

Neeraj Kumar Sharma and anr. Vs. State of M.P. and ors.

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Court : Madhya Pradesh

Decided On : Apr-12-2007

Reported in : 2007(3)MPHT527

Judge : A.K. Patnaik, C.J. and ;K.K. Lahoti, J.

Appellant : Neeraj Kumar Sharma and anr.

Respondent : State of M.P. and ors.

Judgement :

ORDER

A.K. Patnaik, C.J.

1. The petitioners are residents of Revenue District Anuppur, which was carved out from Revenue District Shahdol with effect from 15th August, 2003 by notification dated 11th August, 2003 of the State Govt, issued under Sub-section (2) of Section 13 of the Madhya Pradesh Land Revenue Code, 1959 (hereinafter referred to as 'the Code'). They have filed this petition under Article 226 of the Constitution of India challenging the elections of office bearers of Adim Jati Seva Sahkari Samiti Maryadit Lampus Kotma, Adim Jati Sewa Sahkari Samiti Maryadit, Devgawa & Adim Jati Sewa Sahkari Maryadit Bhalumudi.

2. Several grounds have been taken in the writ petition challenging the election of the office bearers of the three Co-operative Societies, but we cannot consider all such grounds in view of the law laid down by Division Bench of this Court in

Radhey Shyam Sharma v. Chairman Sewa/Vriha Sahakari Samiti Lashkar, Gwalior and Ors. 1989 MPLJ 208, that normally the High Court in exercise of power under Article 226 of the Constitution will not interfere in an election dispute of Co-operative Societies until and unless election process is shown so vitiated that it cannot be said an election held in accordance with law. But in writ petition we can consider grounds which relate to jurisdiction of the authorities under the M.P. Co-operative Societies Act, 1960 to hold the election and appoint the Returning Officer for the election.

3. Mr. Ashish Trivedi, the learned Counsel for petitioners, submitted that Anuppur had been notified as a separate Revenue District by notification dated 11th August, 2003 by the Government under Sub-section (2) of Section 13 of the Madhya Pradesh Land Revenue Code, 1959 with effect from 15th August, 2003, but the State Government has not issued a notification under Sub-section (2) of Section 3 of the Act directing that the powers and duties conferred and imposed on the Registrar under the Act in Anuppur Distt. will be exercisable by the Deputy Registrar of Shahdol District. He submitted that notwithstanding the fact that no such order has been issued by the State Govt. under Sub-section (2) of Section 3 of the Act empowering the Deputy Registrar, Shahdol to exercise power under Section 49 of the Act relating to election of Co-operative Societies. In Anuppur District the Deputy Registrar Shahdol has exercised all powers under Section 49 of the Act. He submitted that considering the aforesaid lacunae, the entire process of elections of Co-operative Societies in Anuppur District including the aforesaid four Co-operative Societies is vitiated.

4. Mr. Kumresh Pathak, the learned Deputy Advocate General for the respondents, on the other hand, relying on the return filed on behalf of the respondents submitted that earlier, Anuppur was part of Shahdol District and that Anuppur was bifurcated out of Shahdol District with effect from 15th August, 2003. He submitted that the Notification No. F.5-1-99-XV-1-C, dated 26th July, 1999 annexed to writ petition as Annexure P-3 clearly shows that in exercise of power under Sub-section (2) of Section 3 of the Act, the State Government has by general order directed that the powers conferred on the Registrar of Cooperative Societies M.P. under Section 49 of the Act relating to election of Co-operative

Societies shall also be exercisable by the Deputy Registrar, Co-operative Societies in the various districts mentioned therein including District Shahdol. He submitted that at the time the said notification dated 26th July, 1999 was issued, Anuppur was part of Shahdol District and, therefore, the Deputy Registrar, Co-operative Societies, Shahdol had power to exercise powers under Section 49 of the Act relating to election of the Co-operative Societies in respect of Anuppur District. He further submitted that Anuppur was formed with effect from 15th August, 2003 and by the order dated 10-8-2005, issued by the Registrar, Co-operative Societies additional charge of Anuppur District has been given to the Deputy Registrar, Shahdol as no separate Deputy Registrar or Assistant Registrar appointed for Anuppur District.

