
(2009) 11 MP CK 0017
In the Madhya Pradesh High Court

Chandra Shekhar Sahu

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 13-11-2009

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 48A(5)

Citation : (2010) 1 MPHT 273

Hon'ble Judges : A.K. Patnaik, C.J.;Ajit Singh, J

Bench : Division Bench

Judgement

A.K. Patnaik, C.J.—The petitioner is a member of a Co-operative Society known as "Cherital Sahkari Upbhokta Bhandar, Damoh Naka, Jabalpur" and has filed this writ petition praying inter alia for direction to remove the respondent No. 5 from the post of Chairman of the District Central Co-operative Bank Limited, Jabalpur (respondent No. 4).

2. The facts relevant for disposal of this writ petition are that the respondent No. 2, Registrar Co-operative Societies, issued an election programme of the District Central Co-operative Banks in the State of Madhya Pradesh. For the elections of the District Central Co-operative Bank Ltd., Jabalpur, a list of members was issued on 10-9-2007. In the list of members, Nunsar Vrihattakar Seva Sahkari Samiti Maryadit was shown to be a member. The case of the petitioner is that Nunsar Vrihattakar Seva Sahkari Samiti Maryadit has not paid its dues to the District Central Co-operative Bank Ltd., for more than twelve months and was, therefore, a defaulter and had no right to elect its representative to the District Central Co-operative Bank Ltd., Jabalpur, and yet the Nunsar Vrihattakar Seva Sahkari Samiti Maryadit elected respondent No. 5 as its representative to the District Central Co-operative Bank Ltd., Jabalpur. The further case of the petitioner is that the respondent No. 5 was appointed twice on the post of Chairman of the District Central Cooperative Bank Ltd., Jabalpur, by orders dated 30-9-2006 and 11-10-2006 and as per the provisions of Sub-section (5) of Section 48-A of the M.P. Co-operative Societies Act, 1960 (for short "the Act"),

no person who was appointed for two consecutive terms to any specified office, can be re-elected and yet the respondent No. 5 was elected as Chairman of the District Central Co-operative Bank Ltd., Jabalpur, on 9-10-2007 and thereafter again on 7-1-2008.

3. Mr. D.K. Dixit, learned Counsel for the petitioner submitted that Section 48-A of the Act provides in Sub-section (5) that no person shall be eligible to be elected or appointed to any specified office in a society, if he has held specified office in the society for two consecutive terms or for a continuous period of eleven years, whichever is less. He submitted that respondent No. 5 was appointed as Chairman of the District Central Co-operative Bank Ltd., Jabalpur, by orders dated 30-9-2006 and 11-10-2006 of the Registrar, Co-operative Societies, Jabalpur, u/s 53 (13) of the Act, and therefore, had completed two terms in the specified office of the Chairman of the District Central Co-operative Bank Ltd., Jabalpur and was not eligible to be elected or appointed as Chairman of the District Central Co-operative Bank Ltd., Jabalpur, by virtue of Sub-section (5) of Section 48-A of the Act.

4. Mr. R.D. Jain, learned Advocate General appearing for the respondent Nos. 1 to 3, submitted that Sub-section (5) of Section 48-A of the Act has used the expression "two consecutive terms". He submitted that Sub-section (7-A) (i) of Section 49 of the Act states that the term of the committee shall be five years from the date on which first meeting of the committee is held and, therefore, "two consecutive terms" should ordinarily be construed to mean ten years. He submitted that in any case the respondent No. 5 was appointed under Sub-section (13) of Section 53 of the Act only temporarily to act as a member of the committee by the Registrar on account of supersession of the elected committee of the District Central Co-operative Bank Ltd., Jabalpur, by two orders dated 30-9-2006 and 11-10-2006 and such temporary appointment of the respondent No. 5 cannot be held to be appointments for two terms as envisaged in Sub-section (5) of Section 48-A of the Act. Mr. Ashok Tiwari, learned Counsel appearing for the respondent Nos. 4 and 5, adopted the aforesaid arguments of Mr. Jain.

