

MADHYA PRADESH RAJYA SAHAKARI BANK MARYADIT

v

STATE OF M.P. AND ORS.

FEBRUARY 22, 2007

[A.K. MATHUR AND H.S. BEDI, JJ.]

Co-operative Societies:

Madhya Pradesh Co-operative Societies Act, 1960 - s.55—Power under—Scope, in light of the Act of 1994—Held: Registrar of Co-operative Societies under s.55 has power to frame rules but at the same time he cannot ignore the impact of the Act of 1994—The Registrar can lay down reservation in favour of SCs, STs and OBC as general condition of service only in Co-operative societies in which the State has more than 51% paid up share capital and not for any other co-operative societies—Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhinyam, 1994 - s.2(b)—Constitution of India, 1950—Article 16(4A).

In exercise of its power under s.55 of the Madhya Pradesh Co-operative Societies Act, 1960, Registrar, Co-operative 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 whereby conditions of recruitment were relaxed. High Court declared the order as *ultra vires* and allowed the writ petition.

The question which arose for consideration in the present appeal is whether the power exercised by the Registrar, Co-operative Societies, Madhya Pradesh under s.55 of the Act of 1960 can be sustained in the light of the Madhya Pradesh Lok Seva (Anusuchit Jatiyon, Anusuchit Jan Jatiyon Aur Anya Pichhade Vargon Ke Liye Arakshan) Adhinyam, 1994 (Act of 1994).

It was contended by the Appellant that the power of the Registrar under s.55 of the Act of 1960 is not regulated by the Act of 1994 and that under s.55(1) of the Act of 1960, the Registrar has full power to give direction for reservation in order to implement the Constitutional provision under Article

A 16(4-A) of the Constitution. The Respondents however contended that the Act of 1994 clearly lays down that reservation will only be applicable in establishments where the State Government has more than 51 per cent shareholding and not in other establishments.

Dismissing the appeal, the Court

B HELD: 1. 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. [Para 8] [1055-B]

C 1.2. 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 fulfilled. 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, D Corporation or a Co-operative Society in which not less than 51 percent paid up share capital is held by the State Government and including work charge 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 E reservation in public service and posts. Therefore, it confined only for reservation in public services and not any other private institutions. Reading the object and reason along with the definition of establishment it clearly transpires in the context of the Co-operative Society in which the State Government has paid up share capital of 51 percent or more, then the reservation can be made in such Co-operative Society. [Para 8]

F [1055-C-E-G]

Indra Sawhney & Ors. v. Union of India & Ors. [1992] Supp.3 SCC 217 and *M.Nagaraj & Ors. v. Union of India & Ors.*, [2006] 8 SCC 212, referred to.

G 2.1. Reading of the 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 condition for Co-operative Society in which the State has 51 percent of share capital. In case any Co-operative Society in which the State does not have 51 percent of share capital, then that Co-operative Society will not come within the definition of establishment under H Section 2(b) of the Act of 1994 and the Registrar of Co-operative 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 Co-operative Societies Act, 1960 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 the Co-operative Societies under Section 55 of the Act of 1960 to frame condition of service of employees of Co-operative Societies 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 Government has more than 51% share holding. [Para 8] [1056-B-E]

2.2. Thus, on reading of both these two enactments it is more than clear that the Registrar of Co-operative 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 Co-operative Societies can lay down the reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward classes as general condition of service only in Co-operative societies in which the State has more than 51 percent paid up share capital and not for any other co-operative societies. But the notification dated 6.3.1997 is of general in nature and does not make any distinction with Co-operative 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 Co-operative Societies, Madhya Pradesh by 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 Co-operative Societies, Madhya Pradesh is not denuded of his power to frame rules but he will have to keep in view the impact of the Act of 1994.

[Para 8] [1056-F-H; 1057-A]

Supriyo Basu & Ors. v. W.B.Housing Board & Ors., [2005] 6 SCC 289, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2661 of 2004.

From the final Judgment and Order dated 11.3.2003 of the High Court of Madhya Pradesh at Jabalpur in WP No. 1415/1997.

A S.K. Gambhir, M.P. Jha, S.C. Dwivedi, R.E. Roy, Harshvardhan Jha, B.K. Sharma and Anil K. Chopra for the Appellant.

Rajeev K. Virmani, Rajeev M. Roy and Vibha Datta Makhija for the Respondents.

B The Judgment of the Court was delivered by

C **A.K. MATHUR, J. 1.** This appeal is directed against the order passed by the Division Bench of 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 Co-operative Societies in exercise of power under Section 55(1) of the Madhya Pradesh Co-operative 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 the Madhya Pradesh Rajya Sahakari Bank Maryadit (hereinafter to be referred to as the 'appellant').

