
(1994) 05 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Special Appeal No. 192 of 1994

Bhomraj

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-05-1994

Acts Referred:

Constitution of India, 1950 — Article 245

Rajasthan Co-operative Societies Act, 1965 — Section 75

Citation : AIR 1994 Raj 250

Hon'ble Judges : P.K. Palli, J;J.R. Chopra, J

Bench : Division Bench

Advocate : P.P. Choudhary, for the Appellant; U.C.S. Singhvi and M.S. Singhvi, for the Respondent

Final Decision : Allowed

Judgement

J.R. Chopra, J.—This special appeal is directed against the judgment of the learned single Judge dated 18-3-1994 whereby the writ petition filed by the petitioner-appellant has been dismissed with cost of Rs. 2,000/-.

2. The facts necessary to be noticed for the disposal of this special appeal briefly stated are: that the petitioner-appellant was elected as Chairman of Barsinghsar Lalam-deshar Gram Sewa Sahakari Samiti on 20-1-1991 and in the election of Central Cooperative Bank, Bikaner, he represented the Barsinghsar Lalamdeshar Gram Sewa Sahakari Samiti as its Chairman and was elected as Chairman of the Central Co-operative Bank, Bikaner on 15-9-1992 for a period of three years and since then, he is working as its Chairman to the utmost satisfaction of all concerned.

3. It is alleged that after the election of petitioner-appellant as Chairman of the Cent-ral Co-operative Bank, Bikaner, respondent No. 4 Shri Mahendra Singh challenged the election of the petitioner-appellant u/s 75 of the Rajasthan Co-operative Societies Act, 1965 (for short "the Act") on the ground that the petitioner-appellant has incurred disqualification u/s 34(7A) of the Act. It is

further alleged that the petitioner-appellant and respondent No. 4 Mahendra Singh belong to two different political parties and hence, it is a case of political rivalry. That petition u/s 75 of the Act, which was filed before the Registrar, Co-operative Societies, Jaipur was decided against respondent No. 4 Mahendra Singh vide Judgment Annexure-1 dated 18-5-1993. Against that judgment, no appeal or revision was filed by respondent No. 4. However, in the meantime, the State Govt. changed and respondent No. 4 Mahendra Singh again moved an application u/s 34(8) of the Act before the Assistant Registrar on 1-1-1994 for declaring the petitioner-appellant as disqualified u/s 34(7A) of the Act. That application remained pending for some time and no action was taken on it. In the meantime, it is alleged that a bargain was settled between the Assistant Registrar (respondent No. 2) and respondent No. 4 Shri Mahendrasingh that if the Assistant Registrar is transferred to Jaipur then the Assistant Registrar will declare the petitioner-appellant as disqualified u/s 34(7A) of the Act.

4. According to the petitioner-appellant, on account of this bargain, the Registrar, Cooperative Societies prepared a transfer-list, in which the, the then Assistant Registrar was transferred to Jaipur on 11-2-1994 and this transfer order was received by the then Assistant Registrar on 13-2-1994. It is alleged that after the receipt of this transfer order, the then Assistant Registrar declared the petitioner's election as Chairman of Barsinghsar Lalamdeshar Gram Sewa Sahakari Samiti as void vide his Order Annexure 2 dated 16-2-1994. The petitioner-appellant has submitted that this action on the part of the then Assistant Registrar was totally arbitrary and mala fide. He has been deprived of his status as Chairman of the Barsinghsar Lalamdeshar Gram Sewa Sahakari Samiti as well as the Chairman of the Central Co-operative Bank, Bikaner. Aggrieved against this order Annexure 2 dated 16-2-1994, the petitioner-appellant filed a writ petition for quashing the order Annexure-2 dated 16-2-1994.

