

(2000) 12 GAU CK 0010

Gauhati High Court (Imphal Bench)

Case No: Civil Rule No. 266 of 1993

Manipur Co. Op. Department
Officers" Association and
Another

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision: Dec. 1, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 309
- Manipur Co-operative Societies Act, 1976 - Section 3
- Manipur Co-operative Societies Rules, 1977 - Rule 3

Citation: (2000) 3 GLT 530

Hon'ble Judges: H.K. Sema, J

Bench: Single Bench

Advocate: Ashok Potsangbam and S. Rupachandra Singh, for the Appellant; A. Jagatchandra Singh, N.P.C. Singh and L. Shyam Singh, for the Respondent

Final Decision: Allowed

Judgement

H.K. Sema, J.

This petition has been filed by an association called, "Manipur Co-operative Department Officers" Asson." through its President and General Secretary, inter alia, with a prayer to quash the Govt. notification dated 16.2.93 (Annexure-A/1) and the letter dated (Annexure-A/2) framing rules regulating the method of recruitment to the post of Joint Registrar Co-operative Societies and the Government letter dated 16.2.93 requisitioning for filling up and for regularisation of the post of Joint Registrars, Co-operative Societies (Annexure-A/2) respectively, on the ground that the same are violative of Articles 14, 16 and 309 of the Constitution as well as the mandate of the Manipur Co-operative Societies Act, 1976 and the Manipur Co-operative Societies Rules, 1979 framed under the Act.

2. While issuing a Rule this Court on 17.3.93 passed an interim order suspending the notifications at Annexure-A/1 and A/2. The interim order passed on 17.3.93 was modified by this Court on 4.12.96 to the extent that Govt. was allowed to fill up the post of Joint Registrar in the Co-operative Department on temporary basis and any promotion that may be made shall be subject to the final outcome of this writ petition. Pursuant to the aforesaid modification, it is stated that the Respondent No. 8 as Law Officer has been promoted to the post of Joint Registrar on temporary basis.

3. Briefly stated facts leading to the filing of the present writ petition are these; that the officers of the Petitioners' Assn. are the employees under the Manipur Co-operative Societies. The Manipur Co-operative Societies is a creation of Statute by the Manipur Cooperative Societies Act, 1976 (Manipur Act 14 of 1996) In short the Act). The Manipur Co-operative Societies Rules have also been framed called, "The Manipur Co-operative Societies Rules, 1977" (in short the Rules). I shall be dealing with the relevant Act and Rules so far applicable in the case at hand at the appropriate time.

4. By a notification dated 11.1.82, the Governor of Manipur in exercise of powers conferred by the proviso to Article 309 of the Constitution framed the Rules regulating the method of recruitment to the post of Joint Registrar of the Co-operative Societies (Annexure-A/3). In column "10" of the said Rules, recruitment to the post of Joint Registrar is 100% by promotion. Col. 11 prescribes that Dy. Registrar Co-operative Societies with three years regular service in the grade is a feeder post for promotion to the post of Joint Registrar and by Class-I DPC. However, in 1992 by the impugned notification dated 16.6.92 in supersession of all previous notifications and in exercise of the powers conferred by the proviso to Article 309 of the Constitution the Governor of Manipur framed the Rules regulating method of recruitment to the post of Joint Registrar, Co-operative Societies. In Col. 11 of the said recruitment Rules, Law Officer, the post which has been held by the Respondent No. 8 has also been included as a feeder post for promotion to the post of Joint Registrar, other terms and conditions remain unchanged as notified in 1982.

5. The aforesaid Rules have been challenged on the following grounds:

(a) that the Rules have been framed contrary to the provisions of Section 3 of the Manipur Co-op. Societies Act, 1976 read with Rule 3 of the Manipur Co-op. Societies Rules, 1977 inasmuch as the post of Law Officer does not find place in the executive stream mentioned in Section 3 of the Act read with Rule 3 of the Rules;

(b) that the post of Law Officer in the Coop. Department has been created aimed at solely to give legal advice to the Department and the Respondent No. 8 has been subsequently appointed exclusively for dealing with legal matters and therefore the Respondent No. 8 does not have any administrative competence and experience and as such he cannot be brought within the executive stream of the Co-op. officers

by the impugned notification;

(c) the Law Officer has a separate recruitment Rules framed under proviso to Article 309 of the Constitution regulating method of recruitment to the post of Law Officer by a notification dated 1st Aug. 1985 and it is a separate entity and qualifications prescribed for the post of Law Officer and the post of Joint Registrar are quite different and these two cannot be clubbed together and therefore the impugned notification dated 16.6.92 is violative of Article 14 and 16 of the Constitution.

6. I have heard Mr Ashok Potsangbam, Id. Sr. Counsel for the Petitioners, Mr A. Jagatchandra, Id. Addl. G.A. for the official Respondents and also Mr N.P.C. Singh, Id Sr. Counsel for the Respondent No. 8.

