

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE VIVEK AGARWAL
ON THE 20th OF MARCH, 2023
WRIT PETITION No. 13432 of 2009**

BETWEEN:-

M.P.RAJYA SAHAKARI UPBHOKTA SANGH MARYADIT
KARMACHARI SANGH BHOPAL TH.ITS CHAIRMAN
ABDUL LATIF KHAN R/O HOU.NO.40, AHAHTA RUSTAM
KHAN, NEAR POLYTECHNIC COLLEGE, BHOPAL
(MADHYA PRADESH)

.....PETITIONER

*(BY SHRI K.C. GHILDIYAL - SENIOR ADVOCATE ASSISTED BY SHRI
AJEET SINGH - ADVOCATE)*

AND

1. SECRETARY THE STATE OF MADHYA PRADESH
COOPERATIVE DEPTT., VALLABH BHAWAN
(MADHYA PRADESH)
2. R E G I S T R A R COOPERATIVE SOCIETIES
VINDHYACHAL BHAWAN BHOPAL (MADHYA
PRADESH)
3. MANAGING DIRECTOR M.P. RAJYA SAHKARI
UPBHOKTA SANGH PRIYADARSHNI BHAWAN T.T.
NAGAR BHOPAL (MADHYA PRADESH)
4. BOARD OF DIRECTOR OCCUPATION:
PRAIYADARSHNI SUBIDHA SWA SEVA KENDRA
T.T. NAGAR BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

*(BY SHRI MANAS MANI VERMA - GOVERNMENT ADVOCATE FOR THE
STATE)
(SHIR ASHISH SHROTI - ADVOCATE FOR RESPONDENTS NO.3 AND 4)*

*This petition coming on for admission this day, the court passed the
following:*

2
ORDER

This writ petition is filed by the M.P. Rajya Sahakari Upbhokta Sangh Maryadit Karmchari Sangh, Bhopal being aggrieved of the action of the respondents No.3 and 4 in reducing the rate of overtime from double the wages as prescribed in Section 55 of the M.P. Shops and Establishment Act, 1958 to single rate. This decision of the Authorities which was to come into force w.e.f. 01.10.2001 is under challenge before this Court.

Shri Ashish Shrotri has raised an objection as to the maintainability of the writ petition saying that the respondent is a Federation of Cooperative Societies. Reading from the bye-laws contained in Annexure P-13, it is submitted that it is not an instrumentality of the State and, therefore, it will not fall within the purview of Article 12 of the Constitution to be treated as a State.

It is further submitted that the decision of the Board of Directors was consonance of the financial condition of the respondents, therefore, no indulgence is required in the matter.

After hearing learned counsel for the parties and going through the record, it is evident that Government has stake of Rs.309.09 Lacs in the capital of the M.P. Rajya Sahakari Upbhokta Sangh Maryadit Karmchari Sangh, Bhopal. This is out of total paid up capital of 353.45 which constitutes 87.44% of the share capital. Thus, first argument put forth by Shri Ashish Shrotri that respondent is not amenable to writ jurisdiction is not made out in the light of the judgment of Supreme Court in **Madhya Pradesh Cooperative Dairy Federation Limited and Another Vs. Rajnesh Kumar Jamindar and Others, (2009) 15 SCC 221** wherein Supreme Court has held that M.P. State Cooperative Dairy Federation Ltd. is covered by the definition. It is held that since the federation not only carries on commercial activities, it works for

achieving the better economic development of a section of the people. It seeks to achieve the principles laid down in Article 47 of the Constitution of India namely nutritional value and health. It undertakes training and research work. Guidelines issued by it are binding on the societies. It monitors the functioning of the societies under it. It is an apex body. It must, therefore, be held that the appellant would come within the purview of the definition of "State" as contained in Article 12 of the Constitution of India.

