

The Jalna People

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Court : Mumbai Aurangabad

Decided On : Sep-22-2011

Judge : S.S.Shinde, J.

Acts : Maharashtra Co-operative Societies Act, 1960. - Section 79A (3)(b),;
Constitution Of India - Article 227

Appeal No. : WRIT PETITION NO.8059 OF 2010

Appellant : The Jalna People

Respondent : The State of Maharashtra and ors.

Advocate for Pet/Ap. : Mr.Anand Chawre, Adv.

Judgement :

1. Heard learned Counsel for petitioners. Rule. Rule made returnable forthwith and heard finally by consent of learned Counsel for respective parties. Learned A.G.P. waives service of Rule.

2. This writ petition takes exception to the order/notice dated 12.08.2010, passed by the Divisional Joint Registrar, Co- operative Societies, Aurangabad, at Exhibit-G1 of the compilation.

3. The background facts for filing the writ petition are disclosed in the writ petition from paragraphs 03.01 to 03.07. Therefore, same are not repeated herein.

4. Learned Counsel appearing for the petitioners invited my attention to the impugned order and submitted that the notice issued by the Divisional Joint Registrar, Co-operative Societies, Aurangabad, in the concluding paragraph, states that as soon as Shri Tank (petitioner no.2) is served with the show cause notice or as soon as he receives the show cause notice, he should be removed from the services of petitioner no.1 - Bank. According to the learned Counsel for petitioners, such direction / notice is contrary to the mandate of provisions of Section 79A (3)(b) of the Maharashtra Co-operative Societies Act, 1960. Learned Counsel has invited my attention to proviso to clause (b) and submits that before making any order under this sub-section, the Registrar shall give a reasonable opportunity of being heard to the person or persons concerned and consult the federal society to which the society is affiliated. Therefore, according to the learned Counsel for petitioners, such direction issued by the Divisional Joint Registrar to remove petitioner no.2 from the services of petitioner no.1 - Bank as soon as he receives the show cause notice is contrary to the mandate of proviso to sub-section (3)(b) of Section 79A of the Act. It is, therefore, submitted that petitioner no.2 is ready to face the inquiry, answer the show cause notice and further to appear before the concerned authority, however, he should be given reasonable opportunity of hearing before any order is passed by the competent authority.

5. On the other hand, learned Assistant Government Pleader appearing for Respondents, has invited my attention to the affidavit-in-reply filed on behalf of Respondents and submitted that petitioner no.2 is involved in misappropriation of funds of petitioner no.1 - Bank and, therefore, the direction contained in the impugned notice / order cannot be faulted. He submits that the direction given by the Divisional Joint Registrar, Co-operative Societies, Aurangabad, is perfectly sustainable under the provisions of Section 79A (3)(b) of the Act and, therefore, this Court may not interfere in the extraordinary jurisdiction of this Court under Article 227 of the Constitution.

6. I have given due consideration to the rival submissions. Provisions of Section 79A (3)(b) reads thus: 79A Government's power to give directions in the public interest, etc.:

(1) (2) (3) Where the Registrar is satisfied that any persons was responsible for complying with any directions or modified directions issued to a society under sub-sections (1) and (2) and he has failed without any good reason or justification, to comply with the directions, the Registrar may by order-

(a) (b) if the person is an employee of the society, direct the committee to remove such person from employment of the society forthwith, and if any member or members of the committee, without any good reason or justification, fail to comply with this order, remove the members, appoint other persons as members and declare them disqualified as provided in clause (a) above: Provided that, before making any order under this sub-section, the Registrar shall give a reasonable opportunity of being heard to the person or persons concerned and consult the federal society is affiliated. Bare perusal of proviso to sub-section (3)(b) of Section 79A would make it clear that before taking any drastic action, the competent authority is required to give hearing to the concerned person.

7. In the present case, notice is given by the Divisional Joint Registrar, Co-operative Societies, Aurangabad, mentioning therein that petitioner no.2 herein namely Mr.Nandkishore s/o Kachrulalji Tank should be removed from the services of petitioner no.1-bank as soon as he receives the show cause notice. Therefore, in my considered opinion, no employee can be asked to be removed from the services as soon as he receives the show cause notice, unless he is given reasonable opportunity of being heard and to putforth his case. Therefore, the part of the direction/notice issued by the Divisional Joint Registrar, Co- operative Societies, Aurangabad, directing petitioner no.1-Bank to remove petitioner no.2 from the services of petitioner no.1-bank as soon as he receives the show cause notice cannot be sustained. Therefore, that part of the notice requires to be quashed and set aside.

8. It is made clear that the Divisional Joint Registrar, Co- operative Societies, Aurangabad, is free to proceed in pursuant to the notice dated 12.08.2010. However, the direction to remove petitioner no.2 from the services of petitioner no.1-Bank as soon as he receives show cause notice is quashed and set aside. Unless petitioner no.2 is given proper opportunity to putforth his case and he is heard by the concerned authority, he cannot be removed from the services of petitioner no.1-Bank. However, it is clarified that after following mandate of sub-section (3)(b) of Section 79A of the Maharashtra Co-operative Societies Act, 1960, the Divisional Joint Registrar, Co-operative Societies, Aurangabad, would be free to act on the notice impugned in this writ petition. 9 Writ Petition is allowed to the above extent and same stands disposed of. In the facts and circumstances of this case, there shall be no order as to costs.