

The Nayagarh Co-Operative Central Bank Ltd. and Another

Vs

Narayan Rath and Another

Civil Appeal No. 126 of 1971

(Y.V. Chandrachud, P.N. Shinghal JJ)

27.04.1976

JUDGMENT

CHANDRACHUD, J. –

1. This is an appeal by special leave against the judgment dated February 9, 1970 of the High Court of Orissa, setting aside the order dated August 21, 1968 passed by the Registrar of Co-operative Societies and the Order dated August 26, 1968 passed by the President of the Nayagarh Co-operative Central Bank Ltd. The Bank is the first appellant while its President is the second appellant in this appeal. Respondent 1, Narayan Rath, has filed the writ petition in the High Court asking that the aforesaid orders removing him from service should be set aside. Respondent 2 is the Registrar of Co-operative Societies, Bhubaneswar, Orissa.

2. Respondent 1 was functioning as a Secretary of the Nayagarh Co-operative Central Bank from May 25, 1955 till May 13, 1968. On August 21, 1968, the Registrar passed an order disapproving the appointment of respondent 1 as secretary of the Bank on the ground that he was functioning as a secretary without his approval and that he was not qualified to hold the post of a secretary. On August 26, 1968, the President of the Bank issued an order terminating the services of respondent 1 and that order was ratified by the Board of Management of the Bank on September 4, 1968. On August 28, 1968, the respondent filed a writ petition (O. J. C. 863 of 1968) challenging the order whereby his services were terminated. The High Court having allowed that writ petition, the appellants have filed this appeal by special leave of this Court.

3. The learned Advocate-General appearing on behalf of the appellants contends that the High Court was in error in taking the view that a writ application under Article 226 of the Constitution can lie against a Co-operative Society registered under the Co-operative Societies Act. This is a question of far-reaching importance, but in view of the facts of this case we do not think that it is necessary to decide it. As stated above respondent 1 was appointed as a secretary of the Bank on May 25, 1955 and the appointment was made in a meeting over which the Registrar of Co-operative Societies had himself presided. Beyond informing the Bank from time to time that appropriate steps may be taken to terminate respondent 1's services, nothing at all was done by the Registrar either for regularising the appointment of respondent 1 or for removing him from service. It was thirteen long years after the date of appointment that on August 21, 1968 the Registrar issued an order disapproving the appointment of respondent 1 as secretary of the Bank. It was in pursuance of that order that the President issued an order five days later terminating the services of respondent 1. The President's order was ratified by the Board of Management on September 4, 1968.

4. The writ petition filed by respondent 1 could succeed, in our opinion, on the narrow ground that

he had been permitted to function for over thirteen years as secretary of the Bank and that this appointment as Secretary was decided upon in a meeting over which the Registrar of Co-operative Societies had himself president. The writ petition in substance is directed not against any order passed by the Co-operative Bank but against the order passed by the Registrar disapproving the appointment of respondent 1 as secretary of the Bank. It was not open to the Registrar, in our opinion, to set aside respondent 1's appointment as a secretary after having acquiesced in it and after having for all practical purposes, accepted the appointment as valid. It is undesirable that appointments should be invalidated in this manner after a lapse of several years.

5. The High Court has dealt with the question whether a writ petition can be maintained against a co-operative society, but we are inclined to the view that the observations made by the High Court and its decision that such a writ petition is maintainable are not strictly in accordance with the decisions of this Court. We would have liked to go into the question for which the writ petition, was asking for relief not really against a co-operative society but in regard to the order which was passed by the Registrar, who was acting as a statutory authority in the purported exercise of powers conferred on him by the Co-operative Societies Act. The writ petition was in that view maintainable.

6. We would like to observe that the judgment of the High Court should not be treated as an authority for the proposition that a writ petition is maintainable against a co-operative society. That question shall have to be decided by the High Court as and when it arises in the light of the decisions of this Court.

7. The learned Advocate-General made a statement at the Bar that respondent 1 has been removed from service after a disciplinary enquiry but that he has challenged that order by filing a writ petition in the High Court of Orissa. If that be so, the question as to whether a writ application can be maintained against a co-operative society can very appropriately be decided in the proceeding which is pending before the High Court. We will only repeat that the High Court will not treat its judgment of February 9, 1970 as a precedent on that question.

8. With these observations, we uphold the ultimate decision of the High Court, though for different reasons, and dismiss this appeal. Appellant 1 will pay respondent 1 the costs of this appeal.

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