In the present case, the aims and objectives of the M.P. Rajya Sahakari Upbhokta Sangh Maryadit, Bhopal are as under:-

“ ४. उद्देश्यः

अ. सहकारी सिद्धांतों का पालन करते हुये प्रदेश में स्थित सम्बद्ध सहकारी थोक उपभोक्ता भण्डारों एवं सार्वजनिक वितरण प्रणाली के अन्तर्गत सामान्य एवं अतिरिक्त उपभोक्ता वस्तुओं के क्रय—विक्रय एवं वितरण में संलग्न सहकारी समितियों के कारोबारों को समन्वित करना, उनको सुविधाएं प्रदान करना उनके व्यापार को बढ़ावा देना एवं राज्य में सहकारी उपभोक्ता आन्दोलन को सुदृढ़ करना तथा विशेष रूप से नगरीय क्षेत्रों में आधुनिक पद्धति के सुविधा स्वसेवा केन्द्र स्थापित करना ।

4 अ (1) “राज्य/केन्द्र शासन के विभिन्न विभागों/कार्यालयों, निगमों, मण्डलों, सहकारी संस्थाओं के उपयोग हेतु तथा उक्त के द्वारा संचालित विभिन्न योजना/परियोजनाओं के उपयोग के लिये आवश्यक कार्यालयीन तथा अन्य उपयोगी सामग्री का प्रदाय करना ।

ब. उक्त उद्देश्यों को दृष्टिगत रखते हुएः

1. सम्बद्ध समितियों के लिये माल की मांग पूर्ति करना, उपभोक्ता एवं अन्य वस्तुओं का थोक क्रय एवं विक्रय करना, आवश्यकतानुसार स्टाक करना, पैकेजिंग ग्रेडिंग एवं परिवहन की व्यवस्था करना ।

2. उपभोक्ता वस्तुओं का अन्य राज्य अथवा विदेशों से आयात एवं निर्यात करना और इस हेतु राज्य शासन के एजेन्ट के रूप में कार्य करना एवं उसके वितरण की समुचित व्यवस्था करना ।

3. उपभोक्ता वस्तुओं के उत्पादन हेतु स्वयं अथवा अन्य सम्बद्ध समितियों के साथ या अन्य इच्छुक सहकारी समितियों के साथ मिलकर उत्पादन इकाईया स्थापित करना किसी उपभोक्ता उद्योग

को लीज पर लेना उसे चलाने की व्यवस्था करना एवं उत्पादित माल के वितरण विक्रय की व्यवस्था करना ।

4. उपभोक्ता वस्तुओं के खुदरा विक्रय के लिये राज्य में अथवा राज्य के बाहर विभिन्न स्थानों में संघ की शाखाएं, स्वसेवा बिक्री केन्द्र मार्केट रिटेल सेल डिपो) डिपार्टमेंटल स्टोर्स आदर्श पद्धति से खोलना सम्बद्ध समितियों को खुदरा विक्रय केन्द्र स्थापित करने में सहयोग देना तथा सहकारी बाजार की स्थापना करना या करने में सहयोग देना ।

5. भिन्न-भिन्न प्रदर्शनियों एवं डिमॉस्ट्रेशन के माध्यम से खाद्य अपमिश्रण के विरुद्ध जनमत जाग्रत करना एवं इस हेतु सम्बद्ध समितियों अथवा अन्य सहकारी संस्थाओं को मार्गदर्शन देना एवं सहयोग देना ।

6. सम्बद्ध संस्थाओं के कर्मचारियों के केडर निर्माण हेतु आवश्यक पहल करना तथा उनके प्रशिक्षण की उचित व्यवस्था करना ।

7. सम्बद्ध उपभोक्ता भण्डारों एवं अन्य संस्थाओं की लेखा पद्धति एवं स्कंध नियंत्रण (स्टाक कन्ट्रोल) पद्धति के मानकीकरण (स्टेपडब्लाईजेशन) में सहयोग देना, मार्गदर्शन देना तथा उनके कार्यों के उचित पर्यवेक्षण की व्यवस्था करना ।

8. राज्य में सहकारी उपभोक्ता आन्दोलन की प्रगति एवं विकास हेतु सम्मेलन अध्ययन, गोष्ठियों का आयोजन करना तथा उपभोक्ताओं के लाभार्थ प्रचार-प्रसार एवं शिक्षण कार्य करना ।

9. “बाजार प्राविण्य” या मार्केट इंटेलीजेंस संबंधी अन्य जानकारियाँ एकत्रित करना एवं उन्हें सदस्य संस्थाओं में वितरित करना ।

