

(2016) 01 AHC CK 0257

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 69055 of 2015

Braj Ram Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-01-2016

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 128

Citation : (2016) 2 ADJ 696 : (2016) 2 AllWC 1320 : (2016) 115 ALR 145 :
(2016) 1 UPLBEC 725

Hon'ble Judges : Ashwani Kumar Mishra, J.

Bench : Single Bench

Advocate : Dharmendra Kumar, for the Appellant; C.S.C., Kunwar Bahadur Srivastava and Sujit Kumar Rai, for the Respondent

Final Decision : Allowed

Judgement

Ashwani Kumar Mishra, J.—1. This writ petition is directed against an order passed by the Deputy Commissioner and Deputy Registrar, Co-operative U.P. Lucknow, dated 23.9.2015, whereby the order passed by the District Administrative Committee, dated 15.9.2015, has been stayed. Petitioner was initially appointed as an Accountant in the society, and was subsequently screened out to function as Bank Ex-Cadre Secretary of the society. Upon a representation made by the petitioner, the District Administrative Committee passed a resolution transferring the petitioner from the post of Secretary, Sadhan Sahkari Samiti Ltd. to the post of Managing Director, Lalitpur Kisan Sewa Sahkari Samiti. The decision was taken by the District Administrative Committee, vide its resolution No. 3 in its meeting on 4th September, 2015, and a communication pursuant to such decision of the District Administrative Committee was issued under the orders of Member Secretary of the District Administrative Committee. Respondent No. 5, who was aggrieved by the order of the District Administrative Committee, approached the Deputy Registrar, who, exercising his jurisdiction under Section 128 of the U.P. Co-operative Societies Act, 1965, has proceeded to

stay the communication issued by the Member Secretary of the District Administrative Committee, which is as sailed in this petition.

2. Learned counsel for the petitioner contends that the Deputy Registrar had no jurisdiction in the matter, inasmuch as Registrar's jurisdiction under Section 128 of the Act would be available only in respect of a resolution of a co-operative society or an order passed by an officer of a co-operative society in certain cases, and would not extend to an order of the District Administrative Committee constituted under the U.P. Primary Agricultural Co-operative Credit Societies Centralized Service Rules, 1976, particularly as such order is subject to appeal under Rule 8 (x) of 1976 Rules before the State Cadre Authority.

3. A counter-affidavit has been filed by Sri K.B. Srivastava, learned counsel for the respondent Nos. 4 and 5, and it has been contended with reference to paragraph-7 that any communication of the officer of a co-operative society is subject to exercise of jurisdiction under Section 128 of the Act, and since the communication dated 15.9.2015 was by the Member Secretary, who is an officer defined under the Act, as such, the jurisdiction under Section 128 of the Registrar was clearly available.

4. Having heard learned counsel for the parties, it would be appropriate to note relevant provisions of the Act as well as the Rules, in order to determine the controversy. Section 128 of the Act is reproduced :

"128. Registrar's power to annul resolution of a co-operative society or cancel order passed by an officer of a co-operative society in certain cases.--The Registrar may-

(i) annul any resolution passed by the Committee of Management, or the general body of any co-operative society; or

(ii) cancel any order passed by an officer of a co-operative society;

if he is of the opinion that the resolution or the order, as the case may be, is not covered by the objects of the society, or is in contravention of the provisions of this Act, the rules or the bye-laws of the society, whereupon every such resolution or order shall become void and inoperative and be deleted from the records of the society:

[Provided that, the Registrar shall, before making any order, require the Committee of Management, general body or officer of the co-operative society to reconsider the resolution, or as the case may be, the order, within such period as he may fix but which shall not be less than fifteen days, and if he deems fit may stay the operation of that resolution or the order during such period.]"

