

Supreme Court of India

Satya Pal Anand vs State Of M.P. And Anr on 6 May, 1947

Author: A.K.Sikri

Bench: Anil R. Dave, A.K. Sikri

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION( C) No. 33644/2011

Satya Pal Anand

...Petitioner

Vs.

State of M.P. & Anr.

...Respondents

J U D G M E N T

A.K.SIKRI,J.

1. The petitioner herein had filed Writ Petition under Article 226 of the Constitution in the High Court of Madhya Pradesh, Principal Seat at Jabalpur, in the nature of Public Interest Litigation. In that petition, the petitioner has challenged the validity of Section 3 of the M.P. State Co-operative Societies Act, 1960 (hereinafter referred to as the Act) to the extent this provision permits the State Government to appoint the Registrar of the Co-operative Society, as well as Additional Registrar, Joint Registrar, Deputy Registrar, Assistant Registrar etc. The petitioner also challenged proviso added to Section 77 (3)(b) and Section 77 (6) of the Act as unconstitutional. To put it succinctly, the grievance of the petitioner was that these provisions provide for appointment of persons not having any education in law, though discharging the judicial function, which was impermissible and ex-facie violative of Art. 14 and 21 of the Constitution. The petitioner had even given suggestion to the effect that the appointments of these presiding officers be made in manner presiding officers of the labour courts are appointed.

2. The Writ Petition was contested by the respondents on various grounds. In the first place, the very maintainability of the Writ Petition was assailed on the ground that the petitioner had not approached the High Court with clean hands and had suppressed the fact that he was a chronic litigant whose various cases were pending before the Cooperative Court. Therefore, he had personal interest in the matter. As such, he was not competent to file the Writ Petition in the nature of PIL. On merits, it was submitted that such Registrar, Addl. Registrar etc. function under the supervision of M.P. State Cooperative Tribunal (in short 'the Tribunal'). The Chairman of the Tribunal is a judicial officer. Again, both these authorities function under the over all superintendence of the High Court under Art.227 of the Constitution. In several other enactments the administrative officers perform such quasi judicial functions.

3. After considering the submissions of both the parties, the High Court repelled the challenge of the petitioner to the vires of the aforesaid provisions of the Act and dismissed the Writ Petition filed by the petitioner.

4. Against the aforesaid judgment, present Special Leave Petition is preferred under Art. 136 of the Constitution. The petitioner has appeared in person and filed written submissions. At the time of arguments, he referred to and read out certain portion of those written submissions and submitted that he did not have to say anything more than what is contained therein. The learned counsel for the respondents on the other hand relied upon the reasoning given by the High Court in the impugned judgment to justify the said order. We have perused the judgment minutely and have also gone through the written submissions of the petitioner.

5. Before advertng to these submissions, we would like to reproduce the provisions of the Act which are subject matter of the present challenge:

“3. Registrar and other officers.-

(1) The State Government shall appoint a person to be the Registrar of Co-operative Societies for the State and may appoint one or more officers of the following categories to assist him, namely:

(a) Additional Registrar of Co-operative Societies;

(b) Joint Registrar of Co-operative Societies;

(c) Deputy Registrar of Co-operative Societies;

(d) Assistant Registrar of Co-operative Societies;

(e) Such other categories of officers as may be prescribed.

xxxxxx xxxxxx xxxxxx”

77. Madhya Pradesh State Co-operative Tribunal.

(3) (b) Of the other two members, one shall be an officer of Co-operative Department not below the rank of Joint Registrar and the other shall be non-official closely associated with co- operative movement or an Advocate or a Pleader having practical experience for a period of not less than fifteen years:

Provided that if the State Government thinks fit, the Tribunal may consist of a single person.

xxxx xxxxx xxxxx (6) Notwithstanding anything contained in sub-section (4) the State Government may terminate at any time, the appointment of the Chairman or a member if, in its opinion, such Chairman or member is unable or unfit to constitute to perform the duties of his office:

Provided that no appointment shall be terminated under this sub-section unless the person whose appointment is proposed to be terminated is given reasonable opportunity of showing cause against such termination.”

