

M.P. RAJYA SAHAKARI BANK MARYADIT v. STATE OF M.P.

529

(2007) 12 Supreme Court Cases 529

(BEFORE A.K. MATHUR AND H.S. BEDI, JJ.)

a MADHYA PRADESH RAJYA SAHAKARI
BANK MARYADIT . . . Appellant;

Versus

STATE OF MADHYA PRADESH AND OTHERS . . . Respondents.

Civil Appeal No. 2661 of 2004[†], decided on February 22, 2007

b A. Cooperative Societies — M.P. Cooperative Societies Act, 1960 (17 of 1961) — S. 55 — Exercise of power by Registrar under, is effected by M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (21 of 1994) — In view of definition of “establishment” under S. 2(b) and Preamble of the Act of 1994, Registrar can give directions for reservation for SCs, STs, OBCs, etc. as condition of service only in such cooperative societies in which State
c has 51% paid-up share capital — The Act of 1994 being a subsequent legislation, State Legislature must be presumed to be aware of power of Registrar under S. 55 but despite the same it provided for the restriction under the Act of 1994 — M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (21 of 1994), Preamble & S. 2(b) — M.P. Rajya Sahakari Bank Employees’
d (Terms of Employment and Working Conditions) Rules, 1976, R. 5 — Interpretation of Statutes — Subsidiary rules — Subsequent legislation — Service Law — Recruitment process — Reservation

B. Service Law — M.P. Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (21 of 1994) — Preamble — Object — Act also enacted for achieving the object under Art. 16(4-A) — Constitution of India, Art. 16(4-A)

e C. Constitution of India — Art. 226 — Maintainability — Writ petition against cooperative society — When maintainable

D. Constitution of India — Art. 12 — “State” — Cooperative society — Whether falls within the definition under Art. 12

f In exercise of power under Section 55 of the Madhya Pradesh Cooperative Societies Act, 1960, the Registrar of Cooperative Societies issued an order dated 6-3-1997 whereby under Chapter 4, Conditions of Recruitment, Rule 5 of the Madhya Pradesh Rajya Sahakari Bank Employees’ (Terms of Employment and Working Conditions) Rules, 1976 was amended providing for reservation for SCs, STs, OBCs, etc. in the matter of recruitment in the Bank. It was submitted on behalf of the appellant that the power of the Registrar under Section 55 of the Act of 1960 is not regulated by the Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan)
g Adhiniyam, 1994 (21 of 1994) and therefore, the Registrar of the Cooperative Societies under Section 55(1) of the Act of 1960 has full power to give direction for reservation under the Act in order to implement the constitutional provision under Article 16(4-A) of the Constitution. It was also contended that writ is not maintainable because cooperative society is not “State” within the meaning of

h

[†] From the Final Judgment and Order dated 11-3-2003 of the High Court of Madhya Pradesh at Jabalpur in WP No. 1415 of 1997

530

SUPREME COURT CASES

(2007) 12 SCC

Article 12 of the Constitution. The High Court set aside the order passed by the Registrar under Section 55(1) as ultra vires.

Dismissing the appeal, the Supreme Court

a

Held :

The Act of 1994 was promulgated by the State Government for the benefit of providing reservation in the vacancies in public services and posts in favour of persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes. Therefore, this Act only contemplates reservation in public services. In order to claim reservation in public offices, the definition of establishment as mentioned in Section 2(b) of the Act of 1994 will have to be fulfilled. Reading the object and reason along with the definition of establishment it clearly transpires in the context of the cooperative society only in which the State Government has paid-up share capital of 51 per cent or more, that the reservation can be made in such cooperative society by the Registrar. It is true that under Section 55 of the Act of 1960 the Registrar can give direction for reservation for the Scheduled Castes and Scheduled Tribes and Other Backward Classes while exercising the mandate under Article 16(4-A) of the Constitution but at the same time he cannot ignore the State legislation i.e. the Act of 1994. In fact, the Act of 1994 was also promulgated for achieving the object under Article 16(4-A) of the Constitution. Once the State Legislature has framed an Act which is subsequent legislation in point of time it is presumed that the legislature was aware of the power of the Registrar of Cooperative Societies under Section 55 of the Act of 1960. (Paras 9 to 11)

b

c

d

But the Notification dated 6-3-1997 is general in nature and does not make any distinction with cooperative societies which do not have 51 per cent paid-up share capital of the State. Therefore, to this extent the rule framed by the Registrar by the said Notification dated 6-3-1997 cannot be upheld and the same is struck down. But by this it does not mean that the Registrar of Cooperative Societies, Madhya Pradesh is denuded of his power to frame rules but he will have to keep in view the impact of the Act of 1994. (Para 12)

e

In the light of the recent decision of the Constitution Bench in *M. Nagaraj* one thing is clear that reservation can be made in promotion by the Government subject to the limits laid down in the aforesaid case. (Para 8)

