

Chintapalli Agency Taluk Arrack ... vs Secretary (Food And Agriculture) Govt. ... on 28 September, 1977

Equivalent citations: 1977 AIR 2313, 1978 SCR (1) 563, AIR 1977 SUPREME COURT 2313, 1977 4 SCC 337, 1977 (13) CO-OP LJ 129, 1978 (1) SCJ 179, 1978 (1) SCWR 96, 1978 (1) SCR 563, 1977 U J (SC) 651

Author: P.K. Goswami

Bench: P.K. Goswami, P.N. Shingal, Jaswant Singh

PETITIONER:

CHINTAPALLI AGENCY TALUK ARRACK SALESCO-OPERATIVE SOCIETY LT

Vs.

RESPONDENT:

SECRETARY (FOOD AND AGRICULTURE) GOVT. OF ANDHRA PRADESH, ET

DATE OF JUDGMENT 28/09/1977

BENCH:

GOSWAMI, P.K.

BENCH:

GOSWAMI, P.K.

SHINGAL, P.N.

SINGH, JASWANT

CITATION:

1977 AIR 2313 1978 SCR (1) 563

1977 SCC (4) 337

CITATOR INFO :

R 1981 SC 136 (22,23)

 1986 SC 180 (48)

F 1991 SC 2137 (3,5)

ACT:

Andhra Pradesh Co-operative Societies Act, 1964, section 77(2)-Whether mandatory-Whether the orders passed in revision invalid for non-compliance with s. 77(2) and non-affording an opportunity to the person prejudicially affected-Scope of s. 77(2).

HEADNOTE:

The appellants are the registered societies under the Andhra Pradesh Cooperative Societies Act and the area of operation,

as provided by the bye-laws, was for the entire taluk with a view to grant arrack licences to them in respect of the arrack shops within the said taluk. To spread the co-operative movement at the village level the trials, in the various villages in the taluk, were also permitted to form their own village co-operative societies and to ask for grant of licences of their village shops in favour of the respective village societies and enter into the liquor trade. After the village societies were registered on 4th October 1975, the Deputy Registrar (Co-operative Societies), gave a notice to the appellants u/s. 16(5) of the Andhra Pradesh Co-operative Societies Act 1964 calling upon them to amend their bye-laws so as to restrict their area of operation only to the taluk headquarters.

The revision petition filed by the Chintapalli Agency Society against the said orders of Deputy Registrar was allowed by the Registrar on 10-12-1975 directing the District Co-operative Authorities to recommend the case of the appellants for grant of licence for all the shops situated within the taluk for the excise year 1975-76 ending with 30th September 1976. As the licences had already been granted in favour of the village societies, the orders could not be given effect to for the year 1975-76. However, the licence was granted for the year 1976-77 ending with 30th September 1977 in favour of the appellants. The village societies preferred revision petitions under s. 77 of the Act against the orders of the Registrar dated 10-12-1975 before the Government. On the very day, namely, 6-10-1976 when the respondent-village societies filed their revision petitions before the Government, the appellants also filed an application before the Government disputing the claim of the village societies followed by another application dated 28-10-1976. On 5-11-1976, the appellants prayed to the Government for an opportunity to file their counter in the revision petition filed by the respondent-village societies. The Government, however, without any notice to the appellants passed final orders on 4-12-1976 allowing the two revision petitions filed by the village societies and set aside the orders of the Registrar dated 10-12-1975. The Government also "requested" the Excise Superintendent, Visakhapatnam, to take action u/s. 32 of the Andhra Pradesh Excise Act 1968 for withdrawal of the licence already granted in favour of the appellants and to issue a fresh licence amending the area of operation restricting it only to Chintapalli village. The writ petitions filed by the appellants were dismissed by a common judgment dated 27th January 1977 by the Andhra Pradesh High Court.