6. With this, now let us first deal with the argument pertaining to the validity of Section 3 of the Act. As is clear from the above, Section 3 deals with appointment of the Registrar of Co-operative Societies as well as Additional Registrar, Joint Registrar, Deputy Registrar, Assistant Registrar etc. As mentioned above, the plea of the petitioner is that since Registrar and other officers are performing judicial function under the Act, any person to be appointed as Registrar, Joint Registrar etc. has to be necessarily a law person, namely, a person who has education in law and is well equipped to discharge such adjudicatory functions.

7. In order to appreciate this contention, we will have to look into the functioning of the Office of Registrar under the Act. It is elaborately explained in the impugned judgment of the High Court and no quarrel was made by the petitioner in respect of that portion of the judgment explaining the scheme of the Act. Therefore, we can briefly restate the same. Registrar under the provisions of the Act is the executive head of the cooperative movement which is intended to provide strength to the weaker sections of the community and is based on contribution through an open door policy. The Registrar is supposed to be “the friend philosopher and guide” and is required to see that the cooperative movement remains within prescribed limit. Sections 8 and 9 of the Act empower the Registrar to deal with the question of registration of a society. Under Section 10 of the Act, the Registrar has the power to classify the societies whereas Sections 11 and 12 of the Act deal with the power of Registrar with regard to amendment of bye-laws of the society. Section 18 empowers the Registrar to direct cancellation of registration of the society whereas under Section 18-A of the Act the Registrar can order de-registration of societies. Under Section 19-A of the Act, the Registrar may declare a person ineligible for membership of the society. Section 49-D of the Act deals with the power of the Registrar to give direction to the society to make regulations. Section 53 of the Act empowers the Registrar to order suppression of the committee of the society in the contingencies mentioned in sub-section (1) of Section 53. Under the aforesaid provisions, thus, the Registrar is discharging pure administrative functions. Section 57 of the Act deals with the power of Registrar to seize records of the society in the circumstances which have been specified in sub-section (1) of Section 57. Section 58 deals with the power of Registrar to audit or cause to be audited by a person authorized by Section 59 of the Act empowers the Registrar to conduct an enquiry into the affairs of the society in the circumstances enumerated in Section 59(1).

8. However, limited powers are given to the Registrar to entertain certain kinds of disputes and take decision thereupon as well. One such provision is Section 55 of the Act which, inter-alia, provides that regarding terms of employment, working conditions and disciplinary action taken by a Society, if a dispute arises between a Society and its employees, the Registrar or any officer appointed by him

(not below the rank of Assistant Registrar) shall decide the dispute. Likewise, Section 64 of the Act provides that the Registrar shall decide the dispute touching upon the Constitution, management or business, terms and conditions of employment of a Society or the liquidation of the Society.

9. The question that falls for consideration is whether it becomes imperative to appoint a Registrar with legal and/or judicial backdrop keeping in view the aforesaid Scheme of the Act? In an endeavour to justify the appointment of a legal person to man this office, the petitioner submitted that the very nature and significance of the functions discharged by the Registrar or his nominee, would manifest that knowledge of law and practice is dispensable to effectively carry out those functions inasmuch as such presiding officer is supposed to be conversant with the provisions of Civil Procedure Code, Law of Evidence, Indian Penal Code, Code of Criminal Procedure, etc. It was further submitted that the functions are such that authority discharging such function is to be classified as “court” and it is so held by this Court in the case of *Thakur Jugal Kishore v. Sitamarhi Central Co-operative Bank Ltd.* AIR 1967 SC 1494. This decision is followed subsequently in *Mukri Gopalan v. Cheppilat Puthampurayil Aboobacker* AIR 1995 SC 2272 and *P.Sarathy v. State Bank of India* AIR 2000 SC 2023.