5. In that writ petition, a reply to the writ petition was filed on behalf of respondent No, 4 Mahendrasingh, in which, certain preliminary objections were raised. The first preliminary objection raised by respondent No. 4 was that the petitioner has not availed the alternative and efficacious remedy available to him against the impugned order Annexure 2 dated 16-2-1994 under the provisions of the Act and, therefore, the writ petition is not maintainable. According to respondent No. 4, a revision petition could not be filed u/s 128 of the Act. The second preliminary objection raised by respondent No. 4 was that the petitioner has not come with clean hands. He has concealed material facts from the notice of this Hon''ble Court and therefore, his conduct disentitled him from grant of any relief in the extraordinary jurisdiction of this Court. In this respect, it was submitted that the petitioner has conveniently contended that Section 34(7 A) of the Act provides for dis-qualification at the time of election but he has conveniently concealed that bye-law 11(5) of the bye-laws clearly provides that a person cannot remain a member beyond six years or two terms and, therefore, the petitioner is guilty of concealment of material fact and on this ground alone,

the writ petition deserves to be dismissed. It was also contended that as the petitioner has already remained as member of the Committee for more than two terms and in excess of six years and, therefore, no relief could be granted to him in exercise of the extraordinary jurisdiction of this Court because that would result in restoration of the illegality.

6. It was further contended by respondent No. 4 that the petitioner has already remained as Chairman of the Committee for two terms i.e. from 20-6-1973 to 7-10-1986 and from 8-10-1986 to 20-1-1991 and thereafter, he has again been elected as Chairman of the Barsinghsar Lalamdshar Gram Sewa Saha-kari Samiti and Chairman of the Central Cooperative Bank, Bikaner. Thus, he has held membership of the Committee for more than two terms and therefore, he was ineligible for election as member for the third term on 21-1-1992. At any rate, having remained continuously as member for more than six years, he was liable to vacate the Office. The allegations levelled have been denied.

7. According to respondent No. 4, he is entitled to question of the continuance of the petitioner as member of the Committee and Chairman of the Barsinghsar Lalamdeshar Gram Sewa Sahakari Samiti as also Chairman of the Central Co-operative Bank, Bikaner because he has become disqualified to continue in Office. It was further submitted that as no question of law or fact was decided vide Order Annexure 1 and, therefore, no appeal or revision was preferred by the petitioner. It was further submitted that as a matter of fact, the then Assistant Registrar Shri Sunil Kumar was closely associated with the petitioner and at the instance of the petitioner, he has kept the matter pending for such a long time. According to respondent No. 4, it is wrong to contend that notices were not issued to the petitioner. The notices were very much issued to the petitioner and he was aware of the entire proceedings. It was denied that any bargain was settled between respondent No. 4 and the then Assistant Registrar Shri Sunil Kumar that if the then Assistant Registrar is transferred to Jaipur then he will declare the petitioner as disqualified. It was denied that then the Assistant Registrar was transferred under the political influence of respondent No. 4. According to respondent No. 4 a General transfer Order was issued 11-2-1994, in which, the then Assistant Registrar was transferred from Bikaner to Jaipur, as is clear from the Order Annexure Rule 4/1. By this Order 17, persons were transferred to different places and, therefore, there was no question of any bargain being struck between the then Assistant Registrar and respondent No. 4. It was further submitted that the then Assistant Registrar handed over the charge of his Office as Assistant Registrar on 16-2-1994 in the afternoon, therefore, he was within his right to pass the impugned order Annexure-1 before handing over the charge of his office as Assistant Registrar.

8. A rejoinder to the reply to the writ petition was filed by the petitioner, in which, it was contended that the writ petition is maintainable and the preliminary objections raised by respondent No. 4 have no substance. It was further contended that as the entire proceedings have been taken after the change in

the State Govt. and the father of respondent No. 4 is a Cabinet Minister and, therefore, it was futile to file any revision u/s 128 of the Act before the State Govt. It was submitted that there was no reference of bye-law 11(5) in the impugned order and therefore, that ground cannot be pressed into service. According to the petitioner, there is no question of perpetuity of the illegality inasmuch as neither the provisions of the Act nor any other provision declares the continuance of membership being illegal. Moreover, it is a question of interpretation but in the facts and circumstances of this case, whether continuation of membership after six years amounts to illegality, such a dispute can be decided u/s 75 of the Act and not otherwise. A member can be removed u/s 36 or Section 38 of the Act after giving a notice and an opportunity of hearing. It was claimed that Barsinghsar Gram Sewa Sahakari Samiti became Barsinghsar Lalamdesar Gram Sewa Sahakari Samiti after the election took place on 20-1-1991 and, therefore, there was no question of petitioner's continuations for two terms as member of the Committee of the same Society. In addition to these contention, the averments made in the writ petition were reiterated.

