

(1985) 04 MP CK 0026
In the Madhya Pradesh High Court
Case No : M.P. No. 139 of 1984

Ward No. 4 Primary Consumer Co-operative Stores Ltd.,
Satna and another

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 05-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Co-operative Societies Act, 1960 — Section 59(1)

Citation : (1987) J LJ 305 : (1986) MPLJ 203

Hon'ble Judges : Gulab C. Gupta, J

Bench : Single Bench

Advocate : V.K. Tankha, for the Appellant; R.K. Thakur, Govt. Advocate for State, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, J.

Supersession of petitioner No. 1 which is a society registered under the M.P. Cooperative Societies Act, 1960 (hereinafter referred to as "the Act") and consequent removal of petitioner No. 2 from Presidentship of the society by an order dated 27-5-1983 (Annexure P-9) is the subject matter of the present petition filed under Articles 226 and 227 of the Constitution of India. The petitioners pray for a writ of certiorari for quashing the impugned order and a writ of mandamus directing the respondents to maintain the position of the society as existed before the order of supersession.

The petitioner No. 1 is admittedly a society registered under the Act, and is engaged in purchase and supply of consumer goods. Petitioner No. 2 was the elected President of the said society and her term had not expired till then. It appears that certain complaints were made against the society by one Dadan Singh Tiwari, the Chairman of the Wholesale Co-operative Stores which resulted in two separate enquiries against the petitioners. The respondent Assistant

Registrar himself conducted an enquiry and submitted his report on 3-7-1982 (Ex.P-2) and found nothing illegal in the working of the petitioner society. The respondent Joint Registrar also conducted his own separate enquiry and came to the same conclusion in his report dated 5-8-1984 (Annexure P-1). It appears that the respondent Assistant Registrar had in the meantime appointed one Shri R.C. Tiwari, Senior Inspector Co-operative Societies to hold an enquiry under the provisions of section 59(1) of the Act. Said Shri Tiwari submitted his report to the respondent Assistant Registrar dated 31-3-1983 alleging that the petitioner society had not produced records for inspection and had thereby caused obstruction in the enquiry. On the basis of available record, the said Shri Tiwari also found several irregularities in the working of the petitioner's store. Acting on the aforesaid report, the respondent Assistant Registrar issued a show cause notice to the petitioners on 12-5-1983 (Annexure P-3) alleging that the society was making persistent defaults and otherwise neglecting its interests by acting against the Rules and byelaws. 21 specific charges were levelled against the petitioners. It is not disputed that all the charges were levelled on the basis of the recommendation of Shri Tiwari, the Inspector. By this show cause notice, respondent Assistant Registrar required the petitioners to submit their defence within 15 days. It was also stated that in case the reply was not submitted within the prescribed period, it will be assumed that the Board of directors admit the charges and final consequential order will be issued. The respondent Registrar also exercised powers u/s 53(10) of the Act and suspended the society during the pendency of the enquiry. The petitioner No. 1, on receipt of this show cause notice, submitted a request on 16-5-1983 to supply her a copy of the enquiry report submitted by Shri Tiwari on which the charges contained in the show cause notice were based. Subsequent reminder dated 23-5-1983 was also given. This request was however, turned down by respondent Assistant Registrar by his letter dated 16-5-1983 (Annexure P-7) on the ground that all facts necessary to sustain the charges were mentioned in the show cause notice and it was not necessary to supply a copy of the enquiry report. This letter was received by petitioner No. 2 on 27-5-1983. In the meantime, the petitioner No. 2 had also requested for inspection of documents, on the basis of which charges were framed (Annexure P-8). However, before this request could reach the respondent Registrar, he has passed the impugned order on 27-5-1983 (Annexure P-9) superseding the society for a period of one year and appointed Shri R.C. Tiwari Senior Co-operative Inspector as the Officer-in-Charge. The said period has however expired, but it is common ground that the supersession still continues. An appeal against the order was filed before the Registrar which failed. A second appeal before the Board of Revenue also failed and hence the present writ petition.

