
(2018) 04 MP CK 0126

In the Madhya Pradesh High Court

Case No : Writ Petition No.16576, 21131 OF 2017

Santosh Patil

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 19-04-2018

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 3(2), 48AA, 48AA(I), 50A, 50A(2), 78

Madhya Pradesh Cooperative Societies Rule, 1962 — Rule 44, 45, 45(3), 62

Citation : (2018) 04 MP CK 0126

Hon'ble Judges : VANDANA KASREKAR, J

Bench : Single Bench

Advocate : Sanjay Ram Tamrakar, Ashish Shroti, Praveen Dubey, Pushpendra Yadav

Final Decision : Dismissed

Judgement

Both the writ petitions are being decided by this common order as the common question as well as the facts are involved in both the writ petition.

However, for the sake of gravity, the facts are taken from W.P.No.16576/2017.

2. The petitioner has filed the present petition challenging the order dated 07/10/2017 passed by respondent No.3.

3. Brief facts of the case are that the petitioner is an elected Chairman of the Seva Sahkari Samiti Maryadit, Pokharni. The said society is a registered

under the Cooperative Societies Act, 1960 (hereinafter as "the Act"). The society executes various activities to facilitate the farmers with the

schemes of the government and for which funds are provided by the government through respondent No.3 Bank. The election of the Board of

Director of the Bank is conducted from amongst the representatives from the societies which are sent from the societies to represent the society in

the Bank. For the present, the petitioner is the representative from respondent No.5 Society and after contesting election, he was elected as Chairman of the Board of the Bank. Respondent No.5 society was provided credit limit of Rs.12,26,000/- in the year 2015-16 the repayment of which was to be done by 31/02/2016, however, the same was paid on 16/04/2016 and the satisfaction certificate to that effect has also been issued in favour of the society by the Bank.

4. The respondent No.3 thereafter issued notice dated 03/07/2017 for initiating action under Section 50-A of the Act on the allegation that respondent

No.5 society stood defaulter of 12 months in repayment of credit limit granted for chemical fertilizers for the period of 2015-16. The petitioner

submitted that respondent No.5 is a primary society and a notification has been issued under Section 3 of the Act, thereby the Assistant Registrar of

Co-operative Society in District Harda is empowered to exercise all powers of Registrar, therefore, the notice under Section 50-A can be invoked if

the society becomes defaulter of 12 months in repayment of the amount whereas in the present case, society made the payment within 15 days.

Second ground which is raised by the petitioner is that the said power can only be invoked as per the mandate of Section 48-AA and if the society

fails to take action within two months then the registration authority who is, in the case of respondent No.5 Society, the Assistant Registrar was the

competent and the initiation of the proceedings by respondent No.3 who in fact is an appellate authority as per the statutory delegation of powers is

without jurisdiction.

5. Petitioner has further stated that in the present case the order is passed by the Joint Commissioner who has not authority and the Joint Registrar

can exercise the powers but only as a appellate authority over the action of the Registration authority. It is further stated that an action under Section

50-A can be initiated even by the competent authority also after observing the mandate of Section 48-AA and the impugned order was passed without

jurisdiction on such count also. Earlier respondent No.5 Society has filed a W.P.No.9762/2017 before this Court and an interim protection has been

granted in their favour. The said writ petition was dismissed vide order dated 20/09/2017.

6. Respondent No.4 has filed reply and in the said reply, respondents have taken

preliminary objection that the petitioner has an alternate remedy for filing an appeal under Section 78 of the Act before the M. P. Cooperative Tribunal. Respondent has stated that respondent No.4 is a Central Cooperative Bank. One of its principal objects is to provide credit, goods or services as loan to Co-operative Societies affiliated to it for agriculture, industrial and other allied purposes. Respondent No.5 is a primary cooperative society registered under the Act and the petitioner is one of the member of respondent No.5 Society and has been elected as representative of the society to the Board of Director of respondent No.5 Bank. On the date of passing the impugned order, the petitioner was holding the post of President of Board of Director of the respondent/Bank. Respondent No.4 further submits that Section 50-A of the Act provides for disqualification for being candidate or voter for election to Board of Directors of representative or delegate of society. The Section 50-A(2) provides for disqualification of an individual member of society on account of his being defaulter for any loan or advance taken by him for a period exceeding 12 months. Respondent No.5/Society has been availing credit facility from the respondent/Bank from time to time. For the year 2013-14 society was sanctioned CC limit of Rs.12.50 lakh for business of fertilizer. The society was required to clear this limit by 31/03/2014, however as on 01/04/2014 the outstanding dues in this account was Rs.14.29 lakh. The society failed to liquidate the Bank's dues and the dues continued as it is till April 2015. On 21/04/2015 another limit of Rs.10 lakh was sanctioned for the year 2014-15. Even after adjusting this amount with the overdue of previous year, the account left with the balance of Rs.4.29 lakh from sundry account and credit the same in society's account and thus the outstanding balance in the account is shows as nil.