M. Nagaraj v. Union of India, (2006) 8 SCC 212; *Indra Sawhney v. Union of India*, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385, *relied on*

It is not necessary in this case to go into the question whether or not the cooperative society is a State within the meaning of Article 12 of the Constitution, therefore, the writ petition is not maintainable. (Para 13)

f

Supriyo Basu v. W.B. Housing Board, (2005) 6 SCC 289, *followed*

R-M/A/35803/SL

Advocates who appeared in this case :

S.K. Gambhir, Senior Advocate (M.P. Jha, S.C. Dwivedi, R.E. Roy, Harshvardhan Jha, B.K. Sharma and Anil K. Chopra, Advocates) for the Appellant;
Rajeev K. Virmani, Rajeev M. Roy and Ms Vibha Datta Makhija, Advocates, for the Respondents.

g

Chronological list of cases cited

on page(s)

1. (2006) 8 SCC 212, *M. Nagaraj v. Union of India* 533a, 533b, 533b-c
2. (2005) 6 SCC 289, *Supriyo Basu v. W.B. Housing Board* 535a-b
3. 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385, *Indra Sawhney v. Union of India* 532g

h

M.P. RAJYA SAHAKARI BANK MARYADIT v. STATE OF M.P. (*A.K. Mathur, J.*) 531

The Judgment of the Court was delivered by

- A.K. MATHUR, J.**— This appeal is directed against the order passed by the Division Bench of the Madhya Pradesh High Court at Jabalpur in Writ Petition No. 1415 of 1997 by the order dated 11-3-2003 whereby the Division Bench of the Madhya Pradesh High Court has set aside the order passed by the Registrar of Cooperative Societies in exercise of power under Section 55(1) of the Madhya Pradesh Cooperative Societies Act, 1960 (hereinafter referred to as “the Act of 1960”) dated 6-3-1997 as ultra vires and allowed the writ petition. Aggrieved by that, the present appeal was filed by Madhya Pradesh Rajya Sahakari Bank Maryadit (hereinafter to be referred to as “the appellant”).

2. We have heard learned counsel for the parties and perused the records.

- 3.** Learned counsel for the appellant has submitted that the Registrar of Cooperative Societies under Section 55 of the Act of 1960 has full power to frame rules relating to service conditions for the cooperative societies. Therefore, in exercise of the aforesaid power, the Registrar of Cooperative Societies has issued order dated 6-3-1997 whereby under Chapter 4, Conditions of Recruitment, Rule 5 of the Madhya Pradesh Rajya Sahakari Bank Employees’ (Terms of Employment and Working Conditions) Rules, 1976 (hereinafter to be referred to as “the Rules of 1976”) was amended and the following amendment was added:

- “The Managing Committee of the Bank shall decide the percentage of employees to be necessarily recruited from Scheduled Tribes, Scheduled Castes, Backward Classes and handicapped persons provided that a minimum percentage of the posts, as may be advised by the State Government from time to time, shall be reserved for the candidates of Scheduled Tribes, Scheduled Castes, Backward Classes and handicapped persons. Relaxation in the conditions of recruitment as per instruction issued by Registrar, Cooperative Societies, Madhya Pradesh, Bhopal from time to time may be granted to the ex-servicemen and Scheduled Castes/Scheduled Tribes, Backward Classes and physically handicapped persons.”

- 4.** The order dated 6-3-1997 passed by the Registrar of Cooperative Societies is also reproduced as under:

“OFFICE OF THE COMMISSIONER, COOPERATION & REGISTRAR,
COOPERATIVE SOCIETIES, MADHYA PRADESH

No. CR/AP-1/30/2

Bhopal, dated 6-3-1997

ORDER

- In exercise of the powers of the Registrar, Cooperative Societies, Madhya Pradesh under sub-section (1) of Section 55 of the Madhya Pradesh Cooperative Societies Act, 1960 (17 of 1961) conferred upon no. vide Government of Madhya Pradesh, Cooperation Department Order No. 2419/7060/XV/62 dated 16-6-1962, I J.P. Gupta, Joint Registrar, Cooperative Societies, M.P. hereby amend in Chapter 4 — Conditions of Recruitment, Rule 5 and Chapter 3, File No. 15(b)-2 of the M.P. Rajya

532

SUPREME COURT CASES

(2007) 12 SCC

Sahakari Bank Maryadit Employees' Service Rules, 1976 as per enclosed herewith.

The above amendment shall come into force from the date of issue of the order.

(J.P. Gupta)
Joint Registrar
Cooperative Societies, M.P.

