State of Gujarat

Vs

Dilipbhai Nathjibhai Patel

(M. K. Mukherjee , K. T. Thomas JJ)

03.03.1998

JUDGMENT

M.K. MUKHERJEE, J.

1. Leave granted.

2. The appellant No. 2, a District Co-operative Officer of Vadodara has lodged a prosecution against the two respondents under Section 147(1) (d) of the Gujarat Coperative Societies Act, 1961 ('Act' for short) for committing breach of Section 71 of the Act after obtaining sanction of the District Registrar as required under Section 149 (3) thereof. The prosecution is also for certain offences under the Indian Penal Code. Aggrieved thereby the respondents moved the High Court by filling a petition under Section 482 Cr. P.C. In disposing of the petition the High Court observed that a sanction under Section 149(3) for prosecution under Section 147(1)(d) cannot be given without giving the party concerned a prior hearing. Since, admittedly, the respondents were not give such hearing, the High Court directed that the complaint relating to the above offence shall not proceed till notice to the respondents were given and sanction was accorded after hearing them. However, it clarified, the complaint for the remaining offence shall, in no way be affected by its order and shall be proceeded with in accordance with law. The direction of the High Court so far as it relates to the prosecution under the Act is under challenge in this appeal.

3. To appreciate the reasoning of the High Court for issuing the impugned direction it will be necessary to reproduce Section 149(3) of the Act. It reads as under:

> "149 Cognizance of offences-
>
> (1) xxx xxx xxx
>
> (2) xxx xxx xxx
>
> (3) No prosecution under this Act shall be lodged, except with the previous sanction of the State Government in the case of an offence under clause (c) of sub-Section (21) of section 147, and of the Registrar in the case of any other offence under this Act. Such sanction shall not be given, except after hearing the party concerned, by an officer authorised in this behalf by the State Government by a general or special order."

From a plain reading of the first part of the above sub-section it is manifest that for lodging

prosecution for an offence under the Act previous sanction is essential. While for the offence under Section 147(1)(c) the sanctioning authority is the State Government for all other offences it is the Registrar. When the words "such sanction shall not be given" appearing at the beginning of the second part is read in juxtaposition with the words "by an officer authorised in this behalf by the State Government by a general or special order" at the end, it is also manifest that hearing is to be given only if a sanction for prosecution under Section 147(1)(c) is contemplated and not otherwise.

4. From the impugned order of the High Court we find when the above contention was raised before it on behalf of the respondents therein (the appellants before us), the High Court observed that the words "such sanction shall not be given" are to be interpreted in the context of the provisions made for the sanction in connection with two different categories of offences and when so interpreted it would necessarily mean that sanction required to be given either by the Registrar or by the State must be preceded by a notice to and hearing of the parties concerned. The High Court, however, did not spell out, either in interpreting the sanction or issuing the impugned direction who was to give the notice and hear the parties in respect of the offences for which the Registrar is the sanctioning authority. If the legislature intended that in respect of the offences for which the sanctioning authority is the Registrar a prior hearing is also required to be given by him then, after the words "by an officer authorised in this behalf by the State Government by a general or special order", the words "or by the Registrar, as the case may be" (or similar such words) would have been added. When there is no reference to the Registrar at all in the latter part of the section such sanction appearing therein must refer to a sanction which is required to be given by the State Government. In interpreting a Statute the Court cannot aid the legislature's defective phrasing of an Act nor can add or amend and, by construction make up deficiencies which are left there. In Union of India Vs. Deoki Nandan Aggarwal [1991] 3 S.C.R. 873], this Court observed:-

> " It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the Courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Court shall decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature but could not legislate itself. But to invoke judicial activism to set at naught legislate activism to set at naught legislative judgment is subversive of the constitutional harmony and comity of instrumentalities."
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> (emphasis supplied)

In view of the law so laid down the above section cannot be interpreted to mean that in respect of the offences for which the Registrar is the sanctioning authority a prior hearing is required to be given.

5. The matter can be viewed from the other angle also. If the words "the sanction" is to refer also to offences for which the Registrar is the sanctioning authority it will lead to an absurd situation, in that a duly arthorised officer of the State Government will hear the parties on the question of grant of sanction on its behalf, but the decision to grant sanction will rest on the former. In any view of the matter, therefore, the interpretation given by the High Court and, for that matter, the direction

issued cannot be sustained.

6. We accordingly allow this appeal and quash the impugned direction.