
(2001) 04 OHC CK 0026
In the Orissa High Court
Case No : O.J.C. No. 5045 of 2000

Sri Jayanarayan Mohanty

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 05-04-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 92 CLT 421

Hon'ble Judges : Pradipta Ray, J

Bench : Single Bench

Advocate : M/s Pitambar Acharya, A. Patnaik and S.R. Pati, for the Appellant; Mr. M.K. Mohanty, A.G.A., M/s M.K. Mallik, J.N. Sahu, K.B. Meher, S.K. Das, B.P. Das and S.R. Subudhi, for the Respondent

Judgement

Pradipta Ray, J.—Shree Gopinath Weavers Co-operative Spinning Mill Limited, Baliapal (hereinafter referred to as the "Spinning Mill") is a co-operative Spinning Mill under the administrative control of the Director of Textiles and Handloom. The elected committee of management of the said Spinning Mill was removed by the Registrar of Co-operative Societies and a nominated committee consisting of the President and Assistant Director of Textiles, Balasote and Chief Executive of the Spinning Mill as members thereof was constituted by order dated March 19, 1995. By order No. 9525 dated May 17, 2000 the Director of Textiles and Handloom-cum-Additional Registrar of Co-operative Society (O) terminated the appointment of the petitioner from the presidentship of the Spinning Mill, By another order issued on the same date the Director, Textiles and Handloom nominated Sri Aswini Patra as President of the Spinning Mill. The petitioner has filed this writ petition challenging the aforesaid two orders dated May 17, 2000.

2. Mr. P. Acharya, learned Advocate appearing for the petitioner has submitted that the power u/s. 31(2) of the Orissa Co-operative Societies Act, 1962 (hereinafter referred to as the "Act") is exercisable by the State Government and as such the Director of Textiles acting in the capacity of Addl. Registrar of Co-

operative Societies has no authority or jurisdiction to terminate the appointment of the petitioner. He has also submitted that section 31(2) of the Act is not at all attracted to the facts and circumstances of the case.

3. Relevant sections of the Act which are material for the purpose of this case are quoted below :

"Section 28(2)(g)(i)--Notwithstanding anything to the contrary contained in this Act, rules and bye-laws the committee of every Central Society and Apex Society existing immediately before the date of commencement of the Orissa Cooperative Societies (Amendment) Act, 1996 shall stand dissolved with effect from the said date and the members including the President and the Vice President of every such Committee shall be deemed to have vacated their offices on that date provided that nothing in this clause shall be contracted to affect the functions and powers of the Committee of a Primary Society constituted before the commencement of the Orissa Cooperative Societies (Amendment) Act, 1996, as long as it continues in Office ;

(ii) Upon such dissolution the management of the Society shall vest in the Registrar, and the Registrar shall nominate a committee from amongst the members of the Society, as far as practicable, representing the Scheduled Castes, Scheduled Tribes, Other Backward, Classes and Women, to manage the affairs of the Society till the Committee is constituted in accordance with the provisions of this act as amended by the Orissa Cooperative Societies (Amendment) Act, 1996 ;"

"Section 31. Nominees of the Government on the Committee of a society--(1) Where the State Government or Central Government-

(a) has subscribed to the share capital of a society or has granted any assistance in cash or in kind or in any other manner ; or

(b) has assisted indirectly in the formation or augmentation of the share capital of a society as provided in Chapter-VI, or

(c) has guaranteed the repayment of principal and payment of interest on debentures issued by a society, or

(d) has guaranteed the repayment of principal and payment of interest on loans and advances to a society ; The State Government or the Central Government, as the case may be, or any authority specified by such Government in this behalf shall have the right to nominate one third of the total number of members of the committee of such society ;

Provided that the number of members so nominated shall in no case exceed three of whom one shall be a representative of any of the Financing Bank of the Society.

(2) A member nominated in the committee of a society under sub-section (1) shall hold office during the pleasure of the State Government or the Central

Government or the specified authority, as the case may be."