7. It is contended by Mr Ashok Potsangbam, Id. Counsel for the Petitioners that the aforesaid notification dated 16.6.92 has been made contrary to and in derogation of the provisions of Section 3 of the Act read with Rule 3 of the Rules inasmuch as the post of Law Officer has not found place either under the Act or under the Rules. In this connection Counsel for the Petitioners has invited my attention to Section 3 of the Act read with Rule 3 of the Rules. As already said the Manipur Co. Op. Societies is a creation of Statute. Section 3 of the Act deals with registration. It reads:

3. The State Government may appoint a person to be the Registrar of Co-operative Societies for the State; and may appoint one or more persons to assist such Registrar, and may, by general or special order, confer on any such person or persons all or any of the powers of the Registrar under this Act. The person or persons so appointed to assist the Registrar and on whom any powers of the Registrar are conferred, shall work under the general guidance, superintendence and control of the Registrar.

Further, Rule 3 of the Manipur Co-op. Societies Rules, 1977 has been framed u/s 3 of the Act. It reads:

3. Designation of persons appointed to assist Registrar:

Persons appointed to assist the Registrar u/s 3 may be designated as the Additional Registrars. Joint Registrars. Deputy Registrars or Assistant Registrars.

(emphasis supplied).

8. A fascicule reading of Section 3 and Rule 3 it clearly appears that the officers of the Societies recognised and identified under the Act and Rules are being designated as Registrar, Additional Registrars, Joint Registrars, Dy. Registrars and Assistant Registrars. It will be noticed that the post of Law Officer is nowhere found either under the Act or under the Rules. The Petitioner has categorised the hierarchy of the executive officers of the Societies in paragraph 6 of its petition as under:

(a) Inspector Co-operative Societies.

By appointment. Essential qualification is Degree of a Recognised University.

(b) Sub-Registrar Co-operative Societies.

By 100% promotion from Inspector Co-operative Societies. Essential qualification-5 years regular service as Inspector Cooperative Societies and passing of Departmental Examination conducted by the Manipur Public Service Commission.

(c) Assistant Registrar Co-operative Societies.

By promotion (100%) from Sub-Registrar Co-operative Societies. Essential qualification-3 years regular service as Sub Registrar Cooperative Societies.

(d) Deputy Registrar Co-operative Societies.

By promotion (100%) from Assistant Registrar Co-operative Societies. Essential qualification-3 years regular service as Assistant Registrar Co-operative Societies:

(e) Joint Registrar Co-operative Societies.

100% by promotion from Deputy Registrar Co-operative Societies (Previous R.R.) after 3 years regular service in the post.

(f) Additional Registrar Co-operative Societies.

By promotion (100%) from Joint Registrar Co-operative Societies after completion of 3 years regular service in the post.

9. From the hierarchy of the officers of the Societies down from Inspector of Cooperative Societies to Additional Registrar of Co-operative Societies, there is no scope to accommodate the post of Law Officer in the feeder post for promotion to the post of Joint Registrar.

10. By now it is well settled principles of law that the Rules made under proviso to Article 309 of the Constitution shall have effect subject to the provisions of the Act if the appropriate Legislature has passed an Act (See [B.S. Vadera Vs. Union of India \(UOI\) and Others](#), . In the instant case as already pointed out Section 3 of the Act and Rule 3 of the Rules identify the officers of the societies to assist the Registrar as Addl. Registrar, Jt. Registrar, Dy. Registrar or Asstt. Registrar. The post of Law Officer is not found in the list. Since the post of Law Officer is not recognised under the Statute, he cannot be made as a feeder post for promotion to the post of Joint Registrar which has been recognised under the statute. Even on this score alone, the Rule being made in derogation and contrary to the statute are liable to be quashed and set aside.

11. This apart, the post of Law Officer has been created solely aimed at to tender legal advice to the Societies is well founded in the memorandum itself proposing to create the post of Law Officer.

12. In the counter affidavit of the Respondent No. 8 the aims and object for creation of the post of Law Officer has been annexed as Annexure-S/1-1. In the aims and objects for creation of post, it is noted:

The duty and functions of the officers of the Department are quasi-judicial in nature and as such the officers very often require legal advice/Counsel in the course of performance of their normal official duty. As there is no Law Officer in the Department, the officers cannot get legal advice as and when they require. Hence, creation of one post of Law Officer in the Department is considered quite necessary.

A reading of the aims and objects for creation of the posts of Law Officer, it is quite clear that it is in the nature of ex-cadre post.

13. Recruitment for the post of Law Officer has been notified by a notification dated 1st Aug/95. Col. 7 of the Rules prescribes essential qualifications, it reads:

7. Essential:

Degree in Law from a recognised University.

2. 3 years experience at the Bar or 3 years experience of holding responsible post connected with legal matters under the Central/State Govt. (for this purpose, period spent partly in one and partly in Anr. will be taken together).

Desirable:

Experience in Co-operative Law and cases preferably in any Co-operative Deptt. under State or Central Government.