9. After hearing both the parties, the learned single Judge felt that the provisions of Sections 34(7A) and 34(8) of the Act are applicable to the facts of the present case and no dispute about the election of the petitioner as Chairman of the Barsinghsar Gram Sewa Sahakari Samiti could be raised by respondent No. 4 u/s 75 of the Act. The learned single Judge further felt that as the petitioner has already served for six years as member of the Committee of the Barsinghsar Gram Sewa Sahakari Samiti, he is not entitled to continue as its Chairman and consequently, to represent the Barsinghsar Gram Sewa Sahakari Samiti as also in the Central Co-operative Bank, Bikaner to continue as its Chairman. It was observed by the learned single Judge that although no opportunity of hearing was afforded to the petitioner before his election was declared as void but it was felt that the exercise of the powers by the Assistant Registrar were neither illegal nor the. petitioner has any legal-right to challenge that order on the ground of not affording him an opportunity of hearing and, therefore, for non-compliance of the principles of natural justice, no relief can be granted to the petitioner because that will result in the preparation of the illegality. Consequently, the writ petition was dismissed with cost of Rs. 2000.

10. We have heard Mr. P.P. Choudhary the learned counsel appearing for the petitioner-appellant, Mr. M.S. Singhvi, the learned counsel for respondent No. 4 and Mr. U.C.S. Singhvi, the learned Additional Govt. Advocate have carefully gone through the record of the case.

11. It is true that a dispute was raised as regards the election of the petitioner as Chairman of the Central Co-operative Bank, Bikaner by respondent No. 4 u/s 75 of the Act and that dispute was decided against respondent No. 4 by the Joint Registrar vide his order Annexure-1 dated 18-5-1993 on the ground that no dispute has been raised about the election of the petitioner as Chairman of Barsinghsar Gram Sewa Sahakari Samiti and consequently, no such dispute could

have been raised u/s 34(7A) of the Act by respondent No. 4 because respondent No. 4 is neither the member of Barsinghsar Gram Sewa Sahakari Samiti nor he is the officebearer of Barsinghsar Gram Sewa Sahakari Samiti. No factual foundation of Section 34(8) of the Act has been laid before the learned Joint Registrar and the learned Joint Registrar also came to the conclusion that powers u/s 34(8) of the Act cannot be exercised by the Registrar u/s 75 of the Act. The powers u/s 34(8) of the Act can be exercised by the Registrar and, therefore, that application/petition was dismissed.

12. For raising a dispute about the election of the member of the Committee one has to be either a member of that Committee or a past member of that Committee or a person claiming through members, past members and deceased members of the Committee. In this case, the respondent No. 4 was neither a member nor a past member and was not a person claiming through members, past members and deceased members of the Barsinghsar Gram Sewa Sahakari Samiti. It was also not a dispute between Barsinghsar Gram Sewa Sahakari Samiti and its management committee. Neither it was a dispute between the society and any other co-operative society nor it was a dispute between the aforesaid society and the surety of a member, past member or a deceased member or a person other than a member who has been granted a loan by the society or with whom the society has or had transaction u/s 66 whether such a surety is or is not a member of a society. Thus, no dispute about the election of the petitioner as Chairman of the Barsinghsar Gram Sewa Sahakari Samiti could have been raised by respondent No. 4 u/s 75 of the Act.

