

(1978) 10 OHC CK 0011

In the Orissa High Court

Case No : Original Jur. Case No. 499 of 1978

Sarat Chandra Panda

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 06-10-1978

Acts Referred:

Constitution of India, 1950 — Article 226(3)

Citation : AIR 1979 Ori 143

Hon'ble Judges : R.N. Misra, J;B.K. Ray, J

Bench : Division Bench

Advocate : R. Mohanty, R.C. Patnaik and P.K. Misra, for the Appellant; G. Rath and Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, J.—The Aska Central Multipurpose Co-operative Society Limited, opposite party No. 3, (hereinafter referred to as the "Society") is a society registered under the Orissa Co-operative Societies Act of 1962 (hereinafter referred to as the "Act"). Petitioner and opposite parties Nos. 4 to 13 are members of its Committee of Management. The present Committee was formed on 9-1-1977. The Society has as its financing bank the Aska Central Co-operative Bank and as stated in para. 6 of the writ application, the Society is indebted to the Bank. The Committee of Management received a notice dated 14-2-1978 from the Registrar of Co-operative Societies, opposite party No. 2, purporting to be u/s 32(1) of the Act calling upon it to show cause why it may not be superseded by the Registrar in exercise of his powers under that section. Petitioner contends that as a condition precedent to the issue of notice u/s 32 (1) of the Act, the financing Bank had to be consulted as required by Sub-section (4) of Section 32 of the Act and, in the absence of consultation, the initiation of the proceeding is without jurisdiction and has to be quashed.

2. Opposite parties Nos. 4, 6, 7 and 9 have appeared through different counsel and counsel for opposite parties Nos. 4 and 6 at the hearing support the

petitioner's stand. The application is opposed by opposite parties Nos. 1, 2 and 11 represented by learned Additional Government Advocate. A counter-affidavit on behalf of these contesting opposite parties has also been filed wherein it has not been disputed that there has been no consultation with the financing Bank before issue of the impugned notice and it has been maintained that such consultation at that stage is not warranted by law. It is further contended that the writ application is premature and since the final order of supersession is open to appeal and revision, alternate remedy is available and this Court should not examine the merit of the matter in view of Article 226(3) of the Constitution.

3. There does not seem to be any force in the contention of the contesting opposite parties that alternate remedy is available against the final order, because the objection of the petitioner is that the proceeding itself is without jurisdiction as the basic precondition of consultation with the financing Bank has not been satisfied before initiation of the proceeding. The material question for consideration, therefore, is whether petitioner's contention is acceptable.

4. Sub-sections (1) and (4) of Section 32 of the Act, which are material for our purpose, may now be extracted.

"32. Super session of Committee and power to disqualify officers of the society :--

(1) If, in the opinion of the Registrar, the Committee of any society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interest of the society or its members, or is otherwise not functioning properly, the Registrar may after giving the Committee an opportunity to state its objections, if any, by order in writing, stating reasons therefore, remove the Committee; and

(a) appoint a new committee consisting of one or more members of the society in its place;

(b) appoint one or more Administrators who need not be members of the society; or

(c) appoint any other society with its consent;

to manage the affairs of the society for a period not exceeding two years specified in the order and the said period may, at the discretion of the Registrar, be extended from time to time, so however that the aggregate period does not exceed four years.

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(4) Before taking any action under Sub-section (1) in respect of a society, the Registrar shall consult the financing Bank to which it is indebted and consider the opinion, if any, received from such Bank."

According to the petitioner, even before issue of the notice with which steps u/s

32 (1) of the Act have to be initiated, the consultation provided under Sub-section (4) of Section 32 of the Act has to take place, while according to the Registrar, Sub-section (4) comes into play before actual removal of the committee is ordered. Sub-section (4) provides that consultation has to take place "before taking any action under Sub-section (1)". According to the petitioner and those supporting him, "action" in the absence of a definition must take its normal meaning in common parlance, and the meaning of the term is "a proceeding by which one party seeks in a court of justice to enforce some right against, or to restrain the commission of some wrong by, another party". (See "Words and Phrases" by John B. Saunders). Reference is also made to "The Dictionary of English Law" by Earl Jowitt, where "action" is said to mean "conduct, something done; also the form prescribed by law". The term "action" is applied to all proceedings in the Court which would have been commenced by writ of the superior courts in common law. Sub-section (1) contemplates of a single act of removal of a committee and if the committee is removed from office, the Registrar has three alternatives to choose for filling of the vacancy, i. e. he may appoint a new committee; appoint one or more administrators not being members of the society; or he may appoint any other society with its consent. Sub-section (1), therefore, contemplates of act of removal of the committee from office. Therefore, if the Legislature had actually intended to say that before the order of removal of the Committee was made, consultation was to take place, nothing stood in the way of specifically indicating so. Emphasis is placed upon the language used in Sub-section (5) of Section 32 of the Act, where it has been stated :--

"If the Registrar, while making an order under Sub-section (1)....."