4. The impugned notification dated May 17, 2000 shows that the Director, Textiles and Handloom-cum-Additional Registrar of Cooperative Societies exercised powers u/s. 31(2) of the Act. Section 31 is not at all applicable to a Managing Committee nominated by the Registrar u/s. 28(2)(g)(ii) of the Act. Section 31 of the Act refers to the nominees of the Government in the regular committee of management of a society u/s. 31(1) of the Act the State Government or the Central Government or any specified authority of the Government has the right to nominate 1/3rd of the total number of members of the Managing Committee of such Society. In respect of such nominees of the Government sub-section (2) of section 31 provides that those nominated members shall hold office during the pleasure of the State Government or the Central Government or the specified authority. The committee of management constituted by the Registrar in exercise of his power u/s. 28 (2)(g)(ii) is a special type of interim committee of management governed by section 28. Thus, the Director of Textiles and Handloom has clearly acted without jurisdiction and erroneously in invoking the power u/s. 31(2) of the Act in terminating the appointment of the petitioner. Moreover, the authorisation and/or order dated September 23, 1999 empowers the Director of Textiles to exercise the powers of the Registrar, The Registrar and the State Government is not the same authority. A perusal of the said Government order dated September 23, 1999 will clearly show that State Government has not authorised the Director of Textiles to exercise any power u/s. 31 of the Act.

5. It has been submitted on behalf of the opp. parties that reference to u/s. 31 of the Act in the impugned order is just a mistake and in fact the Director of Textiles has exercised the power of the Registrar u/s. 28 of the Act to replace the petitioner.

6. It is a settled position that misdescription of a particular section of the Act does not vitiate an order if it is found that the concerned authority has actually exercised a different power under a different provision. It appears from section 28(2) (g)(ii) that upon dissolution of the management of the Society, the Society is vested in the Registrar. For the purpose of management of the Society, the Registrar has been empowered to nominate a committee from amongst the members of the Society. The effect of the said section is that instead of running the management of the Society himself the Registrar has been empowered to nominate a committee to manage the affairs of the Society. The members of the Committee so nominated by the Registrar act on behalf of the Registrar and accordingly they cannot claim any right to continue as a member of the nominated committee if the Registrar does not want him to continue. The members of such not nominated committee are not elected and they continue as members till the Registrar wants them to continue. The power to change the members of the committee is inherent in the power to nominate a committee. Thus, if the Registrar issues any order replacing a member of the committee he

cannot claim any right to continue.

7. The Director of Textiles has been authorised to exercise the powers of the Registrar conferred u/s. 28 of the Act. However, in this case the Director has not properly applied his mind to the provisions of the Act and purported to invoke a power which does not reside in him. The Registrar can nominate a committee u/s. 28(2)(g)(ii) and also replace the members of the committee nominated by him, but he is to exercise this power himself without being dictated or directed by any higher authority. A power exercisable under a statute by an authority is to be exercised by that authority upon application of his independent mind and taking an independent decision. , From the records produced before this Court it appears that a direction came from the concerned Hon'ble Minister to replace the petitioner by opp. party No. 5. In the note dated May 16, 2000 put before the Director it was clearly mentioned that the replacement was to be made as the Hon'ble Minister so desired. It is clear and apparent from the record that the Director did not exercise his power independently and mechanically followed a direction of the above. The note of the Hon'ble Minister dated March 27, 2000 was not a request to the Director of Textiles to consider the question of replacement, but a clear directive to replace the petitioner and to appoint opp. party No. 5 as the Chairman. Thus, assuming that the Director of Textiles in fact exercised his power u/s. 28(2)(g)(ii) still such an order was passed under a dictate from above.

8. Vesting the management of the Society in the Registrar and constitution of a nominated committee are meant as an interim arrangement till a regular committee in accordance with the provisions of the Act is elected. An Election Officer has already been appointed. By order dated September 20, 2000 this Court made it clear that the Election Officer should take expeditious step for the purpose of holding election in accordance with the relevant provisions of the Act and the Rules framed for the purpose. While passing the interim order on June 6, 2000 Hon'ble Justice B.P. Das directed the Director, Textiles and Handloom to exercise powers of the President himself. As the petitioner has no right or claim to continue as member or Chairman of the nominated committee and in view of the fact that process for holding election has already commenced and the Director has been exercising the powers of the Chairman of the Committee, this Court does not think it fit and proper to reinstate the petitioner as Chairman of the nominated committee. At the same time, the nomination of opp. party No. 5 as the Chairman of the nominated committee at the dictate from above cannot be allowed to stand and the said order of appointment is liable to be set aside.

9. For the foregoing reasons, the order No. 9530 dated May 17, 2000 issued by the Director, Textiles & Handloom-cum-Additional Registrar, Co-operative Societies (O) appointing the opposite party No. 5 as the President of the Managing Committee (Annexure-2) is set aside. It is further directed that the Director, Textiles and Handloom will act as the Chairman of the nominated committee till the Managing Committee is reconstituted under the provisions of

the Act, if the same has not yet been reconstituted. If the election has not yet been held the Director acting as the Registrar will ensure that the election is completed within a period of three months from the date of the judgment.

10. The writ application is accordingly disposed of.

11. Writ application disposed of.