Allowing the appeals by special leave, the court

HELD : (1) Section 77(2) of the Andhra Pradesh Co-operative Societies Act 1964 is a mandatory provision. The view of the High Court that this provision can be by-passed by resort to belying into correspondence between the appellant and the Government is not correct; The minimal requirement

u/s. 77(2) is a notice informing the opponent about the application and affording him an opportunity to make his representation against whatever has been alleged

564

in his petition. It is true that a personal hearing is not obligatory but the minimal requirement of the principles of natural justice which are ingrained in s. 77(2) is that the party whose rights are going to be affected and against whom some allegations are made and some prejudicial orders are claimed should have a written notice of the proceedings from the authority disclosing the grounds of complaint or other objection preferably by furnishing a copy of the petition on which action is contemplated in order that a proper and effective representation may be made. This minimal requirement can on no account be dispensed with by relying upon the principle of absence of prejudice or imputation of certain knowledge to the party against whom action is sought for.

In the instant case the impugned order of the Government is invalid being in the teeth of s. 77(2) of the Act and in violation of the principles of natural justice. Even though the appellant may somehow get a copy of the application or the appellant may have, on its own motion, submitted certain representations, the duty of a quasi-judicial authority, as the Government undoubtedly is, in disposing of a matter u/s. 77, could not be avoided in affording the appellant an opportunity to make representations. This requirement u/s 77(2) cannot be considered as an empty formality and sub-s.(2) of s. 77 has to be complied with by the Government. [569 H. 570 A-D]

(2) It is not correct that the Registrar could not exercise powers u/s. 77 in examining the correctness, legality or propriety of the proceedings initiated by the Deputy Registrar u/s. 16(5) of the Act and that the Registrar's order in revision is, a nullity. In exercise of the powers conferred by s. 3 of the Act, the Governor of the Andhra Pradesh has conferred, inter alia, powers u/s. 16 on the Deputy Registrar of Co-operative Societies in charge of the Divisions. It was competent for the Deputy Registrar to issue the notice u/s. 16(5) to the appellants. Section 3(1) of the Act provides for the appointment of Registrars and "other persons". Under s. 3(2) "every other person appointed under subs. (1) "shall exercise such powers of the Registrar under the Act as the Government may confer on him under the general superintendence of the Registrar" The Deputy Registrar belongs to the category of "other persons" appointed under sub-s. (1) of s. 3. When, therefore, powers of the Registrar are conferred upon him he has to act "under the general superintendence of the Registrar" as specifically mentioned in sub-s. (2) of s. 3. Under the scheme of the Act "any other person" appointed under s. 3(1) on whom Government confers powers under s. 3(2) is not equated with the Registrar. The Deputy Registrar is an

officer subordinate to the Registrar for all purposes and has to act under the supervision of the Registrar. It is true that the power u/s. 16 is that of the Registrar but the Deputy Registrar exercises that power as empowered by the Government but always "under the general superintendence of the Registrar". Again, under s. 76(2) any order passed in pursuance of the power so exercised u/s. 16 is appealable to the Registrar as order passed by "any other officer" appointed u/s 3(1). [568 C-D, G, 569 A-C, E, F] *Roop Chand v. State of Punjab* [1963] Suppl. (1) SCR 539, distinguished.

(3) Any request of the Government to a subordinate authority is tantamount to a positive direction or order and it will be difficult for the subordinate authority to disregard the same. [The court, however, expressed no opinion as to whether Government in exercising revision power u/S. 77 of the Act was competent to issue directions to the Excise Department in the matter of settlement of arrack shops. The court also left open to the Government to notify the policy with regard to the settlement of arrack shops as it may deem fit.]

[570 E-G]

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 503-504 of 1977.

Appeals by Special Leave from the Judgment and Order dated 27-1-77 of the Andhra Pradesh High Court in Writ Petitions Nos. 3967 and 3987/76 respectively.

A. Venkataramana, K. Rajendra Chaudhary and Mrs. Veena Devi Khanna for the Appellant.

P. Parmeswara Rao and G. Narayana Rao for Respondent No.

1. G.Yenkatarama Sastry (In CA No. 503/77 for Respondent No. 1.

G.Yenkatarama Sastry (In CA No. 503/77 for Respondent No. 5.

The Judgment of the Court was delivered by GOSWAMI, J. Chintapalli Agency Taluk Arrack Sales Co-operative Society Ltd. and the Paderu Taluk Tribal Arrack Sales Co-operative Society Ltd. were registered as Co-operative Societies by the Deputy Registrar of Co-operative Societies, Yelamanchili. The question raised in this case by these two Societies has been decided by a common judgment of the High Court of 27th January, 1977. It is sufficient to state the facts appertaining to Chintapalli Agency Taluk Arrack Sales Co-operative Society Ltd. (briefly the appellant) as these are common.

