
(2006) 01 CAL CK 0011

In the Calcutta High Court

Case No : M.A.T. No. 3048 of 2005 with C.A.N. No. 7886 of 2005

The Dakshinee Co-operative Housing Society Ltd.

APPELLANT

Vs

Nayan Ranjan Das and Others

RESPONDENT

Date of Decision : 24-01-2006

Acts Referred:

Citation : (2006) 2 CALLT 17 : (2006) 4 CHN 321

Hon'ble Judges : Asok Kumar Ganguly, J; Aniruddha Bose, J

Bench : Division Bench

Advocate : Anupam Chatterjee, Ashit Chakraborty and Subrata Basu, Keshab Chandra Bhattacharya and Basanti Mukherjee, for the Appellant; Pabitra Chandra Bhattacharya, for Private Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Asok Kumar Ganguly, J.—With the consent of the parties, this Court heard the matter finally. This Court therefore, treats the appeal on the day's list and disposes of both the appeal and the application by the following Judgment.

2. The writ petition out of which the present appeal arises was filed by four persons claiming to be members of Dakshinee Co-operative Housing Society Limited (hereinafter referred to as the said Society). Their grievance in the writ petition was that the affairs of the said Society were not carried on properly and in accordance with law and that there were various irregularities. Several complaints were lodged by the members of the said Society in the office of the Registrar and thereafter the Registrar passed certain orders directing the holding of an enquiry into the affairs of the said Society. In doing so, Registrar acted on the basis of suo motu power conferred on him u/s 93(1) of the West Bengal Co-operative Societies Act.

3. Despite such orders, as the actual enquiry was not held, this writ petition was filed by the petitioners praying for directions from this Court upon the authorities to hold such enquiry.

4. Before the Writ Court, prayers of the petitioners were opposed only by the learned lawyer appearing for the said Society. This has been recorded in the Judgment of the Writ Court dated 12th August, 2005.

5. Before this Court also the opposition came from the same quarter. The Writ Court in its Judgment dated 12th August, 2005 overruled the objections raised by the learned Counsel for the said Society and held that such an enquiry can be ordered. The learned Judge did not find, and in our view rightly, any illegality in the prayers of the writ petitioner for a direction upon the authorities to hold an enquiry.

6. In assailing the Judgment of the Writ Court the following objections were raised by the learned Counsel for the said Society.

(a) From the order issued by the Registrar, it is clear that the Registrar acted on the basis of alleged complaint by 21 members of the said Society and there are about 162 members of the said Society. Therefore, the decision of the Registrar, on the basis of such complaint is not in accordance with law.

(b) It was urged if the Registrar has to act on the basis of the complaint of the members, then the complaint must be made by one-third of the total members and 21 members do not constitute one-third of the total members.

(c) In directing an enquiry the Registrar must be guided by Cooperative principles as enumerated in Section 11 of the said Act.

(d) According to the learned Counsel, those principles confer on a cooperative society freedom from interference by the Government in the running of the said Society by an elected body of members. The learned Counsel further submits that such principles are based on democratic norms. A co-operative society is axiomatic institution and is run on basis of the decision of the elected members and in the said running of the Co-operative Society interference at the instance of the State and its Officer, must be kept to the minimum.

(e) The other point, which has been urged, is that the writ petition itself is misconceived as the writ petitioners are seeking to enforce orders passed by the executive authorities by the Writ Court and that is not permissible.

7. On the other hand it was urged by the learned Counsel for the State that while exercising, suo motu powers the Registrar can act on the basis of any relevant material which is available before him and in the instant case there are various complaints about irregularities in the affairs of the Society. Therefore, the Registrar had acted bona fide and in the interest of the Society directed an enquiry. The learned Counsel for the petitioners has also supported the order of the learned Judge of the Writ Court on the same line.

8. It may be pointed out that pursuant to the order of the Writ Court, dated 12th August 2005, an enquiry has been held. The learned Counsel for the Registrar has handed-over a copy of the enquiry report to this Court. As far as the said

report is concerned, the same has not been challenged so far. But the learned Counsel for the writ petitioners submits that the said report has not been communicated to him.

9. Be that as it may, looking at the provisions of Section 93 of the said Act, this Court finds that Section 93 is in Chapter X of the said Act. Chapter X of the said Act provides for Audit, Inspection and Enquiry. It is clear from Chapter X that the intention of the Legislature in enacting those provisions is to ensure that a co-operative society, once formed and registered under the said Act, must carry on its functions in accordance with the cheques and balance provided under the said Act. The Legislature has enabled the Registrar with the supervisory power to see whether the co-operative society is actually running its affairs as per the various statutory norms under the said Act. Such provisions have been brought on the statute in order to infuse transparency and fairness in the affairs of particular co-operative society. Such provisions also strengthens the larger interest of the cooperative movement in general. Thus provisions for holding enquiry in details in Chapter X of the said Act have been enacted in order to serve that purpose. If the provisions of Sections 90, 91, 92, 93 & 94 of the said Act are conjointly read no one will miss this common, thread running through all these sections. After going through these sections it becomes clear that the anxiety of the Legislature is to see that the co-operative societies are run on en-operative principles which guarantees freedom but this freedom is not unfettered, rather it is regulated in public interest. So those provisions of Chapter X are in harmony with the principles u/s 11 of the said Act, thus a proper balance has been achieved under Chapter X of the said Act between autonomy and control.

10. Apart from that no one has challenged the provisions of Section 93(1) of the said Act. So the argument that the autonomy of a co-operative society is undermined by reason of Section 93(1) of the said Act, is untenable.

