

Veerpal Singh

Vs

Registrar, Co-Operative Societies U. P. and Others

Shri Yograj Singh and Another

Vs

The Registrar, Co-Operative Societies, U. P. and Others

Writ Petition No. 298 of 1971 and Civil Appeal No. 593 of 1972

(CJI S.M. Sikri, A.N. Ray, D.G. Palekar, M.H. Beg, S.N. Dwivedi JJ)

22.01.1973

JUDGMENT

RAY, J. -

1. The petitioner in this writ petition impeaches the order, dated July 14, 1971, passed by the Deputy Registrar, Co-operative Societies, Meerut. By that order the Deputy Registrar, Co-operative Societies suspended the President and the committee of management of Jahangirabad Co-operative Marketing Society Ltd., Jahangirabad. The petitioner Veerpal Singh was the President of the Jahangirabad Co-operative Marketing Society. By that order the Deputy Registrar further appointed Ghanshyam Murari Sharma, Additional District Co-operative Officer, Bulandshahr as administrator to carry on the functions of the Society.
2. The appeal is from the order, dated November 29, 1971, of the Allahabad High Court dismissing in limine the petition under Article 226 of the Constitution. In that petition the appellants Yograj Singh and Others challenged the aforesaid order, dated July 14, 1971, suspending the President and the committee of management of Jahangirabad Co-operative Marketing Society.
3. Two questions fall for determination in the writ petition and the appeal. First, whether the Deputy Registrar under the Co-operative Societies Act, 1965, referred to as the Act could suspend the President and the committee of management of Jahangirabad Co-operative Marketing Society. Secondly, whether the Deputy Registrar could temporarily appoint an administrator.
4. Council on behalf of the petitioner raised three contentions for impeaching the order of suspension. First, it was said that the order of suspension is void because it is made mala fide and exercised for collateral purpose of withdrawing the petitioner from the committee of management to which he was elected and in which he continued his office. Secondly, it was said that the order of suspension is bad because there were no super-session proceedings as contemplated in Section 35 of the Act. The Registrar did not give an opportunity to the Society and did not hear the Society. The Registrar did not obtain the opinion of the general body of the society as to the suspension of the committee. Thirdly, it was said that the suspension order could not have the effect of appointment of an administrator under Section 35 of the Act.

5. In the month of April, 1969, there was an inspection of the Jahangirabad Co-operative Marketing Society (hereinafter referred to as the Society). That inspection note has, however, not been disclosed. In the month of October 1969, the petitioner was re-elected as a Director of the management of the society. Again, in the month of October 1969, the petitioner was appointed as a delegate by the committee of management of the Society to the Provincial Co-operative Federation. Subsequently, the general body of the Provincial Co-operative Federation, elected the petitioner to the committee of management of the Federation. In the month of April 1970, the petitioner was also elected Chairman of the Provincial Co-operative Federation.

6. In the month of September 1970, at the instance and under the direction of the Deputy Registrar who had been a former Secretary of the Federation and of Shri Yadav the then Minister of Co-operative Society, the Uttar Pradesh Government nominated 10 members and a Chairman of the Federation. The petitioner who was the then Chairman, was however omitted from the list of U.P. Government. In the month of December 1970, the new Ministry of the U.P. Government revoked the previous order of Government made in the month of September 1970.

7. In the month of June, 1971, there was again a new Ministry in which Shri Yadav again became the Minister of Co-operative Society. The Government then nominated 10 members in the committee of management of the Federation under Section 34(1) of the Act and appointed the Additional Registrar of Co-operative Society as the President.

8. In the month of June 1971 a lot was drawn to find out which of the Directors of Provincial Co-operative Federation were to vacate the office in order to make room for the nominees of the Government. The petitioner survived his office in the lot.

9. The petitioner made an application for amendment of the petition. In that application for amendment, allegations were made that Shri Yadav and Tyagi both contrived to suspend the committee of management of the Federation. It was also alleged that the withdrawal of the delegation of the petitioner to the Provincial Co-operative Federation was ante-dated. The order of withdrawal was, dated July 15, 1971. The letter, dated July 15, 1971, is said to have been sent by the administrator of the Society withdrawing the delegation of the petitioner to the U.P. Provincial Co-operative Federation. The petitioner denies that alleged fact. In the prayer of the petition for amendment the petitioners asked for quashing the order, dated July 15, 1971.