The appellant was registered by the Deputy Registrar of Co- operative Societies, Yelamanchili, on 26th September, 1975. The area of operation of the appellant was provided in its bye-laws was for the entire taluk with a view to grant arrack licences to it in respect of all the arrack shops within the said taluk. There was, however, an infection of the cooperative movement and it appears that trials in the various villages in the taluk were. also encouraged by the Cooperative Department to form their own village cooperative societies and to ask for grant of licences of their village shops in favour of the respective village societies instead of granting all the licences of the taluk to a single society, such as the appellant. With this purpose of initiating them into the liquor trade, the village societies were registered on 4th October, 1975.

Having thus registered the village co-operative societies (briefly the village societies), the Deputy Registrar of Co- operative Societies gave a notice to the appellant under section 16(5) of the Andhra Pradesh Co-operative Societies Act, 1964, calling upon it to, amend its bylaws so as to restrict its area of operation only to the taluk head- quarters.

The underlying idea behind such a notice was that the appellant should be given the licence in respect of shops situated in the taluk headquarters while licences in respect of shops Situated within the villages should be granted to the respective village societies which have since been registered.

The appellant filed a petition of revision before the Registrar of Co-operative Societies challenging the above notice. The petition was allowed by the Registrar by his order dated 10th December , 1975. In the said order the Registrar not only set aside the aforesaid notice of the Deputy Registrar but also directed the District Co-operation authorities to recommend the case of the appellant for grant of licences for all the shops situated within the taluk for the excise year 1975-76 ending 30th September, 1976. This direction, however, could not be implemented since by that time the village societies had already been granted licences in respect of shops situated in the respective villages. The appellant's licence was confined to the area in taluk headquarters 'for the year 1975-76.

With the said recommendation staring in the face, the village societies apprehended trouble in the year 1976-77 and filed writ petitions in the High Court challenging the Registrar's order of 10th December, 1975. Indeed the licences for 1976-77 were granted to the appellant for the entire area as recommended by the Registrar. No stay orders could be obtained by the respondents and hence the licences, for 1976-77 continued with the appellant. The village societies also, almost simultaneously approached the Government by way of revision under section 77 of the Andhra Pradesh Co-operative Societies Act, 1964 (briefly the Act) against the order of the Registrar of 10th December, 1975. On 6th October 1970, the Government suspended the operation of the order of the Registrar dated 10th December 1975 and further directed the Collector (Cooperation) Visakhapatnam to recommend the case of the village societies to the Excise Superintendent for the issue of licences for the excise year 1976-77.

The appellant filed a writ petition in the High Court against the aforesaid order of the Government dated 6th October 1976. The High Court issued Rule nisi, but declined to stay the impugned order. We are not concerned with this writ petition which was dismissed as infructuous. On the very day, viz., 6th October, 1976, when the respondents filed their revision before the Government, the

appellant filed an application to the Government disputing the claim of the village societies. The appellant also filed before the Government a similar application on 28th October, 1976. On 5th November, 1976, the appellant prayed to the Government for an opportunity to file counter in the revision petition filed by the respondents. The Government, however, without any notice to the appellant, passed final orders on 4th December, 1976, allowing the two review petitions filed by the village societies and set aside the order of the Registrar dated 10th December, 1975.

Under the aforesaid order the Government "requested" the Excise Superintendent, Visakhapatnam, to take action under section 32 of the Andhra Pradesh Excise Act, 1968, for withdrawal of the licence already granted in favour of the appellant and to issue a fresh licence amending the area of operation restricting it only to Chintapalli village. The Excise Superintendent was also requested to issue thereafter fresh individual licences to all the village level societies in the Chintapalli taluk for arrack shops existing in their respective villages. It was, however, mentioned in that order that the appellant should have opportunity to represent its grievances, if any, before the Divisional Co-operative Officer, Yalamanchili, who issued the notice under section 16(5) of the Act. The appellant felt aggrieved by the, above order of the Government and filed two writ petitions Nos. 3947 and 3987 of 1976, in which the impugned order was passed by the High Court and with which alone we are concerned in these appeals.

