

(2007) 08 UK CK 0015

In the Uttarakhand High Court

Case No : Writ Petition No. 477 of 2007 (M/S)

Dhirendra Singh Rawat

APPELLANT

Vs

District Magistrate, Udham Singh Nagar and Others

RESPONDENT

Date of Decision : 02-08-2007

Acts Referred:

General Clauses Act, 1897 — Section 9

Limitation Act, 1963 — Section 12, 12(1)

Representation of the People Act, 1951 — Section 110(3), 47A

Uttaranchal Co-operative Societies Rules, 2004 — Rule 471, 478, 479, 481(1), 482(2)

Citation : (2007) 3 UC 1938

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : S.K. Mandal, for the Appellant; Learned Standing Counsel for the State-Respondents No. 1, 2 and 5, Manoj Tiwari and Alok Singh a/b., Gajendra Tripathi, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Verma, J.—This writ petition has been preferred for issue a writ, order or direction in the nature of certiorari quashing the order dated 12-5-2007 passed by Respondent No. 3 (Annexure No. 5) whereby no confidence motion was passed against the Petitioner by members of Gularbhoj Dirghakar Bahuuddaishiya Sahkari Samiti, i.e. Respondent No. 3 society and the Respondent No. 4 was elected as chairman of the society.

2. The impugned order has been assailed mainly on the ground that the notice for no confidence motion was presented before the District Magistrate, i.e. Respondent No. 1, on 12-4-2007 and the meeting of no confidence motion was held on 12-5-2007 after expiry of period of 30 days from the date of receipt of the notice and thus, the meeting is null and void.

3. Learned Counsel for the Petitioner has submitted that the mandatory provision of Rule 481 (1) of the Uttaranchal Cooperative Society Rules, 2004 (for short the

Rules) has been violated.

4. In para No. 13 of the writ petition it has been contended that on 29-3-2007 the District Assistant Registrar Cooperative Society Uttarakhand passed an order by which the name of the nominated members have been withdrawn and on 6-3-2007 a condolence meeting was held in the Society due to sudden death of Sri Maan Singh the members of Board of Director which shows the vacancy of two members arose on 6-3-2007 and 24-3-2007. True copies of the minutes of the meeting dated 6-3-2007 and 29-3-2007 have been annexed as Annexure No. 6 with the writ petition.

5. It has been stated in paragraph No. 14 of the writ petition that according to Rule 471 of the Rules the committee of management has to fill-up the vacancy by co-option within 30 days but the society has failed to do so and after expiry of 30 days, the Registrar Cooperative Society also not filled up the same and not followed Rule 471, hence the requisite quorum of 2/3rd members were not present to pass resolution of no confidence motion, therefore, the resolution passed in the meeting itself is null and void.

6. Counter Affidavit has been filed by the Respondent Nos. 3 and 4 and Rejoinder Affidavit was also filed by the Petitioner in reply thereto.

7. I have heard learned Counsel for the parties and perused the averments made in the writ petition and the counter affidavit as well as the rejoinder affidavit.

8. In the present writ petition, the following two points are to be answered:

1. Whether the meeting of no confidence motion was held in violation of Rule 481 (1) of the Rules?

2. Whether in the no confidence motion, the total number of the members of the Society constitute the Quorum for the purpose of no confidence or the existing members having right to vote constitute the quorum for no confidence motion?

9. Rule 481 of the Rules reads as under:

481. (1) On receipt of the notice of no-confidence as provided in Rules 478 and 479, the specified authority shall fix such time, date and place as he may consider suitable for holding a meeting for the purpose of consideration of the proposed no confidence motion:

Provided that, such meeting shall be held within 30 days of the receipt of the notice.

(2) The notice for meeting under Sub-rule (1), shall also provide that in the event of the no-confidence motion being duly carried, election of the new Chairman or Vice-Chairman, as the case may, shall also be held in the same meeting.

