

APPELLATE CIVIL

Before Kapur, J.
DHARAM PAL,—Appellant
versus

THE JAGADHRI THATHERA CO-OPERATIVE SOCIETY,
JAGADHRI, THROUGH THE LIQUIDATOR, THE
CENTRAL CO-OPERATIVE SOCIETY,
AMBALA,—Respondent.

Execution Second Appeal No. 207 of 1953.

1954

July, 8th

Co-operative Societies Act (II of 1912), Section 42 and rule 26—Liability of a member of a Co-operative Society in Liquidation determined by the Liquidator under section 42(2)(b) of the Act without notice to the member—Liability confirmed by the Industrial Registrar, Co-operative Societies after notice—Liquidator sought to recover the liability through a Civil Court—Whether the objection of the Judgment-Debtor member that he had never been given notice by the Liquidator before his liability was determined fatal to the recovery proceedings.

Held, that any determination by a Liquidator without giving an opportunity to person whose liability is to be determined is a nullity as this is contrary to natural justice. The Liquidator is by rules empowered to summon evidence and the object can be none other than to determine the liability of a member on the evidence before him. Such evidence cannot be one-sided for no quasi-judicial tribunal can act without hearing both sides.

Held, also that the notice by the Registrar is not contemplated by the statute or the rules and the power given to him is of a limited nature more in the nature of a revising authority who can approve, modify or order further enquiry. The notice sent by him is, therefore, contrary to law and is ineffectual.

Sayed Mahbub Hussain Shah v. Anjuman Imdad Qarza (1) and Abdul Ghani v. Anjuman-i-Imdad Qarza Bahmi (2), followed, Inder Singh v. Anjuman Imdad Qarza (3), not followed.

(1) A.I.R. 1942 Lah. 129

(2) A.I.R. 1942 Lah. 237

(3) C.R. 691 of 1951

Execution Second Appeal from the order of Shri J. N. Kapoor, Additional District Judge, Ambala, dated the 12th December, 1952, affirming that of Shri G. R. Luthra, Sub-Judge, III Class, Jagadhri, dated the 8th March, 1952, dismissing the objection application with costs.

SHAMAIR CHAND and P. C. JAIN, for Appellant.

K. S. CHHACHHI, for Respondent.

JUDGMENT

KAPUR, J. This is a judgment-debtor's appeal against an appellate order of Additional District Judge J. N. Kapoor, dated the 12th December, 1952, confirming the order of the executing Court dismissing the objections of the judgment-debtor.

Kapur, J.

The appellant was alleged to be a member of a Co-operative Society which went into liquidation. His liability was determined by the liquidator under section 42 (2) (b) of the Co-operative Societies Act, and it was finally confirmed by the Industrial Registrar, Co-operative Societies.

When the liquidator took proceedings for recovery of money through a civil Court the judgment-debtor objected that he had never been given any notice by the liquidator before his liability was determined, and the Courts below relying on a judgment of Falshaw, J., in Civil Revision No. 691 of 1951 have held that notice by a liquidator was not necessary and that a notice given by the Assistant Registrar is sufficient to make a member or a past member liable.

The objection of the present appellant was that he was not a member or a past member within the meaning of the words as used in the Co-operative Societies Act and, therefore, no liability could be imposed upon him.

Dharam Pal v. The Jagadhri Thathera Co-operative Society, Jagadhri

Section 42 of the Co-operative Societies Act deals with winding up and section 42 (2) (b) is as follows :—

Thathera Co-operative Society, Jagadhri
 —————
 Kapur, J.

“42 (2) (b). A liquidator appointed under subsection (1) shall have power—

(b) to determine the contribution to be made by the members and past members of the society respectively to the assets of the society.”

Therefore the law imposes upon the liquidator the power to determine the liability of members. Rule 26 made under section 43 of the Act prescribes the rules for winding up and rules 26 (d) (e) and (g) prescribe what the liquidator should do and they are as follows :—

“(d) The liquidator shall proceed to determine the assets and liabilities of the society as they stood at the time of the cancellation of its registration, and shall determine the contributions to be made by the members and past members respectively to the assets of the society. He shall also determine by what persons and in what proportions the costs of the liquidation are to be borne.

(e) The liquidator may issue a summons to any person whose attendance is required either to give evidence or to produce documents. He may compel the attendance of any person to whom a summons is issued and for that purpose issue a warrant for his arrest through the civil court exercising jurisdiction in the area in which the society operates.

(g) He shall make an order noting the names of members and past members of the society and the amount to be realized from each as contribution under clause (b), subsection (2) of section 42, and as costs of liquidation under clause (d) of the same subsection. This order shall be submitted to the Registrar for his approval, and he may modify it or refer it back to the liquidator for further enquiry or other action."