13. Section 34(7A) of the Act clearly provides that no person shall be eligible for election as a member of a Committee if he has continuously remained a member of the Committee of the same society for a period of six years or for two terms, whichever is less unless a period of three years from the date of expiry of the said period or the said terms, as the case may be, has elapsed. Thus, it is clear that Section 34(7A) of the Act decides the eligibility of a person for his re-election as a member of the Committee or its society. At the time of the re-election, if any objection is raised as regards the competence of the person to seek re-election and if that man is elected then Section 37(7A) of the Act becomes redundant because such an objection about the eligibility of a person seeking re-election has to be raised at the time when the re-elections are held. After a person is re-elected, his term is governed by the provisions of bye-law 11 (5) of the bye-laws, which provides that a person cannot hold the membership of a committee beyond six years or two terms whichever is less. If somebody is aggrieved by the re-election of a member to the Committee or the Society because that entitles him to seek his election to the Central Co-operative Bank, Bikaner, then of course, remedy is available u/s 34(8) of the Act and not u/s 34(7A) of the Act. Fixing of a term and disentitling a person from seeking re-election or to continue his membership of the committee of the same society is neither discriminatory nor unreasonable. The object of this provision is clearly discernible as preventing a person or group of person from monopolising the

affairs of a society by exercising control thereon indefinitely for a long period. A co-operative society is not meant to be run as a close preserve of an individual or a group of persons. "Co-operative" has been understood as a form of organisation where persons voluntarily associate together on a basis of equality for the promotion of their economic interests. The emphasis is on "co-operation". It is, therefore, desirable to have the active participation of as many members as may be possible. While dealing with a somewhat similar provision of Section 73A of the Maharashtra Co-operative Societies Act, 1960, their Lordships of the Supreme Court in *Bhandara District Central Co-operative Bank Ltd. and Others, Vs. State of Maharashtra and Another etc.*, have held that to check this unhealthy tendency and to give a more democratic character to the co-operative institutions, it was found necessary to prescribe the limitations, in the Statute itself by amendment. All this has been done for realising the objective set out by the Act and is clearly in the public interest. Their Lordships have further held that such a provision is *intra vires* and valid and is in consonance with the spirit of co-operation.

14. In *Sujan Singh v. Registrar, Cooperative Societies, Rajasthan, Jaipur 1989* (1) RLR 29, a Division Bench of this Court has observed that remedy available to a person u/s 75 of the Act does not exclude that person from available remedy u/s 34(8) of the Act.

15. It was contended by Mr. M. S. Singhvi, the learned counsel appearing for respondent No. 4 that earlier the petitioner has claimed the remedy u/s 75 of the Act when he challenged the election of the petitioner was Chairman of the Central Government Bank, Bikaner and, therefore, he could not avail the remedy available to him u/s 34(8) of the Act. We have already observed above that if the remedy available to a person u/s 75 of the Act is exhausted, that will not exclude the remedy available to him u/s 34(8) of the Act. Their Lordships of the Supreme Court in *Andhra Pradesh State Financial Corporation Vs. M/s. GAR Re-Rolling Mills and another*, have observed that the doctrine of election clearly suggests that when two remedies are available for the same relief, the party to whom the said remedies are available has the option to elect either of them but that doctrine would not apply to cases where the ambit and scope of the two remedies is essentially different.

16. Thus, having decided that respondent No. 4 was entitled to avail this remedy u/s 34(8) of the Act, now we appraise ourselves to the question whether the order Annexure-2 in the facts and circumstances of this case can be sustained or not?

17. It was contended by Mr. M. S. Singhvi, the learned counsel appearing for respondent No. 4 that the petitioner has remained a Member and Secretary of the Managing Committee of the Barsinghsar Gram Sewa Sahakari Samiti from 20-6-1973 to 7-10-1986. Thereafter, he was elected as its Chairman and worked as such from 8-10-1986 to 20-1-1991. Thus, he had held the membership of the Committee for more than two terms and, therefore, he was ineligible for his re-

election as member of the same Committee for the further term on 21-1-1991. He was again elected as its Chairman in the elections held on 21-1-191 and is continuing as such. The then Assistant Registrar who has been conferred powers of the Registrar went to Barsinghsar Gram Sewa Sahakari Samiti, inspected the record and found these facts to be true and, therefore, he recorded the follow-in finding in his Order Annexure 2:

^rF;ksa dh tkudkhj gsrq fuEu gLrk{kjdrkZ us fnukad 15&2&94 dks cjflaglj xzke lsok lgdkjh lfefr fy- cjflag ?eq[;kokl? tkdj lEcU/kr fjdkMZ dk voyksdu fd;k A voyksdu ds i"pkr ik;k fd Jh Hkksejkt vk;Z mDr fooj.kkuqlkj fnukad 28&8&73 ls mDr lfefr ds ea=h rFkk fnukad 8&10&86 ,oa 28&1&91 ls v/;{k jgs gSa vkSj orZeku esa v/;{k in ij dk;Zjr gSa A vr% ckn voyksdu fjdkMZ ds ;g Li"V gks tkrk gS fd Jh Hkksejkt vk;Z lgdkjh vf/kfu;e] 1965 dh /kjk 34 ?7d? ds rgr 6 o"kZ dh dkykof/k ;k nks dk;Zdkyksa esa tks Hkh de gks] ds izko/kkuksa ds foijhr v/;{k ds in ij dk;Zjr gS A*

From the aforesaid observations made in the Order Annexure-2, it is absolutely clear that no opportunity of hearing was afforded to the petitioner. Even before passing this Order, the petitioner was not issued a show cause notice. It has been mentioned in this order that the petitioner-appellant is continuing as the Chairman of the Barsinghsar Gram Sewa Sahakari Samiti even after the expiry of six years or the two terms against the provisions of Section 34(7A) of the Act. As stated above Section 34(7 A) of the Act is a provision which affects the eligibility of a person seeking re-elections. It does not determine his term, if he is re-elected. The term of such elected mem-bers is determined by bye-law 11(5) of the Bye-laws. There is no reference in the impugned order to bye-law 11(5) of the Bye-laws, which restricts the term of a member of the Committee or its Chairman to six years only. When this fact does not form part of the order Annexure 2, this fact cannot be supplied now, by respondent No. 4 by raising a plea about it. In this respect, we may gainfully refer to the observations of Their Lordships of the Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, that the action can be judged on the basis of the reasons stated while making the order. The reasons cannot be supplied later on either by the facts or by arguments and supplementary reasons in the shape of affidavits are to be excluded.

18. Relying on Mohinder Singh Gill's case (supra), a Division Bench of this Court in Sahiram v. State of Rajasthan, 1991 WLR 680 held that if any statutory functionary [makes an order based on certain grounds then jvalidity of that order must be judged by the reasons so mentioned in that order. Thus, reasons cannot be supplemented by fresh contentions in the shape of affidavits or otherwise.

19. As stated above, the order Annexure-2 is purely based on the provisions of Section 34(7 A) of the Act. It has no reference whatsoever to bye-law 11(5) of the Bye-laws and, therefore, to this extent the order Annexure 2 cannot be sustained.

20. It was next contended by Mr. P.P. Choudhary, the learned counsel appearing for the petitioner-appellant that the powers of the Registrar were delegated to the Assistant Registrar u/s 34 of the Act much prior to the insertion of Sub-section (7A) of Section 34 of the Act. These powers are general in nature and they cover the whole provisions of Section 34 of the Act and, therefore, even if Sub-section (7 A) of Section 34 of the Act has been added later on. it does not affect the delegated powers of the Registrar to the Assistant Registrar. Thus, to this extent, the submission of Mr. Choudhary cannot be sustained.

21. It was further argued by Mr. Choudhary that the order Annexure 2 has been passed against the petitioner mala fide by the then Assistant Registrar. He has submitted that this impugned order Annexure-2 was passed by the then Assistant Registrar after his transfer order was received and he was posted at a place of his choice. In this case, the then Assistant Registrar Shri Sunil Kumar has not been made a party by name to these proceedings and, therefore, he could not have filed any reply to these allegations. Even respondents Nos. 1 to 3 i.e. the State of Rajasthan, Assistant Registrar and Joint Registrar have not chosen to deny this allegation. Be that as it may, this much is clear from this impugned order Annexure-2 that before passing this order, neither any notice was issued to the petitioner nor any opportunity of hearing was given to him. If such an opportunity of hearing would have been given to the petitioner, the petitioner would have shown that the provisions of Section 34(7 A) of the Act are not applicable to this case and order u/s 34(8) of the Act cannot be passed removing him from the membership of the Committee is also from the Chairmanship of the Barsinghsar Gram Sewa Sahakari Samiti and Central Co-operative Bank, Bikaner. In this respect, we may place reliance on a decision of this Court in Sahiram's case (supra), wherein it has been observed as under:

that it is true that the selection process was a farce but still the persons so appointed may be on wrong basis have joined their service and when their appointments will be cancelled or their services are terminated that will visit them civil and evil consequences. Vested right will be divested without an opportunity therefore, their services cannot be terminated without affording them an opportunity of hearing."