The short question that arises for decision is whether the order of the Government in revision which was passed under section 77 of the Act is invalid for non-compliance with section 77(2) which provides that no order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation. It is submitted that the Government did not afford any opportunity to, the appellant for making representation before it. The High Court rejected this plea on the ground that from a perusal of the voluntary applications filed by the appellant it was clear that the appellant had anyhow met with the points urged by the respondents in their revision petition before the Government. We are, however, unable to accept the view of the High Court as correct.

The question of amendment of the bye-laws is intimately connected in this case with the abridgement of the operation of business directly affecting the existing licences which had already been granted to, the appellant. Even though the appellant may somehow get a copy of the application or the appellant may have, on its own motion, submitted certain representations, the duty of a quasi-judicial authority, as the Government undoubtedly is, in disposing of a matter under section 77, could not be avoided in affording the appellant an opportunity to make representation. This requirement under section 77(2) cannot be considered as an empty formality and subsection (2) of section 77 has to be complied with by the Government. This has not been done in this case.

It is submitted on behalf of the respondents that the order of the Registrar is a nullity for the reason that the Registrar could not entertain the revision petition against the order of the Deputy Registrar who has been empowered to exercise the functions, and powers of the Registrar under section 16.

Section 2(n) of the Act defines Registrar as follows " 'Registrar' means the Registrar of Co-

operative Societies appointed under section 3(1) and includes any other person on whom all or any of the powers of the Registrar under this Act are conferred".

Section 3 may be read "3(1) There shall be appointed a Registrar of Co-operative Societies for the State and as many other persons as the Government think fit for the purposes of this Act.

(2) Every other person appointed under sub- section (1) shall exercise, under the general superintendence of the Registrar, such powers of the Registrar, under this Act as the Government may, from time to time, confer on him".

In exercise of the powers conferred by section 3 of the Act the Governor of the Andhra Pradesh has conferred, inter alia, powers under section 16 on the Deputy Registrars of Co-operative Societies incharge of Divisions. It was therefore competent for the Deputy Registrar to issue the notice under section 16(5) to the appellants. The question next arises whether the Registrar could entertain a petition under section 77 when the proceedings under section 16(5) were questioned by the appellant. It is strenuously submitted that the power exercised by the Deputy Registrar under section 16 was the power of the Registrar delegated to him and therefore any order passed in those proceedings would lie the order passed by the Registrar and, therefore, the Registrar was not competent to entertain a petition of revision against what may be described as his own order. In this context the respondents rely upon a decision of this Court in *Root Chand v. State of Punjab* (1) in support of the above submission.

We may first examine the scheme of the present Act with which we are concerned. The appointment of the Registrar and "other persons" is provided for under section 3(1). Under section 3(2) " every other person appointed under sub- section (1)" shall exercise such powers of the Registrar under the Act as the Government may confer on him "under the general superintendence of the, Registrar". It is, therefore, clear that the Deputy Registrar belongs to the category of "other persons" appointed under sub-section (1) of section 3. When, therefore, powers of the, Registrar are conferred upon him he has to act "under the general superintendence of the Registrar" as specifically mentioned in subsection (2) of section 3.

Again, we may refer to section 76 of the Act which provides for appeals. Under section 76(2) any person or society aggrieved by any decision under section 6, refusal to register a society under section 7 or amendment of the bye- laws under section 16, etc. may appeal to the Government if the order is passed by the Registrar [section 76(2) (i)] and to the Registrar if the decision is of any other person [section 76 (2) (ii)]. The Explanation in sub-section (2) of section 76 provides that the Registrar includes the Additional Registrar, the Joint Registrar, the District Collector and the Special Cadre Deputy Registrar working as Personal Assistant to the Collector, but not the Deputy Registrar of Co-operative Societies incharge of the Divisions. Thus under the scheme of the Act, "any other person" appointed under section 3 (1) on whom Government confers powers under section 3 (2) is not equated with the Registrar. It is manifest that the Deputy Registrar is an officer subordinate to the Registrar for all purposes and has to act under the supervision of the Registrar. Any order passed by the Deputy Registrar of Co-operative Societies under section 16 is appealable to the Registrar under section 76(2) (ii).

