

(2002) 05 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1419 of 1991

Ashok Kumar Jain and Others

APPELLANT

Vs

The Additional Registrar (II) Co-operative Societies and
Others

RESPONDENT

Date of Decision : 23-05-2002

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 124(1)

Rajasthan Co-operative Societies Rules, 1966 — Rule 18(3)

Citation : (2003) 3 RLW 1654 : (2002) 4 WLC 511 : (2002) 5 WLN 549

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

**Advocate : S.N. Trivedi, for the Appellant; Suman Porwal, for Sangeet Lodha,
for the Respondent**

Final Decision : Allowed

Judgement

Garg, J.—This writ petition under Articles 226 and 227 of the Constitution of India has been filed by the petitioners on 26.3.1991 against the respondents with the prayer that by an appropriate writ, order or direction, the order dated 19.1.1991 (Annex.8) passed by the respondent No. 1 Additional Registrar (II), Cooperative Societies, Rajasthan, Jaipur be quashed and set aside and further, the Resolutions No. 5 and 6 dated 30.8.1987 (Annex.5) and the order dated 18.1.1988 (Annex.6) passed by the respondent No. 2 Assistant Registrar, Cooperative Societies, Jodhpur by which the Resolutions No. 5 and 6 were approved be also quashed and set aside etc. etc.

2. It arises in the following circumstances:

The petitioners are members of the Marudhar Gran Niram Sahkari Samiti Ltd. Jodhpur (hereinafter referred to as "the Samiti") and since all the petitioners have common cause of action against the impugned order Annex.8 dated 19.1.1991 passed by the Additional Registrar (II), Cooperative Societies, Rajasthan, Jaipur, therefore, they have filed this writ petition jointly.

The Annual General Meeting of the Samiti was called by the respondent No. 3 Mantri of the Samiti on 30.8.1987 and in that Meeting, Resolutions No. 5 and 6 with regard to expulsion of the petitioners from their membership were passed. The copy of the Minutes of the Annual General Meeting of the Samiti held on 30.8.1987 containing Resolutions No. 5 and 6 is marked as Annex.5.

Thereafter, the respondent No. 2 the Assistant Registrar, Cooperative Societies, Jodhpur vide letter dated 18.1.1988 (Annex.6) approved the Resolutions No. 5 and 6 passed in the Annual General Meeting of the Samiti on 30.8.1987.

Thereafter, the petitioners were expelled from their membership vide letters dated 19.1.1988 issued by the respondent No. 3 Mantri of the Samiti. A copy of the letter dated 19.1.1988 issued by the respondent No. 3 is marked as Annex.7.

Aggrieved by the aforesaid decision expelling the petitioners from their membership, the petitioners preferred appeal being No. 64/88 before the respondent No. 1 Additional Registrar (II), Cooperative Societies, Rajasthan, Jaipur u/s 124(1)(e) of the Rajasthan cooperative Societies Act, 1965 (hereinafter referred to as "the Act of 1965"). The said appeal of the petitioners was dismissed by the respondent No. 1 Additional Registrar (II), Cooperative Societies, Jaipur through order dated 19.1.1991 (Annex.8) on the ground of limitation holding inter- alia that the period of limitation for filing appeal is 60 days and since the Resolutions No. 5 and 6 were passed on 30.8.1987 and the appeal was filed on 7.3.1988 beyond the period of 60 days, therefore, it was not maintainable. Thus, the respondent No. 1 Additional Registrar (If), Cooperative Societies, Jaipur through order dated 19.1.1991 (Annex.8) did not decide the appeal of the petitioners on merits, but dismissed the appeal as being time barred.

Aggrieved from the said order dated 19.1.1991 (Annex.8) passed by the respondent No. 1 Additional Registrar (II), Cooperative Societies, Jaipur, the petitioners have filed this writ petition.

3. In this writ petition, the main contention of the learned counsel appearing for the petitioners is that the respondent No. 1 Additional Registrar (II), cooperative Societies, Rajasthan, Jaipur has committed grave error in dismissing the appeal of the petitioners on the ground of limitation as the Resolutions No. 5 and 6 passed in the Annual General Meeting of the Samiti on 30.8.1987, were approved by the respondent No. 2 Assistant Registrar, Cooperative Societies, Jodhpur on 18.1.1988, therefore, the . period of limitation would start from 18.1.1988 when the Resolutions No. 5 and 6 were approved and not from the date of passing the Resolutions No. 5 and 6 i.e. 30.8.1987, the appeal of the petitioners filed on 7.3.1988 is within limitation and therefore, the impugned order Annex.8 dated 19.1.1991 passed by the respondent No. 1 Additional Registrar (II), Cooperative Societies, Rajasthan, Jaipur cannot be sustained and the same is able to be set aside.