The impugned order of supersession is assailed on the ground that the petitioners have not been given a reasonable opportunity of showing cause against the proposed action and hence the impugned order is violative of section 63(2) of the Act. It is also submitted that the petitioner society is indebted to a

financing Bank and hence no order of supersession could have been passed except after consulting the financing Bank and after waiting for 45 days for the opinion of such Bank. Since this has not been done, the impugned order is said to be violative of sub-section (3) of section 53 of the Act. On merits, it is submitted that the respondent Assistant Registrar and the Joint Registrar having themselves investigated the complaints made by Shri Dadan Singh and found nothing worth taking further action, appointment of Shri R.C. Tiwari for holding enquiry and acting on his report was illegal and unjustified. Learned Govt. Advocate appearing for the respondents, however, supported the action on the ground that the reasonable opportunity has been afforded to the petitioners before passing the impugned order and that want of consultation does not introduce any infirmity in the

Before considering the correctness or otherwise of the submissions of the parties, it may be noted that section 55(1) of the Act permits the Registrar, by an order in writing, to remove the Committee of the society if in the opinion of the Registrar the Society is persistingly making defaults or is negligent in the performance of duties or commits acts prejudicial to the society or is otherwise not functioning properly. This provision clearly specified that it is the opinion of the Registrar which matters. Sub-section (2) of this section provides that no order of supersession of the committee can be passed unless the committee has been given a reasonable opportunity of showing cause against the proposed order and representation made by, if any is considered. Sub-sections (1) and (2), read together, clearly indicate that the Registrar is first required to apply his mind in the context of requirements of sub-section (1) and reach a tentative conclusion for taking action towards supersession. After he has reached this conclusion and proposes to make an order of supersession the Registrar is required to give the committee a reasonable opportunity of showing cause against the proposed order. Giving a reasonable opportunity is, therefore, second and important stage in the process of action. This provision incorporates, what is known in the legal parlance, the principles of natural justice. The third stage is reached when the representation against the proposed action has been submitted by the society to the Registrar. The Registrar then applies his mind to the various defences taken by the committee in the reply and thereafter, passes an order in conformity with law. Since the Registrar, while passing the order under this section, performs his statutory function, it must be conceded that the Registrar has to give reasons for the conclusion ultimately reached by him. This legal position seems to be emerging from the plain reading of the Act and is, therefore, beyond controversy. The question, however, is whether the opportunity afforded to the committee would be the "reasonable" opportunity within the meaning of the terms u/s 53(2)? These two words are said to be incorporating principles of natural justice. Principles of natural justice are not contained in any straight jacket formula and have been interpreted differently in the context of different facts and circumstances. It however appears to be clear that wherever an action involving civil consequences is required to be taken

against a person he must be given a reasonable opportunity of showing cause against the action. This opportunity may include informing him of the material which is to be used against him, supplying him all material that may be necessary for his defence and considering impartially, without fear and favour, the defence taken by him and reach a conclusion which a reasonable mind, reasonably instructed in law, would reach on the basis of the facts and circumstances on record. Unless the opportunity as aforesaid has been given, it will be difficult to hold that the person affected by the order had a reasonable opportunity of showing cause against the proposed action. This appears to be the view of this Court in *M.P. Khadya Avam Agrikpurit (Karyapalik) Karmchari Sangh, Bhopal v. State of M.P. & another* (M.P. No. 109/81, decided on 26th March 1985). Though the aforesaid case was a case where appointment order of persons selected on their merits by a duly constituted committee was cancelled, this court had the occasion to consider the ambit and scope of principles of natural justice to hold that cancellation of such an appointment without a reasonable opportunity was illegal. This also appears to be the view of the Supreme Court in *State of U.P. v. Nandkishore* (AIR 1977 S.C. 1267) and *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, .

We may now examine the grievance of the petitioner in the context of aforesaid law. They complained denial of reasonable opportunity to show cause against the proposed order because (sic) they have not been given a copy of the enquiry report submitted by Shri Tiwari in spite of demand. The fact that the report was demanded and has not been supplied, is admitted. The question for consideration, therefore, is whether the principles of natural justice have been violated effecting the reasonable opportunity required to be given to the petitioners. In *Suresh Seth v. State of M.P.* (1969 M.P.L.J. 327) a Division Bench of this Court while considering a parallel provision in the M.P. Municipal Corporation Act, 1956, considered the scope of principles of natural justice in the context of supersession of the Municipal Corporation, Indore. The view taken by the Division Bench was that a reasonable opportunity contemplated u/s 422 of the Act was not a bare formality and obliges the authority to disclose all adverse material to be used against the Corporation. According to the Division Bench, principle of fairness was implicit in the protection and imposed a mandatory requirement in law. The report of the Commissioner which formed basis of action had not been supplied to the Corporation and this, according to the Division Bench, vitiated the legal guarantee of reasonable opportunity to show cause. Though the law clarified by the Division Bench in this case was in the context of the quasi-judicial authority which the government while acting under its statutory powers leading to supersession of the Corporation, was held to be, this law has now been extended beyond the frontiers of Quasi-Judicial Tribunals and covers even the administrative bodies. There is no reason why the aforesaid law should not govern the supersession under the Act in question as not only the provisions but also the procedural safeguards and consequences remain the same. Even otherwise, there is enough judicial authority for the proposition that a report of a

