

Indian Labour Coop. Society Ltd. and Another

Vs

Union of India and Others

Civil Appeal No. 223 of 1999

(B. N. Kirpal, S. R. Babu JJ)

20.07.1999

ORDER

1. The challenge in this appeal is to the exercise of powers by the Central Government under Section 99 of the Multi-State Cooperative Societies Act, 1984 (hereinafter referred to as "the Act") whereby it has purported to grant an exemption to Respondent 3, namely, the National Cooperative Union of India (for short "NCUI") from the provisions of Section 36 and Section 37 of the said Act.

2. Briefly stated the facts for the purposes of this case are that Respondent 3 is a multi-State cooperative society. Shri B. S. Vishwanathan, Respondent 4 was first elected as its President in 1990. Upon the three years' term contemplated by Section 35 coming to an end he was re-elected for a further period of three years. In the meanwhile National Cooperative Bank of India (later renamed Cooperative Bank of India) (hereinafter referred to as "COBI") was promoted. Respondent 4 was also elected as the Chairman of COBI in February 1994 for a period of three years.

3. Since Section 36 of the Act restricted an individual from holding the office of Chairman/Vice-Chairman, President/Vice-President of more than one multi-State cooperative society, the Central Government was approached and by orders dated 23-8-1994 and 1-2-1995 exemption was accorded under Section 99(2) in respect of Section 36 to NCUI and COBI. On 16-1-1997 3rd exemption for two years from 3-2-1996 to 2-2-1998 was granted under Section 99(2) from the bar of Section 36 of the Act. The fourth exemption from the bar of Section 36 for a period of two years was granted on 13-1-1998 from 3-2-1998 to 2-2-2000. Bar of Section 37 was sought to be removed firstly by an exemption granted for two years by order dated 16-1-1997 which was followed by a subsequent order dated 13-1-1998.

4. The appellant then filed a writ petition in the High Court of Delhi seeking to challenge the two exemptions dated 13-1-1998, one relating to Section 36 and the other relating to Section 37, which exemptions had permitted Respondent 4 to continue as the Chairman of NCUI and COBI simultaneously and for more than two terms.

5. On the writ petition being dismissed by the High Court the present appeal has been filed.

6. The validity of the action of the Government depends on the interpretation of some of the provisions of the Act. Chapter IV of the Act contains provisions regarding the direction and management of the multi-State cooperative societies. Section 34 sets out the disqualifications regarding a member of a Board; Section 35 provides for election of members of the Bar, which stipulates that the member shall be elected for a period not exceeding three years; Section 36 and Section 37 which are relevant in the present case and deal with the holding of office in cooperative

societies read as follows :

"36. Holding of office in cooperative society.-Notwithstanding anything contained in this Act, no person shall be eligible to hold, at the same time, office of a President or Chairman or Vice-President or Vice-Chairman on the Board of more than one multi-State cooperative society :

Provided that any person holding, at the commencement of this Act, the office of a President or Chairman or Vice-President or Vice-Chairman in more than one multi-State cooperative society shall, within three months from such commencement by notice in writing signed by him, intimate the name of the multi-State cooperative society in which he wishes to serve and thereupon his office in the other multi-State cooperative society in which he does not wish to serve shall become vacant :

Provided further that in default of such intimation within the period referred to in the preceding proviso, his offices in all the multi-State cooperative societies shall, at the expiration of the period aforesaid, become vacant.

37. Restrictions on holding of office. - No person shall be eligible to hold the office of a President or Chairman or Vice-President or Vice-Chairman on the Board of a multi-State cooperative society, after he has held the office as aforesaid during two consecutive terms, whether full or part :

Provided that a person who has ceased to hold the office of a President or Chairman continuously for one full term of three years shall again be eligible for election to the offices aforesaid.

Explanation. - Where any person holding the office of the President or Vice-President or Chairman or Vice-Chairman at the commencement of this Act is again elected to that office after such commencement, he shall for the purpose of this section, be deemed to have held office for one term before such election."