10. The petitioner also submitted that the Bombay High Court in the case of *Maharashtra Co-operative Courts Bar Association, Bombay & Ors. v. State of Maharashtra & Ors.* 1990 Mah.L.J. 1064 has held that presiding officer of the cooperative court form cadre of subordinate courts as understood by Art.234 of the Constitution of India and State Government will have to take action to make appointment of these presiding officer in accordance with the direction contained in the said Article. In other words, it would mean that they can be selected by the Maharashtra Public Service Commission in consultation with the High Court. On that basis, the petitioner pleads that State Government should not be given right to appoint any person as the Registrar etc. The petitioner also went to the extent of describing these functionaries as the “Cooperative Courts” while discharging these duties through no such nomenclature is provided in the Act. He also submitted that in the State of M.P. functioning of these authorities was dismal, creating unfortunate and painful situation which was because the reason that persons appointed were blissful ignorant about the legal aspects. They were not functioning “independently” as well, though independence of judiciary was the hallmark of the basic structure of the Constitution. He argued that with such appointments impartiality, independence, fairness and reasonableness is threatened and compromised. In support of this argument, the petitioner has referred to the following judgments.

(2010) 11 SCC 11 : *UOI v. R.Gandhi President Madras Bar Assn.* (2012) 10 SCC 353: *State of Gujarat v. Gujarat Revenue Tribunal Bar Assn.*

(2013) 1 SCC 745: *Namit Sharma v. UOI.*

11. We have already taken note of the Scheme of the Act and the role and functioning of the office of the Registrar under the said Scheme. Most of the powers of the Registrar are administrative in nature. While exercising those powers the Registrar is not deciding any lis. He is one of the main administrative functionaries for the purposes of carrying out the objectives of the said Act. At the same time, the Registrar is also give some quasi-judicial powers. He, also for that matter

Additional/Joint/Deputy/Assistant Registrar are, therefore, wearing two hats, with predominant role of the administrators. It is not the case of the petitioner that the judicial function should be taken away from the Registrar and assigned to some other authority. The petitioner has pleaded for appointment of a person with legal background as Registrar etc. to enable him to decide the dispute between the parties more effectively, as according to him, any person with no legal/judicial background is incapable of deciding those cases. However, same arguments can be pressed by other side in a reverse situation. If a person with legal background is appointed to any of these posts, then his appointment can be challenged on the ground that such a person though would be fit to discharge the quasi judicial duties, but totally unfit to discharge other administrative duties which are the primary and day to day duties attached to the said office.

12. We would have still given some weightage to the argument of the petitioner, had it been a case where order of the Registrar, deciding the dispute, was made final. That is not so. In fact, under Chapter X of the Act, M.P. State Cooperative Tribunal is constituted. This Tribunal consists of the Chairman and two other Members. In so far as Chairman is concerned, Section 77 (3) (a) unambiguously provides that no person shall be qualified to be the Chairman of the Tribunal unless he had been a Judge of a High Court or has held the office of a District Judge for not less than 5 years. Likewise, in respect of two Members of the Tribunal, Section 77 (3) (b) contains a clear stipulation that one of them shall be an officer of Cooperative Department not below the rank of Joint Registrar, and the other shall be non-official closely associated with the cooperative movement or an Advocate or a pleader having practical experience for a period of not less than 15 years. With such a composition of the Tribunal, which is given power to hear appeals from the orders of the Registrar or his nominee, the apprehension of the petitioner is adequately taken care of. We find that in addition to hearing the appeals from the orders of the Registrar, the Tribunal is also given power of revision and review. Similar schemes are provided in various other statutes wherein at the first ladder of the lis, powers are given to the administrative authorities to decide the same with provision for appeal against those orders. One example is Public Premises (Eviction of Unauthorized Occupants) Act 1971. In such cases the orders are passed by the Estate Officer and the order of the Estate Officer is made amenable to challenge before the District Judge under Section 9 of that Act. Similar position can be found under the Land Reforms Act and various other Acts.

13. We emphasize, at the cost of repetition, that most of the functions are in the sphere of administration and governance with few additional duties having quasi judicial character. In such a situation and more particularly when a Tribunal is constituted with all the trappings of a court, we do not find any fault with the provision of Section 3 of the Act empowering the Government to appoint persons as Registrars, Joint Registrars, Deputy Registrars and Assistant Registrars etc. necessarily with legal/judicial background. Challenge to the vires of Section 3 of the Act is, therefore, rejected, upholding the judgment of the High Court on this issue for our own reasons given hereinabove.