10. सम्बद्ध समितियों का कर्मचारी भविष्य निधि कर्मचारी बीमा योजना, आयकर, विक्रयकर आदि सभी प्रकार के करारोपण एवं अन्य वैधानिक प्रक्रियाओं से एवं आधुनिक व्यापारिक एवं लेखा पद्धतियों से अवगत कराने के लिये तत्संबंधी नीति निर्देश प्रसारित करने के लिये संघ में कक्ष (स्पेशल सेल) की स्थापना करना और मार्गदर्शन देना ।

11. संघ एवं शाखाओं व बिक्री केन्द्रों के व्यवसाय को सक्षम रूप से संपादित करने के उद्देश्य से आन्तरिक अंकेक्षण व्यवस्था हेतु विशेष कक्ष की स्थापना करना ।

12. अन्य ऐसे समस्त कार्य करना जिनसे राज्य के सहकारी उपभोक्ता आन्दोलन को बल

मिले।

13. सदस्य सोसायटी एवं आवश्यक सामग्री प्रदाय संबंधी उपभोक्ताओं के हित में कोई भी अन्य सेवा प्रदान करना।
14. ऐसे अन्य सभी व्यवसाय तथा कार्य करना जो समय पर संघ के हित में आवश्यक हो।
15. जीवन बीमा तथा सामान्य बीमा का कार्य करने वाली संस्थाओं की एजेंसी प्राप्त कर बीमा संबंधी कार्य करना।
16. शासकीय, अर्ध शासकीय एवं अन्य कार्यालयों आदि हेतु प्रिंटिंग आदि कार्य करना।
17. शासन के नियमानुसार दवा(मेडिसिन) आदि का व्यापार करना।"

When these objects are read then they are consonance with provisions contained in Article 39(b) of the Constitution of India which deals with the distribution of ownership and control of the material resources of the community to be so distributed as to best subserve the common good. Article 43(a) deals with participation of workers in management of industries. Article 43(b) deals with promotion of cooperative societies. Thus, it is evident that respondents are discharging their constitutional duty and not only promoting distribution of essential commodities and other commodities amongst the beneficiaries on an equal footing but are also responsible for promoting participation of workers in the management of the societies and also promotion of the cooperative societies.

Thus, in the light of the aforesaid judgment of Supreme Court and also the judgment of Constitution Bench of this Court in **M.P. State Cooperative Dairy Federation Vs. Madan Lal Chourasia, 2007(2) MPLJ 594**, I have no hesitation to hold that respondents' society is discharging the functions akin to that of State beside discharging Constitutional functions as enumerated above and is a State within the meaning of Article 12 of the Constitution.

This leads to another question that whether respondent authorities are free to take any decision dehors the Rules and Regulations or are bound by the Rules and Regulations.

Shri Ashish Shrotri is at loss to show any provision of law under which impugned decision was taken to reduce the rate of overtime. On the contrary, Shri K.C. Ghildiyal has shown Section 55 of the M.P. Shops and Establishment Act, 1958 whcih provides for rate on which over time is to be paid and reads as under:-

"55. Wages for overtime work.- Where an employee in any establishment is required to work in excess of the limit of hours of work, he shall be entitled, in respect of the overtime work, to wages at the rate of twice is ordinary rate of wages."

In the present case, it is not the stand of the respondents that provisions of M.P. Shops and Establishment Act, 1958 are not applicable.

On the contrary Shri Ashish Shrotri submits that he had not seen this provision. However, when he is requested to show from record that under which provision impugned action was taken, he is unable to demonstrate any legal provision under which said impugned action was taken by the respondents, therefore, in absence of any provision being brought on record to justify the action of the respondents No.3 and 4, that deserves to be set aside because an instrumentality of the State cannot act in an arbitrary and illegal manner and is suppose to loathe every decision of its with reasoning and transparency.

In absence of reasoning and transparency backed by the legal or statutory sanction, said decision is set aside and petition is allowed. It is directed that petitioner will be entitled to overtime in terms of the provisions

contained in Section 55 of the M.P. Shops and Establishment Act, 1958.

In above terms, this petition is allowed and disposed of.

Certified copy as per rules.

**(VIVEK AGARWAL)
JUDGE**

Tabish