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

E 3. Learned counsel for the appellant has submitted that the Registrar of Co-operative Societies under Section 55 of the Act of 1960 has full power to frame rules relating to service conditions for the Co-operative Societies. Therefore, in exercise of the aforesaid power, the Registrar of Co-operative 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:

G " 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. Co-operative Societies, Madhya Pradesh, Bhopal from time to time may be granted to the Ex-serviceman

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and Scheduled Castes/ Scheduled Tribes, Backward Classes and physically handicapped persons.” A

The order dated 6.3.1997 passed by the Registrar of Co-operative Societies is also reproduced as under:

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

No. CR/AP-1/30/2

Bhopal, Dated 6.3.1997.

O R D E R

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 (No. 17 of 1961) conferred upon no.Vide Government of Madhya Pradesh, Cooperation Department order No.2419/7060/XV/62 dated 16.6.1962, I U.P.Gupta, Joint Registrar, Cooperative Societies, M.P. hereby amend in Chapter 4- condition of Recruitment Rule No.5 and Chapter-3 File No.15 (b)-2 of the M.P.Rajya Sahakari Bank Maryadit Employees Service Rules, 1976 as per enclosed herewith. C

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

(J.P.GUPTA)

JOINT REGISTRAR COOPERATIVE SOCIETIES, M.P.

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

Copy forwarded to :-

1. The Managing Director, 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. G

JOINT REGISTRAR

COOPERATIVE SOCIETIES, M.P.” H

A 4. 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 (No.21 of 1994 (hereinafter to be referred to as the 'Act of 1994'). Therefore, it was contended that the Registrar of the Co-operative 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(4A) of the Constitution of India.

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C 5. It was also contended that writ is not maintainable because Co-operative Society is not a '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 share-holding. Therefore, Act of 1994 which regulates the reservation of vacancies of ST/SC in 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.

D 6. We have considered the rival submissions of learned counsel for the parties.

E 7. 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 & Ors. v. Union of India & Ors.* [1992] Supp.3 SCC 217, 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 referred to the Constitution Bench. The Constitution Bench in its decision in *M.Nagaraj & Ors. v. Union of India & Ors.* [2006] 8 SCC 212, 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.Nagaraja* (supra) 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.Nagaraja* (supra) 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. A

8. Now, the question before us in the present case is whether the power exercised by the Registrar of Co-operative Societies under Section 55 of the Act of 1960 can be sustained or not in the light of Act of 1994. 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 fulfilled. Section 2(b) of the Act of 1994 reads as under : B C

“(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 percent of the paid up share capital is held by the State Government and includes a work charge or contingency paid establishments.” D

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 Co-operative Society in which not less than 51 percent paid up share capital is held by the State Government and including work charge 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 Co-operative Society in which the State Government has paid up share capital of 51 percent or more, then the reservation can be made in such Co-operative Society. The object & reason of the Act reads as under: E F G

“An Act to provide for the reservation of vacancies in public services and posts in favour of the persons belonging to the Scheduled H

A Castes, Scheduled Tribes and other Backward Classes of citizens and for matters connected therewith or incidental thereto.”

Therefore, 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 condition for Co-operative Society in which the State has 51 percent of share capital. In case any Co-operative Society in which the State does not have 51 percent of share capital, then that Co-operative Society will not come within the definition of establishment under Section 2(b) of the Act of 1994 and the Registrar of Co-operative 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 Co-operative 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 the Co-operative Societies under Section 55 of the Act of 1960 to frame condition of service of employees of Co-operative Societies 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 Government has more than 51% share holding. Thus, on reading of both these two enactments it is more than clear that the Registrar of Co-operative 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 Co-operative Societies can lay down the reservation in favour of Scheduled Castes, Scheduled Tribes and other Backward classes as general condition of service only in Co-operative societies in which the State has more than 51 percent paid up share capital and not for any other co-operative societies. But the notification dated 6.3.1997 is of general in nature and does not make any distinction with Co-operative 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 Co-operative Societies, Madhya Pradesh by 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 Co-operative Societies, Madhya Pradesh is not denuded of his power to frame rules but he will have to keep

in view the impact of the Act of 1994.

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9. Learned counsel for the respondents has also submitted that the Co-operative 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 in *Supriyo Basu & Ors. v. W.B.Housing Board & Ors.* [2005] 6 SCC 289, their Lordships have laid down what are the parameters for challenging the orders passed by the Co-operative Societies. It has been held that writ would be maintainable against a Co-operative 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.

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10. 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.

B.B.B.

Appeal dismissed.