

(1971) 02 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3242 of 1969

Chhotey Lal Misra

APPELLANT

Vs

The District Magistrate and Collector and Others

RESPONDENT

Date of Decision : 09-02-1971

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1971 All 476

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : S.S. Chandrawaria, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The petitioner is a Director of Zila Sahkari Bank Ltd., Kanpur, registered under the U. P. Co-operative Societies Act, 1965. At the meeting of the committee of management of this Society held on 24th June, 1969, the petitioner was appointed as the officiating Secretary under Rule 127 of the U. P. Co-operative Societies Rules, 1968. On or about 23rd August, 1969, the District Magistrate, Kanpur acting as the ex-officio Chairman of the Society convened a meeting of the committee of management to be held at 3.00 P. M. on 24th August, 1969 at his own official residence. The meeting was held on this date and was attended by five directors. The petitioner's case is that he along with seven other directors did not attend this meeting. At this meeting several resolutions were passed. By one resolution one Sri K. B. Khare was appointed as the Secretary of the Society. By another resolution it was resolved that Sri Gulab Chand Jain and Sri Iqbal Bahadur Srivastava were no longer directors of the Society.

2. The petitioner challenges the validity of the meeting on the following grounds:--

(i) The District Magistrate could not function as the ex-officio Chairman of the Society on 23rd and 24th August, 1969.

(ii) The convening of the meeting at the residence of the District Magistrate was illegal and as such the proceedings of the meeting were void.

(iii) The Petitioner's appointment as Officiating Secretary could not be terminated prior to six months from the date of the appointment.

(iv) The resolution that two of the directors ceased to be so was unlawful.

In Civil Misc. Writ No. 2727 of 1969 (All) (Rajendra Singh v. Registrar) decided on 7-10-1969, I held that the District Magistrate could validly continue to function as the Chairman so long as a fresh committee of management is not constituted. In the present case, it has not been established that a fresh committee of management had been constituted till 24th August, 1969. Hence the District Magistrate could validly function as the Chairman.

3. The meeting held on 24th August, 1969, took place at the office of the District Magistrate which admittedly meant his own residence. Rule 95 provides that the meeting of the committee of management of a co-operative society shall be held only at the headquarters of the society. Clause (n) of Rule 2 defines "the District Co-operative Bank" to mean a central co-operative bank having its head-office at the headquarters of a district. In view of this definition it was alleged that the head-office of a society can be at the headquarters of the district in which a co-operative bank is situate. The respondent-Bank is a bank situate at Kanpur. Thus, according to the learned counsel for the respondents, the headquarters of the society was Kanpur. I am unable to agree. The definition of a District Co-operative Bank has been given in order to distinguish inter se the various banks situate in the various districts of the State. Each District Co-operative Bank was to be established by the name of the headquarters of the district from the other similar co-operative banks but Rule 95 requires the meeting to be held at the headquarters of the society. The headquarters of the society is something entirely different than the headquarters of a district. This is made clear by Rule 39. Under it, every co-operative society should communicate in writing to the Registrar its complete postal address. The address so communicated is to mention the name of the district and also the village, town, city and municipal wards or mohalla, street, house number and postal circle as may be necessary for making the address complete in all respects. A change of address is to be similarly communicated to the Registrar. This address is registered by the Registrar. This would show that the headquarters of the society within the meaning of Rule 95 would be the registered address under Rule 35. The petitioner has stated that the head-office of the respondent society was situate at 43/32 Chowk Sarafa, Kanpur, vide, paragraph 1 of the petition. This has been admitted in the counter affidavit. So this place was the headquarters of the society. The residence of the District Magistrate could not be deemed to be the headquarters of the society. The meeting held at the official residence of the

District Magistrate was not regular.

4. The meeting was attended by five directors. Under the byelaws of the society the quorum for a meeting is five. In that respect the meeting was regular. The proceedings of the meeting held on 24th August, 1969, were confirmed by another meeting of the committee of management held on 3rd October, 1969. At this meeting 9 directors were present. They unanimously confirmed the proceedings of the previous meeting held on 24th August, 1969. It is thus apparent that the proceedings of the meeting held on 24th August, 1969 were ratified by the board of directors at a subsequent meeting whose validity has not been challenged in the present writ petition. Thus, the ratification has been by a validly constituted meeting of the committee of management. In this situation, the question is whether the irregularity in convening the meeting of the Board at a place other than the headquarters of the society was fatal to its validity.

