and regulations made by responsible authorities concerned with local Government; the second usually consists of by-laws and regulations made by persons, societies or corporations who are conducting commercial or other enterprises, whether of a public character or not. Now the distinction between the two is this that where the statute, under the authority of which the rules, regulations or by-laws are promulgated, itself declares that they shall have the same effect as if enacted in the statute, the validity of the rules, regulations or by-laws cannot be questioned in any Court of law, nor can the Courts quash them or reject them on the ground that they are uncertain or unreasonable. But where the statute does not so provide their validity can be canvassed in the Courts of law, and the Courts can reject them as unenforceable on the ground that they are uncertain or unreasonable.

All that discussion aside, according to the well-known principle of interpretation of statutes every rule made under an Act must as far as possible, be construed as being in consonance with the parent provision of the Act and the rule-making power conferred by the Act. Where such a course is not possible then it will certainly be the duty of the Court to hold the rule to be "ultra vires". But if the rule is ambiguous and open to two constructions one of which is in consonance with the parent provision in the Act and the rule-making power, then it is the duty of the Court to construe the rule in such a way as brings it in consonance with the provisions of the Act and the rule-making power. It was held in *Vysaraju Appala Narasimha Raju Vs. Brundavanasahu (died) and Others*,

If the reconciliation is found to be impossible between a section and the rules made thereunder and the latter is found to be in excess of the statutory power authorising them, the subordinate provision, as the rules framed happen to be, must give way and the portion of the rule in excess of the statutory power found to be invalid as being ultra vires of the rule-making power. But before doing so, the Court will have to struggle against such a construction and will have to make an effort within the bounds of reason to bring them within the ambit of the section if that can be possibly so done. This is because when a competent authority like the Governor-General in Council entrusted with the task of making rules exercise that power, the rules made by him should be made as far as possible supported even by a "benevolent" interpretation particularly when the result of holding otherwise would be to give rise to a conflict of jurisdiction. If in spite of this attempt, however the rule or any portion thereof is found to be manifestly beyond the power of the Governor-General in Council, there would be no other alternative but to declare it to be invalid.

I am clearly of the opinion that Rule 50 (3), when it confers the impugned power on the Registrar, accords with Section 3 (b) of the Act. There the expression "Government Inspector Co-operative Societies" is defined as to mean a person appointed by the Government on the post and also includes any such person appointed to perform any of the duties of that post. This means that the Government was competent to appoint any person, although he held a different designation, to perform the duties u/s 79 of the Act. Then, indeed it is undeniable that the Government can always make rules and regulations for the appointment of its officers and an officer appointed under such rules is an officer appointed by the Government. And if instead of making separate rules for the purpose, the Government under Rule 50 (3) set up a machinery for such appointment, i.e., entrusted it to the Registrar of the Co-operative Societies, the Head of the Department, I do not see what was wrong with the conferment of such a power of appointment. There is no delegation of any legislative function or rulemaking power. In that view of the matter the notification published in the Madhya Bharat Gazette dated December 30, 1950, whereby the Registrar Cooperative Societies authorized the Development Inspectors to exercise powers u/s 79 cannot be impeached with success.

For yet another reason the impugned appointment must be upheld. In Rule 50 (3) "District Inspectors Co-operative Societies" have also been empowered to exercise the powers vested in the Government Inspector u/s 79. The expression "District Inspector Co-operative Societies" has not been defined in the Act or in the rules. In its ordinary acceptation, that expression means Inspectors of the Co-operative Societies who are in charge of their respective Districts. Shri Dixit invites our attention to the notification contained in the Madhya Bharat Gazette dated April 2, 1949, whereby "Development Officers" have been designated as "Inspectors for Co-operative Societies" also, and they are placed in charge of their respective districts. From this it is obvious enough that a "Development Inspector" became also a "District Inspector of the Co-operative Societies" in his

District and, therefore, became empowered under Rule 50 (3) to exercise powers u/s 79 of the Act.

From whatever angle this case is looked at, the objection raised before us has no substance. The petition is accordingly dismissed. The parties shall be left to bear their own costs in this Court.

A.H. Khan, J.

I agree.