

(1969) 03 MP CK 0008
In the Madhya Pradesh High Court
Case No : M. P. No. 579 of 1968

Basant Kumar Mishra

APPELLANT

Vs

Assistant Registrar, Co-operative Societies, Jabalpur, and
others

RESPONDENT

Date of Decision : 26-03-1969

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 19

Citation : (1969) J LJ 1016 : (1969) MPLJ 683

Hon'ble Judges : G. P. Singh, J; A. P. Sen, J

Bench : Division Bench

Advocate : K. K. Tankha, for the Appellant; S. Verma, for the Respondent

Final Decision : Dismissed

Judgement

G. P. Singh, J.

The petitioner by this petition under Article 226 of the Constitution seeks a writ in the nature of certiorari to quash an order of the Assistant Registrar, Co-operative Societies, Jabalpur passed on 21st November, 1968 to the effect that his membership in the managing committee of the Jabalpur Wholesale Consumers' Co-operative Store Limited, which was on behalf of the Motinala Primary Consumers' Co-operative Society Limited, has come to an end because the Society is in default to the Store for a period exceeding twelve months thereby incurring a disqualification for being a member of the managing committee of the Store under Bye-law No. 32-A (e).

The material facts are these. The petitioner is a member of the Motinala Primary Consumers' Co-operative Society Limited (hereinafter referred to as the Society). There is another society named as the Jabalpur Wholesale Consumers' Co-operative Store Limited (hereinafter referred to as the Store). The society is a member of the store and the petitioner represents the society in the store. On 16th June, 1968 the petitioner in his representative capacity was elected as a

member of the managing committee of the store. The society later became in default to the store for a period exceeding twelve months in respect of loans taken by it. The petitioner by the impugned order has been intimated that his membership in the managing committee has ceased because the society represented by him being in default has incurred a disqualification. The petitioner in this petition claims that his membership continues.

Before adverting to the contentions raised by the learned counsel for the petitioner it is necessary to refer to the relevant statutory provisions. Section 19 of the Madhya Pradesh Co-operative Societies Act, 1960 deals with persons who may become members in a Co-operative Society. A Co-operative Society may have as its members individuals, any other society and the State Government. A Society registered under the Act, as declared by section 31 of the Act, is a body corporate by the name under which it is registered and as provided in Rule 34 of the Madhya Pradesh Co-operative Societies Rules is managed by a committee of management which is elected within a period of three months from the date of its registration. The disqualifications for membership of the committee of management of a society are provided in Rule 44 which reads as follows:

Disqualification for membership of committee. No person shall be eligible for election as a member of the committee of a society and shall cease to hold his office as such, if he-

- (a) is an applicant to be adjudicated or is an undischarged insolvent; or
- (b) is sentenced for an offence, other than an offence of a political character or an offence not involving moral turpitude and a period of five years has not elapsed from the date of expiry of the sentence; or
- (c) is or becomes of unsound mind; or
- (d) holds or accepts any office of profit in the society; or
- (e) carries on business of the kind carried on by the society; or
- (f) has been held responsible u/s 63; or
- (g) is or becomes a near relation of a paid employee of the society; or
- (h) is or gets in default to the society or to any other society for a period exceeding twelve months in respect of any loan or loans taken by him; or
- (i) has been a member of a society for less than twelve months immediately preceding the date of such election:

Provided that the disqualification specified in clauses (d) and (e) in the case of any member be removed with the previous sanction of the Registrar:

Provided further that the disqualification specified in clause (i) shall not apply for the conduct of an election to the committee of a society till fifteen months have elapsed after the registration of such society.

When a society is a member in another society it is represented by a person appointed or elected by it and disqualifications of such person for purposes of representation are contained in Rule 45 which reads as follows :

Disqualification for representation.-

(1) No society shall elect any member as its delegate, who suffers from any of the disqualifications laid down in rule 44, to the committee of another society or to represent the society in another society.

(2) A delegate of a society sitting on the committee of another society or representing it in another society shall cease to hold his office as such-

(a) if he suffers from any of the disqualifications laid down in rule 44; or

(b) if he ceases to be a member of the society from which he is delegated; or

(c) if the society which elected him as a delegate withdraws him or elects another delegate in his place; or

(d) if the committee of a society which elected him has been removed under sub-section (1) of section 53; in which case the person or persons appointed under the said sub-section shall have power to nominate himself or one among them, as the case may be, to fill the vacancy so caused; or

(e) if he was nominated by a person or persons appointed to manage the affairs of a society after the removal of the committee under sub-section (1} of section 53, when a new committee is constituted under sub-section (6) of section 53; or

(f) if the registration of the society of which he is a delegate is cancelled.

