
(2014) 08 UK CK 0004

In the Uttarakhand High Court

Case No : Writ Petition No. 1934 (MS) of 2014

Avinash Sharma

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 25-08-2014

Acts Referred:

Citation : (2015) 2 UC 1206

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : S. Bhupendra Singh, Advocate for the Appellant; Gajendra Tripathi, Brief Holder, Advocate for the Respondent;

Final Decision : Disposed off

Judgement

Alok Singh, J.

1. Undisputedly, Sri Gurnam Singh, son of Late Sri Lakkha Singh, was holding the office of Vice Chairman, Bajpur Ditya Kishan Sewa Sahkari Samiti Limited, District Udham Singh Nagar (hereinafter referred to as "society"); meanwhile, Sri Gurnam Singh contested the election of Village Pradhan of Village Diyohari, Tehsil Bajpur and was declared as Gram Pradhan on 28.06.2014; a meeting of the Society was held under the chairmanship of Sri Gurnam Singh on 08.08.2014 wherein Sri Gurnam Singh tendered his resignation from the post of Vice Chairman as well as membership of the Society; in the meeting held on 08.08.2014 under the chairmanship of Sri Gurnam Singh, petitioner was allegedly elected as Vice Chairman of the Society, after accepting the resignation of Sri Gurnam Singh; respondent No. 2 Managing Director/Secretary of the Society vide order dated 13.08.2014 (Annexure No. 3 to the writ petition) impugned, herein, was pleased to hold that since Sri Gurnam Singh was elected as Gram Pradhan on 28.06.2014 of Village Diyohari, therefore, he would be deemed to have discontinued from the membership of the Society as well as from the post of Vice Chairman of the Society with effect from 28.06.2014, as per mandate of Rule 473 of the Uttaranchal Cooperative Society Rules, 2004

(hereinafter referred to as Rules, 2004); it was further held that since Sri Gurnam Singh was not a member/Vice Chairman of the Society, in view of Rule 473 with effect from 28.06.2014, therefore, meeting held on 08.08.2014 under his chairmanship was ab initio void and nullity, therefore, resolution made in the meeting dated 08.08.2014 would be deemed to be nullity and non est. Petitioner, who was allegedly elected as Vice Chairman of the Society in the meeting dated 08.08.2014, has filed present writ petition challenging the order dated 13.08.2014 (Annexure No. 3 to the writ petition). I have heard Mr. S. Bhupendra Singh, Advocate for the petitioner, Mr. Gajendra Tripathi, Brief Holder for the State of Uttarakhand/respondent No. 1 & 3, Mr. Paresh Tripathi, Advocate for respondent No. 2. and Mr. Manav Sharma, Advocate for respondent No. 4 and have carefully perused to record.

2. Rule 473 of the Rules 2004 reads as under:

"473. (1) No person shall be eligible to be or to continued as a member of the Committee of Management of any co-operative Society, if-

- (a) he is under 21 years of age; (except in case of societies of students)
- (b) he is declared insolvent;
- (c) he is of unsound mind, or is deaf and dumb, or blind or suffers from leprosy;
- (d) he has been convicted for any offence involving, in the opinion of the Registrar, moral turpitude, such conviction not having been set aside in appeal;
- (e) he, or in the opinion of the Registrar, member of his family enters into or carries on, without the permission of the Registrar, within the area of operation of the Society, the same kind of business as done by the Society itself;
- (f) he enters into any transaction or contract with the society against the provisions of the Act or the Bye-laws of the Society.
- (g) he accepts or holds any office of profit under the society or under any society affiliated to such society:

provided that this restriction shall not apply in case of such producers or workmen's society as have been permitted by the State Government to provide in their bye-laws for the participation of employees in the management of the society;

- (h) he is not a member of the General Body of the society;
- (i) he has been convicted of any offence under the Act or the Rules, unless a period of 5 years has elapsed from the date of the conviction;
- j) he is a person against whom an order under Section 91 has been obtained by a co- operative society and is pending satisfaction;
- (k) he is in default (at least for a period of six months), to the society in respect

of any loan taken by him, or he is a judgment-debtor of the society;