5. Mr. Trivedi, relied upon a notification dated 18th August, 2003 annexed to the rejoinder as Annexure A-3 issued under Sub-section (2) of Section 3 of the Act which was issued after Anuppur District was formed with effect from 15th August, 2003 to show that the State Govt. has not directed that the power under Section 49 of the Act conferred on the Registrar of the Cooperative Societies shall also be exercisable by the Deputy Registrar, Shahdol in respect of Co-operative Societies in Anuppur District.

6. Sub-section (2) of Section 3 of the Act on which reliance is placed by Mr. Trivedi is quoted hereinunder:

(2) The officers appointed to assist the Registrar shall, within such areas as the State Government may specify, exercise such powers and perform such duties conferred and imposed on the Registrar by or under this Act as the State Government may, by special or general order, direct:

Provided that no officer other than the Additional Registrar or the Joint Registrar shall be directed to exercise the powers to hearing appeals under Section 78...

The aforesaid Sub-section (2) of Section 3 of the Act provides that the officers appointed to assist the Registrar shall, within such areas as the State Government may specify, exercise such powers and perform such duties conferred and imposed on the Registrar by or under the Act as the State Government may, by

special or general order direct. In the aforesaid Sub-section (2) of Section 3 of the Act, the word 'District' has not been mentioned and instead the word 'areas' has been mentioned. Hence by a general order or special order, under Sub-section (2) of Section 3 of the Act, the State Govt. may specify any area which is larger than a district or which is lesser than a district and the officer appointed by the Registrar such as the Deputy Registrar or the Assistant Registrar can by such special or general order be empowered to exercise and perform duties conferred and imposed on the Registrar under the Act within the said area which is larger than a district or lesser than a district.

7. In exercise of the powers conferred under Sub-section (2) of Section 3 of the Act the State Government has by general order in the notification dated 26th July, 1999 directed that the powers conferred on the Registrar Co-operative Societies M.P. can be exercised by the Deputy Registrar Co-operative Societies under Sections of the Act, as specified in column (2) of the First Schedule and by the Rules in the M.P. Co-operative Societies Rules, 1962, to the extent and for the areas mentioned in Columns 2,3,4 and 5 of the 1st Schedule of the notification. The relevant portion of the said notification dated 26th July, 1999 is extracted hereinbelow:

3. [No. F.5.1-99-XV-I-C, dated 26th July, 1999, Pub. in Rajpatra Ext., dated 26-7-1999, p. 1096 (12)]. In exercise of the powers conferred by Sub-section (2) of Section 3 of the Madhya Pradesh Co-operative Societies Act, 1960 (No. 17 of 1961), and in supersession of this Department Notification No. D-5-6-79-I-XV-G, dated 27th August, 1979, the State Government hereby directs the powers conferred on the Registrar of Co-operative Societies, Madhya Pradesh,

(1) by sections of the said Act as specified in column (2) of the First Schedule below and by the rules of the Madhya Pradesh, Co-operative Societies Rules, 1962, as specified in column (3) of the said Schedule shall also be exercisable by the Deputy Registrars of Co-operative Societies to the extent as specified in column (4) and within the area as specified in column (5) of the said Schedule, and.. FIRST SCHEDULE-----No, Sections
Rules Extent of Areaof the Powers-----1.

All powers of Registrar in respect of all 1. Bhopal, 2. types of Vidisha, Raisen, 3. 4. societies Sehore, 5. Rajgarh except: - 6. Betul, 8.7. Hoshangabad, Jabalpur, 9. Chhi-(a) Financing ndwara, 10. Seoni, Bank Raigarh, 11. Balaghat, 12. Narsinghpur, 13.(b) All Bilaspur, 14. 15. societies Sarguja, 16. Indore, whose area 17. Khargone, 18. of operation Dhar, 19. Khandwa, extend 20. Jhabua, 21. beyond the Rewa, 22. Shahdol, limits of 23. Sidhi, 24. District. Satna, 25. Ujjain, 26. Dewas, 27. Shajapur, 28. Ratlam, 29. Mandsaur, 30. Morena, 31. Gwalior, 32. Bhind, 33. Shivpuri, 34. Guna, 35. Raipur, 36. Durg, 37. Rajnandgaon, 38. Sagar, 39. Tika-mgarh, 40. Chhata-rpur, 41. Bastar, 42. Kanker-----20. 49 All powers of - do - the Registrar in respect of societies which he can register.-----

Thus in the area of District Shahdol which included Anuppur when the aforesaid notification dated 26th July, 1999 was issued, the Deputy Registrar of Co-operative Societies. Shahdol could exercise all powers of the Registrar conferred under Section 49 of the Act in respect of societies which he can register and it is by virtue of powers vested by Section 49 of the Act that the Registrar issues various orders in relation to election of Co-operative Societies.

