
(1999) 07 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1897 of 1999

Satish Kumar Upadhyaya

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 22-07-1999

Acts Referred:

Citation : AIR 2000 MP 92 : (2001) ILR (MP) 1787 : (1999) 2 MPLJ 669

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; Prashant Singh, Panel Lawyer, P.R. Bhawe and T.M. Dhamdhar, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a petition under Article 226 of the Constitution of India challenging the order dated 16-4-1999 (Annexure P-5) of respondent No. 3 Additional Registrar, Cooperative Societies.

The petitioner is President of respondent No. 2 M.P. Rajya Hathkargha Bunkar Sahkari Sangh Maryadit, Jabalpur. There were several complaints against him alleging negligence and fraud in the discharge of his duties. A preliminary inquiry was conducted , Thereafter, by the letter dated 19-2-1999 the Registrar. Co-operative Societies in exercise of the power u/s 53-B of the M.P. Co-operative Societies Act, 1960 (hereinafter to be referred to as the Act) called upon the respondent No. 2 Society to remove the President from his office and to disqualify him from holding the same for a period of three years after affording opportunity of hearing to him. The Managing Director of the Society served show cause notice dated 24-2-1999 upon the petitioner. That is Annexure P-1. A meeting of the Board of Directors was convened and held on 19-3-1999 to consider the charges against the petitioner. That meeting was presided over by him as President. An objection to this effect was raised but he turned it down.

The petitioner submitted his reply to the show cause notice in that meeting. A copy of the reply is Annexure P3. There were three nominated members present in this meeting. They were not allowed to vote. A copy of the minutes of the meeting is Annexure P4. It is recorded therein that the proposal to remove the petitioner on various charges failed by 8 : 9 votes. By the impugned letter dated 16-4-1999 the Society has again been called upon to take action as per letter dated 19-2-1999 as no clear or specific decision was taken in the meeting held on 19-3-1999. It has been expressed in the impugned order that the President against whom the charges were to be considered could not preside over that meeting and the nominated members could not be prevented to vote in this meeting.

The petitioner's case is that as per Rule 43(5) of the M.P. Co-operative Societies Rules, 1962 (hereinafter to be referred to as the Rules), he was entitled to preside over the meeting as he was present in that meeting. There is no provision in the Act or the rules to debar him from doing so. The State Government has not nominated any member on the Board of Directors as per Section 52(1) of the Act and therefore they had no right to vote. No opportunity of hearing was given to the petitioner before the impugned order was passed. The proposal to remove the petitioner from the President of the Society has already failed and the Additional Registrar has no power to annul the said resolution of the Board. The said proposal cannot be reconsidered.

The case of the respondent No. 1 to 3 is that the petitioner had the alternative remedy of filing an appeal against the impugned order and therefore the writ petition is not maintainable. The petitioner could not legally preside over the meeting in which charges were to be considered against him. It was improper and unfair on the part of the petitioner to do so. The respondents No. 4, 7 and 8 were the nominated directors as per bye-law No. 12(3) of the Society and respondent No. 5 was ex-officio on the Board of Directors as per bye law No. 12(5). They had the voting right but the petitioner did not permit them to vote. As per bye law 12 (6) the Managing Director had also voting right and his vote was not counted. The impugned order does not decide anything. The Society has been asked to comply with the earlier order dated 19-2-1999.

The petitioner has filed a rejoinder and stated that there is no alternative remedy of appeal to challenge the impugned order. The Co-operative Tribunal has been constituted on 1-5-1999 and has started functioning from 1-7-1999. Therefore, no appeal could be filed before it on 21-4-1999 when this petition was presented before this Court. It is further stated that the nominated members did not actually cast their votes by raising their hands as required by the bye-laws. An additional point has been raised that the Additional Registrar could not Issue the impugned order as there is a Deputy Director functioning for handloom societies and the powers of the Additional Registrar have been delegated to him.

The points for determination are (a) whether the petitioner could preside over the meeting held on 19-3-1999 in which the charges against him were to be

considered (b) whether the nominated members of the Board of Directors were unlawfully prevented from voting (c) whether the impugned order could not be passed without an opportunity of hearing to the petitioner, (d) whether the Additional Registrar had the power to Issue the Impugned order which has the effect of annulling the resolution dated 19-3-1999 and (e) whether the petitioner had an alternative remedy to challenge the Impugned order.

