
(1983) 09 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 250 of 1979

Vijay Kumar and Others

APPELLANT

Vs

Sunderlal and Others

RESPONDENT

Date of Decision : 19-09-1983

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 53, 53(1)

Citation : AIR 1984 MP 40 : (1984) JLJ 71 : (1983) 28 MPLJ 762

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : B.R. Nahta, for the Appellant; Surjeet Singh, Government Advocate and R.S. Garg, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, J.

This is a petition filed by the petitioners, who were employees in the Co-operative Society known as the Mandsaur District Co-operative Land Mortgage Bank Ltd. This Society was registered under the Madhya Pradesh Cooperative Societies Act on 20-11-1961.

2, It is alleged by the petitioners that in the year 1966 the M. P. Co-operative Land Development Act came into force and thereafter the name of the Mandsaur District Co-operative Land Mortgage Bank was changed to the Mandsaur District Co-operative Land Development Bank and it is alleged that management of this Bank was done by the Board of Directors elected under the bye-laws of the Bank. Till the year 1971 the elected Board constituted under the bye-laws of the Bank was managing the affairs of the Bank. In the year 1971 the Joint Registrar, Cooperative Societies in exercise of powers vested in him u/s 53 of the Act superseded the Board and appointed Assistant Registrar of Co-operative Societies, Mandsaur, as an Officer-in-charge of the Bank to manage its affairs.

That in the year 1974 an ad hoc committee was appointed to manage the affairs

of the Bank u/s 53 of the M. P. Co-operative Societies Act. It is alleged that after an ad hoc committee was nominated, this Bank which was running in losses started making profits and there was an ambitious plan before its Board of Directors to enhance the business. The Staff Committee, therefore, decided to appoint additional staff and ultimately after proper selections and the formalities the petitioners were appointed as employees in the Bank. It is alleged that these appointments were made after a written test and interview by the Staff Committee and the Assistant Registrar. It is also alleged that they were initially appointed on probation and subsequently their probation period was finalised and they were confirmed in accordance with Rule 15, which lays down that initially the period of probation was to be for one year, which could be extended for six months. It is alleged that in any event beyond one year and six months, i. e. 18 months it could not be extended and all these petitioners had worked for about three years in the Bank. It is alleged that this Committee, which was appointed in the year 1974 was removed and in exercise of powers u/s 53(1) a fresh Board of Directors was appointed by orders of the Joint Registrar and it is alleged that it is this Committee which was functioning when the services of these petitioners were terminated. It is alleged that the services of all these petitioners were terminated by the Staff Committee in accordance with Rule 17 by giving one month or three months notice. But it is contended in this petition that under Rule 17 the power of termination lay with the Board of Directors and not with the Staff Committee or any sub-Committee appointed by the Board.

It is further contended that the termination orders of the petitioners were issued on the basis of a decision of the Staff Committee and not the decision of the Board of Directors and, therefore, this termination is without authority.

It is also contended that this Board, which was nominated u/s 53(1) by the Registrar is also not in accordance with law as u/s 53(1) the powers have been conferred on the Registrar to appoint a Committee; whereas the impugned order by which the Board was appointed, the Registrar had not nominated the persons but authorised the persons to nominate others to be the members of the Board and it is contended that in view of the language of Section 53(1) this Board could not be said to have been appointed in accordance with law as it is not nomination of persons but in substance the Registrar has abdicated his function to authorise others to nominate persons and it is such persons nominated by others and authorised by the Registrar that were functioning as Board of Directors and a Sub-Committee of this Board has passed the orders of termination and, therefore, as the Board itself is not lawfully constituted, its sub-Committee also has no authority in law and, therefore, the services of the petitioners could not be terminated by such a Committee or under the Rules even by the Board which itself is not lawfully constituted.

It was contended by the learned counsel for the petitioners that if the appointment of the Board of Directors by orders of the Joint Registrar dated 20-10-1978 itself is not in accordance with law then the question about the

character of the petitioners being permanent or probationers and the authority of the Staff Committee need not be gone into as if the Board itself is found to be without lawful authority it could not even appoint a Sub-Committee and, therefore, the orders passed by any Committee of this Board will automatically fall.