7. A compliant has been made by one Mahesh Jetaji Jat to the Deputy Registrar, Cooperative Society, Harda on 13/01/2016 stating that respondent No.5 society has been in default of loan advanced by the Bank for more than 12 months and, therefore, the petitioner is disqualified to hold the post of Director of the Bank. Similar a complaint was also made to the State Minister. Accordingly, an enquiry was made and respondent No.3 prima facie satisfied about the allegation made in the complaint and notice was issued to respondent No.5 Society on 03/07/2017 and the petitioner was also asked

to keep his defence before respondent No.3. In the meanwhile, respondent No.5 Society has challenged the memo dated 03/07/2017 before this Court

by filing a W.P.No.9762/2017 in which the petitioner has raised the objection regarding the jurisdiction of respondent No.3. Initially an interim order

was passed in favour of the petitioner, however the said writ petition was dismissed vide order dated 20/09/2017. Against the said order, a

W.A.No.817/2017 has been filed which was also dismissed vide order dated 04/10/2017. The CEO of respondent Bank submitted his comments to

respondent No.3 vide memo dated 29/09/2017 and reported that as per the record, the Society is in default of advance given by the Bank for more

than 12 months. Respondent No.3, after examining the record and after giving an opportunity of hearing to the Society and also to the petitioner,

passed the impugned order on 07/10/2017. Against the said order, the petitioner has filed the present writ petition.

8. Learned counsel for the petitioner submits that the petitioner mainly contained that as in accordance with annexure P/1 a certificate issued on

03/07/2017 by District Co-operative Central Bank Hoshangabad Branch Timarni. The Society of the petitioner i.e. Seva Sahkari Samiti Maryadit

Pokharni Tehsil Timarni District Harda is not in default payment of loan for more than 12 months. There was a default of payment of loan for 15 days

as on 31/03/2016 which has already been paid on 16/04/2016. The said certificate by the Bank still continuous in operation as the same has not yet

been cancelled. He further submitted that the order passed by the Joint Registrar is bad in the eye of law as no action has been taken by the Board of

Directors of the Society i.e. Zila Sahkari Kendriya Bank of which petitioner is the President under Section 48-AA of the Act. The Joint Registrar

has taken action and passed the impugned order invoking the powers under Section 50-A of the Act of 1960 read with Rule 45(3) of the Rules of

1962.

9. Learned counsel for the petitioner further submits that from bare reading of Sections 48-AA, 50-A and Rules 45(3) it is clear that Section 50-A only

provides that if a person elected to an office of a society is in default of payment of loan or advance for more than 12 months to the society, he shall

cease to hold such office. The Registrar is empowered under sub-Section (2) of Section 50-A to declare his post vacant. However, no methodology is

prescribed in Section 50-A. Section 50-A is silent regarding the applicability of principle of natural justice. He further submitted that Section 48-AA

relates with disqualification of membership of Board of Directors and representatives of the candidates. Undoubtedly, Section 48-AA was inserted

later on, Section 48-AA(1) makes it clear that the legislature intended to provide reasonable opportunity of hearing to the person concerned. This

Section makes it clear that if a member suffers from any of disqualifications specified in the Act or Rules, it is the duty of the Board of Directors of

the Society to disqualify such member. However, this proviso makes it clear that this can be done after giving him a reasonable opportunity of being

heard. If the society fails to take action within two months, the power is vested with the Registrar to disqualify such member by passing an order in

writing after giving him reasonable opportunity of being heard. Thus, the principle of natural justice are embodied in Section 48-AA.