5. From the provision, contained above, it is apparent that Registrar's jurisdiction to annul resolution of a co-operative society and cancel an order passed by the co-operative society would be available, only when a resolution is passed by the Committee of Management or a general body of the co-operative

society or an order is passed by an officer of the co-operative society. The Registrar in the aforesaid two exigencies can interfere, if it is found that the decision taken is not covered by the objects of the society, and is in contravention of the provisions of the Act, Rules or Bye-laws.

6. In the facts of the present case, it is to be noticed that service conditions of the petitioner is governed by the provisions of the Rules of 1976. A cadre of Secretary has been created under the Rules, by virtue of Rule 3 of the Rules of 1976. Part-III of the Rules provides for creation of executive authorities in order to supervise and control the Members of the Centralized Service. Rule 7 contemplates creation of a State Cadre Authority, Regional Administrative Committee and District Administrative Committee. The constitution of State Cadre Authority has been provided under Rule 7(2) of the Rules of 1976, which is quoted hereinafter :

"7. (2) The State Cadre Authority shall consist of the following :

- (i) Chairman, U.P. Co-operative Bank - Ex-officio Chairman.
- (ii) A Chairman of a bank nominated by the Registrar, Co-operative Societies, U.P. - Member.
- (iii) A Chairman of a society nominated by the Registrar, Co-operative Societies, U.P. - Member.
- (iv) Additional Registrar (Banking) Co-operative Societies, U.P. - Member.
- (v) A nominee of the Secretary to Government of U.P. - Member.
- (vi) Deputy Chief Officer, Agricultural Credit Department Reserve Bank of India - Member.
- (vii) Secretary/Managing Director, U.P. Co-operative Bank - Member/Secretary."

The District Administrative Committee has been contemplated under Sub-rule (4) of Rule 7 of the Rules of 1976, which is to consist of following officers :

- "(i) Chairman or the Administrator, as the case may be, of the Bank of the District - Ex-officio Chairman.
- (ii) District Audit Officer, Co-operative Societies and Panchayats - Member.
- (iii) District Assistant Registrar, Co-operative Societies of the District - Member/Secretary."

7. In the instant case, the decision to transfer the petitioner has been taken by the District Administrative Committee, vide its resolution No. 3 in its meeting on 4th September, 2015. The order of the Member Secretary dated 15.9.2015 merely communicates the decision already taken by the District Administrative Committee. The communication vide order dated 15.9.2015 cannot be said to be an order passed by an officer of the Co-operative Society, inasmuch as it is

merely a communication of the decision taken by the District Administrative Committee. Under Rule 8(1)(x) of the Rules of 1976, an order of District Administrative Committee is subject to exercise of appellate jurisdiction by the State Cadre Authority, which is reproduced hereinafter :

"8.(1).....

(x) to hear appeals against the orders passed by the District Administrative Committee."

8. In case, any person felt aggrieved by the order of the District Administrative Committee, an appeal could have been filed before the State Cadre Authority, but no such appeal appears to have been filed. So far as the invoking of jurisdiction of Registrar under Section 128 is concerned, the same was clearly not available to respondent No. 5, inasmuch as necessary ingredients to exercise such a jurisdiction was clearly missing in the facts of the present case. The Registrar has no jurisdiction to set aside an order passed by the District Administrative Committee, while exercising his jurisdiction under Section 128 of the Act. By necessary corollary, the Registrar has also no jurisdiction to pass an order of stay against the order of the District Administrative Committee. The order dated 23rd September, 2015, exercising jurisdiction under Section 128 of the Act by the Deputy Registrar, is clearly in excess of jurisdiction, and cannot be sustained. For the reasons, aforesaid, this writ petition succeeds and is allowed. The order dated 23rd September, 2015 passed by the Deputy Commissioner, as well as consequential order passed by the Member Secretary dated 30th September, 2015, are set aside. It shall, however, be open for the respondent No. 5 to prefer an appeal, in case he feels so aggrieved by the decision of District Administrative Committee, by invoking jurisdiction under Rule 8(1)(x) of the Rules of 1976.