14. In so far as the provisions of Section 77 (3) (b) and Section 77 (6) of the Act are concerned, we hardly see any reason to hold these provisions as unconstitutional. Section 77 deals with the Cooperative Tribunal. As already pointed out above, this tribunal consists of a Chairman and two other Members. Chairman is to be a person with judicial background. No person is qualified to be

the Chairman of the Tribunal unless he had been a Judge of a High Court or who held the office of the District Judge for not less than 5 years. Two Members of the tribunal are to be appointed as per the impugned provisions namely Section 77 (3) (b) of the Act. Scheme shows that out of the two, one would be 'administrative member' and other may be a 'judicial member' though such nomenclature is not specifically assigned. However, it becomes clear from the provision which provides that one of the members would be the person not below the rank of Joint Registrar. It clearly shows that he would be a person who would have worked as Joint Registrar and in that capacity gained experience on administrative side about the functioning of the cooperative societies. In that capacity, he would have also gained some experience of deciding the disputes between the parties which could be assigned to him. Other member is to be non- official and he/ she could be the person who is closely associated with the cooperative movement or an Advocate or a pleader with practical experience for a period of not less than 15 years. Therefore, other members can be a person with legal background. In nutshell, the tribunal consists of a former Judge as Chairman, one member who has held high office of Joint Registrar in the department and the other member either with the legal background or a person closely associated with cooperative movement. We, thus, do not find any fault with this provision as well.

15. In so far as Section 77 (6) of the Act is concerned, it gives power to the State Government to terminate the appointment of the Chairman or a member if, in its opinion, such Chairman or Member is unable or unfit to perform the duty of his office. Thus, this power is given only when the State Government forms such an opinion about the inability or unfitness of such Chairman or Member to perform the duties of his office. This opinion may be subjective but has to be based on objective consideration/material on record. Since the State Government is the appointing authority, power to remove has to necessarily vest in the appointing authority. It is not an omnibus or unguided/uncanalyzed power conferred upon the Government. Further, the decision is always subject to judicial review. In a given case if the power is exercised arbitrarily or without any material on the basis of which such an opinion is formed, it can be remedied by the court of law. It is further significant to mention that proviso to this sub- section (6) of Section 77 provides an additional safeguards which mandates following procedure in consonance with principle of natural justice by giving reasonable opportunity of show cause against such termination. Thus, when such an action is contemplated, the Government is under an obligation to issue show cause notice which would necessarily contain the reasons/material on the basis of which, a belief is nurtured that such Chairman or Member would be unable or unfit to continue to perform the duties of his office. It would be open to the noticee to refute the same by giving suitable reply. Final opinion would be formed only after eliciting and considering the defence. Therefore, we see no reason to hold such a provision as unconstitutional. In fact, in the written submissions filed by the petitioner, there is no plea or ground taken by the petitioner on the basis of which the petitioner seeks to condemn these provisions. We, therefore, reject the prayer of the petitioner qua on Section 77 (3) (b) and Section 77 (6) of the Act as well.

16. Having regard to our aforesaid discussion, various arguments raised by the petitioner based on the judgments cited by him are of no benefit as those judgments have no applicability. No doubt the Registrar exercising powers under Section 48 of the Bihar and Orissa Cooperative Societies Act is held to be a Court. It was so stated in the following manner :

“It will be noted from the above that the jurisdiction of the ordinary civil and revenue Courts of the land is ousted under S.57 of the Act in case of disputes which fell under S.48. A Registrar exercising powers under S.48 must, therefore, be held to discharge the duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary civil Courts of the land by the Code of Civil Procedure including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in S.151 of the Code of Civil Procedure. In such a case there is no difficulty in holding that in adjudicating upon a dispute referred under S.48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do.” However, it does not necessarily follow from that the Registrar exercising such powers has to be necessarily a person with judicial/legal background.