Rule 6 of the Rules authorises a society to make bye-laws in respect of the matters mentioned therein. In exercise of this power, the Store has framed its bye-laws. Bye-law 7 states that the membership of the Store shall consist of the following:

Membership-

The membership of the store shall consist of-

(1) Primary Consumer Co-operative Stores, Marketing and other classes of societies which join in the application for registration,

(2) Such other persons who are admitted to membership in accordance with these bye-laws and

(3) The State Government.

Bye-law 9 which contains the heading "General Meeting" provides that, "every society shall be represented by one representative of the society duly authorised by a resolution of the managing committee or of the General Meeting of the society as the case may be." The constitution of the managing committee of the

store is dealt with in Bye-law 12 which reads as follows :

The managing committee of the store shall consist of the following members:-

- (a) Four members to be elected in the General Meeting by Primary Consumer Co. operative Store from amongst themselves;
- (b) One member to be elected in the General Meeting by Marketing and other classes of societies from amongst themselves;
- (c) Four members to be elected in the General Meeting from amongst the individual members who do not represent any society affiliated to the store. For this purpose the committee may divide the individual membership into four groups on a territorial basis;
- (d) Three women members to be co-opted by the elected members of the committee in its first meeting. If, however, co-option is not done the Registrar may nominate three women members;
- (e) The President of the Co-operative Central Bank at the Head-Quarter of the store or his nominee, who shall be an ex-officio member;
- (f) The President of the Madhya Pradesh State Federation of Consumer Co-operative Wholesale Stores Ltd. or his nominee, who shall be an ex-officio member and
- (g) Three nominees of the State Government appointed u/s 52 of the Act.

The disqualifications for membership of the committee of management as set out in Bye-law 12-A are as follows :

12-A. Disqualification for membership of the committee-

- (1) No person shall be eligible for election as a member of the Managing Committee of the Store, if he-
 - (a) is an applicant to be adjudicated or is an undischarged insolvent; or
 - (b) has been sentenced for any offence other than an offence of a Political character or an offence not involving moral turpitude provided that this disqualification shall not apply where more than five years have elapsed from the date of expiry of such sentence; or
 - (c) is of unsound mind; or
 - (d) holds any office of profit in the store; or
 - (e) is in default to the store or to another society for a period exceeding twelve months in respect of any loan or loans taken by him; or
 - (f) is interested directly or indirectly in any contract made with the store or in any sale or purchase made by the store private or in auction or in any contract or transaction of the store (other than investment and borrowing); or

(g) if he or any one in his family does business or trade which comes or is likely to come into conflict with the business carried on by the store.

(2) A member of the managing committee of the Store shall cease to hold office as such if he incurs any of the disqualifications mentioned in clause (1) above. It will be the personal responsibility of the Assistant Registrar of the district to initiate action for removal of any member from the Board of Directors as soon as he incurs any of the above disqualifications or as soon as the fact of the incurring of such disqualification is otherwise brought to his notice.

The first contention of the learned counsel for the petitioner is that the petitioner, though representing the society, was himself the member of the managing committee of the store and as he did not personally incur any disqualification, his membership did not come to an end. The constitution of the managing committee of the store is dealt with in Bye-law 12 which has already been set out. Clauses (a) and (b) of this bye-law provide that four members are to be elected in the General Meeting by Primary Consumers Co-operative Stores "from amongst themselves" and one member is to be elected by Marketing and other classes of societies "from amongst themselves." Clauses (a) and (b) go to show that the member so elected is either the Primary Store or other society. These clauses do not contemplate individuals as members. A society not being a living person, can only act as a member of the general body or the managing committee of the store through its representative. It is therefore provided in Bye-law 9 that a society will authorise some individual as its representative. The heading of Bye-law 9 is "General Meeting" and at first glance suggests that the representation contemplated by this bye-law is with reference to the General Meeting of the store, but the language used in the substantive portion of the bye-law is quite general and having regard to its object it must be construed to authorise a society to appoint its representative for representing it in the general body as well as in the managing committee of the store. The representative of a society appointed under Bye-law 9 does not himself become a member of the general body or the managing committee of the store; he is only a representative of the Co-operative Society which is the real member. This conclusion is further supported by the language used in Rule 45 which provided that no society shall elect any member, who suffers from any of the disqualifications laid down in Rule 44 as its delegate, to the committee of another society or to represent it in another society. The rule thus contemplates that a society can appoint one of its qualified members as its delegate to the committee of another society. Such a delegate can always be withdrawn and another delegate appointed in his place by the society as is provided in Rule 45 (2) (c). The occasion for a society to nominate a delegate to the committee of another society can only arise when the society is a member of the committee and an individual is required to represent it in the committee. A delegate representing a society in the committee of another society is not himself a member but is only a representative of the society, which is really the member of the committee. In our opinion, when members are elected to the managing committee of the store

under clauses (a) and (b) of Bye-law 12, those members are the Primary Co-operative Societies and not the individuals representing them. It is not disputed that the membership in the instant case was under clauses (a) and (b) and therefore, it must be held that the petitioner personally was not a member of the managing committee of the store, but the membership of the managing committee of the store vested in the society and the petitioner was a mere representative.