7. According to Section 36 no person is entitled to hold, at the same time, office of a President or a Chairman or Vice-President or Vice-Chairman of the Board of more than one multi-State cooperative society. Section 37 places an embargo on a person from holding of an office of President/Chairman, Vice-President or Vice-Chairman of the Board of a multi-State cooperative society from holding an office for more than two consecutive terms.

8. In the instant case the bar contained in Section 36 as well as in Section 37 was applicable to Respondent 4. This necessitated NCUI in applying to the Central Government for exemption. This exemption was granted under Section 99 which reads as under :

"99. Power to exempt multi-State cooperative societies from conditions as to registration. - (1) Notwithstanding anything contained in this Act, the Central Government may, by general or special order, for reasons to be recorded therein, and subject to such conditions, if any, as may be specified therein exempt any multi-State cooperative society or class of such societies from any of the requirements of this Act relating to registration.

(2)(a) The Central Government, by general or special order and for reasons to be

recorded therein, -

(i) exempt any multi-State cooperative society or any class of such societies from any of the provisions of this Act or of the rules; or

(ii) direct that such provisions shall apply to such society or class of societies with such modifications not affecting the substance thereof as may be specified in the order :

Provided that no order shall be made under sub-clause (ii) so as to prejudice the interests of such society or class of such societies without a reasonable opportunity being given to make representation in the matter.

(b) Every order made under clause (a) shall be published in the Official Gazette."

9. As we read Section 99(2)(a) it appears to us that the power of the Central Government under the said provision is to exempt a multi-State cooperative society or any class of such societies from any of the provisions of the Act or the rules and this provision does not contemplate giving exemption to anyone else. In other words, if the society is required to comply with any of the provisions or the rules and a case is made out for granting exemption then the Central Government can, in the manner provided by the said section, grant exemption.

10. What is contended before us is that under Section 99(2) it is the society which is granted exemption from complying with the provisions of Section 36 and Section 37.

11. Section 36 and Section 37 are provisions which, inter alia, create a bar or an impediment on a person holding office of more than one society as the President at the same time or for continuing to hold such office for more than two consecutive terms. The rigour of these two provisions is qua an individual and not qua the society. Section 99(2) enables the Government to give relief to the society from the operation of any provisions of the Act but what has now been done is to give relief to an individual, namely, Respondent 4 from the operation of Section 36 and Section 37. That certainly is not the intention nor the letter of the law.

12. As we have already indicated, Section 34 provides that no member of a multi-State cooperative society shall be eligible to be chosen as a member or shall continue to be a member if he incurs the disqualification contained in the said section. Section 34, to our mind, is *pari materia* with Section 36 and Section 37. Just as Section 36 and Section 37 provide that under certain circumstances the elected office-holder is not to continue in office, similarly, Section 34 provides that a person who has a disability attached to him not to stand for election or a person who is elected as a member of the Board shall stand disqualified from continuing as a member in the event of his incurring any disqualifications mentioned in the said section. If the contention of the respondent is correct and the Central Government could grant exemption under Section 99(2) from the applicability of Sections 36 and 37 of the Act, then on the same principle one would have to hold that the Central Government could also grant exemption to a multi-State cooperative society from the applicability of the provisions of Section 34. Surely, that will be opposed to the very object and purpose of the Act. Just as applicability of Section 34 of the Act cannot be dispensed with or relaxed, similarly, the provisions of Sections 36 and 37 cannot be done away with by granting an exemption to the society under Section 99(2).

13. Sections 36 and 37, as we have already noticed, are directed at a person holding or aspiring to

hold office and are not directed at any multi-State cooperative society. The question of granting exemption to a multi-State cooperative society under Sections 36 and 37 does not arise and is not covered by Section 99(2).

14. For the aforesaid reasons the appeal is allowed and the judgment of the High Court is set aside. The result of this would be that the orders dated 13-1-1998 granting exemption under Section 99(2) in respect under Sections 36 and 37 are quashed. There will be no order as to costs.

15. Mr Rama Jois, learned Senior Counsel appearing for Respondent 6 in special leave petition states that the petitioner in the High Court, Shri B. S. Vishwanathan, undertakes to withdraw the writ petition which has been filed in the High Court. In this view of the matter Special Leave Petition No. 20314 of 1998 has become infructuous. It is accordingly dismissed.