10. Learned Counsel for the Petitioner has vehemently submitted that Rule 481 (1) of the Rules provides that on receipt of notice of no confidence as provided in

Rules 478 and 479, the specified authority shall fix such time, date and place as he may consider suitable for holding the meeting for the proposed no confidence motion provided that such meeting be held within 30 days of the receipt of notice.

11. It was further urged that the meeting of no confidence motion was held on 12-5-2007 and according to the Petitioner, the meeting was held after 30 days. It has been contended that the date of receipt of the notice shall be included for the purposes of counting the limitation of within thirty days. According to the learned Counsel for the Petitioner, while interpreting Statute, it is not open to add to the words of the statute or to read more in the words than is meant, for that would be legislating and not interpreting a legislation. In support of his contention, learned Counsel for the Petitioner has relied upon the Full Bench judgment of Allahabad High Court in the case of Mahesh Chandra and Another Vs. Tara Chand Modi, . Relevant extract of paragraph No. 82 reads as under:

(82) It was argued that unless the President had the copy of the motion which was intended to be moved by the members who had given written notice of their intention, the President could not be deemed to know that really a motion of non-confidence had been properly moved and passed against him, and further, that he could not have proper material in his hands on which he could make a representation to the State Government to dissolve the Board- a power or privilege which has been vested in the President by law.

This argument to my mind, is without force, for a copy of the motion would not include the reasons for the motion or the arguments in support of the motion. A motion is merely a bald proposition. That bald proposition was communicated to the President in this particular case; he also had a communication of the minutes of the meeting and the result of the voting. So that, he had all that material which, according to the view of the legislature, was deemed sufficient to enable him to make a representation if he chose to do so. It is not open to add to the words of the statute or to read more in the words than is meant, for that would be legislating and not interpreting a legislation.

12. Learned Counsel for the Petitioner has further relied upon the Division Bench judgment of Allahabad High Court in the case of Satya Prakash Mani and Ors. v. State of U.P. and others [(2005) 2 UPLBEC 1883]. In that case Point No. 5 was framed whether convening the meeting within 30 days is mandatory or not. In paragraph No. 37, the following observations were made:

37. There is dispute between the parties whether the provision provided for holding of a meeting within 30 days is mandatory or not. The Counsel for Ms. Jaiswal has cited the Chhatrapal case and Girish Chandra Sharma V. District Magistrate, Aligarh, 1992 All CJ 44, for the preposition that the meeting has to be held within time prescribed under the statute, otherwise it is illegal.

13. The case of Satya Prakash Mani (supra) is of no avail to the Petitioner, because the Division Bench has not answered the Point No. 5 framed in the case.

14. In reply, learned Senior Advocate Sri Alok Singh appearing for the Respondent No. 4 has submitted that the interpretation of the word "of be treated "from" and the first day has to be excluded for the purposes of counting 30 days as per Section 9 of the General Clauses Act and the principle laid down by Section 12(1) of the Limitation Act. In support of his contention, learned Counsel has relied upon the Division Bench judgment of Allahabad High Court in the case of Kashi Nath Pandey Vs. Shibban Lal Saxena and Others, wherein the interpretation of the words "of and "from" was made by the High Court. The Division Bench observed:

There would, of course, have been no difficulty at all if, in Section 110(3)(c) of the Representation of the People Act, the word used had been "from" instead of the word "of. Had the language been that the application for substitution had to be presented within 14 days "from" such date, no argument could at all have been raised as Section 9 of the Central General Clauses Act would have applied under which the day of publication would have been excluded. A slight confusion has arisen because the Legislature used the word "of instead of the word "from". However, we have also to take into account the principle laid down in Section 12(1) of the Limitation Act. The principle contained in Section 12(1) is that "in computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded". u/s 110(3) (c) of the Representation of the People Act the period of 14 days has to be computed from the date of publication of the notice of withdrawal even though the word "from" is not used and the word "of is used.