That was not even an issue in the aforesaid case.

17. In so far as judgment in the case of Mukrigopalan is concerned, the Court therein discussed the power of the appellate authority constituted under Section 18 under Kerala Building Lease Rent Control Act. In the instant case, the appellate authority is the tribunal which is headed by a judicial person. The judgment in R.Gandhi (supra) again pertains to the National Company Law Tribunal and the law stated therein, emphasizing the need for person with judicial background, is in the context of a tribunal. Same is the position in the matter of Gujarat Revenue Tribunal Bar Association case (supra). In so far as Namit Sharma (supra) is concerned, much of what is stated therein is watered down in the decision dated September 3, 2013 rendered in the Review Petition (C) No. 2309 of 2012 titled Union of India v. R.Gandhi. The Court has gone to the extent of holding that CIC is not discharging judicial duties.

18. We would like to point out that such quasi judicial powers are given even to the Election Commission under the Representation of People Act, 1951 in a matter where it decides as to whether to register a political party or not. This was so made clear in the case of Indian National Congress (I) vs. Institute of Social Welfare & Ors. 2002 (5) SCC 685. Notwithstanding that Election Commission under Section 29-A of the said Act is required to act judicially and the act of Commission, in that capacity, is quasi judicial, nobody has ventured to say that such functions be discharged only by a person with judicial/legal background.

19. Having determined the question raised, we would like to emphasize the need for appointment of suitable persons not only as Registrar, Joint Registrar etc. but as Chairman and members of the tribunal as well. While discharging quasi-judicial functions Registrar, Joint Registrars etc. have to keep in mind that they have to be independent in their functioning. They are also expected to acquire necessary expertise to effectively deal with the disputes coming before them. They are supposed to be conscious of competing rights in order to decide the case justly and fairly and to pass the orders which are legally sustainable. In this behalf, we would like to refer to judgment dated

3.9.2013 passed in the Review Petition (C) No.2309/2012 (Namt Sharma case). In that case, one unfortunate feature that was noted was that experience over the years has shown that the orders passed by Information Commissions have, at times, gone beyond the provisions of the Right to Information Act and that Information Commissions have not been able to harmonise the conflicting interests indicated in the preamble and other provisions of the Act. The reasons for this experience about the functioning of the Information Commissions could be either that the persons who do not answer the criteria mentioned in Sections 12(5) and 15(5) have been appointed as Chief Information Commissioner or that the persons appointed even when they answer the aforesaid criteria, they do not have the required mind to balance the interests indicated in the Act. It was therefore insisted that experienced suitable persons should be appointed who are able to perform their functions efficiently and effectively. In this behalf certain directions were given and one of the directions was that while making recommendation for appointment of CIC and Information Commissioners the Selection Committee must mention against name of each candidate recommended the facts to indicate his eminence in public life ( which is the requirement of the provision of that Act), his knowledge and experience in the particular field and these facts must be accessible to the citizens as part of their right to information under that Act, after the appointment is made.

20. Taking clue from the aforesaid directions, and having gone through the similar dismal state of affairs expressed by the petitioner in the instant petition about the functioning of the cooperative societies, we direct that the State Government shall, keeping in mind the objective of the Act, the functions which the Registrar, Joint Registrar etc. are required to perform and commensurate with those, appointment of suitable persons shall be made. Likewise, having regard to the fact that the Chairman of the Tribunal is to be a judicial person, namely, Former Judge of the High Court or the District Judge, we are of the opinion that for appointment of the Chairman and the Members of the Tribunal, the respondent- State is duty bound to keep in mind and follow the mandate of the Constitution Bench judgment of this Court in R.Gandhi (supra). Thus, for appointment of the Chairman and Members of the Tribunal, the selection to these posts should preferably be made by the Public Service Commission in consultation with the High Court.

21. As a result, subject to the aforesaid directions, this Special Leave Petition is dismissed.

.....J.

(Anil R. Dave) .....J.

(A.K.Sikri) New Delhi, Dated: May 6, 2014