
(2003) 12 MP CK 0022

In the Madhya Pradesh High Court

Case No : Miscellaneous Appeal No's. 1907 and 1939 of 2003

State of Madhya Pradesh and Another	APPELLANT
Vs	
M.K. Chaturvedi and Another	RESPONDENT

Date of Decision : 16-12-2003

Acts Referred:

Civil Procedure (Madhya Pradesh Amendment) Act, 1984 — Order 43
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2(2)

Citation : (2004) 2 MPHT 246 : (2004) 2 MPLJ 157

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

Bench : Single Bench

Advocate : Dinesh Choubey, for the Appellant; Ravish Agrawal and Ajay Ojha, in M.A. No. 1907/2003 and K.S. Wadhwa, In M.A. No. 1907/2003, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

These two appeals are under Order 43 Rule 1 (r), CPC by the defendants against the order of temporary injunction by which the defendant Nos. 1 and 2 have been restrained from demoting the plaintiff and the defendant No. 3 from taking charge of the post of the General Manager.

It is not in dispute that M.P. Mahila Vitta Avas Vikas Nigam is a society registered under the M.P. Society Registrikaran Adhiniyam, 1973. Plaintiff M.K. Chaturvedi was working as a Manager in the Society. He was temporarily promoted as General Manager. Defendant No. 1 State of Madhya Pradesh has posted defendant No. 3 Sushri Mamta Pathak as General Manager in his place on deputation as per order dated 18-6-2003. This order has been challenged by the plaintiff in the civil suit. An application for temporary injunction has also been filed by him seeking the same relief. The Trial Court has granted the temporary injunction claimed by the plaintiff.

In these appeals it is contended that the Trial Court had no jurisdiction to issue the order of temporary injunction in view of the proviso to Order 39, Rule 2 (2), CPC which has been added by Madhya Pradesh State Amendment Act (No. 29 of 1984) from 14-8-1984. The proviso is as under :--

"Provided that no such injunction shall be granted--

(a) where no perpetual injunction could be granted in view of the provisions of Section 38 and Section 41 of the Specific Relief Act, 1963 (47 of 1963); or

(b) to stay, the operation of an order for transfer, suspension, reduction in rank, compulsory retirement, dismissal, removal or otherwise termination of service of, or taking charge from, any person appointed to public service and post in connection with the affairs of the State including any employee of any company or Corporation owned or controlled by the State Government; or

(c) to stay, any disciplinary proceeding, pending or intended or, the effect of any adverse entry against any person appointed to public service and post in connection with the affairs of the State including any employee of the company owned or controlled by the State Government; or

(d) to restrain any election; or

(e) to restrain any auction intended to be made or, to restrain the effect of any auction made by the Government; or to stay the proceedings for the recovery of any dues recoverable as land revenue unless adequate security is furnished;

and any order for injunction granted in contravention of these provisions shall be void."

The learned Counsel for both the sides have been heard on the point mentioned above. As per Clause (b) of the proviso no temporary injunction shall be granted to stay, the operation of an order for transfer, suspension, reduction in rank etc. or taking charge from, any person appointed to public service and post in connection with the affairs of the State including any employee of any company or Corporation owned or controlled by the State Government. In the present case the Society known as "Madhya Pradesh Mahila Vitta Avam Vikas Nigam" is prima facie owned and controlled by the State Government. A memorandum of association of this Society has been placed on record. According to this memorandum, the Chairman of the Society is appointed by the State Government on such terms and conditions as may be prescribed. The Managing Director is also appointed by the State Government. The State Government has the power to issue directives or instructions to this Society as it thinks fit in regard to the finance and the conduct of the business and affairs of the Society and it shall duly comply with and give effect to such directives or instructions. The Society registered under the Act comes within the term "Corporation". Recently in Professional Examination Board Vs. Bhopal Municipal Corporation, after exhaustively considering the case law it has been held that a body of persons or an office which is recognised by the law as having a personality which

is distinct from the separate personalities of the members of the body is a Corporation. It is created by or under a statute. In the present case the society has been created under a statute. The societies formed under the Society Registrikaran Act or even Co-operative Societies under the Co-operative Societies Act come within the term of Corporation as these are incorporated under the statute. It is through the act of "incorporation" by or under a statute that a separate juridical person is born and it is endowed with a corporate personality. In *Siya Ram Sharma Vs. Kendriya Sahakari Bank Maryadit, Bhind and others*, also it has been held by this Court that a Co-operative Society is a Corporation.

In the present case the plaintiff claimed the relief of the stay of the order by which he was to be reverted to his original post of Manager and an officer of the State Government has been deputed to work as General Manager. There is a statutory ban on the power of the Civil Court to stay, the operation of an order for "transfer", "reduction in rank" and also "taking charge from any person". The order of the State Government which has been challenged has the effect of reducing the plaintiff in rank and also taking charge from him of the post of General Manager. The Civil Court has been injuncted by a statutory provision to grant the stay in such matters by issuing an order of temporary injunction. Therefore, in the present case, the Trial Court could not entertain the application for issuing the temporary injunction for staying the operation of the order dated 18-6-2003 of the State Government.

It has been argued on behalf of the learned counsel for the plaintiff that the order which has been issued by the State Government is without jurisdiction and, therefore, it can be challenged as per law laid down by this Court in *Sonelal v. State of M.P.* 1988 J.L.J. 283. In that case transfer order was challenged on the ground that it was a "fraudulent document". In the present case that is not the position. The order has been issued by the State Government. The question whether the State Government could issue such order could not be examined by the Civil Court while deciding the application for temporary injunction. It is not said that the order issued by the State Government in the present case is a "fraudulent document". Therefore, this ruling is not attracted in the present case. In view of the legislative ban the impugned order of temporary injunction issued by the Trial Court is without jurisdiction being against specific legislative embargo.

In the result these appeals are allowed. The impugned order dated 1-8-2003 is set aside and the application of the plaintiff for temporary injunction is rejected.