Co. 10 provides that the post shall be filled up by direct recruitment, whereas the recruitment for promotion to the post of Joint Registrar of the Societies as notified by notification dated 11.1.82 (superseded by the impugned notification) provides that 100% by promotion in Col. 10. Since the Law Officer has a different recruitment Rule and under the said Rule the post has to be filled up by direct recruitment and to give legal advice to the Department, he cannot have any administrative experience which was essential qualification for promotion to the post of Joint Registrar. The post of Law Officer held by the Respondent No. 8 is not a statutory post, has been admitted by the Respondents in the counter affidavit filed in C.R. No. 689/97. C.R No. 689/97 has been filed by the Respondent No. 8 as writ Petitioner. In that case the 8th Respondent was appointed as a Registrar of Co-op. Societies by various orders as stop gap arrangement which were cancelled by the Government order dated 16.7.97. The order dated 16.7.97 was challenged by the Respondent No. 8 by filing two Civil Rules. In that Civil Rules the Respondents had filed counter and in the counter of Respondents-1 to 4 it has been specifically stated as under:

It is further to state that the post of law officer is not a statutory post. Under the Manipur Co-operative Societies Act, 1976 and Rules made there under the Registrar Cooperative Societies, Addl. Registrar, Cooperative Societies, Dy. Registrar

Cooperative Societies and Assistant Registrar, Co-operative Societies only are statutory posts.

The duty of the Petitioner as the Law Officer is only to render/tender legal advice in the legal matters. He cannot exercise the executive function. Due to non-availability of his service serious problems are being faced by the Department. There are about 50 cases pending in the Law Courts involving the Department. Further, the Petitioner has been appointed as the Prescribed Authority under the Manipur Agricultural Credit Operations and Misc. Provisions (Banks) Act, 1976 for recovery of loans advanced by the Commercial banks for agriculture and allied activities for which his duty is to attach properties of loanees for disposal of the properties so attached as per provisions of the Act. However, he failed to discharge his duty which is in negligence of his duty.

14. It would, therefore, manifestly clear that the post of Law Officer is not a statutory post under the Act and Rule. In other words, the Act and the Rules does not recognise the post of Law Officer. The post is created solely aimed at to give legal advice to the Department and in the nature of ex-cadre post and he cannot exercise executive function. The post which is not recognised under the Statute cannot be made a feeder post for promotion to the post which has been recognised under the Statute.

15. Apart from what has been said, it also clearly appears that the post of Dy. Registrars of the Co-operative Societies and Law Officers are not at all identical as regards the mode of appointment, requisite qualifications, nature of work and duties and responsibilities. The function of the Dy. Registrar of the Society is executive by nature which would require administrative expertise for promotion to the post of D.R.C. from A.R.C. The promotion to the post of D.R.C. can only be done after acquiring administrative expertise and after passing departmental examination conducted by the M.P.S.C. as required under the R.R. whereas the function of the Law Officer is only to tender legal advice to the I Registrar of Co-operative Societies and other officers in the legal matters and does not require administrative expertise and appointment to the post is by direct recruitment under the relevant Rules.

16. At the time of hearing of the writ petition an attempt has been made that the pay scale of the Deputy Registrar of the Cooperative Societies is identical with post of Law Officer. Carrying identical pay scale is not the sole criteria for equating two posts. Apart from carrying identical pay scale, there must be functional similarities. As already pointed out, there is functional dissimilarities between the D.R.C. and the Law Officer. One is purely an executive functional and the other is purely legal consultant and therefore the two posts cannot be equated merely because they carry identical pay scale. By framing the impugned Rules the Respondents sought to treat the unequals equally and is violative of Article 14 and 16 of the Constitution.

17. Counter on behalf of the Respondent has been filed. The main thrust of contention of both Mr Jagatchandra appearing for the official Respondent 2 and Mr N. P.C. Singh, Id. Sr. Counsel appearing for the Respondent No. 8 are that the rule making power is within the domain of the legislature and such Rule framed in exercise of legislative power cannot be struck down on the ground of even unreasonableness unless the legislative measures itself can be struck down. In this connection the Id. Counsel referred to the decision of the Apex Court in [R.L. Bansal and others Vs. Union of India and others](#), and the decision of the Apex Court rendered in [V.K. Sood Vs. Secretary, Civil Aviation and others](#), . There is no quarrel over the proposition of law. However, in the instant case, as already pointed out, the Rule has been made contrary to and in derogation of the provisions of the Act and Rules and it cannot be sustained. Rules are always framed in consonance and to carry out that aims and objects of the Act. When rules are framed contrary to the provisions of the Act, it ultravires the Act and liable to be struck down which I hereby do. In the case at hand the legislative measures itself is liable to be struck down.

18. Rules are always framed to cause the advance of the public interest, apart from carrying out the Act. In the present case by the impugned Rules the Respondent No. 8 is allowed to hold/promote to die post for which he has not been trained. Expert hand in particular field serves public interest better. Arbitrary exercise of power is writ large.

19. In the result, the impugned notifications dated 16.6.92 (Annexure-A/1) and dated 16.2.93 (Annexure-A/2) are hereby struck down. Since the notifications have been struck down, all the consequential orders/promotions flows from the notification in respect of Respondent No. 18 are also quashed and set aside. This petition is allowed. Parties are asked to bear their own costs.

Despite the order aforesaid, it is open to the appropriate authority to amend the Recruitment Rules for the post of Law Officer so as to create some promotional avenue for the Law Officer as a separate entity if so advised.