
(2012) 02 MP CK 0097

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 1065 of 2011

Sanjay Nagayach

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Co-operative Societies Act, 1960 — Section 53, 53(1), 78

Citation : (2012) 02 MP CK 0097

Hon'ble Judges : Sushil Harkauli, Acting C.J.; Tarun Kumar Kaushal, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sushil Harkauli, A.C. J.

1. The appellant before us is the Chairman of the Board of Directors/Managing Committee of the District Cooperative Central Bank Ltd., Panna (Madhya Pradesh). The Respondent No. 3 i.e. the Joint Registrar, Cooperative Societies, Sagar Division, Sagar, M.P., by his order dated 30.9.2011, superseded the Managing Committee/Board of Directors of the Bank for a period of one year and the Collector, Panna was appointed as the officer-in-charge.

2. The said order has been passed by the Joint Registrar in exercise of the powers conferred by Section 53 of M.P. Cooperative Societies Act 1960.

3. Section 53(1) permits the Registrar (Cooperative Societies), in the given circumstances, to remove the Board of Directors/Committee and to appoint a person or persons to manage the affairs of the society for a specified period not exceeding two years in the first instance.

4. The second Proviso to Section 53(1) reads as follows :-

Provided further that in case of a Cooperative Bank, the order of supersession shall not be passed without previous consultation with the Reserve Bank.

(Emphasis supplied)

5. The third Proviso to Section 53(1) says that if no communication containing the views of Reserve Bank of India in respect of the action proposed is received within 30 days of the receipt by the Reserve Bank of the "request soliciting consultation" it shall be presumed that the Reserve Bank of India agrees with the proposed action and the Registrar shall be free to pass such order as he may deem fit.

6. The appellant filed Writ Petition No.17059/2011 challenging the order dated 30.9.2011 passed by the Joint Registrar on the ground that there was no previous consultation with the Reserve Bank.

7. By the impugned judgment and order dated 14.10.2011 the learned Single Judge dismissed the writ petition on the ground of alternative remedy of appeal before the M.P. Cooperative Tribunal provided u/s 78 of the Act.

8. Certain allegations of mala fide have been made against the certain respondents, who have been impleaded by name.

9. However, because it is not necessary to go into those allegations for the purposes of deciding this writ appeal or the writ petition, therefore, those allegations are being ignored.

10. It is not disputed that the aforesaid Bank is a Cooperative Bank and consequently it is not disputed that previous consultation with the Reserve Bank was necessary before passing an order of supersession as required by the second Proviso which has been quoted above.

11. The contention of respondents is that previous consultation with the Reserve Bank had been done. For this purpose the respondents have placed reliance upon Annexure R-1 dated 2.3.2009, Annexure R-2 dated 17.4.2009, Annexure R-3 dated 3.6.2009, Annexure R-4 dated 8.12.2009 and Annexure R-5 dated 24.12.2009. All these annexures are enclosed with the return filed on behalf of Respondent No. 1 to 3 in this writ appeal, which is supported by the affidavit of Shri Pradeep Neekhara, the Joint Registrar of Cooperative Societies, sworn on 9.1.2012.

12. The respondents No. 1 to 3 contend that through these documents Reserve Bank of India was consulted.

13. Annexure R-1 dated 2.3.2009 is a copy of the show cause notice given to the Chairman and members of Board of Directors. It is addressed to them, and its copy has been endorsed to 19 persons. The Regional Manager, Reserve Bank of India finds mentioned at serial No.13 of the person to whom copies has been endorsed.

14. The mandatory previous consultation required before passing of supersession order would mean an effective, proper and meaningful consultation, for which the consultee would require to be supplied with all relevant material by the

person consulting, so that the consultee can apply its mind and form an independent informed opinion on the subject matter. A mere copy of the show cause notice without a copy of the reply, not to say of other relevant material supporting the allegations, can hardly be said to form the entire relevant material to enable the consultee to examine all aspects of the matter and to form an independent informed opinion.

15. Secondly, for such consultation there should be a direct communication in the form of a covering letter addressed directly to the consultee indicating clearly why the material is being sent to the consultee. Mentioning the name of consultee at an obscure place in the middle of the list of persons to whom the letter addressed to the Board of Directors is endorsed, is more than likely to escape the notice of the consultee.

16. Further by Annexure R-2 dated 17.4.2009 the Reserve Bank expressly sought from the Joint Director, the show cause notice, the reply to the same and the proceedings following the reply. Similar was the request made by reminder Annexure R-3 dated 3.6.2009 and by the reminder Annexure R-4 dated 8.12.2009 both sent by the Reserve Bank.

17. In response to the aforesaid request and reminders of the Reserve Bank vide Annexure R-2, R-3 and R-4, the Joint Director intimated vide Annexure R-5 dated 24.12.2009 that hearing is going on and the Reserve Bank would be intimated after the final decision. Intimation after final decision cannot be a substitute for previous consultation, which was necessary before passing of the order for supersession.

18. In the circumstances we are of the opinion that on the admitted facts of the case there has been no previous consultation with the Reserve Bank before passing of the supersession order.

19. Thus because the mandate of the second proviso of Section 53(1) has not been fulfilled, therefore the supersession order is not in accordance with the procedure and requirement of the statute.

20. While an alternative remedy may exist, but dismissing the writ petition on the ground of alternative remedy is merely a rule of discretion and is not a mandate of law. Where on the admitted facts the case can turn only one way, relegating parties to alternative remedy would only amount wastage of money and time of the parties as well as wastage of the time of the authority before whom alternative remedy lies.

21. In the circumstances we are unable to agree with the order of the learned Single Judge, and the same is accordingly set aside. We also set aside the order of Joint Registrar dated 30.9.2011 on the ground of violation of the mandate of the second Proviso to Section 53(1) of the Act.

22. We may mention here that an argument was advanced from respondents' side that this writ appeal is not maintainable because the Joint Registrar while

exercising the powers u/s 53(1) was acting as "Tribunal" within the meaning of Article 227 of the Constitution of India. Writ appeals are maintainable against orders of learned Single Judges passed under Article 226 of the Constitution of India and not against those passed under Article 227 of the Constitution of India.

23. We are unable to agree with this argument, which was in fact abandoned by the respondents later on. A "tribunal" is one which decides in quasi judicial manner, the dispute between two parties of which the Tribunal is independent. In this case the Registrar of his own gave the show-cause notice and decided whether to supersede the Management. Thus he is not deciding any dispute between two parties independent of and other than the Registrar. Therefore, we have no doubt that the Registrar while exercising the powers u/s 53 of the Act was not acting as a "Tribunal".

24. For the reasons given above writ appeal succeeds and is allowed as indicated above.