No. CR/AP-1/30/2/774

Copy forwarded to:

1. The Managing Director, M.P. Rajya Sahakari Bank Maryadit, Bhopal for information and necessary action.

2. Deputy Registrar, I/C Audit, M.P. Rajya Sahakari Bank Maryadit, Bhopal for information.

Joint Registrar
Cooperative Societies, M.P."

5*. Learned counsel for the appellant submitted that this power of the Registrar under Section 55 of the Act of 1960 is not regulated by the Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhiniyam, 1994 (21 of 1994) (hereinafter to be referred to as "the Act of 1994"). Therefore, it was contended that the Registrar of the Cooperative Societies under Section 55(1) of the Act of 1960 has full power to give direction for reservation under the Act in order to implement the constitutional provision under Article 16(4-A) of the Constitution of India.

6. It was also contended that writ is not maintainable because cooperative society is not "State" within the meaning of Article 12 of the Constitution. As against this, it was contended that the Act of 1994 clearly lays down that reservation will only be applicable in the establishment where the State Government has more than 51 per cent shareholding. Therefore, the Act of 1994 which regulates the reservation of vacancies of ST/SC in the State stipulates that reservation shall be made in establishment wherein holding of the State Government is more than 51 per cent and not in other establishments.

7. We have considered the rival submissions of learned counsel for the parties.

8. Article 16 of the Constitution of India was amended and Clause (4-A) was subsequently added in view of the decision rendered by this Court in *Indra Sawhney v. Union of India*¹ and in order to obviate the law laid down by this Court whereby reservation for Scheduled Castes and Scheduled Tribes was also made permissible in the matter of promotion. The validity of Article 16(4-A) was again challenged before this Court and the matter was

* **Ed.**: Para 5 corrected vide Official Corrigendum No. F.3/Ed.B.J./41/2007 dated 21-5-2007.

¹ 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385

M.P. RAJYA SAHAKARI BANK MARYADIT v. STATE OF M.P. (*A.K. Mathur, J.*) 533

- referred to the Constitution Bench. The Constitution Bench in its decision in *M. Nagaraj v. Union of India*² upheld the validity of Article 16(4-A) of the Constitution of India but with certain conditions that it is left open to the State to identify and collect quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment, keeping in mind maintenance of efficiency in administration and such reservation is subject to the judicial review. Their Lordships further laid down the ceiling of limit of maximum of 50 per cent. Their Lordships warned that in case the parameters laid down in *M. Nagaraj*² are not fulfilled, then such matter will be subject to the judicial review by the Court. In the light of the recent decision of the Constitution Bench in *M. Nagaraj*² one thing is clear that reservation can be made in promotion by the Government subject to the limits laid down by this Court in the aforesaid case.

9. Now, the question before us in the present case is whether the power exercised by the Registrar of Cooperative Societies under Section 55 of the Act of 1960 can be sustained or not in the light of the Act of 1994. The Act of 1994 was promulgated by the State Government for the benefit of providing reservation in the vacancies in public services and posts in favour of persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes. Therefore, this Act only contemplates reservation in public services. In order to claim reservation in public offices, the definition of establishment as mentioned in Section 2(b) of the Act of 1994 will have to be fulfilled. Section 2(b) of the Act of 1994 reads as under:

- “2. (b) ‘Establishment’ means any office of the State Government or of a local authority or statutory authority constituted under any Act of the State for the time being in force, or a university or a company, corporation or a cooperative society in which not less than fifty-one per cent of the paid-up share capital is held by the State Government and includes a work-charged or contingency-paid establishment.”

10. Therefore, Section 2(b) clearly says that the establishment would include any office of the State Government or local authority or statutory authority constituted under the Act of the State or a university, or a company, corporation or a cooperative society in which not less than 51 per cent paid-up share capital is held by the State Government and including work-charged and contingency-paid establishments shall be “establishment” and in that case reservation can be made for the members of Scheduled Castes, Scheduled Tribes and Other Backward Classes. The very object of the Act is to provide reservation in public service and posts. Therefore, it confined only for reservation in public services and not any other private institutions. For the purpose of public service, an establishment should answer the requirement as given in Section 2(b) of the Act of 1994. Therefore, reading the object and reason along with the definition of establishment it clearly transpires in the context of the cooperative society in which the State Government has paid-up share capital of 51 per cent or more, that the reservation can be made in such cooperative society.

534

SUPREME COURT CASES

(2007) 12 SCC

11. The object and reason[†] of the Act reads as under:

“An Act to provide for the reservation of vacancies in public services and posts in favour of the persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes of citizens and for matters connected therewith or incidental thereto.”