preliminary inquiry has to be given to the person against whom an inquiry is subsequently held in accordance with law. In *State of M.P. v. Chintaman* (AIR 1961 S.C. 1623) this principle was applied to a case of Departmental Enquiry against a government servant and refusal to supply him a preliminary inquiry report was held sufficient to deny reasonable opportunity guaranteed under Article 311 of the Constitution. The view taken by a Full Bench of this Court in *Prabhakar v. State of M.P.* (1967 M.P.L.J. 174) is also the same view. Since then it has been accepted as a principle of service jurisprudence developed around under Art. 311 of the Constitution that refusal to supply the copy of the preliminary enquiry report would deny reasonable opportunity to the delinquent government servant and would violate Art. 311 of the Constitution.

The above mentioned cases represent two broad categories viz. Quasi-Judicial Tribunals and Administrative Tribunals, which are obliged to supply copies of preliminary inquiry report to the person facing regular inquiry and non-supply of the same had been held sufficient to introduce illegality in the consequent action. This principle is required to be followed rather strictly in a proceeding under the Act as the report asked for by the petitioner in the instant case was the report of the inquiry held u/s 59 of the (sic) which section itself obliges the Registrar to communicate the result of the inquiry to the society (see sub-para 4). Communicating the result of the inquiry does not mean giving extracts of the report but means supplying copy of the report itself. If the law itself requires the report to be given to the society, there is no reason why the report should not have been so given. That failure to supply the report has resulted in denial of opportunity is apparent on the face of the record of this case. Admittedly, the Assistant Registrar and Joint Registrar had made their own independent inquiries into the charges and found nothing objectionable. If an Inspector holds another inquiry into those charges and reaches a contrary conclusion, his report must be based on facts not considered by the Assistant Registrar and Joint Registrar. If that be so, the person concerned would be entitled to read the report and ascertain how the report of the Inspector differs from the report of other two higher officers. Under the circumstances, the defence that all necessary material on which charges were sustained had been communicated in the show cause notice cannot be accepted as sufficient to satisfy the requirement of reasonable opportunity which the petitioners are entitled under law. There is, therefore, no escape from the conclusion that the impugned order of supersession was violative of section 53(2) of the Act.

The next grievance of the petitioners that they were not given an opportunity to submit their defence, is also substantial. The show cause notice dated 12-5-1983 gave them 15 days time for filing the reply. 15th day would expire on 27th May, 1983 and hence the applicant would be within the time limit if they submit their reply even at the closing hours of 27th May, 1983. The respondent Assistant Registrar, however, did not wait for the time to expire and passed the order on 27-5-1983 itself. Apparently, he acted in a hot haste and even did not care to wait for the whole period given by him to the petitioners for showing cause.

Then, there was no reason for the petitioners to file their reply by 27-5-1983 as the petitioner No. 1 had on 16-5-1983 demanded a copy of the inquiry report for enabling her to file the reply. The request was rejected and the rejection was communicated on 27-5-1983. It is only after this communication that the petitioners could be required to file their reply. There was hardly any time given to them for this purpose. The efficiency and promptness with which the Assistant Registrar moved in the matter makes one doubt the bona fide of the said Registrar. The doubt becomes clear when one considers the fact that the letter dated 16-5-1983 rejecting the request of the petitioner No. 1 to supply her with a copy of preliminary inquiry report was served on her on 27-5-1983 itself. The Registrar's office could not be slow and inefficient in disposing of the application of the petitioner No. 1 for copy of the preliminary inquiry report and so prompt and efficient in passing and communicating the impugned order of supersession. Whatever be the actual position, the respondent Registrar must realize its obligations as a statutory authority and further that there are authorities above him to see that he remains within the limits of law. These words of caution and advice should make the statutory authorities like the respondent Registrar, act in accordance with law and without fear and favour. In view of the finding that reasonable opportunity has been denied to the petitioners in the matter, it is not necessary to examine in detail the other submission of the petitioners regarding consultation with the finance bank. Not only the respondent Joint Registrar but also the respondent Board of Revenue have found, as a matter of fact, that such consultation was not done though the law required it to be done. They have, however, taken the view that this did not prejudice the petitioner in any manner. This approach is not the correct approach. In *Radheshyam Sharma Vs. Govt. of M.P. through C.K. Jaiswal and Others*, and *Board of Directors of Shri Ganesh Sahakari Vipnan (Marketing) Sanstha Maryadit v. Deputy Registrar, Co-operative Societies* (1982 MPLJ 46) this Court has held that requirement of consultation is mandatory requirement and no order of supersession can be passed within 45 days of such consultation if made. A mandatory requirement of law is normally not dependent on the consequences of prejudice caused to the person aggrieved. Breach of a mandatory requirement, by itself, is accepted as proof of injury and law Courts help remedy such breaches. In this view of the matter, it is apparent that the respondents' approach in the matter has been illegal.