(l) if he is already a member of the Committee of Management of three co-operative societies, i.e. one primary, one central and one apex society at a time but he shall be entitled to contest for the membership of the Committee of Management of more than three cooperative societies. In case of his election to the Committee of Management of more than three societies as specified above, he shall have to resign from the Committee of Management of such society or societies within one month so that he may not remain member of the Committee of Management of more than three societies. In case he fails to resign within the specified period then at the expiry of such period he shall be deemed to have resigned from all except one apex society and one central society and one primary society to which he has been elected last;

(m) he has been dismissed for practicing fraud, or bad or dishonest conduct from Government service or from service of a co-operative society or of a body corporate, such order of dismissal not having been set aside in appeal;

(n) he joined in the application for the registration of, or was a member of the Committee of Management of a co-operative society which was subsequently wound up by Registrar Under Clause (a) of sub-section (2) of Section 72 on the ground that the registration of the society was obtained by fraud, such order of the Registrar not having been reversed in appeal;

(o) he is otherwise disqualified under any of the provisions of the Act or the Rules or the Bye-laws of the society;

(p) he becomes a member of Gram Panchayat, Kshetra Panchayat, Nagar Panchayat, Zila Panchayat, or any other local body, Member of Parliament or State Legislative Assembly.

(2) A member of the Committee of Management of a co-operative society who absents himself from three consecutive meetings of the Committee of Management without reasonable cause shall not be entitled to continue as a member of the Committee of management.

(3) The provisions of Sub-rule (2) shall not apply to an ex-officio member of the Committee of management of a co- operative society.

(4) Any person who has contested for election to the membership of the Committee of Management of a co-operative society, but has lost such election, shall not be eligible to become such member by co-option or nomination.

(5) The disqualification laid down under Sub-rule (1) shall apply subject to the following conditions:-

(i) The disqualification laid down in Clause (h) shall not apply to a nominated or an ex-officio member of the Committee of Management or to such co-opted member of the Committee of Management for whose co-option membership of the General Body was not a condition under the bye-laws of the society;

(ii) the disqualification laid down in Clause (d) or Clause (m) shall cease to operate on the expiry of five years after the payment of fine under the conviction or after he has served out the sentence under the conviction or after the order of dismissal, as the case may be;

(iii) the disqualification laid down in Clause (1) shall not apply to a Government servant nominated on the Committee of Management of a co-operative society under Section 34."

3. In my considered opinion, a plain reading of Rule 473(p) would demonstrate that member of the cooperative society, on being elected as a member of Gram Panchayat, Kshetra Panchayat, Nagar Panchayat, Zila Panchayat or any other local body, or Member of Parliament or State Legislative Assembly, shall not be eligible to be or to continue as a member of any Cooperative Society. In other words, the moment any member of cooperative society is elected as a member of Gram Panchayat, Kshetra Panchayat, Nagar Panchayat, Zila Panchayat or any other local body, or Member of Parliament or State Legislative Assembly, he shall be ceased as member of cooperative society, from the date of his election. Consequently, Sri Gurnam Singh was no more a member/Vice Chairman of the Society with effect from 28.06.2014, therefore, he was not entitled to chair the meeting of the society allegedly held on 08.08.2014. Therefore, meeting dated 08.08.2014, on the face of it, was void, illegal and non est.

4. Learned counsel for the petitioner, while referring to Rule 94 of the Rules 2004, has vehemently argued that Chairman of the Cooperative Society or in his absence, Vice Chairman or in absence of both, even a member can preside over the meeting, since other members were present in the meeting, wherein petitioner was elected as Vice Chairman after accepting the resignation of Gurnam Singh, no fault can be attributed to meeting dated 08.08.2014.

5. Rule 94 of the Rules, 2004 reads as under:

"94. The Chairman of the Society or in his absence the Vice-Chairman or in the absence of both, a member elected by the members present at the meeting shall preside over the meeting provided that no person including the Chairman or Vice-Chairman shall preside over a meeting when matters in which he has a personal interest are to be discussed."

6. A plain reading of Section 94 would demonstrate that Chairman of the Society or in his absence, Vice Chairman or in absence of both, any member elected by the members present at the meeting, can preside over the meeting.