If in Sub-section (4) the relevant point of time of consultation was making of an order under Sub-section (1), the Legislature did not lack words to express itself in the same way as in Sub-section (5).

Emphasis is again placed on the use of the word "any". There is no dispute that the use of the word "any" connotes a concept of plurality. In "Words and Phrases", "any" is said to be a word of very wide meaning and prima facie the use of it excludes limitation. The term "any person" came to be interpreted in the case of *Re: Turner's Will Trusts, Bridgman v. Turner* (1959) 2 All ER 689, to mean "including an unascertained or unborn person". "Any property" used in Section 14(1) of the Hindu Succession Act was indicated by the Supreme Court in the case of *V. Tulasamma v. Sesha Reddi* AIR 1977 SC 1944, to cover "any and every kind of property". The term "any prohibition" in Section 111(d) of the Customs Act of 1962 was interpreted by the Supreme Court in the case of *Sheikh Mohd. Omer Vs. Collector of Customs, Calcutta and Others*, , to mean "every type of prohibition". There can, therefore, be no doubt that the advised use of the word "any" in Sub-section (4) Sub-section (4) there would have been no justification for the use of the word "any" as an adjective to "action". On the other hand, the phrase "any action" would refer to the several steps indicated in

Sub-section (1), namely, formation of tentative opinion, issue of notice giving opportunity to the Committee to state its objection, recording an order in writing for supersession etc. The law as contained in Section 32 of the Act appears in several similar Acts of other States. Learned Additional Government Advocate, therefore, relies upon two decisions of the Madras High Court and one of the Karnataka High Court in support of his stand that the stage of consultation comes only before the actual order of removal is passed. In the case of P.M.V. Co-op. Agricultural Credit Society v. Joint Registrar of Co-operative Societies, Tirunelveli AIR 1973 Mad 460, a learned single Judge was construing the provision of Section 72(1)(a) and (6) of the Madras Co-operative Societies Act of 1961, Section 72 (1) (a) provides :--

"If, in the opinion of the Registrar, the Committee of any registered society, is not functioning properly or wilfully disobeys or wilfully fails to comply with any lawful order or direction issued by the Registrar under this Act or the rules, he may, after giving the committee an opportunity of making its representations, by order in writing dissolve the committee and appoint either a person (hereinafter referred to as the special officer) or a committee of two or more persons (hereinafter referred to as the managing committee) to manage the affairs of the society for a specified period not exceeding two years."

Sub-sec. (6) of the Madras Co-operative Societies Act makes it obligatory on the Registrar to consult the financing Bank to which the Society is indebted before taking any action under Sub-section (1). The learned single Judge in the Madras case referred to above observed (at p. 461):--

".....What consultation is contemplated under Sub-section (6) of Section 72 does not evade analysis. Obviously, such consultation begins after the Registrar is subjectively satisfied on objective materials placed before him that a prima facie case has been made out for the purpose of superseding the co-operative society. It is only at that point of time that the necessity for consulting the financing bank arises....."

The question strictly did not fall for consideration on the rival contentions raised by the parties in the said case. In the case of K. Thangavelu v. Joint Registrar of Co-operative Societies AIR 1976 Mad 280, the observation in the earlier single Judge case was quoted with approval and the learned single Judge observed (at p. 281) -

"But on due consideration of the matter, I am inclined to think that, having regard to the object of the provision u/s 72 (6) which requires the consultation of the financing bank, such consultation is necessary before the final order is passed u/s 72 (1). At the stage of the issue of the above show cause notice no one knows as to what is going to happen ultimately. It is only when the first respondent makes up his mind after due enquiry in relation to the irregularities referred to in the show cause notice, that the financing bank has to be consulted with regard to the action proposed to be taken. If the consultation is before the

issue of show cause notice and if the first respondent ultimately finds that the irregularities referred to in the show cause notice have not been established, the consultation earlier obtained will become a mere formality and it would be a sheer waste of time. The matter is also clear if we consider the question of prejudice that will be caused to the petitioner. The petitioner can complain that the consultation has not been made only if the enquiry arising out of the show cause notice ultimately results in an order of supersession u/s 72 (1)....." (Underlining is ours for emphasis).