Mr. Choudhary has further placed reliance on a decision of their Lordships of the Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, wherein it has been observed as under:

"The status and office and the rights and responsibilities and the expectation of the Committee to serve its full term of office certainly creates sufficient interest in the Municipal Committee and their loss, if superseded, entails civil consequences so as to justify an insistence upon the observance of the principles of natural justice before an order of supersession is passed."

Their Lordships have further observed as under:

"The principles of natural justice know of no exclusionary rule dependent on

whether it would have made by any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It ill comes from a person who has denied justice that the person who has been denied justice is not prejudiced."

"Where on the admitted or indisputable facts only one conclusion is possible and under the law only one penalty is permissible the Court may not issue its writ to compel the observance of natural justice, not because it is not necessary to observe natural justice but because Courts do not issue futile writs. Therefore, merely because facts are admitted or are indisputable it does not follow that natural justice need not be observed."

Here, it may be an arguable question whether after the election of a person as a member of the Managing Committee or the Chairman of the Co-operative Society beyond the period of two terms will attract the provisions of Section 34(7 A) of the Act or will attract the provisions of bye-law 11(5) of the Bye-laws. When there is no reference to the provisions of bye-law 11(5) of the Bye-laws in the impugned order Annexure-2, non-mention of bye-law 11(5) of the Bye-laws in the writ petition by the petitioner does not amount to suppression of material facts.

22. This is a case, in which, a person after having been elected as Chairman of a Cooperative Society was sent to represent that Co-operative Society in the election of Central Co-operative Bank and, there also, he has been elected as its Chairman and if he has incurred any disqualification on account of the provisions of bye-law 11(5) of the Bye-laws or on account of the provisions of Sections 34 and 36 of the Act, a dispute can be raised u/s 34(8) of the Act and that dispute can be decided by the Assistant Registrar and if while deciding that dispute, in the impugned order, no reference has been made to the provisions by bye-law 11(5), that ground cannot be supplemented by referring to it in the reply to the writ petition on behalf of the respondent.

23. Even this is also a disputed question of law whether a person who has served the Management Committee of the same society for two terms and has been again elected as a member of the Management Committee or as its Chairman or any other office bearer, will give a cause of action for raising a dispute about his ineligibility u/s 75 read with Section 34(7) of the Act or it can be agitated only by raising such a dispute u/s 34(8) of the Act? This is a debatable question and on this aspect of the matter, there is no agreement between the parties and, therefore, it cannot be treated to be an undisputed question of law and when that be so, the principles of natural justice must be followed. This is what has been held by Their Lordships of the Supreme Court in *Shrawan Kumar Jha and others Vs. State of Bihar and others*,

24. In this respect, Mr. Singhvi the learned counsel appearing for respondent No. 4 has placed reliance on a decision of their Lordships of the Supreme Court in *T.*

Ramegowda Vs. R. Krishnamurthy and others, That was a case in which the status of a Special Officer and the powers to be exercised by him were disputed. It was argued by Mr. Shanti Bhusan that the members enrolled by the Special Officer were entitled to a notice. Their Lordships felt that the question before the Tribunal was whether the Special Officer was competent to exercise all the powers of a Special Officer u/s 30A of the Act after the High Court had quashed the supersession of his appointment as Special Officer. That order having not been appealed against had become final and binding. The question turned on the interpretation of the order of the High Court. Their Lordships further felt that it was a case where powers of the Special Officer were to be decided and, therefore, the members enrolled by him were not entitled to any notice. This case does not apply to the facts of the present case.

25. As stated above, in this case, the petitioner has not been disqualified on account of the provisions of Sections 36 and 38 of the Act. His removal has been ordered on the basis of the provisions of Section 34(7A) of the Act and, therefore, this authority has no application to the facts of the present case.

