
(2009) 04 AHC CK 0566

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 21285 of 2009

Committee of Management, Cooperative Cane Development Society, Seohara, District Bijnore and another APPELLANT

Vs

State of U.P. and others RESPONDENT

Date of Decision : 21-04-2009

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 35(2), 98(e)

Citation : (2009) 04 AHC CK 0566

Hon'ble Judges : Arun Tandon, J

Final Decision : Dismissed

Judgement

Arun Tandon, J.—Heard learned Counsel for the petitioners, Sri Mansoor Ahmad, learned Counsel for the respondent Nos. 2 and 6 and learned Standing Counsel for respondent Nos. 1, 3 to 5.

2. No notice is being issued to private respondent in view of the order proposed to be passed today.

3. Petitioner before this Court is the Committee of Management of Cane Development Society, Bijnore. Feeling aggrieved by the order passed by the Cane Commissioner/Registrar dated 27th November, 2008 under Section 35(2), of the Cooperative Societies Act, 1995 (hereinafter referred to as the "Act, 1965") whereby the petitionerCommittee of Management was suspended pending enquiry into the allegations, petitioner filed Writ Petition No. 282 of 2009 before this Court. The writ petition was dismissed vide judgment and order dated 9th February, 2009 after recording that against the order of suppression, Committee of Management can file an appeal under Section 98(e) of the Act, 1965. The Division Bench of this Court observed that petitioner may seek his alternative remedy.

4. Petitioner filed an appeal under Section 98(e) of Act, 1965 before the U.P. Cooperative Tribunal, Lucknow. The Cooperative Tribunal by means of the order

dated 23rd March, 2009 has rejected the appeal filed by the petitioners Committee of Management on the ground that same is legally not maintainable, on the ground that against the order of suspension of the Committee of Management pending proceedings for suspension no appeal under Section 98(e) of Act, 1965 has been provided for. This order of the Tribunal is being challenged by means of the present writ petition.

5. Learned Counsel for the petitioner contends that since the Division Bench of this Court in the earlier writ petition filed by the petitioner has held that an appeal under Section 98(e) of Act, 1965 was maintainable, the Tribunal was under legal obligation to entertain the appeal and decide the same on merits.

6. The contention raised on behalf of the petitioner is opposed by learned Counsel for respondent Nos. 2 and 6 and the order of the Tribunal is stated to be correct.

7. I have considered the submissions made by the learned Counsel for the parties and have gone through the records of the present writ petition.

8. The Tribunal under the impugned order with reference to the provisions of Section 98(e) of Act, 1965 has rightly held that an appeal under Section 98(e) is maintainable only against a final order of supersession of the Committee of Management. The conclusion recorded by the Tribunal to that extent is unassailable.

9. For appreciating the controversy raised in the present writ petition, it would be worthwhile to reproduce Section 98(e) of Act, 1965, which reads as follows :

"98. Appeal against the awards, orders and decision. (1).....

(e) an order of the Registrar superseding the Committee of Management of a cooperative Society under Section 35;

10. It is settled law that right of appeal is a creation of Statute and therefore, unless and until Statute provides for an appeal, no authority has any jurisdiction to sit in appeal against an order passed, further no order of this Court can confer a jurisdiction of appeal not provided under the Statute. In such circumstances this Courts held that Tribunal is legally justified in recording a finding that in the facts of the case appeal is not provided for and has, therefore, rightly refused to entertain the appeal under Section 98 (e) of Act, 1965.

11. So far as the order passed by the Division Bench of this Court dated 9th February, 2009 is concerned, it may be pointed out that the Division Bench of the Hon"ble High Court has recorded that petitionerCommittee of Management has been superseded and it is in this background that the Division Bench directed that an appeal under Section 98(e) has to be preferred.

12. In the facts of the present case, it is admitted on record that no final orders of suppression of the Committee of Management under Section 98(e) of Act, 1965 has been passed till date by the Registrar of the Cooperative Cane Society,

it has only been placed under suspension pending enquiry/final orders of supersession made. The order which was impugned in appeal was an order of suspension passed under Section 35(2) of Act, 1965 pending proceedings of supersession as contemplated by Section 35(1) of Act, 1965. Therefore, Tribunal has rightly recorded that order had been obtained from the Division Bench of this Court without disclosing the full and complete facts.

13. I am of the considered opinion that the impugned order passed by the Tribunal cannot be said to be illegal in any manner. The Committee of Management has only been placed under suspension in the facts of the and final order of supersession has been after enquiry, appeal under Section 98(e) against such an order is not maintainable. Petitioner, if so advised, is at liberty to make an appropriate application before the Division Bench of this Court for modification/clarification of the order 9th February, 2009 passed in his earlier writ petition.

14. The writ petition is accordingly dismissed subject to the observations made above. Writ petition dismissed.