Yet another submission of the petitioner that there was no justification for issuance of show cause notice or ordering supersession of the petitioner society, may also be examined. It is not disputed that the action is based on the report of Shri Dadan Singh Tiwari, Chairman of Wholesale Consumers Co-operative Stores which has been the subject matter of investigation by the Assistant Registrar and the Joint Registrar, both of whom did not find anything worth starting proceedings u/s 53(1) of the Act. If the respondent Assistant Registrar by making inquiry to his satisfaction found nothing worth initiating action u/s 53 of the Act it will require some effort on the part of the said Registrar to establish how the action can be maintained on the report of Inspector under the

circumstances. The report of the Assistant Registrar as well as that of Shri Tiwari Senior Inspector has been filed by the respondents along with their return for perusal of this Court. The report of Shri Tiwari is sketchy and is based on surmises and unwarranted assumptions. Charge No. 1 in the said report is based on adverse inference drawn against the petitioners as they did not file their statement. Such a course is unacceptable to the law. An inquiry u/s 59 is not to be conducted in the office room on the material supplied by the society nor such an inquiry is required to be made on assumptions. The Senior Inspector should have looked into documents and should have even recorded oral evidence to ascertain if allegations were correct. Then this charge had been earlier investigated by respondent Registrar who found nothing objectionable about it (See para 5 of his report, Annexure R-3). In view of this finding the respondent Assistant Registrar was required to consider how his own earlier finding was bad in law and the Finding of the Inspector based on surmises could be preferred. Same is true about the charge in para 2 of the report of the Inspector which relates to some persons being made members of the Committee from outside its territorial jurisdiction. Respondent Registrar had earlier found no substance in this allegation and should have, therefore, recorded its separate reasons for changing his views. Indeed, all the findings as recorded by the Assistant Registrar and joint registrar are detailed findings based on facts and contain cogent reasons for reaching the conclusions, whereas the findings recorded by Shri Tiwari, Inspector are prima facie based on no material whatsoever. Clearly, therefore, the finding recorded by Shri Tiwari, the Inspector could not form the basis of an action against the petitioners. In such circumstances, allegation of absence of fair play becomes relevant. It is, however, not necessary to investigate the matter further as this, by itself, is sufficient to hold that there is no basis whatsoever for issuing the show cause notice or ordering supersession.

The manner and the hot haste in which the impugned action has been taken by the respondent Asstt. Registrar sufficiently indicates that he was not applying his free and independent mind. It has to be realized that the co-operative movement is vital to the economy of the country and directly concerns the weaker sections of the society. Officers responsible for such an important movement are, therefore, expected to work with missionary zeal so that the desired progress is achieved without undue delay. The present case cannot be accepted as the evidence of this missionary spirit. It, on the contrary, points to the ills of the system. It is high time that the significant and vital aspects of the co-operative movement are appreciated and movement carried forward in proper directions to speedily achieve the desired goal. This Court hopes and believes that officers of the Department would wake up to their responsibilities imposed upon them by law and prove themselves worthy of the confidence reposed upon them.

The petition succeeds and is allowed. The impugned order of supersession dated 27-5-1983 (Annexure P-9) is quashed. The respondents are directed by a writ in the nature of mandamus to restore the petitioners to the same position in which they were before the show cause notice dated 12-5-1983 and permit them to act

in accordance with law. The petitioners shall be entitled to the costs of this petition. Counsel's fee Rs. 200/- The outstanding amount of security deposit, if, any, shall be refunded to the petitioners.