Therefore, on reading of objective of the Act of 1994 along with the definition of establishment it transpires that the Registrar under Section 55 of the Act of 1960 can lay down service conditions for cooperative society in which the State has 51 per cent of share capital. In case any cooperative society in which the State does not have 51 per cent of share capital, then that cooperative society will not come within the definition of establishment under Section 2(b) of the Act of 1994 and the Registrar of Cooperative Societies shall have no power to frame rule for reservation. It is true that under Section 55 of the Act of 1960 the Registrar can give direction for reservation for the Scheduled Castes and Scheduled Tribes and Other Backward Classes while exercising the mandate under Article 16(4-A) of the Constitution but at the same time he cannot ignore the State legislation i.e. the Act of 1994. In fact, the Act of 1994 was also promulgated for achieving the object under Article 16(4-A) of the Constitution. Once the State Legislature has framed an Act which is subsequent legislation in point of time i.e. the Madhya Pradesh Cooperative Societies Act, 1960 (Act 17 of 1961) came in 1960 whereas the present Act has come in 1994, it is presumed that legislature was aware of the power of the Registrar of Cooperative Societies under Section 55 of the Act of 1960 to frame conditions of service of employees of cooperative societies but despite that the legislature has promulgated the Act of 1994 and laid down ceiling that the reservation in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes should be made in the establishment where the Government has more than 51% shareholding.

12. Thus, on reading of both these two enactments it is more than clear that the Registrar of Cooperative Societies under Section 55 of the Act of 1960 has power to frame rules but at the same time he cannot ignore the impact of the Act of 1994. The Registrar of Cooperative Societies can lay down the reservation in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes as general condition of service only in cooperative societies in which the State has more than 51 per cent paid-up share capital and not for any other cooperative societies. But the Notification dated 6-3-1997 is general in nature and does not make any distinction with cooperative societies which do not have 51 per cent paid-up share capital of State. Therefore, to this extent the rule framed by the Registrar of Cooperative Societies, Madhya Pradesh by the Notification dated 6-3-1997 cannot be upheld and the same is struck down. But by this it does not mean that the Registrar of Cooperative Societies, Madhya Pradesh is not (*sic*)

h

[†] Ed.: As contained in the Preamble to the Act.

HARBANS SINGH v. STATE (GOVT. OF NCT OF DELHI)

535

denuded of his power to frame rules but he will have to keep in view the impact of the Act of 1994.

- a* **13.** Learned counsel for the respondents has also submitted that the cooperative society is not a State within the meaning of Article 12 of the Constitution, therefore, the writ petition is not maintainable. We need not go into this aspect as in view of the recent decision of this Act (*sic* Court) in *Supriyo Basu v. W.B. Housing Board*³ Their Lordships have laid down what are the parameters for challenging the orders passed by the cooperative societies. It has been held that the writ would be maintainable against a cooperative society if it is established that a mandatory statutory provision of a statute has been violated. Therefore, nothing turns on this aspect of the matter.

14. As a result of our above discussion, we do not find any merit in this appeal and the same is dismissed with no order as to costs.

c

(2007) 12 Supreme Court Cases 535

(BEFORE S.B. SINHA AND MARKANDEY KATJU, JJ.)

HARBANS SINGH

.. Appellant;

d

Versus

STATE (GOVT. OF NCT OF DELHI)

.. Respondent.

Criminal Appeal No. 212 of 2007[†], decided on February 15, 2007

- e* **A. Prevention of Terrorism Act, 2002 — Ss. 22 and 32 & 52 — Conviction based on confession — Procedural safeguards for recording confession under Ss. 32 and 52 complied with — High Court considering all submissions of accused in detail, convicted appellant-accused under S. 22 and sentenced him to 14 years' RI — Held, no interference called for**

(Paras 12 to 18)

State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715 : (2005) 3 Crimes 87, *relied on*

- f* **B. Evidence Act, 1872 — S. 106 — Proving fact within the knowledge of accused — Delivery of money through hawala by appellant — A to whom money to be delivered not known to appellant — Appellant identified A by colour of his dress and also by the number of a 10 rupee note which he handed over to appellant — They were neither partners in business nor had any transaction with each other — In this situation, held, purpose of handing over the cash was especially within the knowledge of the two accused — S. 106 casts upon them responsibility of advancing an explanation for the same**

(Para 14)

State of W.B. v. Mir Mohammad Omar, (2000) 8 SCC 382 : 2000 SCC (Cri) 1516; *Sucha Singh v. State of Punjab*, (2001) 4 SCC 375 : 2001 SCC (Cri) 717, *relied on*

Appeal dismissed

R-M/A/35751/SR

³ (2005) 6 SCC 289

- h* [†] Arising out of SLP (Crl.) No. 2930 of 2006. From the Final Judgment and Order dated 9-1-2006 of the High Court of Delhi at New Delhi in Criminal Appeal No. 331 of 2004 : (2006) 3 Recent Cri Rul 23