
(1997) 01 SC CK 0006

In the Supreme Court Of India

Case No : Civil Appeal No. 867 of 1993

Administrator, Konch Sahakari Kraya Vikraya Samiti Ltd.

APPELLANT

Vs

Sarnam Singh and Others

RESPONDENT

Date of Decision : 08-01-1997

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1998) 9 JT 281 : (1997) 11 SCC 144

Hon'ble Judges : S. P. Kurdukar, J; S. C. Sen, J; J. S. Verma, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. Respondent 1 Sarnam Singh was appointed Secretary of the Konch Sahakari Kraya Vikraya Samiti Ltd., District Jalaun. Disciplinary proceedings were initiated against him by the District Assistant Registrar, Cooperative Societies, U.P., District Jalaun and the Additional District Cooperative Officer was appointed the Inquiry Officer. Pursuant to the charge-sheet and the report of the Inquiry Officer, as required by the provisions of the U.P. Cooperative Societies Act, 1965 (11 of 1966) (for short "the Act") the Society, at the behest of the District Assistant Registrar, Cooperative Societies, passed an order of removal from service. A writ petition was filed in the Allahabad High Court by the respondent challenging his removal from service. An objection was taken by the appellant to the maintainability of the writ petition on the ground that it did not lie against the Cooperative Society. The High Court referred to the relevant provisions of the Act and rejected that objection. The order dated 28-6-1988 of removal from service was quashed but it was left open to the Cooperative Society to take fresh action and complete the inquiry proceedings against the writ petitioner (Respondent 1 herein) in accordance with law.

2. This appeal by special leave is confined only to the question of maintainability of the writ petition filed in the High Court.

3. In the present case, it is not necessary for us to examine the larger question of maintainability of a writ petition under Article 226 of the Constitution of India against every action of the Society. The decision in the present case is confined only to the maintainability of the writ petition by a Secretary of the Cooperative Society who has been removed from service in the manner provided in the statute.

4. Section 2(o) defines "officer of a cooperative society" to include also Secretary of a cooperative society. Section 31 relates to the office of the Secretary, his emoluments and functions. Section 38 provides for removal of an officer of a cooperative society which includes Secretary of the Society. Section 38 is as under:

38. Removal of an officer of a cooperative society. - (1) If in the opinion of the Registrar, any officer of a cooperative society has contravened or has forfeited his right to hold office, the Registrar may, without prejudice to any other action that may or can be taken against him, call upon the society to remove, within a specified period, such officer from the office held by him and where necessary also to disqualify him from holding any office under that society for a period not exceeding three years, whereupon the society shall, after affording opportunity of being heard to the officer concerned, pass such orders as it may deem fit.

(2) On the failure of the society to take action under Sub-section (1), the Registrar may, after affording opportunity of being heard to the officer and for reasons to be recorded and communicated to the person and the society concerned, remove, or remove and disqualify for a period not exceeding three years, the officer from holding any office under that society.

(3) An officer removed under Sub-section (1) or Sub-section (2), shall with effect from the date of communication of the order, cease to hold that office and, if disqualified, shall not be eligible to hold any office under that society for the period specified in the order.

5. It is clear from Section 38 that the Society is required by Sub-section (1) to take action for removal of an officer of a cooperative society in accordance with the opinion of the Registrar, after affording an opportunity of being heard to the officer concerned. Sub-section (2) further provides that in the event of failure of the Society to take action under Sub-section (1), the Registrar himself is empowered to take the action inter alia of removal from service of the officer concerned. In the present case, the action of removal from service of Respondent 1 was taken by the Society in accordance with the opinion of the Registrar, in terms of Section 38(1) of the act.

6. We may also refer to Section 98 of the Act which enumerates the orders against which appeals are provided. Clause (d) of Sub-section (1) of Section 98 provides for an appeal to the Tribunal against an order made under Sub-section (2) of Section 38 removing or disqualifying any officer of a cooperative society. By an amendment made subsequently in Section 98, an order passed under Sub-

section (1) of Section 38 for removal of an officer from the office held by him or to disqualify him from holding any office has also been made appealable. The scheme of the enactment clearly shows that the order of removal from service of Secretary of a cooperative society made under Sub-section (1) of Section 38 by the Society or that under Sub-section (2) of Section 38 by the Registrar is, therefore, statutory in nature. For this reason alone, it must be held that such an order is amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution. The view taken by the High Court that the writ petition was maintainable in the present case does not, therefore, call for any interference.

7. For the aforesaid reason, the appeal fails and is dismissed.