Section 77 provides for the power of revision and only the Registrar and the Government have this concurrent power. This power can be exercised either on an application by a party or suo moto. Power under section 77 is not conferred on the Deputy Registrar (1) [1963] Supp. (1) SCR 530.

whereas power under section 16 along with some other powers is conferred on the Deputy Registrar. Section 77 provides that the Registrar may of his own motion or on an application made to him call for and examine the record of any officer subordinate to him in respect of any proceeding, not being a proceeding wherefrom appeal lies to the Tribunal under section 76(1) to satisfy himself as to the regularity of such proceeding, or the correctness, legality or propriety of any decision passed or order made therein and pass any of the appropriate orders specified in section 77(1). This power of the Registrar is in accord with the preeminent position accorded by the Act to the Registrar under whose supervision "every other person appointed under section 3(1)" may function and act. It is, therefore, not correct that the Registrar could not exercise power under section 77 in examining the correctness, legality or propriety of the proceedings initiated by the Deputy Registrar under section 16(5) of the Act.

Roop Chand's case (supra) is clearly distinguishable since there under section 41(1) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the State Government appoints persons and delegates its powers or functions under the Act to such officers. When, therefore, an officer acts as a delegate of the State Government he exercises statutory power of appeal of the Government under section 21 (4) of the Act. This Court observed, in that case "... such a power when delegated remains the power of the Government, for the Government can only delegate the power given to it by the statute and cannot create an independent power in the officer. When the delegate exercises the power, he does so for the Government".

In the present case it is true the power under section 16 is that of the Registrar but the Deputy Registrar exercises that power as empowered by the Government but always "under the general superintendence of the Registrar". Again, under section 76(2) any order passed in pursuance of the power so exercised under section 16 is appealable to the Registrar as an order passed by "any other officer" appointed under section 3(1). The scheme of the Consolidation Act which this Court had to deal with in Roop Chand's case (supra) is different from that of the Co-operative Act. The submission of counsel that the Registrar's order in revision is a nullity is devoid of substance.

As mentioned earlier in the judgment the Government did not give any notice communicating to the appellant about entertainment of the application in revision preferred by the respondents. Even though the appellant had filed some representations, in respect of the matter, it would not absolve the Government from giving notice to the appellant to make the representation against the claim of the respondents. The minimal requirement under section 77(2) is a notice informing the opponent about the application and affording him an opportunity to make his representation against whatever has been alleged in his petition. It is true that a personal hearing is not obligatory but the minimal requirement of the principles of natural justice which are ingrained in section 77(2) is that the party whose rights are going to be affected and against whom some allegations are made and some prejudicial orders are claimed should have a written notice of the proceedings from the authority disclosing grounds of complaint or other objection preferably by furnishing a copy of the petition on

which action is contemplated in order that a proper and effective representation may be made. This minimal requirement can no on account be dispensed with by relying upon the principle of absence of prejudice or imputation of certain knowledge to, the party against whom action is sought for.

It is admitted that no notice whatever had been given by the Government to the appellant. There is, therefore, clear violation of section 77(2) which is a mandatory provision. We do not agree with the High Court that this provision can by-passed by resort to delving into correspondence between the appellant and the Government. Such non-compliance with a mandatory provision gives rise to unnecessary litigation which must be avoided at all costs.

The impugned order of the Government is invalid being in the teeth of section 77(2) of the Act and in violation of the principles of natural justice and the High Court should have quashed the same under Article 226 of the Constitution. We, therefore, set aside the judgment of the High Court as well as the order of the Government dated 4th December, 1976. Since we are allowing these appeals by setting aside the order of the Government, we express no opinion as to whether the Government in exercising revision power under section 77 of the Act was competent to issue directions to the Excise. Department in the matter of settlement of arrack shops. It was submitted, however, that there was no direction in the order which was only by way of 'request" and suggestion. We are, however, unable to accept this submission as correct. Any "request" of the Government to a subordinate authority is tantamount to a positive direction or order and it will be difficult for the subordinate authority to disregard the same.

Normally we would have remanded the revision petition to be disposed of by the Government in accordance with law and in the light of this judgment but since the period of the arrack licences will expire on 30th September, 1977, no useful purpose would be served by a remand. It will however, be open to the Government to notify its policy with regard to the settlement of arrack shops in future in such appropriate manner as it may deem fit.

This judgment will govern both the appeals. Both the appeals are allowed, but there will be no. order as to costs,.

S. R.

Appeal allowed.