

(2008) 04 CAL CK 0028
In the Calcutta High Court

Case No : M.A.T. No's. 1678 of 2004 and 2057 of 2007 and C.A.N. 3185 of 2008

The Secretary, Ram Nagar Layek Para Samabay Krishi
Unnayan Samiti Limited

APPELLANT

Vs

Sri Gouri Sankar Kar and Others

RESPONDENT

Date of Decision : 24-04-2008

Acts Referred:

Constitution of India, 1950 — Article 12, 142, 226

Citation : (2008) 04 CAL CK 0028

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Milan Chandra Bhattacharya, Pradip Kumar Patra and Sulagna Bhattacharya, for the Appellant; Anupam Kumar Chatterjee and Indranil Nandi, for the Respondent

Judgement

Bhaskar Bhattacharya, J.—These two mandamus-appeals were taken up together as a common order passed by the learned Single Judge, disposing of two writ-applications, has been challenged by preferring these two mandamus-appeals.

2. Initially, M.A.T. No. 1678 of 2004 was filed by the appellant by impleading both the writ-petitioners as respondents along with an application for condonation of delay in filing the appeal. A Division Bench of this Court condoned such delay. Subsequently, objections having been raised by the respondents/writ-petitioners as regards the maintainability of one appeal against a common order disposing of two writ-applications, the other appeal being M.A.T. No. 2057 of 2007 was filed along with an application for condonation of delay.

3. After taking into consideration the fact that M.A.T. No. 1678 of 2004 had already been filed by making both the writ-petitioners as parties, we have decided to condone the delay in filing the latter one as by filing the said appeal, the technical objection raised by the respondents before us has been obviated and at the same time, the State has not been deprived of its just revenue.

4. By filing the two writ-applications, the two private respondents before us challenged the order of termination passed by Ram Nagar Layek Para Samabay Krishi Unnayan Samity, the appellant herein, by which the appellant terminated the services of the two writ-petitioners from the posts of Manager and Assistant Manager, respectively, of the said Co-operative Society.

5. The grievance of the writ-petitioners was that before terminating their services, the appellant before us did not comply with the provision of Rule 48 of the West Bengal Co-operative Rules as no adequate opportunity was given to them to controvert the allegations levelled against them by their employer.

6. Those two writ-applications were contested by the appellants by filing affidavits-in-opposition wherein they disputed the allegations made in the writ-application and according to them by giving fullest opportunity to defend their case, the order of termination was passed.

7. A learned Single Judge of this Court, by a common order, disposed of those two writ-applications by holding that no charge sheet was issued and that no enquiry in proper sense had been held as required under Rule 48 of the West Bengal Co-operative Societies Rules, 1978 before terminations of the services of the writ-petitioners. The learned Single Judge further pointed out that it appeared from the affidavit-in-opposition that the report of the so-called enquiry was submitted after the date of passing of the order of termination and thus, His Lordship set aside the orders of termination. His Lordship, however, made it clear that the appellant would be free to initiate fresh proceedings after complying with all the formalities required under law. His Lordship consequently reinstated the writ-petitioners to service with a direction to make payment of 50 percent of the back wages, provided they were not engaged otherwise during the said period on such declaration being given by the respondent.

8. Being dissatisfied, these two appeals have been preferred.

9. Mr. Bhattacharya, the learned advocate appearing on behalf of the appellants severely criticised the order passed by the learned Single Judge by pointing out that His Lordship totally overlooked the materials on record that specific charge sheets were framed against the writ-petitioners. Mr. Bhattacharya further contends that even sufficient opportunities were given to them as would appear from the fact that before the meeting of the general body of the society, the respondents did not appear. Mr. Bhattacharya, therefore, submits that there was substantial compliance of Rule 48 of the West Bengal Co-operative Societies Rules and there was no justification of quashing the order of termination. Mr. Bhattacharya further submits that in the fact of the present case the society being running at a loss, His Lordship should not have, at all events, passed a direction for payment of 50 percent of the back wages as His Lordship proposed to set aside the order of termination on technical ground. Mr. Bhattacharya further submits that the writ-application itself was not maintainable against his client who was not a "State" within the meaning of Article 12 of the Constitution

of India. In support of such contention, Mr. Bhattacharya relies upon the decision of the Supreme Court in the case of M.D., Bhadra Shahakari S.K. Niyamita Vs. President, Chitradurga Mazdoor Sangh and Others, .

10. Therefore, the first question that arises for determination in these mandamus-appels is whether the writ-application filed by the respondents was maintainable against the appellant.

11. It is true that the appellant society is not a "State" within the meaning of Article 12 of the Constitution of India. It is now a settled law that even if a particular authority is not strictly speaking a "State" within the meaning of Article 12 of the Constitution of India, if such authority is a creature of Statute and is duty bound by operation of law to comply with certain formalities provided in a Statute in the discharge of its duties and if such requirements of law are not complied with thereby affecting the legal or fundamental right of any person, such person can maintain a writ-application alleging non-compliance of the statutory provision at the instance of such authority. In this connection, the following observations of the Supreme Court in the case of Federal Bank Ltd. Vs. Sagar Thomas and Others, be referred to where the Apex Court after considering all the existing decisions on the point narrated the categories of the persons against whom a writ-application is maintainable:

From the decisions referred to above, the position that emerges is that a writ petition under Article 226 of the Constitution of India may be maintainable against (i) the State (Govt.); (ii) Authority; (iii) a statutory body; (iv) an instrumentality or agency of the State; (v) a company which is financed and owned by the State; (vi) a private body run substantially on State funding; (vii) a private body discharging public duty or positive obligation of public nature (viii) a person or a body under liability to discharge any function under any Statute, to compel it to perform such a statutory function.

