
(2007) 11 OHC CK 0025
In the Orissa High Court

Sekh Nasiruddin and Others	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 26-11-2007

Acts Referred:

Orissa Co-operative Societies Act, 1962 — Section 28(1aa), 28(1b)

Citation : AIR 2008 Ori 116 : (2008) 105 CLT 86 : (2008) 1 OLR 305 Supp

Hon'ble Judges : R.N. Biswal, J;P.K. Tripathy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.K. Tripathy, J.—Petitioner No. 1 was elected as the President of Nayagarh Regional Co-operative Marketing Society Ltd. (in short "Nayagarh R.C.M.S. Ltd.") on 29.07.2004 and thereafter he continued as such. Petitioner Nos. 2 to 5 are the elected members to the Committee of Management of Nayagarh R.C.M.S. Ltd. They assumed the office on 30.07.2004. According to the provision in Section 28 (1-aa) of the Orissa Co-operative Societies Act, 1962 (in short "the Act"), the term of office of the Committee shall be for four years from the date of assumption of office by the Committee and in that respect the date of election of the President shall be deemed to be the date of assumption of office by the Committee.

2. Alleging breach of that provision of law by the Opposite Party members in passing the order Annexure-1 by superseding the Committee and vesting the authority with A.R.C.S., Nayagarh to manage the day-to-day affairs of the Nayagarh R.C.M.S. Ltd. w.e.f. 25.04.2007 until further order is under challenge. That order was passed on 13.06.2007.

3. Opposite Party No. 3, i.e., Deputy Registrar of the Cooperative Societies, Puri, has filed the counter affidavit stating therein that Petitioners No. 1 to 5 were elected as members of the Primary Co-operative Societies respectively on 25.04.2003, 18.03.2003, 17.05.2003, 12.12.2003 and 25.04.2003. According to

Section 28 and the Rules and Bye-Laws, validity period of membership in the Primary Co-operative Societies is for four years and their membership expired on each of them completing four years and, therefore, in view of the provision in Section 28(1-b) read with Section 16(1 -a) and Section 16-A(1)(a) they were no more eligible to hold the post in the Committee, i.e., Nayagarh R.C.M.S. Ltd. and under such circumstance whether or not they are directed to vacate the office, they are functus officio by lapse of time and direction in Annexure-1 authorizing the A.R.C.S., Nayagarh to manage the affairs of Nayagarh R.C.M.S. Ltd. is to be appreciated accordingly.

4. For the sake of ready reference and proper appreciation, we quote the relevant provisions as referred to above.

Section 16(1-a): "Notwithstanding anything to the contrary contained in any other provisions of this Act, and the rules or bye-laws framed thereunder, the members of the Committee including the co-opted members, if any, but excluding the members nominated or appointed under Clause (ii) of Sub-section (1-b) of Section 28, Sub-section (1) of Section 31 and Sub-section (1) of Section 32, of the primary Societies affiliated to the Central Society or an Apex Society shall be deemed to be the members of their respective Central Society or, as the case may be, of the Orissa Co-operative Societies (Amendment) Act, 1997 so long as they continue as member of the Committees of Primary Societies."

Section 16-A(1): "No person shall be eligible for being admitted or for continuing as a member of a Society, if he-

(a) does not satisfy the requirements of this Act, Rules and Bye-Laws made thereunder";

Section 28(1-aa): "The term of office of the Committee shall be four years from the date of assumption of office by the Committee.

Explanation - "The date of election of the President shall be deemed to be the date of assumption of office by the Committee.""

Section 28(1-b): "The expiration of the period of four years shall operate as a dissolution of the committee and thereupon-

(i) the members including the President (and Vice-President, if any) of the committee shall be deemed to have vacated their offices;

(ii) if the election of a new Committee is not completed by the date of such dissolution, the management of the Society shall vest in the Registrar, and upon such vesting, the Registrar, or any officer of the State Government, the Society or the Apex or Central Society to which it is affiliated authorized by the Registrar in that behalf in writing, shall manage the affairs of the Society, (and if necessary, take all or any policy decision including admission of members in relation to the society) and constitute the committee in accordance with the provisions of this Act, Rules and the Bye-Laws, within a period of six months

from the date of such dissolution;

(iii) The Registrar or, subject to the superintendence and control of the Registrar, the officer authorized under Clause (ii) shall be competent to exercise and perform all or any of the powers and functions of the Committee or of any Office-bearer of the Society and shall be deemed, for the purposes of this Act, Rules and the Bye-Laws, to be the Committee as such Society;