Point (a)

Rule 43 (5) is as under :--

The President shall preside over all meetings of the committee at which he is present. In his absence, the Vice President shall preside or in the absence of both the President and Vice-President, the members present shall elect one amongst themselves to preside over meeting".

It is argued on behalf of the petitioner that as per Rule 43 (5) of the Rules and as per bye-laws the President shall preside over "all meetings" of the Committee at which he is present and there is no legal bar which prevented him from presiding over the meeting in which the charges against him were to be deliberated. It is pointed out that decision was in the hands of the majority of the members of the Committee and therefore it is not of much significance that the petitioner was presiding over the meeting of the Committee. On the other hand it is contended that the petitioner was to defend himself of the charges levelled against him and his position was that of an accused or a delinquent and. therefore, it was not only improper and unfair but illegal for him to preside over the meeting. After considering the arguments of both the sides this Court is of the opinion that the petitioner was legally incompetent to preside over the meeting. It is true that there is no provision in the Act or in the Rules to deal with this contingency akin to Section 47 (2) (iii) of the M.P. Municipalities Act. 1961 which provides that the President against whom no confidence motion is to be moved, shall not preside over the meeting. There is a rationale or principle behind such a provision. The person who is facing charges should not preside in the meeting of the Committee. During the course of the deliberations and discussions in the meeting of the Committee the President as Chairperson is required to take decisions on several matters such as the members who are entitled to vote, the objections which are raised in the meeting and on a host of other issues and ultimately he has to decide whether the motion has been carried through by the requisite majority or it has failed. The role of President in such meeting is of crucial importance. Now if he is required to defend himself of the grave charges against him in that meeting he would be playing the role of a delinquent. How can he be permitted to preside over that meeting in which his role is to defend himself. He cannot be expected to be independent and impartial. His participation in the proceeding cannot be objective. It is well settled that a prosecutor and a judge cannot be the same person. It is all the more true that an accused or a delinquent cannot be permitted to play the role of a judge in his own cause. There would be a collision of his duty as a President acting as Chairman of the

Committee and his right to defend himself of the charges levelled against him. There is real likelihood that the action of the Chairman of the Committee in such meeting would be biased in his own favour. It would be a case of personal bias.

A man cannot be permitted to decide a cause in which he has personal interest or in which his own conduct is at stake. This is ordained by "natural law" or "divine law", which is the law of reason. Natural Justice is ingrained in Rule of Law. No man shall be a judge in his own cause. Justice should not only be done, but manifestly and undoubtedly be seen to be done. Justice can never be seen to be done if a man acts as a judge in his own cause or is himself interested in its outcome. This principle applies not only to judicial proceedings but also to quasi judicial as well as administrative proceedings. What is to be seen is whether there is real likelihood of bias.

In the leading case in A.K. Kraipak and Others Vs. Union of India (UOI) and Others, it has been observed : "It is against all canons of justice to make a man judge in his own cause. There should not be a conflict between interest and duty." The real question is not whether he was biased. It is difficult to prove the state of mind of a person. Therefore, what we have to see is whether there is reasonable ground for believing that he was likely to have been biased." It was later on observed that the decision in this case has nourished the roots of the rule of law and injected justice and fairplay into legality.

The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. In Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, it has been held that the deciding authority must be impartial and without bias. The test is whether there was a real likelihood of bias. Answer to the question whether there was a real likelihood of bias depends upon not what actually was done but upon what might appear to be done. In administrative law, rules of natural Justice are foundational and fundamental concepts and law is now well settled that principles of natural justice are part of the legal and judicial procedures and are also applicable to administrative bodies in its decision making process having civil consequences.

In State of West Bengal and Others Vs. Shivananda Pathak and Others, it has been explained that it may not always be possible to furnish actual proof of bias. But the Courts for this reason, cannot be said to be in a crippled state. There are many ways to discover bias; for example by evaluating the facts and circumstances of the case or applying the tests of "real likelihood of bias" or "reasonable suspicion of bias".