5. Sub-section (5) of Section 48-A of the Act is quoted herein below:

Section 48-A. Disqualification for holding specified office.:

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(5) No person shall be eligible to be elected or appointed to any specified office in a society, and shall cease to hold his office as such, if he has, including the period of his co-option or appointment or both, held specified office in the society for two consecutive terms or for a continuous period of eleven years, whichever is less:

Provided that a person shall not be re-elected or re-appointed to such specified office till a period equal to one full term has expired.

Explanation: For the purposes of this sub-section, if any person holding a specified office mentioned in this sub-section resigns such office at any time during any term, he shall in his resignation be deemed to have completed his term of office.

It will appear from Sub-section (5) of Section 48-A of the Act quoted above that if a person has held specified office in the society "for two consecutive terms or for a continuous period of eleven years, whichever is less", is not eligible to be elected or appointed to any specified office in a society. Hence, we have to examine whether the respondent No. 5 had already been elected or appointed as Chairman of the District Central Co-operative Bank Ltd., Jabalpur, for two consecutive terms and for this reason was not eligible to be elected as Chairman of this Central Co-operative Bank for the third term.

6. The appointments of the respondent No. 5 as Chairman of the District Central Co-operative Bank Ltd., Jabalpur, by order dated 30-9-2006 and 11-10-2006 were under Sub-section (13) of Section 53 of the Act, which reads as follows:

Section 53. Supersession of committee.:

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(13) Notwithstanding anything contained in this Act, or rules made thereunder or bye-laws of society, if the committee of society ceases to function due to order of any Court or otherwise, the Registrar may appoint a person or committee of persons temporarily till the Court order is vacated or the new elections are held and the committee takes charge.

It will be clear from the language of Sub-section (13) of Section 53 of the Act that under this sub-section, the Registrar appoints a person or committee of persons temporarily till the Court order is vacated or the new elections are held and the new committee takes charge. The appointment of a person or a committee of persons by the Registrar under Sub-section (13) of Section 53 of the Act is therefore not for a term. It is a temporary appointment till the Court order is vacated or till the new elections are held and the newly elected committee takes charge. In other words, the appointment under Sub-section (13) of Section 53 is upto the time order of Court is vacated or the new elections are held and a new committee takes charge and not for a specified term. In our considered view, the period for which the respondent No. 5 acted as Chairman of the District Central Co-operative Bank Ltd., Jabalpur, pursuant to the appointments under Sub-section (13) of Section 53 of the Act by orders dated 30-9-2006 and 11-10-2006, cannot be held as appointments for two consecutive terms so as to render him ineligible to contest the elections to the post of Chairman of the District Central Co-operative Bank Ltd., Jabalpur, held on 9-10-2007 and 7-1-2008.

7. Mr. Dixit next submitted that Sub-rule (3) of Rule 45 of the Madhya Pradesh Co-operative Societies Rules, 1962 (for short "the Rules") provides that no

representative of the society shall be eligible for election as a member of the committee of Co-operative Bank, Financing Bank, Federal Society or Apex Society and shall cease to hold his office as such if the society is in or gets into default for a period exceeding twelve months in respect of any loan or loans taken by it from such Co-operative Bank, Financing Bank, Federal Society or Apex Society. He submitted that the respondent No. 5 represents the Nunsar Vrihattakar Seva Sahkari Samiti Maryadit in the District Central Co-operative Bank Ltd., Jabalpur, as will be clear from the communication dated 13-4-2007 of the Returning Officer annexed to the writ petition as Annexure P-10. He further submitted that the certificate of the District Central Co-operative Bank Ltd., Jabalpur annexed to the writ petition as Annexure P-9 would show that as on 31-3-2007 for a period of more than twelve months, Nunsar Vrihattakar Seva Sahkari Samiti Maryadit is a defaulter to the tune of Rs. Ten lakhs to the District Central Co-operative Bank Ltd., Jabalpur. He submitted that the affidavit filed by the In-charge General Manager of the District Central Co-operative Bank Ltd., Jabalpur, pursuant to the order dated 5-11-2009 of this Court, would also show that as on 24-8-2007 an amount of Rs. 97,32,501.18 was over due from Nunsar Vrihattakar Seva Sahkari Samiti Maryadit and out of this amount, only Rs. 28,68,717/- has been paid and Nunsar Vrihattakar Seva Sahkari Samiti Maryadit did not pay the full amount upto 7-1-2008. He submitted that the respondent No. 5, therefore, was not eligible to be elected as a member of the Committee of the District Central Cooperative Bank Ltd., Jabalpur and yet he was elected on 9-10-2007 and thereafter on 7-1-2008 as Chairman of the District Central Co-operative Bank Ltd., Jabalpur.