5. It is apparent from the provision in Section 28 (1-aa) that the Committee is to continue for a period of four years from the date of assumption of office by the Committee, i.e., from the date of election of the President. Learned Counsel for the Petitioner thus argues that when Petitioner No. 1 was declared elected as the President and assumed office w.e.f. 29.07.2004, therefore, the Committee was to continue till 28.07.2008 and accordingly the order of super-session, Annexure-1 is illegal and liable to be quashed. In that context, he argues that the provision of law has to be given the plain interpretation without adding or subtracting anything to or from the statutory provision. In that respect he relied on the case of Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others, . In paragraph 25 of that Judgment, the Apex Court held that:

25. Further we wish to clarify that it is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.

6. It is obvious from the aforesaid ratio of the Apex Court that the statutory provision should be given plain and natural interpretation of the words employed in the statute unless for harmonious construction of the statutory provision there is necessity to interpret it to give the statutory provision a meaningful expression. Applying the said test if we give the provision in Section 16(1-a), 16(1-b) and Section 16A(2) read with Sub-section (1)(a) and the different provisions u/s 28(1-b) and (1-c), it is seen that if a person losing the primary qualification as the member of the Co-operative Society, he cannot continue as a member of the Committee constituted u/s 28 irrespective of the period for which he continues in that office. In other words his position in the Committee ceases to operate the moment, his eligibility to hold the post of member in the primary co-operative society comes to an end. In this case there is no factual controversy

on the contention of the respective parties regarding ceasing of membership of the Petitioner as the representative of the primary co-operative society and under such circumstance by virtue of operation of law in Section 16(1-a) together with the other provisions as already noted, the period of four years mentioned in Section 28(1-aa) is to be construed as the maximum period and not the fixed period of functioning of the Committee. Therefore, if a person is a member of the Primary Co-operative Society as the basic qualification to be eligible to be a member of the Committee, then his period of holding the office in the Committee is for similar length of time, i.e., to the extent he is qualified to hold the membership in the Primary Co-operative Society. In any event, holding the post in the Committee cannot exceed four years and that is apparent from the language employed in Section 28(1-b). It is provided therein that the members including the President and Vice-President, if any, of the Committee shall be deemed to have vacated their offices on expiry of the period of four years.

7. Learned Counsel for the Petitioner further argues that the deeming provision in Section 28(2-b) cannot be construed otherwise than for completion of a period of four years. In that respect he relies on the case of Z. Engineers Construction (P) Ltd. Vs. Bhubaneswar Development Authority and Another, . In the reported case the dispute for adjudication before the Court was to whether on non-approval of the building plan the deeming provision provided in the Rule is to automatically operate and in that context Hon"ble the Chief Justice, speaking for the Bench, held that:

9. ...A deemed provision is a legal fiction created by a statute and in interpreting a legal fiction the Court is to first ascertain the purpose for which the fiction is created. (See State of Travancore-cochin and Others Vs. Shanmugha Vilas Cashew Nut Factory and Others, and also the decision of the Supreme Court in the case of The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others,). After ascertaining this purpose the Court is to assume all facts and consequences which are the inevitable corollaries for giving effect to the fiction. At the same time it is also well settled that in construing the fiction its effect is not to be extended beyond the purpose for which it is created. (See the Judgment of the Supreme Court in the case of The Bengal Immunity Company Limited Vs. The State of Bihar and Others,). Therefore, a reasonable view of the facts-situation has to be taken by the Court having regard to the purpose for which the legal fiction is created. Considering all these principles and also considering the reply given by BDA dated 26.2.2003 which is within one month from 11.2.2003, this Court cannot hold that the deeming provision u/s 16(8) can be applied in the facts of the case.

This Court further holds that when any person insists on the application of a deeming provision, he must strictly comply with the conditions for invoking the deeming provision. In other words, if any person wants to enjoy a benefit granted under a deeming provision, he must adhere to the conditions which are

to be followed in order to bring him under the beneficial provision of the deeming clause.

8. Keeping in view the statutory provision, as quoted above from the Act and the different nature of the dispute in the present case, the aforesaid ratio has no applicability relating to interpretation of the deeming provision in Section 28 (2-b).

9. For the reasons indicated above, we find that the order, Annexure 1, is not illegal and, therefore, that does not require interference by this Court. Accordingly the Writ Petition is dismissed.

R.N. Biswal, J.

10. I agree.