8. The next question is whether the said power conferred by the notification dated 26th July, 1999 by the State Govt. under Sub-section (2) of Section 3 of the Act on the Deputy Registrar, Co-operative Societies, Shahdol to exercise all powers of the Registrar under Section 49 of the Act in respect of Societies which he can register in the district was in any way affected by the creation of new revenue District of Anuppur with effect from 15th August, 2003 by notification under Sub-section (2) of Section 13 of M.P. Land Revenue Code issued by the State Government. In our considered opinion, if in Sub-section (2) of Section 3 of the Act instead of the word 'area', the word 'district' would have been used, then on creation of new district of Anuppur, the Deputy Registrar, Shahdol could not have exercised powers conferred on him by the notification dated 26th July, 1999 under Section 49 of the Act and in such a case, it would have been necessary for the State Govt. to issue a notification conferring power under Section 49 of the Act on the Deputy Registrar, Shahdol in respect of the Co-operative Societies of Anuppur

District. But as we have seen under Sub-section (2) of Section 3 of the Act the word 'area' has been used and by the notification dated 26th July, 1999, the powers under Section 49 of the Act was conferred on the Deputy Registrar for District Shahdol, which included the whole area of Districts Shahdol and Anuppur in the year 1999.

9. Mr. Trivedi cited decision of the Supreme Court in *The State of Gujarat and Anr. v. Zinabhai Ranchhodji Darji and Ors.* : [1972]2SCR686 , in which the question arose whether the word 'district' in Section 1(3) of the Gujarat Panchayats Act must mean a revenue district and not a district as defined in Section 2(6) of the said Act and the Supreme Court held that the word 'district' in Section 1(3) of the said Act would mean a revenue District. Since the word 'district' has not been used in Sub-section (2) of Section 3 of the Act and instead the word 'area' has been used therein, the aforesaid decision is not relevant for deciding this case.

10. We have to next decide whether the notification dated 18th August, 2003 issued by the State Government under Section 3 (2) of the Act in any way supports the contention of Mr. Trivedi that the Deputy Registrar, Shahdol will have no jurisdiction relating to election of Co-operative Societies in Anuppur? We have perused the notification and we find that by the said notification the existing entries in Column 5 of Schedule I of the notification dated 26th July, 1999 have been substituted. This notification dated 18th August, 2003 was necessary because after the reorganisation of State of M.P. carving out a separate State of Chhattisgarh, 8 districts were excluded from State of M.P. and included in the State of Chhattisgarh. The notification dated 18th August, 1999 has been issued by the State Govt. under Sub-section (2) of Section 3 of the Act substituting for 42 districts which now comprised the State of M.P. A reading of notification dated 18th August, 2003 would show that by the said notification the State Govt. has not issued any fresh general order or special order directing that the powers of the Registrar of Co-operative Societies under the Act shall be also exercisable by the Deputy Registrars of the respective areas. In other words, it is by notification dated 26th July, 1999 issued under Sub-section (2) of Section 3 of the Act that the State by general order directed that the powers of the Registrar, Co-operative Societies under Section 49 of the Act shall also be exercisable by the Deputy Registrar in

the respective areas and the notification dated 18th August, 2003 was only an amendment notification substituting 34 district after re-organisation of State of M.P. for the 42 districts, which were comprised in the State of M.P. before the reorganisation. The first ground taken by the petitioners that Deputy Registrar Distt. Shahdol did not have the power of Registrar under Section 49 of the Act in relation to Distt. Anuppur in the absence of a notification of the State Govt. under Sub-section (2) of Section 3 of the Act, therefore, fails.

