

(1991) 04 OHC CK 0023

In the Orissa High Court

Case No : Original Jurisdiction Case No. 508 of 1991

Sri Rama Chandra Khera and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 26-04-1991

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1991) 2 OLR 32

Hon'ble Judges : L. Rath, J;K.C. Jagadeb Roy, J

Bench : Division Bench

Advocate : B.P. Das, for the Appellant; S.K. Das, Additional Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—A proceeding for supersession u/s 32 (1) of the Orissa Co-operative Societies Act, 1962 (hereinafter referred to as "the Act") having been initiated against the Board of Management of Boipariguda LAMPS, a large size multipurpose co-operative society, the petitioner No. 1, the President of the Board and the petitioner Nos. 2 and 3, its members, have moved this Court for quashing the notice to show cause for supersession. The facts in the barest minimum are that the notice was issued by the Assistant Registrar of Co-operative Societies, Jeypore Circle on 28-12-1990 alleging certain acts of mismanagement against the members and calling upon to file their reply within twenty-one days from the date of the service of the notice. The show-cause was submitted on 17-1-1991 but the petitioners have moved the Court on 1-2-1991 alleging of having come to know of an order of supersession to be in the offing because of political pressure. The notice to show cause has_ been assailed both on the grounds of the allegations against the Board being unfounded and on the ground of mandatory provisions of Section 32 (4) to have not been complied. We were not inclined to enter into the question of either of extraneous influence in the matter of issue of notice or whether on facts the issue of notice was justified

or either an order of supersession is not liable to be passed in view of the reply - submitted by the petitioners, but have admitted and heard the case with consent of the parties only regarding the question as to whether the provisions of Section 32 (4) have been complied with and if not, whether the proceeding of supersession is vitiated on that account. The learned Additional Government Advocate has filed a memo indicating that the financing Bank of the Society, the Koraput Central Co-operative Bank Ltd. was requested in the office letter No. 243 dated 22-1-1991 of the opposite party No 2, the Assistant Registrar of Co-operative Societies to offer their opinion regarding supersession of the Board of Management. A copy of the letter has also been annexed to the memo Both the memo and the letter have been taken into record.

2. It is the submission of the learned counsel appearing for the petitioners that Section 32 (4) of the Act makes mandatory provision for consultation with the financing Bank before any action is taken u/s 32 (1) and that whenever it is seen that the consultation has not been made, the supersession proceeding becomes liable to be quashed. It is his submission that issuing a notice to show cause against supersession is itself taking action u/s 32(1) and hence the notice is incompetent until the steps u/s 32 (4) are taken regarding consultation with the financing Bank. For the purpose reliance has been placed on Ramachandra Misra and Another Vs. Additional Director of Public Instruction (Schools) and Another, and an unreported decision of this Court OJC 1641/78 (Brundaban Patra v. State of Orissa) (decided on 23-2-1979). It is on the contrary the submission of the learned Additional Government Advocate that since the opinion of the financing Bank has been solicited on 22-1-1991 but as yet no opinion has been received the proviso to Sub-section (4) of Section 32 comes into operation and it has to be deemed that the financing Bank has agreed to the proposed action of supersession. Besides reliance has also been placed on two other decisions of this Court Parameswar Bagh and Others Vs. State of Orissa and Others, and AIR 1932 Ori 20 (Durga Shankar Kar v. State of Orissa) to support the proposition.

3. The two provisions of Section 32 which are relevant for the purpose are Sub-secs. (1) and (4) thereof. So far as the first is concerned, it authorises the Registrar to remove committee of a society after giving the committee an opportunity to state its objection, by an order in writing, stating the reasons therefore if in his opinion the committee persistently makes default or is negligent in the performance of the duties imposed on it by the Act or the Rules or the bye-Laws, or commit any act which is prejudicial to the interest of the society or its members, or is otherwise not functioning properly. Sub-section (4) imposes a rider" on the Registrar's authority and is to the following effect:

"(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 received from such Bank :

Provided that where no opinion is received from such Bank of period of thirty days from the date of reference by the Registrar, it shall be deemed that such

Bank has agreed to the action proposed to be taken by the Registrar under Sub-section (1)"

Both the sub-sections in the present form are in the statute book since 1982 having been brought in by way of substitution by Orissa Act 19 of 1983. Sarat Chandra Panda Vs. State of Orissa and Others, interpreted the provisions of Section 32(1) & (4), as it stood then, to mean that the consultation with the financing Bank of the society is a condition precedent not only when the final step of supersession is contemplated, but even for issue of notice to the society to show cause against the supersession. In that case since notice has been issued without consultation with the Bank, it was quashed. The amendment of the provisions of Sub-secs. (1) and 4 by Act 19 of 1983, so far as relevant in the present context, is that in Sub-section (1) a time limit of twenty-one days has been fixed for submission of reply to the show cause notice and in Sub-section (4) a proviso has been added to the effect that if no opinion is received from the financing Bank within thirty days of the reference by the Registrar, it shall be treated as a deemed acceptance of the proposed action by the financing Bank. The amendments are only procedural in nature and do not in any way affect the interpretation of the substantive provisions of Sub-secs. (1) and (4) in Sarat Chandra Panda Vs. State of Orissa and Others, followed in OJC 1641/78 {supra} and hence it must be held that a proper consultation with the financing Bank of the society is a condition precedent before even any notice is issued to show cause against the proposed action of supersession. Such consultation of the financing Bank is not a mere formality but is of substantial importance as the financing bank is posted with intimate details regarding the working of the society under proceeding, is aware of its difficulties or reckless conduct of the management, and is the most suitable body to offer its expert opinion as to whether the body of management must be superseded or must be left with continued management. It must be remembered that the supersession of an elected society is not a normal feature under the Act and is only an extraordinary step intended to be taken to remedy a drastic situation which otherwise appears irremediable. It is not that an elected committee of Management is to be superseded at the slightest jerk. Instead, there must be satisfaction in the Registrar of the committee persistently making default or being persistently negligent in the performance of the duties or to have committed acts prejudicial to the interest of the society or its members or as not functioning properly. Default or negligence of a persistent character would imply as making default or being negligent in a stubborn or impenitent manner and hence would require a plurality of occurrence to bring home the charge. Similarly the charge of not functioning properly would also require a plurality of mal-functions to conclude of it as not properly functioning. The other alternative requirement of commission of acts prejudicial to the interest of the society or its members so as to justify a supersession though may even mean a single such act, but in the context of having been placed in the same class as persistent default or persistent negligence, or mal-functioning must mean, if a single prejudicial act is to be