8. Mr. Ashok Tiwari, learned Counsel appearing for the respondent Nos. 4 and 5, on the other hand, submitted that in the list of members of the District Central Co-operative Bank Ltd., Jabalpur, annexed to the writ petition as Annexure P-4, Nunsar Vrihattakar Seva Sahkari Samiti Maryadit has been shown to be a member and not as a defaulter. He explained that if Nunsar Vrihattakar Seva Sahkari Samiti Maryadit was a defaulter, a cross mark would have been against the name of Nunsar Vrihattakar Seva Sahkari Samiti Maryadit in the list of members of the District Central Co-operative Bank Ltd., Jabalpur, but there is no such cross mark against the name of Nunsar Vrihattakar Seva Sahkari Samiti Maryadit. He submitted that there is a clear provision in Rule 23 (3) (j) of the Rules for a defaulter to pay his dues on account of which he has been shown as a defaulter in the list and to get the list corrected by the Returning Officer and if Nunsar Vrihattakar Seva Sahkari Samiti Maryadit had been shown as a defaulter in the list of members, it could have paid the dues. He also submitted that Section 48-AA of the Act while providing that no person shall be eligible for election as a member of the Board of Directors of a society, and shall cease to hold his office as such, if he suffers from such disqualification as may be prescribed, has made a provision in proviso (i) that the Board of Directors will give reasonable opportunity of being heard to such person before disqualifying him as a member of the Board of Directors of the Society, but no opportunity of

hearing has been given to the respondent No. 5.

9. Section 48-AA of the Act and Sub-rule (3) of Rule 45 of the Rules are quoted herein below:

Section 48-AA. Disqualification for membership of Board of Directors and for representation.- No person shall be eligible for election as a member of the Board of Directors of a society, and shall cease to hold his office as such, if he suffers from such disqualification as maybe prescribed, and no society shall elect any member as its representative to the Board of Directors of any other society or to represent the society in other society, if he suffers from such disqualification as may be prescribed:

Provided that, if a member suffers from any of the disqualifications prescribed under this section,:

(i) it shall be lawful for the Board of Directors of the society to disqualify such member where he is elected as a Director, being a member of that society, after giving him a reasonable opportunity of being heard within two months from the date of coming to the notice of the society, from holding the post,

(ii) if, the member incurs a disqualification in the higher level society, for his actions as a representative, such higher level society shall take action to disqualify him for holding the post in the higher level society, and if the society fails to take action, the Registrar shall disqualify such member from holding such post by an order in writing, after giving him reasonable opportunity of being heard.

Explanation : For the purpose of this section, the expression "disqualification" shall not include the disqualification specified in Section 50-A for election as a member of the Board of Directors or a representative of a society.

Rule 45. Disqualification for representation.:

(1) *** **

(2) *** **

(3) No representative of the society shall be eligible for election as a member of the committee of Co-operative Bank, Financing Bank, Federal Society or Apex Society and shall cease to hold his office as such if the society is or gets into default for a period exceeding twelve months in respect of any loan or loans taken by it from such Co-operative Bank, Financing Bank, Federal Society or Apex Society.

