
(1993) 05 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 2241 of 1993

Sri Uma Charan Bishoi

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-05-1993

Acts Referred:

Citation : (1993) 2 OLR 275

Hon'ble Judges : R.K. Patra, J;L. Rath, J

Bench : Division Bench

Advocate : Das, for the Appellant; Debasis Das, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

L. Rath, J.—Annexure 4, an order passed by the Chief District Veterinary Officer-cum-Deputy Registrar of Co-operative Societies, Berhamour, on 19-3-1993 directing winding up of Karnoli Poultry Producers Co-operative Society is impugned before us. The petitioner is the elected member from the society to the Aska Co-operative Central Bank Ltd, and since because of the order of winding up he is to lose membership of the Committee of Management of the Bank, he seeks the relief of quashing of the order. The sole ground urged by Mr. Das, the learned counsel for the petitioner, is that in passing the order the principle of natural justice was not complied with inasmuch as no hearing was given to the society before the winding up was directed.

2. As the impugned order shows it is purported to have been exercised u/s 72 (1) of the Orissa Co-operative Societies Act, 1962 (hereinafter referred to as "the Act") for the reason that it appeared to the Deputy Registrar that the society has ceased functioning as there was no Board of Directors meeting for the year 1991-92 as revealed from the inspection report of the SDFO-cum-Assistant Registrar of Co-operative Societies on 13-3-1993. The order speaks of no meeting to have been held in the year "1991-92 and 1991-92" which is obviously a mistake as is explained by the learned Additional Government Advocate saying

that the meetings were not held during the period 1991 and 1992. Rule being issued counter affidavit has been filed reiterating the reason as in the order itself that no meetings were held and that the order of winding up was passed validly under Sec, 72 of the Act.

3. Section 72 of the Act in Sub-section (1) authorises the Registrar, if he is satisfied inter alia after the inspection has been made u/s 64 that the society ought to be wound up, to issue an order directing it to be wound up. Reliance has also been placed by the learned Additional Government Advocate on Section 72 (2) (b) of the Act where the Registrar may on his own motion make an order directing the winding up of the society if the society has not commenced working within the period of eighteen months from the date of its registration or has ceased to work. It is the submission of the learned Additional Government Advocate that since the meetings of the society had not been held during the years 1991 and 1992, the order of winding up was validly passed u/s 72 of the Act. In reply it is submitted by the learned counsel of the petitioner that the stand of the State is factually incorrect as Annexure-4 to the counter affidavit, the inspection report which formed the basis of the winding up order, itself shows in Column 14 thereof five meetings to have been held during 1991. As regards 1992 it was stated in the petition that the society was under supersession during that period, a fact which is not disputed in the counter affidavit.

4. We are not impressed by the submission of the learned Additional Government Advocate that since the order has been passed by the Deputy Registrar in exercise of powers u/s 72 (1) and that Section does not provide for issue of any notice before passing of the order, compliance with the rule of audi alteram partem is not necessary. It has by now become for deeply imbedded in our constitutional set-up that rules of natural justice are to be regarded as inbuilt into all relevant statutory provisions and command compliance with it before any administrative or quasi-judicial order is passed, unless the adoption of such procedure is either specifically or impliedly excepted. Hence even if Section 11 does not say in so many words that before any order winding up a society is passed it is entitled to a hearing, yet it has to be taken that such hearing was necessary before the order could have been passed. The legal position on the issue has been now even raised to the level that even if the authority charged with the duty to comply with the principles of natural justice is of the opinion that had a notice been issued the notice could not have anything more to say than the facts already existing before it, yet the principles are to be complied with and if not so done, the order would become vitiated. Reference may be made to *Swadeshi Cotton Mills Vs. Union of India (UOI)*, . A question arose before this Court in *The Govindpur Agricultural Credit Co-operative Society and Another Vs. Assistant Registrar, Co-operative Societies and Another*, where u/s 14 (3), as it stood then, the Registrar had the authority, after an inspection made u/s 64 or an enquiry held u/s 65, to direct amalgamation of two or more societies if the societies and same or overlapping or adjoining areas of operation and had similar objects, or could direct a society also to be divided into two societies. An order of

amalgamation passed by the Registrar without notice to the societies which were to be amalgamated being impugned before the Court, it was decided that without notice to the affected societies, the order was bad. In the present case apart from the non-observance of natural justice, it also appears that the factual background on the basis of which order was passed was not correct as in the inspection report itself it was mentioned that five meetings had been held in 1991 and the society was supersession during 1992 for which no meeting could have been held. In that view of the matter, the order has become bad in law.

5. In the result the writ petition is allowed and the impugned order in Annexure-4 is quashed. Hearing fee is assessed at Rs. 500/-.

R.K. Patra, J.

6. I agree