4. On the other hand, the learned counsel appearing for the respondents

supported the impugned order dated 19.1.1991 (Annex.8) passed by the respondent No. 1 Additional Registrar (II), Cooperative Societies, Rajasthan, Jaipur.

5. I have heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents and gone through the materials available on record.

6. There is no dispute on the point that the Resolutions No. 5 and 6 expelling the petitioners from the membership were passed on 30.8.1987 and there is also no dispute on the point that the decision of expulsion of the petitioners from the membership was approved by the Assistant Registrar, Cooperative Societies, Jodhpur on 18.1.1988.

7. There is also no dispute on the point that the petitioner filed appeal before the respondent No. 1 Additional Registrar (II), Cooperative Societies, Jaipur u/s 124(1) (e) of the Act of 1965 is quoted here:-

"124. Appeal to other authorities.-(1) An appeal shall lie under this section against.-

(e) a decision of a co-operative society other than that of a Farming and Producers' Society, as classified under the rules, refusing to admit any person as a member of the society or expelling any member of the society."

8. An appeal u/s 124 of the Act of 1965 should be filed within 60 days from the date of decision or order and in Section 124(1) (e) of the act of 1965, the word "decision" is there and not "order".

9. The proviso to Sub-rule (1) of Rule 18 of the Rajasthan Cooperative Societies Rules, 1966 (hereinafter referred to as "the rules of 1966") further provides that no Resolution shall be effective unless it is approved by the Registrar. Furthermore, in Sub-rule (3) of Rule 18 of the Rules of 1966, there is a clear mention of the fact that Resolution shall be effective from the date of such approval.

10. When this being the position, in my considered opinion, the decision would be final only when the same is approved by the Registrar.

11. The word "decision" is equivalent to the word "decree". In other words, the word "decision" embraces the final determination of the Court on all the claims put forward in controversy between the parties in a suit or a proceeding. The word "decision", should mean not a part but as a whole. From this point of view also, the decision would include not only the resolutions passed by the Samiti, but also its approval by the competent authority.

12. In the present case, though the decision of expulsion of the petitioners from the membership was taken on 30.8.1987, but it was approved by the Assistant Registrar, Cooperative Societies, Jodhpur on 18.1.1988 and therefore, the period of limitation of 60 days would start from 18.1.1988 when the decision taken in

the Annual General Meeting of the Samiti on 30.8.1987 expelling the petitioners from the membership was approved by the Assistant Registrar, Cooperative Societies, Jodhpur and not from 30.8.1987. When the period of limitation starts from 18.1.1988, the appeal of the petitioner filed on 7.3.1988 is within limitation.

13. Furthermore, in Section 124(1) (c) of the Act of 1965, it appears that the Legislature has intentionally put the word "decision" instead of "order" because the action taken through the Resolution further requires approval of the Registrar and, therefore, when the same is approved by the Registrar, it becomes decision and from this point of view also, the limitation should start from the date of decision taken by the Assistant Registrar i.e. 18.1.1988 and not from the date of passing the resolutions i.e. 30.8.1987 and from 18.1.1988, the appeal filed by the petitioners on 7.3.1988 is within limitation and it should have been held to be within limitation and decided on merits by the Addl. Registrar (II), Cooperative Societies, Rajasthan, Jaipur.

14. In this view of the matter, the impugned order dated 19.1.1991 (Annex.8) passed by the respondent No. 1 Additional Registrar (II), Cooperative Societies, Rajasthan, Jaipur cannot be sustained and the same is liable to be set aside and this writ petition deserves to be allowed.

Accordingly, this writ petition filed by the petitioners is allowed and the impugned order dated 19.1.1991 (annex.8) passed by the respondent No. 1 Additional Registrar (11), Cooperative Societies, Rajasthan, Jaipur is set aside and the matter is remanded back to the respondent No. 1 Additional Registrar (II), Cooperative Societies, Rajasthan, Jaipur with a direction to decide the appeal of the petitioners afresh on merits in accordance with law, after giving an opportunity of hearing to the petitioners. The petitioners shall be at liberty to raise all submissions before the respondent No. 1.