The next contention of the learned counsel for the petitioner is that the disqualifications provided for in Rule 44 and Bye-law 12-A do not relate to member societies but to individuals. He lays stress on the words "if he" as they occur in the opening portion of these provisions and points out that most of the disqualifications mentioned in them can only apply to individuals. These provisions open with the words "no person shall be eligible for election as a member." The word "person" is defined in section 2(31) of the Madhya Pradesh General Clauses Act, 1957 and includes an association or body of individuals whether incorporated or not. The General Clauses Act by virtue of section 31(b) applies to the construction of Rules and Bye-laws made under a Madhya Pradesh Act. Subject to a contrary context therefore, we must include a society within the word "person" in Rule 44 and Bye-law 12-A. The use of the words "if he" does not negative the inclusion of a society within the word "person". The word "he" in statutes may be used to include both sexes as well as Corporation (Black's Law Dictionary, p. 850). In *Motipur Zamindari Co. v. State of Bihar* (1) the contention before the Supreme Court was that a company registered under the Companies Act did not fall within the word "Proprietor" as defined in the Bihar Land Reforms Act, 1950. "Proprietor" was defined in the Act as meaning "a person holding in trust or owning for his own benefit an estate or a part of an estate" and as including "the heirs and successors-in-interest of a proprietor and, where a proprietor is a minor or of Unsound mind or an idiot, his guardian, committee or other legal curator." It was held by the Supreme Court that the word "person" used in the definition (1) *Motipur Zamindari Co. Ltd. Vs. The State of Bihar and Another*, . included a Company and therefore, a Company could be a proprietor as defined in the Act. It is noticeable that the definition of "Proprietor" construed by the Supreme Court used the word "his" and in spite of it the definition was construed as wide enough to include a Corporation. This case therefore, supports our conclusion that the use of the words "if he" in Rule 44 and Bye-law 12-A does not exclude a society from the ambit of these provisions. It is no doubt true that most of the disqualifications listed in these provisions will not apply to a society and will apply to individuals, but this is because those disqualifications from their very nature cannot apply to a society and not because the word "person" or the word "he" is used in a restricted sense. If a particular clause contains a disqualification which is wide enough to include both individuals and societies, there is no reason to give to that clause a restricted meaning. The disqualification arising out of being in default to the store for a period exceeding twelve months in respect of any loan as provided by Rule 44 (h) and Bye-law 12-

A (1) (e) is wide enough to include a society within it. Now, the object of the disqualification, that a person who is in default to the store or to any member-society should not be elected to the managing committee of the store, is to avoid conflict of interest against duty. This object equally applies whether the person concerned is an individual or a society. In our opinion, the disqualification arising out of Rule 44 (h) and Bye-law 12-A (1) (e) applies to the case of a society. The second contention raised by the learned counsel therefore, fails.

It was then contended that disqualifications for a delegate or representative are all provided in rule 45 and unless it can be said that the delegate or representative of the member-society in the committee of another society has himself incurred the disqualification under rule 45, the delegate or the representative does not lose his seat in the committee. There is no substance in this contention. A society to be a member in the committee of management of another society must not suffer from the disqualifications mentioned in rule 44. As a society can only function in the committee of management through some individual, the society must elect one of its members as its delegate, But rule 45 provides that the delegate or representative so elected should also not suffer from any of the disqualifications mentioned in rule 44. Thus, the requirements of the Rules are two-fold. The member-society must not suffer from any disqualifications mentioned in rule 44 and the delegate elected by it to represent it should also not suffer from any of the disqualifications. The delegate however, has no independent existence. He only represents the society which is the real member in the committee and if the society ceases to be a member of the committee because of a disqualification incurred by it, the delegate will automatically cease to be delegate although he may not have himself incurred any disqualification under rule 45.

It was lastly contended that Bye-law 12-A (1) (e) is ultra vires. The argument is that power to make bye-laws is conferred under rule 6 and Bye-law 12-A (1) (c) is not covered by any of the items in that rule. This question is purely academic and we decline to examine it, for Bye-law 12-A (1) (e) is in identical terms as rule 44 (h). The language used in these two provisions is same and it is wholly immaterial whether the disqualification in the instant case was incurred under the bye-law or the rule. Even if the bye-law was ultra vires, the case fell within the rule and the petitioner's removal was justified.

The petition fails and is dismissed with costs. Counsel's fee Rs. 100. The outstanding amount of security shall be refunded to the petitioner.