It was contended by the learned Counsel that Section 53 of the M. P. Co-operative Societies Act provides for supersession of an elected body and also authorises the Registrar to appoint a committee. This power is a power to replace the nominated body in place of elected body, the provisions have to be strictly construed and it could not be doubted that the Registrar while exercising powers under Sub-clause (1) could not delegate his authority to someone else as there is no provision wherein such a power of delegation is conferred on the Registrar.

Learned Government Advocate and learned counsel for the other respondents also frankly conceded that if the appointment of the Committee by orders dated 20-10-1978 itself is held to be bad then further questions about individual termination orders and about powers of the Staff Committee are not necessary to be gone into. It was, however, contended by the learned Government Advocate and the counsel for other respondents that the order passed on 20-10-1978 by the Joint Registrar in exercise of powers u/s 53 could not be said to be bad as by this order the Joint Registrar has appointed a Committee, although learned counsel for the respondents also frankly conceded that the Registrar instead of nominating persons has nominated some authorities who have been authorised to nominate persons and it is not in dispute that these persons authorised under orders dated 20-10-1978 have further nominated other persons who in fact constituted the Committee, which was functioning as a Board of Directors at the time when orders of termination were issued against all these petitioners.

It is, therefore, clear that the first question which is material for decision in this petition is as to whether u/s 53(1) the Registrar or a Joint Registrar could appoint a Committee or authorise others to nominate persons who will constitute a Committee u/s 53(1). Section 53(1) reads:

"Section 53. Supersession of committee.-- (1) If, in the opinion of the Registrar, the Committee of any society--

(a) persistently makes default or is negligent in the performance of the duties imposed on it by or under this Act or bye-laws of the society or by any lawful order passed by the Registrar or is unwilling to perform such duties; or

(b) commits acts which are prejudicial to interests of the society or its members, or

(c) is otherwise not functioning properly; the Registrar may, by order in writing remove the committee and appoint a person or persons to manage the affairs of

the Society for a specified period not exceeding two years in the first instance;"

It is provided in this Section that the Registrar after removing the Committee can appoint a person or persons to manage the affairs of the Society for a specified period. It is, therefore, clear that the Registrar or the Joint Registrar is supposed to appoint a person or persons to look after the affairs of the Society. There was some controversy also about the period for which such, a Committee could function, but the learned counsel for the parties frankly conceded that so far as the present petition is concerned, that question will not be material.

In the return it has been contended that the State Government had power to exempt any Society from the operation of this Clause (1) of Section 53 in exercise of its powers u/s 91. But the learned Government Advocate frankly conceded that it has not been possible for him to place on record any order of the Government exempting, this Society from the operation of Clause (1) of Section 53. It appears that this stand taken in the return is of no substance as apparently if the Society has been exempt from the operation of the Section, then there will be no powers left with the Registrar also to supersede the Committee and to appoint a new Committee and the learned Government Advocate frankly conceded that the only question is as to whether within the provisions contained in Section 53(1) appointment made of a Committee by the Joint Registrar by this orders dated 20-10-1978 could be said to be a legal order and the appointment could be held to be proper.

It is not disputed that there is no other provision conferring powers with the Registrar or the Joint Registrar to delegate the function of nominating persons to look after the affairs of a Society. The language of Section 53(1), quoted above, clearly provides that it is the Registrar who has to appoint a person or persons to manage the affairs of a Society and, therefore, it is clear that he has no authority to delegate his own power to anyone else. The order dated 20-10-1978 reads:

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e- iz- lgdkjh laLFkk;sa vf/kfu;e 1960 dh }kjk 53 dh mi/kkjk 1 ds vf/kdkj] tks e- iz- "kklu] lgdkfjrk foHkkx dh vf/klwpuk ?ekad 1419%7060%15%62% fnukad 16&6&62 ds }kjk eq>s izn?k gS] 1 dk mi;ksx djrs gq;s eSa ;"kiky dqekj la;qDr iath;d lgdkjh laLFkk;sa e- iz- Hkksiky dk;kZy;hu vkns"k ?ekad Hkw] fo- v- 2%78%1206% fnukad 17&4&78 esa vkaf"kd la"kks/ku djrs gq;s ftyk lgdkjh Hkwfe fodkl cSad e;kZfnr eUnlksj ds izca/k gsrq xfBr lfefr ds :ikarj fuEu O;fDr;ksa dh lferh fu;qDr djrk gw? %

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2- ftys dk vFkok ftys ds fdlh Hkkx dk izfrfuf/kRo djusokys ea=h] jkT; ea=h] mi ea=h] laln; lfpo }kjk ukekafdr O;fDr-

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6- ftys ds ftyk/;{k vFkok muds izfrfu/kh-

7- ftys ds mi lapkyd ?f"k-

8- ftys ds lgk;d iath;d lgdkjh laLFkk;sa-

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lgh ;"kiky dqekj la;qDr iath;d ^lgdkjh lfefr;k? e- iz- Hkksiky-**

It is clear that as many as six persons have been mentioned in this order, but there is no appointment of any person. The first one is said to be from the M. L. As. of the district. Although not named but this could mean those who were the sitting M. L. As in the district then. But under other heads the Registrar has chosen to delegate his authority as under Item No. 2 it has been mentioned that any Minister, Deputy Minister or Parliamentary Secretary of the district can nominate the persons to be on this Committee. In other Items also, Nos. 3, 4 and 5 authority has been conferred on some other persons to nominate persons and it is not in dispute that in fact the Committee which has come into existence is a Committee consisting of persons who were nominated by persons who were so authorised under this order dated 20-10-1978. It, therefore, could not be disputed that the Joint Registrar by the impugned order did not appoint person or persons to look after the affairs of the Society but authorised persons to appoint persons to look after the affairs of the Society. It is, therefore, clear that the Joint Registrar delegated his authority on other persons to exercise the authority u/s 53(1) to nominate persons and it is clear that such a power to delegate his own authority u/s 53(1) to someone else is not conferred under this Act. "It is, therefore, clear that when u/s 53(1) the Registrar or the Joint Registrar has only been authorised to appoint person or persons it does not mean that they have also been conferred with powers to delegate their own authority under this Section to anyone else and in this view of the matter, therefore, it could not be doubted that the appointment of the Committee under orders of the Joint Registrar dated 20-10--1978 is not a Committee appointed by the Joint Registrar but is a Committee appointed by persons authorised by the Joint Registrar to nominate persons and in this view of the matter, therefore, it is

clear that the Committee which was appointed was not a Committee appointed in accordance with Sub-clause (11 of Section 53 and, therefore, had no lawful authority to look after the affairs of the Society.

It was contended by the learned counsel for the petitioners that unfortunately the Society is still being looked after by another Committee nominated u/s 53 (1), but there is no challenge to that in so far as continuance of the nominated Committee u/s 53(1) is concerned. About the period the controversy is not material for decision of this case.

As it is found that the Committee appointed u/s 53(1) is not a lawfully appointed Committee, it is clear that any Sub-Committee, appointed by it could not have any lawful authority and in this view of the matter, therefore, the orders of termination passed against all the petitioners could not be said to be lawful and in this view of the matter, therefore, as prayed for by the learned counsel for the parties it is not necessary for this Court to go into the other questions about the compliance with Rule 15 or Rule 17 as even the so-called Board or the Committee nominated u/s 53(1) by the Joint Registrar itself is held not to be in accordance with law, and these orders could not be said to be passed by the Registrar by the authority under law.

The petition, therefore, is allowed. The orders of termination passed against the petitioners are, therefore, quashed. The petitioners shall be entitled to costs of this petition. Counsel's fee Rs. 150/-, if certified. The outstanding amount of the security deposit shall be refunded to the petitioners.