In the present case there was real likelihood of bias in the petitioner's presiding over the meeting in which the accusations against him and the allegations of misconduct were to be decided. He was controlling and conducting the meeting in which his own conduct was to be discussed and debated. Therefore, the argument on behalf of the petitioner that he acted Independently cannot be

accepted. A perusal of the minutes of the meeting Annexure P-4 goes to show that he took many decisions in the meeting which go to exhibit his bias. The minutes of the meeting are dictated by the President. He took the decision that the nominated directors have no right to vote.

It is argued on behalf of the petitioner that Rule 43 (5) did not preclude him from presiding over the meeting as he was present in that meeting and therefore in view of the statutory rule the general principles of bias should not be pressed into service. This argument is not acceptable. The petitioner was required to be present as he was to furnish reply to the show cause notice and to defend himself. He was legally disabled from being present to preside over the meeting. In the eye of law he will be considered as "absent" as Chairperson as he was incompetent to preside over the meeting. Absence does not mean physical absence alone. It will include "absence because of the incompetence to preside". In *The State of M.P. and Others Vs. Beni Pd. Rathore and Others*, the Full Bench considered the meaning of "present" in Section 59 of the M.P. Municipalities Act, 1961 and observed :

"President may be present and he may not have reasonable cause, or he may be prevented by reasonable cause from presiding; he may refuse to preside or he may refrain from presiding over, the meeting. The "presence" of the President or Vice President referred to in Section 59 Is not mere physical presence, but presence coupled with readiness to preside over the meeting."

The Full Bench decision has been recently relied upon by the Division Bench in *Chandi Bai Vishwakarma Vs. Gulabkali*, . In these cases the Vice President was present in the meeting but he was not ready to preside and therefore it amounted to as if he was not present. In the present case the petitioner was "incompetent to preside" because of his own personal Interest and therefore It would be deemed in the eye of law as if he was absent. His personal Interest and bias disentitled him to preside. There is "no clear statutory bar but the omission in law is to be filled in by ironing out the creases In the statutory provision by placing reliance on one of the well settled principles of natural justice discussed above. Natural law would step in to bridge the gap or the casus omissus in the statute. The Court cannot fold its hands as a helpless spectator in face of legal flaw or lacuna. *Directorate of Enforcement Vs. Deepak Mahajan and another*, . This approach would not be Inconsistent with the scheme of the Act or the Rules. Filling in the gaps and making sense of the Rule is permissible than by opening it to destructive analysis. The Court has this limited creative role. Wade states that the rules of natural Justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power. The presumption Is that it will always apply however silent about it the statute may be. (Administrative Law by Wade 1980 pages 395 and 503)

The presence of the element of personal bias vitiates the entire proceedings and renders them null and void. That was decided in *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, and in a number of subsequent decisions of the

Supreme Court. The proceedings of the meeting of the Committee held on 19-3-1999 in which the petitioner presided are null and void.

Point (b) It is pointed out on behalf of the petitioner that the nominated directors were not appointed by the State Government as per Section 52 (1) of the Act but they have been nominated as per bye-laws. Assuming it to be so the bye-laws do not debar them from voting. They are the members of the Committee and therefore they have a right to vote. They are to participate in the deliberations and express their views. They have a right to vote. They are not mere show pieces, silent-spectators or watch-keepers in the meeting. They were prevented from voting in the meeting. That can be spelt out from the minutes. That is also the ground on which the proceedings of the meeting held on 19-3-1999 are rendered invalid.

Point (c) There was no question of opportunity of hearing to the petitioner before the impugned order was issued. He is to be heard in the meeting of the Committee of the Society.

Point (d)

The impugned order dated 16-4-1999 is continuation of the original order dated 19-2-1999. The proceedings dated 19-3-1999 are null and void and so these cannot be said to have been annulled by the impugned order. The Additional Registrar had the power to issue the Impugned order u/s 53-B of the Act. Merely because the Joint Registrar has been entrusted with the work of looking after Handloom Societies, that does not take away the right of the Additional Registrar under the law to issue the impugned order.

Point (e)

The Cooperative Tribunal has started functioning long after the filing of this writ petition. Therefore, there was no alternative remedy when the petition was filed.

In view of the foregoing discussion this petition is dismissed. The interim order of stay passed on 28-4-1999 is vacated. Costs as incurred.