
(1995) 05 P&H CK 0130
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6384 of 1994

Bharat Singh

APPELLANT

Vs

The Deputy Registrar, Cooperative Societies

RESPONDENT

Date of Decision : 25-05-1995

Acts Referred:

Citation : (1995) 111 PLR 251

Hon'ble Judges : M.L. Koul, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : S.S. Dalal, for the Appellant; Ritu Bahri, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

G.S. Singhvi, J.—The order annexure P-5 passed by the Deputy Registrar, Cooperative Societies, Haryana, Rohtak while exercising the powers of the Registrar under the Haryana Cooperative Societies Act, 1984 is under challenge in this writ petition. The petitioner has prayed for quashing of the order Annexure P.5 and for the his reinstatement to the office of Director, Rohtak Central Cooperative Consumer Store Ltd., Rohtak.

2. The only argument advanced by the learned counsel for the petitioner is that no action has been initiated against the petitioner u/s 35(1) of the Haryana Cooperative Societies Act, 1984 (for short, the Act) and, therefore, the Registrar was not vested with the jurisdiction to suspend the petitioner u/s 35(2) of the Act. The learned A.A.G. argued that there are serious allegations against the petitioner regarding disturbance of the meeting and the petitioner entering into business transactions with the co-operative society and, therefore, sufficient jurisdiction was available with the competent authority to pass the impugned order.

3. Section 35(1) and 35(2) of the Act read as under:-

"35. (1) If in the opinion of the Registrar, any member of the Committee

persistently makes default or is negligent in the performance of the duties imposed on him by this Act or rule or bye-laws or commits any act which is prejudicial to the interest of the society or its members, the Registrar may after giving the member an opportunity to state his objections, if any, by order in writing, remove the member and get the vacancy filled up for the remaining period of the out going member, according to the provisions of this Act, rules and bye laws.

(2) Where the Registrar while proceeding to take action under Sub-section (1) is of the opinion that the suspension of the member during the period of proceedings is necessary in the interest of the co-operative society, he may suspend the member:

Provided that if the member so suspended is not removed, he shall be reinstated and the period of suspension shall count towards his tenure : Provided further that the period of suspension shall not exceed six months."

4. A conjoint reading of the above quoted provisions of the Act shows that the Registrar is empowered to remove any member of the Committee who is guilty of persistent default or is negligent in the performance of duties imposed on him by Act or the rules or bye-laws or is guilty of committing any act prejudicial to the interest of the society or its members. However, what is imperative for the Registrar before he passes an order u/s 35(1) of the Act is that he must give such member an opportunity to submit his objection to the proposed action and then to pass a reasoned order for removing such member from the office. The language used in Section 35(1) clearly shows that the Legislature has thought it proper to engraft the basic principles of natural justice in the statute itself. It can, thus, be said that before the Registrar passes an order, he is required to give and then pass appropriate order. Issuance of Show Cause Notice u/s 35(1) can appropriately be equated with initiation of enquiry. Logically it has to be held that till a Show Cause Notice is issued with proposal to take action against the erring member u/s 35(1), the proceedings cannot be treated as having been initiated.

5. Section 35(2) of the Act empowers the Registrar to suspend such member during the period of proceedings, if the Registrar considers it necessary to do so in the interest of the cooperative society. The expression "during the period of proceedings" contemplates the pendency of proceedings as a condition-precedent for taking action u/s 35(2) and if the proceedings have not been initiated u/s 35(1), the same cannot be treated as pending. In that situation, the Registrar is not empowered to place a member under suspension.

6. A look at the impugned order shows that the Registrar has suspended the petitioner even without issuing a notice u/s 35(1). Therefore, it has to be held that the Registrar has exercised the power of suspending the petitioner in contravention of the provisions of Section 35(2) of the Act.

7. Consequently, the writ petition is allowed. The order Annexure P.5 is declared

illegal and is hereby quashed. We, however, make it absolutely clear that quashing of the order of suspension of the petitioner on the grounds mentioned hereinabove shall not preclude the competent authority from exercise of its power u/s 35(1) of the Act and then take action against the petitioner in terms of Section 35(2), if such course of action is considered necessary. Parties are left to bear their own costs.