considered for supersession, a prejudicial act of sufficient grave magnitude so as to justify a reasonable conclusion of the supersession being the only remedy for the ailment. The Registrar must come to the conclusion on the basis of facts that the Committee is guilty of one or more shortcomings and that allowing it to continue in management will be suicidal, that the committee of management is beyond any corrective approach and that substituting the management is the only alternative left. Undoubtedly such decision of the Registrar, like all administrative decisions, is bound to be just and fair. A consultation with the financing Bank and the opinion offered by it would be a factor to consider the fairness and justness of the action taken by the Registrar. Hence before the Registrar forms an opinion regarding such factors to justify a supersession, it is mandatory that the financing Bank is consulted since it being, the controlling authority in respect of the finances of the society, is in the best position to advise regarding the nature and gravity of the conduct of the committee of management and in the very nature of things its opinion is entitled to grant weight and consideration before the conclusion is reached either to initiate a proceeding for supersession or to supersede the committee. Emphasising the requirement and ingredients of consultation this Court held in OJC 1641/76 (supra) that the consultation to be effective it is certainly necessary that the institution to be consulted must be posted with appropriate information's and materials germane to the field of consultation. In making the observation the Court was only under-lining the peremptory nature of the consultation.

4. While thus consulting with the financing bank is the condition precedent before issue of notice u/s 82() to show cause and non o consultation renders the supersession proceedins; void, yet where reference has been made to the financing Bank -ifter the issue of notice u/s 32(1) but the order of supersession is passed after receipt of the opinion of the financing Bank as agreeing to the supersession, the orders of supersession have been upheld by this Court in Parameswar Bagh and Others Vs. State of Orissa and Others, and Durga Shankar Kar Vs. State of Orissa and Others, . A reading of the decisions shows the Court to have held, while maintaining that consultation u/s 32(4)is a condition precedent, that in cases like the one under its consideration then, the discretionary jurisdiction under Art. 226 of the Constitution of India would not be invoked. What was being handed down by the Court in those two cases was that in such case Section 32(4) had been substantially complied with and that to strike down the order of supersession would not be in furtherance of justice. On the same logic it may also be said that where consultation is made with the financing Bank after issue of the notice and the Bank offers its opinion against supersessionbut the Registrar on consideration of its opinion and other relevant materials yet comes to the conclusion that the society is to be superseded, even then the requirement of consultation can be taken to have been substantially complied with and no fault may be found with the order of supersession if challenge has not been at the stage of issue of the notice. But the position would be drastically different where the reference for consultation is made to the

financing Bank does not choose to give a reply. It is the submission of the learned Additional Government Advocate that the proviso to Sub-section (4) would still stand and it must be taken that the financing Bank had agreed to the supersession. Consultation with the financing Bank being the condition precedent to the issue of notice to show cause u/s 32(1), it has to be conceded as the normal feature of the scheme for supersession of a society under the Act. A reference to the financing bank after steps have been taken for supersession can be taken only as an exception and cannot be made the ordinary rule. The committee of Management of a co-operative society is an elected body with statutory powers vested in it and hence even though some control of the body is vested in the Registrar, yet such power is to be exercised with great circumspection and not at every humour. Hence when the legislature itself directs certain checks in exercise of the power, the violation of such restraints cannot be made a normal feature for which reason, before the Registrar makes up his mind to issue the notice to show cause, it is obligatory upon him to consult the financing Bank regarding the wisdom of taking such step. If such pre-condition is not satisfied and notice is issued and consultation is purported to be made thereafter, it is another question if the financing Bank concedes to such consultation and offers its opinion. But where the financing Bank does not choose to reply, it cannot be said that it has consented to be consulted at such late stage. The proviso comes into play where the reference has been made before the issue of show cause notice providing that if the financing Bank does not reply to the reference, their consent shall be deemed after thirty days of the reference. But where no reference is made to the financing Bank before the issue of the notice and subsequently a consultation procedure is started, the financing Bank may hold the view of there being no purpose in consultation since the Registrar had already been prima facie satisfied about supersession thus reducing the consultation to a mere formality and taking such view, it may choose not to reply. In such event, to infer a deemed consent would wholly frustrate the intention behind the mandatory provision for consultation and would in reality be giving a premium to the illegality committed in not making the consultation prior to the issue of the notice. Such an interpretation does not naturally flow from the proviso and hence would be one which would defeat the very substantive provision of Section 32(4). I have thus no hesitation to reject the submission of the learned additional Government Advocate in that behalf. In the instant case the reference for consultation having been admittedly made after the issue of notice for supersession and there being no case of the financing Bank having waived the prior consultation, it must be held that the proceeding of supersession has become vitiated.

5. In the result the writ petition succeeds. The impugned notice to show cause in Annexure-1 and the proceeding of supersession commenced thereupon are quashed. Hearing fee is assessed at Rs 300/-.

K.C. Jagadeb Roy, J.

14. I agree.