The other case where a similar view has been taken is of the Karnataka High Court reported in ILR (1973) Kar 1170, construing Section 30 which is the corresponding provision in the Mysore Act. These cases have referred to an earlier decision of the Supreme Court in the case of Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others, , where supersession of the managing committee u/s 72 of the Madras Act was in issue. After referring to the provision in Section 72 of the Madras Act, the Court observed (At p. 995) :--

"It is significant that Section 72 (1) does not contain any mention of Ss. 64 to 67 which appear in Section 70 (1) and of Sections 65, 66 and 67 which are expressly mentioned in Section 85 (1). If the intention of the Legislature was that the supersession of the Committee u/s 72 can be ordered by the Registrar only after recourse to Ss. 64, 65, 66 and 67, there is no reason why language analogous to Section 70 (1) or Section 85 (1) containing an express mention of the aforesaid sections, should not have been employed. An audit u/s 64 has to be done every year in view of the mandatory form of the language of that Section 64. But as regards Ss. 65 and 66 the Registrar has been given the discretionary powers to make an inquiry or an inspection in accordance with those sections, there is no duty or obligation cast on him for doing so before he proceeds to take action u/s, 72. All that is required by Section 72 (1) (a) is that the Registrar should form an opinion that the Committee of any Registered society is not functioning properly or has wilfully disobeyed or failed to comply with any lawful order or direction issued by him.....The requisite opinion has indisputably to be formed honestly and after applying his mind by the Registrar to the relevant materials before him. The only condition precedent for taking action u/s 72 (1) is that the Registrar must consult the financing bank to which the society is indebted (vide Sub-section (6)). There is no other requirement or condition precedent laid down by the Legislature which the Registrar must fulfil before he acts in the matter of supersession of the Committee....." (Underlining is ours).

There is dispute as to what exactly is the effect of the above paragraph of the Supreme Court decision. While in the Madras decisions this has been referred to as meaning the final order of removal, it is contended before us by petitioner's counsel that the Court actually intended to say that before any action in the matter of supersession of the Committee was taken. If the Supreme Court did

not intend the entire process of removal to be in view, the learned Judges would have had no difficulty to say "in the matter of supersession or removal of the Committee", instead of "before he acts in the matter of supersession of the Committee". The Court obviously intended to refer to the entire process beginning with formation of opinion and ending with removal of the Committee. We are inclined to agree with the submission advanced before us that the principle indicated by the Supreme Court was not properly stated in the two Madras decisions and the Karnataka decision and proper interpretation of Sub-section (4) of Section 32 of the Act would mean that before the entire process indicated in Section 32 (1) of the Act commences, consultation is necessary.

5. Learned Additional Government Advocate relied upon the observation in the later Madras decision that the Legislature could not have intended consultation at the earlier stage because by then it was not known whether the Registrar would actually pass an order of removal. After forming a tentative opinion, he proceeds to give the Board of Management an opportunity of showing cause and after the cause shown is considered, the Registrar comes to a more definite opinion in the matter. It is at that stage only that consultation is warranted. To meet this contention, counsel challenging the action of the Registrar have contended that initiation of a proceeding u/s 32 (1) of the Act has a very adverse effect on the working of the society. Many of the co-operative societies have monetary dealings, and once it circulates that the Board of Management is in jeopardy on account of the proposed action of the Registrar to remove it from office, the business of the Society is adversely affected. Therefore, unless there is a strong prima facie case, no action is warranted and the Legislature advisedly asked for consultation with the financing Bank from the very commencement of the proceeding. There can be no doubt that the financing Bank has a large stake in the right functioning of a society and, therefore, the mandatory provision in Sub-section (4) is provided. It is not the contention of the learned Additional Govt. Advocate that Sub-section (4) is not mandatory. In fact, after the Supreme Court decision referred to above that Sub-section (6) of Section 72 of the Madras Co-operative Societies Act is mandatory, there is no scope for such a contention.

6. As admittedly the Registrar had no consultation with the financing bank, we must hold that a mandatory requirement of the law has not been complied with by the Registrar which would give him jurisdiction to issue the notice u/s 32 (1) of the Act. The notice accordingly is liable to be quashed. The writ application is allowed and the impugned notice is quashed. The petitioner will have his costs of the proceeding. Hearing fee is assessed at rupees one hundred to be recovered from opposite parties 1 and 2 only.

B.K. Ray, J.

I agree.