11. Mr. Trivedi next submitted that under Section 49 of the Act, the Committee of the Co-operative Society is to hold elections and, therefore, the order passed by the Registrar that the election of Co-operative Societies including the Co-operative Societies in Anuppur will be held by the Deputy Registrar or the Assistant Registrar is without jurisdiction.

12. We have perused the provisions of Section 49 of the Act, and we find that Sub-section (8)(ii) of Section 49 provides as under:

49. (8)(ii) If the Committee fails to hold election and has not handed over the charge on expiration of the term, under Sub-section (7-A) or extended term under Sub-section (7-AA) to the Registrar or any officer authorised by him on his behalf, all the members of the Committee shall be deemed to have vacated their seats and the Registrar shall assume charge and hold election as early as possible.

It is clear from the aforesaid provision in Sub-section (8)(ii) of Section 49 of the Act that if the committee of the Cooperative Society fails to hold election or does not hand over the charge after expiration of the term, all the members of the Committee shall be deemed to have vacated their seats and the Registrar shall assume the charge and hold elections as early as possible. It is not disputed that the term of the Co-operative Societies in the District Anuppur has expired and, therefore, all members of the Committees of Co-operative Societies in Distt. Anuppur are deemed to have vacated their seats and hence the Registrar had the jurisdiction to assume charge and hold election under Sub-section (8)(ii) of Section 49 of the Act. The second ground raised by Mr. Trivedi with regard to jurisdiction of the Registrar to hold election also fails.

13. Mr. Trivedi next submitted that under Rule 41(26) of the M.P. Co-operative Societies Rules, 1962, the Returning Officer has been defined as an officer appointed by the Registrar by general or special order or appointed by the Committee from amongst the members of the society. He submitted that it is only the Registrar who can pass an order appointing the Returning Officer for the election of the Committee members of Co-operative Societies. He cited the decision of the Division Bench of this Court in *Thaneshwar Shyam Bihari Mishra v. Jilas Sahakari Kendriya Bank Matyadit Mandla* 1986 MPLJ 329, in which the Division Bench interpreting Rule 41(26) of M.P. Co-operative Societies Rules, 1962 has held that the order passed by the Registrar appointing the District Collector or an officer nominated by him to be the Returning Officer to hold the election of the District Co-operative Bank was illegal. He submitted that in this case instead of Registrar of Co-operative Societies, the Deputy Registrar has appointed the Returning Officer and consequently elections of Co-operative Societies in District Anuppur and the appointment of the Returning Officers are illegal and therefore, the election of the Co-operative Societies held by such Returning Officer is also illegal.

14. Under Sub-section (2) of Section 3 of the Act, officers appointed to assist the Registrar including the Deputy Registrar and the Assistant Registrar can also exercise the powers of the Registrar under the Act and Rules if the State Government by a special or general order directs. The State Govt. has in fact issued the order dated 26th July, 1999 enabling the Deputy Registrar, Shahdol to exercise the powers, of the Registrar under Section 49 of the Act in Shahdol District which included in the present district of Anuppur. Hence when the Deputy Registrar appoints the Returning Officer in exercise of such powers, he exercises the power of the Registrar under Rule 41(26) of the Rules. The Division Bench decision of this Court in *Thaneshwar Shyam Bihari Mishra v. Jila Sahakari Kendriya Bank Maryadit Mandla* (supra), holding that the appointment of the Collector or any officer nominated by him to be Returning Officer for holding election of District Co-operative Bank by the Registrar was illegal has no application to the facts of this case. Hence the third ground taken by Mr. Trivedi has also no force.

15. All other grounds taken in the writ petition relating to various illegalities in the voter list and in the election of three Co-operative Societies in Distt. Anuppur can be taken by the petitioners in an election dispute filed under Sub-section (2)(v) of Section 64 of the Act and all such grounds cannot be considered by the High Court in a writ petition under Article 226.

16. For the aforesaid reasons, we dispose of the writ petition with the observation that in case an election dispute is filed by the petitioners, the Competent Authority will try and dispose of it within a period of 4 months from the date of communication of this order. No cost.

17. In view of the disposal of the writ petition, I.A. No. 2216/2007 and I.A. No. 2570/07 for intervention also stand disposed of.

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