10. The Registrar could have taken action only when society failed to take action within two months. Section 48-AA (i) is inserted by Amendment Act

2009, it is mentioned that Section 48-AA is being amended to empower the Registrar to take action if the cooperative society failed to fulfil its

obligations. In Section 48-AA (i) no uncertain terms makes it clear that if the society fails to take action within two months, the Registrar shall

disqualify such member from holding such post by passing an order in writing.

11. Section 50-A(2) is an enabling provision which gives power to Registrar to declare the seat vacant if certain conditions are fulfilled. In view of

Section 48-AA, it is clear that such action can be taken if cooperative society fails to fulfil its obligation. Thus, the action of the Registrar in initiating

action by issuance of show cause notice is clearly permissible. The impugned order dated 07/10/2017 is based on such proceeding needs to be

interfered with as it beyond jurisdiction of Joint Registrar.

12. Rule 45(3) of the Rules 1962 prescribes the disqualifications,. No procedure has been prescribed to disqualify such member or Director. Rules 62

have been framed by the government in exercising the powers conferred on it under different provisions of the Act. Section 19-AA has already

empowered the State Government to prescribe such disqualification, which will make a person ineligible to be a candidate for election and if already

elected shall make him ineligible to continue on the post of member of the

committee or a society. In exercise of powers under Rule 19-AA, the State government has framed Rules 44 & 45, these Rules do not prescribe any procedure to disqualify a member. Section 19-AA has been deleted from the statutes book w.e.f. 13/06/2005. Thus, since Rule 45(3) of the Rules of 1962 and also Section 50-A of the Act, 1960 does not lay down any procedure then the recourse available by the respondents in Section 48-AA of the Act when the Board of Directors does not take any action in accordance with Section 48-AA within two months then only Registrar gets an authority to invoke the powers to disqualify the member.

13. In view of the aforesaid, he submitted the impugned order dated 07/10/2017 is in total non-compliance of the Section 48-AA as the Board of Director of the Society has not taken any action against the petitioner and it is only the Joint Registrar who has taken the action, has no jurisdiction to take action at first instance. Thus, the order passed by the Joint Registrar, Co-operative Society is without authority of law, therefore, deserves to be set aside.

14. On the other hand, learned counsel for respondent No.4 argues that in the present case, an action has been initiated under Section 50-A of the Act. Section 50A(2) provides disqualification of an individual member of society on account of his being defaulter for any loan or advance taken by him for a period exceeding 12 months. The proviso to sub-section 2 provides for disqualification of a person elected to an office of cooperative Bank in case of committing default by the society for any loan or advance. In other words, under sub-Section 2, the disqualification is on account of default on the part of individual member of society whereas under its proviso default is on the part of society. In both the cases, disqualification is automatic and the member of society cease to hold the office as soon as there is default of loan or advance. In light of the aforesaid learned counsel for respondent No.4 submits that respondent No.3 has rightly passed the impugned order.

15. Learned Government Advocate submits that in the present case, respondent No.3 has jurisdiction to pass the impugned order. He drawn my attention to the notification issued by the State Government on 23/10/2010 which is issued in exercise of the powers conferred by subsection (2) of Section 3 of the M.P. Cooperative Societies Act, 1960 and by the said notification

the powers of the Registrar has been delegated as specified in column (2) of First Schedule below to the Assistant Registrar of Cooperative Society at Hoshangabad Division which includes Harda District. Further a notification has been issued on 26/07/1999. The said notification specified in column (2) of the Second Schedule, the power shall be exercisable by the Assistant Registrar of Cooperative Societies to the extent as specified in column (3). In the First Schedule at serial No.18 shows that powers have been given to the Registrar in respect of all types of societies to exercise the powers under Section 48-A(2) of the Act. Serial No.22 shows that all powers of the Registrar in respect of all societies under Section 50 of the Act. Thus, as per First Schedule, the Registrar has not given jurisdiction to exercise the powers under Section 48-AA and 50-A of the Cooperative Societies Act and, therefore, the order passed by the Joint Registrar is legal and proper.

16. So far as the question for giving an opportunity of hearing is concerned, in the present case an action has been taken under Section 50-A of the Act, and there is no provision for giving any opportunity of hearing to the Society or its Director. However, in the present case, notice has already been issued to the society as well as to the petitioner and opportunity of personal hearing was also given to them, therefore, the contention of learned counsel for the petitioner that no notice was given to the petitioner before passing the impugned order cannot be accepted.