5. In my opinion, it would not be. The meeting was in other respects regular and valid. It was convened by a person authorised to do so. It was attended by the requisite number of directors. Its proceedings were confirmed by a large number of directors. In fact, nine directors who confirmed the proceedings, constituted a majority of the committee of management. There is no allegation that the meeting was convened at the official residence of the District Magistrate with any ulterior object.

6. The petitioner has alleged that on receipt of the notice on 23rd August, 1969, some members of the board of directors protested and represented to the District Magistrate that in any case under the rules and the byelaws the meeting could not be held at a place other than the head-office of the bank. They requested that the time and venue of the meeting should be changed. It is to be noticed that this allegation made in para 13 of the petition has been sworn on the basis of perusal of records. I fail to appreciate which record may tell the petitioner this fact. Further, the basis of swearing of this clause would show that there is some record from which this fact can be asserted, but the petitioner has not filed or identified any such record. On the other hand, it has been stated in the counter affidavit that only one objection was received and that was by Sri Gulab Chand Jain. He only had an objection to the time of the meeting. He suggested that the time be postponed from 3 p. m. to 4 p. m. No other objection was received from any other director. A copy of the written objection filed by Sri Gulab Chand Jain has been annexed. It shows that no objection about venue of the meeting was taken by him. In this situation, it is difficult to agree that the petitioner has established as a fact that he raised any such objection. No director seems to have raised any objection about the venue of the meeting prior to its being held. If such an objection had been taken, the irregularity would have been immediately cured by holding the meeting at the headquarters of the society, which was in the same town.

7. In this context it has to be seen whether the irregularity in holding the meeting at the wrong place is fatal to the validity of the resolutions passed,

therein. In *Browne v. La Trinidad* 1887-37 Ch D 1 a director could be removed by special resolution passed at a general meeting. The director, who was proposed to be removed, was given notice of the meeting of the board of directors only ten minutes before the time fixed for holding it. At that meeting the board resolved to convene a general meeting for, inter alia, removing B from the office of director. B initiated proceedings in the court for preventing the holding of the general meeting four days before the date fixed for the meeting. Till then he had made no complaint of the short notice of the meeting of the board. The ground upon which he sought an injunction was that the board which summoned the general meeting was not duly constituted as B had not received proper notice and could not attend. It was held that assuming the board meeting to be so far irregular that the plaintiff might have objected and required another to be summoned, the general meeting, having been summoned, in all other respects regularly, was competent to act. The substance of the view taken by Cotton LJ and Lindley LJ was that the general meeting had acted regularly. It had resolved to remove B from the post of a director by the requisite majority. It had been convened by proper authority. The plaintiff had tried to raise an objection to the shortness of the notice of the board meeting. He did not raise any objection at the appropriate time to enable others to cure the defect. He was hence not entitled to the injunction. The same principle would, I think, govern the present case. Remedy under Article 226 of the Constitution is discretionary. It is governed by equitable considerations. When the petitioner did not raise the necessary objection at the appropriate time, so that the grievance could have been met the defect cured, this conduct precludes him from asking for the quashing of the proceedings simply on the basis of a technical irregularity. I would hence disallow this point.

8. The next submission was that the petitioner was appointed as Secretary under Rule 127. His services could not be terminated for six months. Under Rule 127 (2) the officiating Secretary holds office for a period not exceeding six months or until the appointment of a Secretary under Rule 125 or 126, whichever is earlier. So if the Secretary is appointed earlier than six months, the term of the officiating Secretary comes to an end. There is no prohibition from appointing a Secretary earlier than six months of the date on which an officiating Secretary is appointed. At the meeting held on 24th August, 1969 it was resolved to appoint Sri K. B. Khare as Secretary. I find no illegality in the resolution appointing Sri K. B. Khare as Secretary.

9. The last point urged by the learned counsel was that the view taken " by the board that two of the directors, viz., Sri Gulab Chand Jain and Sri Iqbal Bahadur Srivastava were no longer directors was in law erroneous. It is unnecessary to go into the merits of this submission. If this resolution was illegal it was open to the aggrieved directors to have taken recourse to appropriate proceedings. The petitioner does not claim to be the authorised agent of those directors. This point need not be entertained at this instance.

10. In the result, the petition fails and is accordingly dismissed with costs.