10. It will be clear from the language of Section 48-AA of the Act that a person is not eligible for election as a member of the Board of Directors of the Society, if he suffers from a disqualification as may be prescribed and no society shall elect any member as its representative to the Board of Directors of any other society or to represent the society in another society, if he suffers from such

disqualification as may be prescribed. This section further provides that if any such person has already become a member of the Board of Directors of a society, he shall cease to hold his office as member of the Board of Directors if he suffers from such disqualification as may be prescribed. The provision in the proviso (i) making it lawful for the Board of Directors of the society to disqualify a member where he is elected as a Director after giving a reasonable opportunity of being heard, is attracted only where a person is already elected as a member of the Board of Directors and the Board of Directors wants to remove such person from the Board of Directors because of a disqualification prescribed in the Rules. In the present case, the petitioner is questioning the very eligibility of respondent No. 5 to get elected as a member of the Board of Directors of the District Central Co-operative Bank Ltd., Jabalpur, on account of his disqualification prescribed in the Rules not his continuance as a member of the Board of Directors because of a disqualification after his election as a member of the Board of Directors of the District Central Co-operative Bank Ltd., Jabalpur. Therefore, proviso (i) to Section 48-AA of the Act has no application.

11. A reading of Sub-rule (3) of Rule 45 of the Rules quoted above shows that no representative of the society shall be eligible for election as a member of the committee of the Co-operative Bank, Financing Bank, Federal Society or Apex Society, if the society is in or gets into default for a period exceeding twelve months in respect of any loan or loans taken by it from such Co-operative Bank, Financing Bank, Federal Society or Apex Society. From the certificate furnished by the District Central Co-operative Bank Ltd., Jabalpur, which is annexed to the writ petition as Annexure P-9, it is clear that Nunsar Vrihattakar Seva Sahkari Samiti Maryadit which the respondent No. 5 represents is a defaulter in making payment of the dues to the tune of Rs. Ten lakhs for a period of more than twelve months. On 4-11-2009 and 5-11-2009 the Court passed orders that the Manager of the District Central Co-operative Bank Ltd., Jabalpur, will appear before this Court with records to show the extent of default on the part of Nunsar Vrihattakar Seva Sahkari Samiti Maryadit towards the District Central Co-operative Bank Ltd., Jabalpur, for a period of more than twelve months prior to 7-1-2008 and an affidavit has been filed by Mr. G.P. Khare, General Manager of the District Central Co-operative Bank Ltd., Jabalpur, which shows that out of Rs. 97,32,501.18 which was over due on 24-8-2007, Nunsar Vrihattakar Seva Sahkari Samiti Maryadit has paid only Rs. 28,68,717/- and the remaining amount was over due upto 7-1-2008. The respondent Nos. 4 and 5 have not filed any document to show that no amount was over due for a period of more than twelve months from 7-1-2008 when the election was held. In the circumstances, we hold that Nunsar Vrihattakar Seva Sahkari Samiti Maryadit was a defaulter for a period of more than twelve months from 7-1-2008 when the election was held and, therefore, its representative, namely the respondent No. 5 was not eligible for election as a member of the Committee or the Board of Directors of the District Central Co-operative Bank Ltd., Jabalpur. The fact that Nunsar Vrihattakar Seva Sahkari Samiti Maryadit was not shown as a defaulter in the list

of members cannot be a good reason to hold that the election of the respondent No. 5 was valid when the statutory provision made in Sub-rule (3) of Rule 45 of the Rules contains a clear and express mandate that no representative of the society which is in default in respect of loan from a Co-operative Bank for more than twelve months shall be eligible for election as a member of the committee of such Co-operative Bank. 12. In the result, the writ petition is allowed and the election of the respondent No. 5 to the Board of Directors or the committee of the respondent No. 4, District Central Co-operative Bank Ltd., Jabalpur, is set aside. There shall be no order as to costs.