17. Heard learned counsel for the parties and perused the record.

18. In the present case, the petitioner is the Director of Seva Sahkari Samiti Maryadit, Pokharni. He was elected as representative of the said society.

Being in the capacity of representative of the society, he was elected as Chairman of the Board of Director of the Bank i.e. Zila Sahkari Kendriya

Bank Maryadit, Hoshangabad. The Joint Registrar has issued a notice to the Society and its Board of Director that society is defaulter as has not been

paid to the dues for more than 12 months. The President of the Society informed to the Joint Registrar stating interalia that the society is not a

defaulter. After giving an opportunity of hearing, the Joint Registrar has passed the order dated 07/10/2017 under Section 50-A of the Act as well as

Rule 45(3) of Rules 1962 declared the post of Director as vacant.

Being aggrieved by that order, the petitioner has filed the present petition on the

grounds that (i) the order dated 07/10/2017 is without jurisdiction as the Joint Registrar has no power to issue such order under Section 50-A of the Act.

(ii) No notice was issued to the petitioner before passing the impugned order.

19. Section 50-A provides disqualification for being candidate or voter for election to Board of Director or representative or delegate of society. The relevant subsection is sub-section (2) for deciding the controversy involved in the present case. As per the said section, if the society commits default for any loan or advance for a period of exceeding three months then the Registrar shall declare his seat vacant.

20. Learned counsel for the petitioner submits that it is only the Registrar who has power to declare the seat as vacant. However, in the present case, as the order impugned is passed by the Joint Registrar who has no authority to pass the impugned order, therefore, the order is bad in law. He further submits that in the present case, the power can only be invoked as per mandate of Section 48-AA and as per this Section, if the society fails to take action within two months then in that case the Assistant Registrar was competent to issue the impugned order.

21. From bare reading of Section 50-A(2) it is clear that disqualification of individual member of society on account of his being defaulter for any loan or advance taken by him for a period exceeding 12 months. Proviso to subsection 2 provides for disqualification of a person elected to an office of Cooperative Bank in case of committing default by society for any loan or advance. In other words; in subsection (2), the disqualification is on account of default on the part of individual member of society whereas under its proviso the default is on the part of society. In both the cases, disqualification is automatic and the member of society cease to hold the office as soon as there is default of loan or advance. In the present case, as the society was in default of repayment of loan, therefore, an action has been taken under proviso to Section 50-A (2) of the Act.

22. So far as the delegation of powers to the Assistant Registrar is concerned, the State Government has issued a notification on 23/10/2010 by exercising the power under sub-section (2) of Section (3) thereby delegating the power of the Registrar to the Officers mentioned therein in the table which is attached with the said notification at serial no.8, the power has been

delegated to the Joint Registrar, Cooperative Societies, Narmadapuram, Hoshangabad in respect of Harda District. A notification has also been issued on 26/07/1999, the First Schedule of the said section provides the power which is given under specified section shall be exercisable by the Assistant Registrar. In the First Schedule, the Registrar has given the power in respect of section which is given therein at serial no.18, the power under Section 48-A has been given to the Registrar as well as at serial no.22 under Section 50 has been given all powers of the Registrar in respect of all societies. However, the said Schedule does not mention the power under Sections 48-AA and 50-A of the Act. Thus, the contention of the petitioner cannot be accepted that the impugned order is required to be passed by the Registrar. As per notification issued on 23/10/2010, the Joint Registrar is empowered to exercise all the powers in respect of District Harda. The second contention that the action has been taken under Section 48-AA of the Act is not under Section 50 of the Act is also cannot be accepted because Section 48-AA is applied in the case when the individual member is in default and Section 50-A would apply in the case when society is in default. In the present case, as the society was in default, therefore, respondent No.3 has rightly taken action against the petitioner under Section 50-A of the Act.

23. So far as the submissions of learned counsel for the petitioner regarding violation of natural justice is concerned. Section 50-A nowhere provides for giving an opportunity of hearing before taking any action. However, from perusal of the record it reveals that a show cause notice was issued to the petitioner as well as society on 03/07/2017 and the petitioner was also given an opportunity of personal hearing. Thus, the contention of the petitioner that opportunity of hearing was not given to the petitioner cannot be accepted.

24. In view of the aforesaid, I do not find any reason to interfere into the said writ petitions. The petitions are, accordingly, dismissed.