7. Undisputedly, members present at the meeting dated 08.08.2014 did not elect any one of them to preside over the meeting. Rather, meeting was presided over by Sri Gurnam Singh, who himself was not a member, after 28.06.2014, in view of the fact that he was elected as Gram Pradhan on 28.06.2014.

8. Learned counsel for the petitioner further submitted that as per Rule 146 of the Rules, 2004, Managing Director/Secretary of the Cooperative Society, should

have referred the matter to the Registrar for his decision, however, in the present case, instead of referring the matter to Registrar, Managing Director/Secretary has himself passed the impugned order. Thus, impugned order is bad in law and without jurisdiction.

9. Rule 146 of the Rules 2004 reads as under:

"146. (1) Where the Secretary of cooperative society is of the opinion that-

(a) a resolution passed by the Committee of Management, or the General Body of the society; or

(b) any order passed by an officer of co-operative society-

is not covered by the objects of the society or is in contravention of the provision of the Act, the rules or the bye-laws of the society and that in case the implementation of such resolution or order is not stayed the order of annulment of the resolution or cancellation of the order which may eventually be made by the Registrar under Section 126, will become in fructuous the secretary shall forthwith-

(i) move the Chairman of the society in writing to refer the matter to the Registrar for his decision:

provided that where the Chairman fails within three days of the receipt of Secretary's request to make the reference to the Registrar or to direct, in writing, the Secretary to make such reference, the Secretary may himself refer the matter to the Registrar for decision;

(ii) Pending reference to and receipt of the decision of the Registrar, withhold the implementation of the resolution or the order, as the case may be, where the Secretary is satisfied for reasons to be recorded, that such a course is necessary in the interest of the society.

(2) The Registrar shall, as soon as may be, but not later than 30 days after receipt of the reference under sub-rule (1) examine the matter and if he decides the resolution or order re-reference to him by the Secretary-

(a) is not covered by the provisions of Section 126, he shall direct the resolution or order to become operative and the Secretary shall accordingly comply;

(b) is covered by the provisions of section 126, he shall direct the Secretary to continue to withhold implementation of the resolution or order, as the case may be, pending action under Section 126 and the Secretary shall act accordingly:

Provided that before passing such order the Registrar shall require the society to reconsider such resolution or order, as the case may be.

(3) Where no intimation of the decision taken by the Registrar has been received by the Secretary within 35 days of the date on which the reference was made, the Secretary shall not further withhold the implementation of the resolution or

the order, as the case may be."

10. In my humble opinion, in ordinary course, Secretary/Managing Director of the Cooperative Society, should refer the matter to Registrar for decision on the legality of the resolution. However, if decision/resolution of the society or its members and officer bearers, on the face of it, is ipso facto illegal, ab initio void, the same shall be treated as non est in the eyes of law, therefore, Managing Director/Secretary of the society is not obliged to refer such decision to the Registrar and may ignore such decision himself.

11. There is another aspect of the matter i.e. if impugned order is quashed on the ground that instead of passing impugned order Managing Director/Secretary ought to have referred the resolution to the Registrar for the appropriate decision, it may amount to restoration of illegal and void resolution dated 08.08.2014. In my considered opinion, such illegal order should not be quashed on the hyper technical ground, which would result into restoration of earlier most erroneous illegal, ipso facto void order. On this score also, I am not inclined to touch the impugned order.

12. Learned counsel for the petitioner further contended that since Sri Gurnam Singh was called to preside over the meeting by Managing Director/Secretary himself, therefore, in view of principle of estoppel, it was not open to the Managing Director/Secretary to challenge the authority of Gurnam Singh to preside over the meeting.

13. The submission made by learned counsel for the petitioner that Managing Director/Secretary was estopped in challenging the status of Gurnam Singh, on the face of it, is misconceived. It is settled position of law that there cannot be any estoppel against the law. As per Rule 473(p) of the Rules, 2004, petitioner was not a member of the Society with effect from 28.06.2014, therefore, from every angle, Sri Gurnam Singh was not competent to preside over the meeting of Society on 08.08.2014. In the net result, petition fails and is hereby dismissed. CLMA No. 9066 of 2014 also stands disposed of accordingly.