11. Coming to Section 93, this Court finds that Section 93(1) empowers, that the Registrar that it may, at any time, on his own motion by himself, or by any person authorised by him by order in writing, hold an enquiry into the constitution, working and financial condition of a co-operative society or into any specific matter relating to the affairs of a co-operative society. Therefore, the power of the Registrar to hold an enquiry at any time and on his own motion is a very sweeping power. Such power is not circumscribed by any limitation except of course the inherent condition that all statutory power must be exercised in good faith and in public interest. Sub-section (2) of Section 93 also empowers the Registrar to hold such an enquiry either by himself or by any person authorised by him by an order in writing on the application of the financing bank, if any, of which the co-operative society is a member or a debtor (Clause - a), or it may be held on the application of the majority of the Directors of the Board of the Co-operative Society (Clause - b) or on the application by one-third of the members of the said Society each of whom has been a member for not less than six months prior to the date of such application (Clause - c). It can also be held

at the instance of the co-operative society's creditors who have borrowed not less than one half of the borrowed capital of the co-operative society and who have deposited such security for cost (Clause - d).

12. Sub-section (3) of Section 93 provides for communication of the inquiry report by the Registrar or a summary thereof to the co-operative society or to the applicant who made the application under sub-sections). For better appreciation, Section 93 is set out hereunder-

Inquiry by Registrar.-(1) The Registrar may, at any time of his own motion, hold by himself or by any person authorised by him by order in writing an inquiry into the constitution, working and financial condition of a co-operative society or into any specific matter relating to the affairs of a co-operative society.

(2) An inquiry under Sub-section (1) may also be held by the Registrar or by any person authorised by him by order in writing on the application of-

(a) the financing bank, if any, of which the co-operative society is a member or a debtor;

(b) the majority of the directors of the board of the co-operative society;

(c) one-third of the members of the co-operative society each of whom has been a member for not less than six months immediately preceding the date of application and who have deposited such security for costs, if any, as the Registrar may direct;

Provided that in the case of a co-operative society having more than one thousand and five hundred members, an application under this sub-section may be made by the delegates elected in the prescribed manner.

(d) the creditors, representing not less than one-half of the borrowed capital of the co-operative society, who have deposited such security for cost, if any, as the Registrar may direct.

(3) The Registrar shall communicate the report of an inquiry under this section or a summary thereof to the co-operative society and to the applicant who made the application under Sub-section 2].

13. Now the question is, whether the Registrar while exercising suo motu power u/s 93(1) can rely on any material which comes his notice at the instance of some members or a body of the members. The learned Counsel for the Society argues that the Registrar cannot do so.

14. This Court is unable to accept the same as there is no logic behind the contention. In the exercise of suo motu statutory power which is conferred on the Registrar and when it is conferred on very wide terms, as in Section 93(1), there is no reason why the Registrar cannot rely on the materials which comes to his knowledge at the instance of some members provided the materials are relevant for the exercise of power. When suo motu statutory power is conferred

on an authority, such power confers on the authority a substantial area of discretion and option and while exercising suo motu power such authority can rely on such material. It is obviously true that if the materials are outrageously irrelevant for the scope of the enquiry or are based on some admittedly concocted versions by some interested quarter, in that event, the exercise of suo motu power may be questioned on the grounds of lack of bona fides of the authority exercising such power. Here it is not the case that the materials, which have been brought to the notice of the Registrar are concocted or fabricated for anybody's personal gain. In the absence of such a challenge the Registrar's order of suo motu enquiry on the basis of materials which have come to his knowledge at the instance of some members of the co-operative society, cannot be interfered with by this Court sitting in a Writ Jurisdiction.

15. The argument on behalf of the co-operative society that as the co-operative society is a democratic institution, it enjoys exemption from the statutory regime under the Act, is rather misconceived. The co-operative society having been registered under the said Act must subject itself to the discipline under the said Act and it must abide by various provisions made thereunder. Democratic norms or democratic principles always presuppose regulatory measures. Democracy cannot exist without moderation.

16. The argument that a writ petition does not lie to implement an executive order is totally misconceived especially when law relating to the Writ of Mandamus has "made the most spectacular advances". A writ of Mandamus is always available to implement an order passed by a public authority in exercise of its statutory power. It is one of the first principles of Constitutional Law that a Writ of Mandamus will lie to enforce statutory provisions.

17. Attention of this Court has been drawn to a Division Bench Judgment of Karnataka High Court reported in *The Muslim Co-operative Bank Ltd. Vs. The Assistant Registrar of Co-operative Societies, Mysore and others*, . In the said Judgment the Division Bench of the Karnataka High Court considered provisions to Section 93(1) of the said Act. In that case provisions u/s 64 of the Karnataka Cooperative Societies Act, 1959 was considered. Similar view was taken on the exercise of statutory power by the Registrar in ordinary inspection. This Court is in respectful agreement with the views, expressed by Karnataka High Court in *Muslim Co-operative Bank Ltd.* in paragraph 6.

18. For the reasons aforesaid, we find no merit in this appeal. The appeal is therefore dismissed. The Judgment of the learned Judge of Writ Court is affirmed. The stay petition is accordingly dismissed.

19. We direct that the report, which has now been prepared and filed after inspection, may be communicated to the Co-operative Society and to the applicants and appropriate actions on such report may be taken. The copy of the report filed before this Court be kept with the record.

The appeal, therefore, stands dismissed.

There will be no order as to costs.

Urgent xerox certified copy of this order, if applied for, be given to the parties on priority basis.