Dharam Pal
v.
The Jagadhri
Thathera Co-
operative
Society,
Jagadhri
Kapur, J.

And in rule (g) is given what orders he can make and it also prescribes that the order shall be submitted to the Registrar for his approval, and he can modify it and refer it back for further enquiry or other action, and it is this order which is to be sent to the Civil Court for execution.

The appellant submits that the learned Judge has taken an erroneous view of the law because the liquidator cannot determine the liability of a person without giving him notice and he has relied on several judgments of the Lahore High Court, and I will quote only two Bench decisions firstly, *Sayed Mahbub Hussain Shah v. Anjuman Imdad Qarza* (1), which was followed by another Bench in *Abdul Ghani v. Anjuman-i-Imdad Qarza Bahami* (2). In both these judgments it was held that any determination by a liquidator without giving an opportunity to the person whose liability is to be determined is a nullity as this is contrary to natural justice and these two judgments have the weight of very high authority. By rule 26(d) the liquidator has to determine the contributions to be made by the members and past members and by rule (e) he is given the power to summon persons to give evidence or to produce documents and

(1) A.I.R. 1942 Lah. 129

(2) A.I.R. 1942 Lah. 287

Dharan Pal
v.
The Jagadhri
Thathera Co-
operative
Society,
Jagadhri
Kapur, J.

then follow rules (f) and (g). The latter entitles the liquidator to make an order noting the names of members and past members and the amounts to be realized therefrom. The sequence indicates that the liquidator is by the rules empowered to summon evidence and the object can be none other than to determine the liability of a member on the evidence before him. Such evidence cannot be one-sided, for no quasi-judicial tribunal can act without hearing both sides. That appears to be the effect of section 42 (2) (b) also.

The notice by the Registrar is not contemplated by the statute or the rules and the power given to him is of a limited nature more in the nature of a revising authority who can approve, modify or order further enquiry. The notice sent by him is, therefore, contrary to law and is ineffectual.

For the respondents an unreported Single Bench judgment of this Court, *Inder Singh v. Anjuman Imdad Qarza* (1), decided by Falshaw, J., has been quoted, but it appears that the judgments which have been quoted before me were not brought to the notice of the learned judge. Besides the learned Judge was not very much impressed by the doctrine of natural justice which is a cardinal principle of administration of justice in this country and which has been emphasised by the Supreme Court in *Bharat Bank v. Employees of Bharat Bank* (2), (per Mahajan, J.) and in *Veerappa Pillai v. Raman & Raman Ltd.*, (3), (Chandrasekhar Aiyer, J.) and in *Parry & Co. v. Commercial Employees*, (4), I would, therefore, respectfully differing from the opinion of the learned Judge prefer to follow the Bench decisions of the Lahore High Court supported as they

(1) C.R. 691 of 1951
(2) 1950 S.C.R. 459 at p. 500
(3) 1952 S.C.A. 287
(4) 1952 S.C.A. 299

are by the statute and rules. As the liquidator Dharam Pai proceeded without hearing the parties his orders are a nullity and they cannot, therefore, be executed. I would, therefore, allow this appeal, set aside the orders of the Courts below and dismiss the application for execution. The appellant will have his costs in this Court and in the Courts below.

v.
The Jagadhri
Thathera Co-
operative
Society,
Jagadhri
—
Kapur, J.

CIVIL WRIT.

Before Kapur J.

DOGAR RAM,—*Petitioner.*

versus

SMALL TOWN COMMITTEE, SAMRALA,

AND OTHERS,—*Respondents.*

Civil Writ No. 296 of 1953.

Small Towns Act (II of 1922), Sections 11, 14, 51 and Rules 3 and 3-A (framed under section 51)—Servants of the Small Town Committee dismissed in direct contravention of the rules framed under the Act—Whether such dismissal legal—Whether it can be justified on the ground that all servants of the committee hold office at the pleasure of the Committee.

1954

July, 8th

Held, that the dismissal of the servants in contravention of the Rules was illegal and could not be justified on the ground that the servants of the Small Town Committee hold office at the pleasure of the Committee, in view of the words of section 14 (2).

Prabhu Lal Upadhya v. District Board, Agra (1), McManus v. Bowes (2), Malik Narain Das v. District Board, Jhang (3), R. Venkata Rao, v. The Secretary of State (4) and V. A. Chellam Aiyar v. Corporation of Madras (5) distinguished.

-
- (1) I.L.R. 1938 All. 252
(2) (1938) 1 K.B. 98
(3) A.I.R. 1940 Lah. 71
(4) I.L.R. 1937 Mad. 532
(5) 42 I.C. 513