10. In view of the fact that the petitioner did not alleged facts to raise any plea of mala fide acts on the part of the respondents this Court did not allow any amendment of the petition.

11. The power of suspension of the committee of management is to be found in Section 35(2) of the Act.

Section 35(2) of the Act is as follow :

"Where the Registrar, while proceeding to take action under sub-section (1) is of opinion that suspension of the committee of management during the period of proceedings is necessary in the interest of the Society, he may suspend the committee of management which shall thereupon cease to function, and make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are complete :

Provided that if the committee of the management so suspended is not superseded it

shall be reinstated and the period during which it has remained suspended shall count towards its term".

12. The Registrar has power under Section 35(1) of the Act to supersede the committee of management. The circumstances under which he can exercise his powers are when in the opinion of the Registrar the society makes default or is negligent in the performance of duties imposed on it by the Act or the rules or the bye-laws of the Society or committees any act which is prejudicial to the interest of the society or its members, or is otherwise not functioning properly, the Registrar after affording the committee of management a reasonable opportunity of being heard and obtaining the opinion of the general body of the society in a general meeting called for the purpose in the manner prescribed may, by order in writing, supersede the committee of management.

13. These provisions indicate the circumstances under which the Registrar has power to supersede or suspend the committee of management and to appoint an administrator. Section 35(2) of the Act confers power on the Registrar to suspend the committee of management during the period of proceedings for supersession. The Registrar has also power under Section 35(2) of the Act to make arrangement as he thinks proper for the management of the Society till the proceedings are completed. The power to suspend the committee of management during the period of proceedings is exercisable when proceedings for supersession have commenced. Section 35(1) of the Act shows that when the Registrar is of opinion that the committee of a co-operative society makes default or is negligent in the performance of duties or is otherwise not functioning properly the Registrar may supersede the committee of management and has to give an opportunity to the society to be heard in that behalf. The Registrar has also to obtain the opinion of the general body of the society. Therefore, the opinion of the Registrar is to be followed by some definite act which will commence the proceedings for supersession. The provisions in the Act indicate that some definite step like the issue of a notice must be taken under the provisions of Section 35(1) of the Act with a view to show that proceedings for supersession of the committee are set in motion.

14. It is therefore manifest that power exercisable under Section 35(2) of the Act is confined to the time during the period of supersession proceedings. Unless the proceedings have started as indicated earlier the Registrar cannot call in aid the power exercisable under Section 35(2) of the Act.

15. The second question which has to be decided is whether the Registrar could appoint an administrator in the present case. The Registrar could not appoint an administrator. The reasons are these. The proceedings for supersession of the committee of management have not commenced. The proceedings can commence only when the necessary step to commence it is taken. The interim suspension of the committee of management under Section 35(2) of the Act is made when in the opinion of the Registrar the suspension of the committee of management during the period of proceedings is necessary in the interest of the society. As no proceedings have been set in motion in accordance with the provisions of the statute, the interim suspension of the committee the management is bad. An appointment of administrator is specifically dealt with in sub-sections (3), (4), (5) and (6) of Section 35 of the Act. The appointment of administrator is normally after the supersession of the committee of management. It is true that there is no specific provision for an appointment of administrator during the interim period. But Section 35(2) of the Act states that the Registrar may make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed. An appointment of administrator during the interim period is therefore not ruled out of the provisions of Section 35(2) of the Act, but the pre-requisite condition to the appointment of the interim administrator has not been fulfilled in the present case, because no proceedings for the supersession of the committee of management of the society have

commenced.

16. The administrator appointed by the Registrar withdrew the delegation of the petitioner-appellant Veerpal Singh to the Uttar Pradesh Provincial Co-operative Federation. Under Rule 86 of the Uttar Pradesh Co-operative Societies Rules, 1968, a person who is a delegate of a co-operative society shall cease to be such delegate if he is withdrawn by the committee, administrator or administrators appointed by the Registrar under Section 35 of the Act. In the present case the appointment of the administrator is bad as indicated earlier. The act of the Registrar in withdrawing the delegation of Veerpal Singh is also bad because of his infirmity to act as an administrator.

17. For these reasons, the order, dated July 14, 1971, is set aside and quashed. The petition succeeds. The appeal is also allowed.

18. Parties will pay and bear their own costs.

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