12. In the case before us, as provided in Rule 48 of the West Bengal Co-operative Societies Rules, before termination of service of any employee of a society, the Board of the society is required to comply with mandate mentioned therein. The provisions of Rule 48 are quoted below:

The board of a co-operative society shall have full control over the administration and the business of the society and shall exercise all or any of the powers as may be provided in the by-laws:

(a) ...

(b) ...

(c) ...

(d) ...

...

(f) to appoint, discharge or to dismiss or to remove employees of the society:

Provided that no employee of a co-operative society shall be dismissed or removed from service except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges, and where it is proposed, after such enquiry, to dismiss or remove him, until he has been given a reasonable opportunity of making representation on the penalty proposed,

(g) ...

13. Therefore, in a writ-application, the dismissed employee of a Co-operative Society is entitled to complain that his service has been terminated by not complying with the aforesaid provision of law and that was the case made out by the writ-petitioners in their writ-applications.

14. In the case of Bhadra Shahakari S.K. Niyamita v. Chitradurga Mazdoor Sangh and Ors. (Supra) relied upon by Mr. Bhattacharya, the appellant was a cooperative sugar factory which was a non-governmental organisation and the writ- petitioner prayed for implementing the settlement arrived with the management. In such circumstances, the Supreme Court held that the writ-application was not maintainable although ultimately, the Apex Court exercised its power under Article 142 of the Constitution of India. In that case, there was no allegation of violation of any statutory duty of the appellant nor was any allegation of infringement of any right conferred upon the respondent under the Statute at the instance of the society. Therefore, the said decision cannot have any application in the facts of the present case where there is clear violation of Rule 48 at the instance of the society resulting in infringement of the legal right of the writ- petitioners.

15. We, therefore, find no substance in the aforesaid contention of Mr. Bhattacharya.

16. As regards the first contention advanced by Mr. Bhattacharya that His Lordship overlooked the fact that two different charge sheets were framed against the writ-petitioners, we find that really some charges were made in the notices to show-cause issued to the two writ-petitioners. In those notices, eight different allegations were made against each of the writ-petitioners but those were all vague; we narrate below the exact charges issued against one of them:

1. Dereliction of duty; (without referring to any instance).
2. Employed elsewhere in a full time job; (no particular of such job).
3. Did not open the office and godown in spite of direction; (without mentioning the date of such incident);
4. Submission of false statement; (without reference to any particulars of such statements).

5. Submission of false information before the government that money was kept with the issuing authority ;(no particulars).

6. Non-deposit of money or sale-proceeds in the bank after realisation; (no date or particulars).

7. Production of false statement in the meeting of the working committee or making false statement; (no date or particular).

8. Wrongly mentioning expenditure including payment of salary in the absence of any pay order. (No date or particulars).

17. Similarly, against the other writ-petitioner, the following allegations were mentioned:

1. Non-implementation of the decision of the working committee; (no particulars).

2. Dereliction of duty; (no particular).

3. Involvement in wrong work; (no particular).

4. Keeping of papers in his own house in spite of the fact that society had its own godown or rented godown; (no description of papers).

5. Failure to open godown or office in spite of direction and to bring the necessary papers to the office ;(no particulars of date or the nature of papers).

6. Non-deposit of money realised or of sale-proceeds in the bank; (no particular of the date or money or sale proceeds).

7. Discloser of statement prejudicial to the society before the public and filing of false statements ;(no particulars of the statement or date).

8. Withdrawal of salary without pay order. (no particular or date). Both the writ-petitioners gave reply to those vague allegations thereby disputing the allegations contained therein.

18. However, the finding of the disciplinary authority was not placed before the Court showing that they were found guilty by the disciplinary authority after giving them opportunity of defending the allegations. It appears from the decision of the general body that they adopted a resolution that the allegations against the writ-petitioners were proved. What were the allegations that were also not indicated in the said resolution. Even no further opportunity was given to the writ-petitioners against the proposed action of dismissal as provided in the Rule 48.

19. In the fact of the present case, we are of the view that so-called opportunity was not sufficient in terms of Rule 48 and therefore, the ultimate conclusion arrived at by the learned Single Judge was correct although, there were some erroneous findings recorded by the learned Single Judge in the order impugned.

20. This Bench, being an Appellate Court within the meaning of Clause 15 of the Letters Patent, is entitled to arrive at a separate finding upholding the ultimate conclusion of the learned Single Judge from the materials on record and accordingly, we hold that in the case before us, the writ-petitioners were not given any effective opportunity to defend their cases. The learned Single Judge having given liberty to the appellant to initiate fresh proceedings, we find no reason to interfere with the order passed by His Lordship. We, however, make it clear that in the fresh proceedings the charges must be specific; otherwise, it is not possible for the writ-petitioners to defend those charges.

21. We also do not find any reason to interfere with the order passed by the learned Single Judge directing the appellant to pay 50 percent of the arrears of salary as in this case, their services were terminated in an arbitrary way based on vague allegations by total disregard to the Rule 48.

22. The appeals are, thus, devoid of any substance to the extent indicated above. In the facts and circumstances, there will be, however, no order as to costs.

Rudrendra Nath Banerjee, J.

23. I agree.