26. It was argued by Mr. Singhvi that by quashing this order Annexure 2. an illegality will be perpetuated. In this respect, he has placed reliance on a decision of their Lordships of the Supreme Court in Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, . That was a case, in which the District Judge decided a case without jurisdiction. The order being valid, it was held that justice has been done and improper order has been set aside and, therefore, the writ jurisdiction cannot be exercised.

27. Reliance was also placed on a decision of this Court in Jagansingh v. STAT AIR 1980Raj 1 where the STAT allowed the appeal and set aside the order of the RTA varying a condition of the petitioner's permit, as respects the route, on the ground that the RTA admittedly did not follow the procedure prescribed u/s 57(3) (4) (5) of the Act and the order of the Tribunal was challenged by a writ petition on the ground that the Tribunal had no jurisdiction to entertain the appeal u/s 64(1)(b) of the Motor Vehicles Act. In those facts, it was held that as allowing the writ petition would result in restoring the illegal order of the RTA and as there had been no failure of justice in the instant case, the High Court refused to interfere with the appellate order.

28. In the facts and circumstances of this case it cannot be said that the impugned order Annexure-2 is an order which has been passed by an authority which had no jurisdiction to do so. The legal position about this controversy raised before us is not admitted and, therefore, the observations made in para 24 of the judgment in S.L. Kapoor's case (supra) have no application,

29. It was next contended by Mr, Chou-dhary that respondent No. 4 is not an aggrieved party so far as the election of the petitioner as Chairman of Barsinghsar Gram Sewa Sahakari Samiti is concerned. That argument cannot be sustained because the petitioner having been elected as Chairman of the

Barsinghsar Gram Sewa Sahakari Samiti has represented it in the Central Co-operative Bank, Bikaner and there he fought the elections of Chairmanship and his candidature was challenged by respondent No. 4 and, therefore, respondent No. 4 is an aggrieved party and he can challenge his election u/s 34(8) of the Act because that affects his rights adversely so far as the election to the Central Co-operative Bank arc concerned. In this respect, we may rely on a decision of their Lordships of the Supreme Court in Lakhi Ram Vs. State of Haryana and Others, as also another decision of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,

30. Reliance was also placed by Mr. Choudhary on a decision of this Court in Sagarmal v. State of Raj. 1982 RLR 313. This is not a case where the powers of the Collector have, been delegated to C.T.O. and C.T.O. has delegated those powers to the ACTO. Here, the powers of the Registrar have been delegated to the Assistant Registrar to exercise powers u/s 34 of the Act and even if Sub-section (7-A) has been added later on to Section 34 of the Act, these powers can be exercised by the Assistant Registrar.

31. It was next argued by Mr. Choudhary that the petitioner has not continued for two terms as member of the Committee or the Barsinghsar Gram Sewa Sahakari Samiti because the nomenclature of Barsinghsar Gram Sewa Sahakari Samiti has now been changed to Barsinghsar Lalamdesar Gram Scwa Sahakari Samiti. This contention cannot be sustained in view of the fact that the Assistant Registrar has verified this fact that no such society by name of Barsinghsar Lalamdesar Gram Scwa Sahakari Samiti has been registered with the Registrar, Co-operative Societies, Jaipur.

32. In the result, we allow this appeal, quash the order Annexure 2 dated 16-2-1994 passed by the Assistant Registrar and set aside the judgment of the learned single Judge dated 18-3-1994. The petitioner will continue to function as Chairman of Barsinghsar Gram Scwa Sahakari Samiti as also the Chairman of the Central Co-operative Bank, Bikaner. However, the Assistant Registrar, Co-operative Societies will be free to issue him a fresh notice u/s 34(8) of the Act asking him to show cause as to why he should not be disqualified to continue as chairman of Barsinghsar Gram Sewa Sahakari Samiti and as a result thereof, as Chairman of the Central Co-operative Bunk, Bikaner and will decide the complaint of respondent No. 4 Mahen-drasingh within a period of four months from today on merits as per law, after giving an opportunity of hearing to both the parties.

33. In the facts and circumstances of this case, the parties are left to bear their own costs of this appeal.