15. Subsequently, Division Bench of the Allahabad High Court in the case of Ram Gopal Gupta Member Municipal Board V. State of U.P. and others [1969 A.L.J 231], following the earlier judgment in the case of Kasi Nath (supra) has observed in the last paragraph at page 242 of the judgment as under:

It was then urged for the Respondents that in the present the President received the communication of the passing of the no confidence motion on 20th August, 1968. His representation to supersede the Board was served on the District Magistrate on 23rd August, 1968, that is to say on the fourth day. Section 47-A requires the President to represent to the State Government within three days of the receipt of such a communication. It was urged that the word used is "of and not "from". Section 9 of the Central General Clauses Act would hence not apply, and the date of receipt of communication could not be excluded in computing the period of three days.

16. It was held by the Division Bench that "even though the word "of has been used in Section 47-A, the date of receipt of the communication will have to be excluded. If 20th August, 1968, is excluded, the representation made on 23rd August, 1968, was within the requisite three days."

17. I have perused the notice issued by the Collector Udham Singh Nagar. The notice was issued on 12-4-2007 fixing 12-5-2007 for no confidence motion.

18. The Full Bench decision of the Allahabad High Court reported in Mahesh Chandra and Another Vs. Tara Chand Modi, relied upon by the Petitioner is regarding interpretation of statute. The ratio of the judgment cannot be disputed but the point involved in the present writ petition is distinct. In the case at hand, the interpretation of the words "of and "from" has to be seen, i.e. whether the day of receipt of the notice be included or excluded for the purposes of counting of period of 30 days for convening the meeting of no confidence motion. The case-law relied upon by the Petitioner is of no help to him.

19. I have perused the Section 9 of the General Clauses Act and Section 12 of the Limitation Act. In my view the word "of as has been used in Rule 481(1) of the Rules framed under the Act should be treated as the word "from" and the first day of the receipt of the notice of no confidence motion shall be excluded for the purposes of limitation for counting 30 days for the said motion. I stand fortified in my view by the law laid down by the Division Bench of the Allahabad High Court in the case of KashiNath Pandey (supra), which was subsequently followed in the case of Ram Gopal Gupta, Member Municipal Board (supra) by the Allahabad High Court.

20. The meeting of no confidence motion was held on 12-5-2007 and if the first day of the receipt of notice, i.e. 12-4-2007 is excluded, then it is evident that the meeting was held within the prescribed period i.e. within thirty days of the receipt of notice. The contention of the learned Counsel for the Petitioner that the first day be included is not tenable and the same cannot be accepted. I therefore hold that the meeting of no confidence motion was held within the period of 30 days as prescribed under the law. Point No. 1 is answered accordingly.

21. So far as the second point is concerned, Rule 483 provided that "the resolution for no-confidence shall be deemed to be carried, if passed by at least the two third of the members present having voting right." It is not disputed that on 12-5-2007 as many as five members having voting right out of 7 members had participated in the no confidence motion. There has been vacancy of two Members because of death of one member and the other for cancellation of nomination of the nominated Member by the government.

22. Learned Counsel for the Petitioner has further relied upon Sub-rule (2) of Rule 482 of the said Rules. Sub-rule (2) of Rule 482 provides that "the quorum for such a meeting of the Committee of Management shall be more than two third of the total number of Members of the Committee having voting right." The argument of the learned Counsel for the Petitioner is that the strength of the Members of the Society is nine and only 5 members had participated in the voting. It is also contended that the vacancy should have been filled up by the Government within 30 days prior to the date of no confidence meeting. For the purposes of no confidence motion, the strength of the existing Members of the Society has to be seen and not the total strength. The argument that the total strength of the Members including the unfilled vacancy be considered for the purposes of no confidence motion cannot be accepted in view of the unequivocal

provisions of the above Rules. It is not disputed that on the date of meeting, there was total strength of 7 Members of the Society having voting right, out of which 5 Members participated in the no confidence motion. Thus, the requirement of Sub-rule (2) of Rule 482 of the said Rules have been fully complied with and the quorum was not wanting in the said no confidence motion. Point No. 2 is answered accordingly.

23. In the no confidence motion out of 7 members 5 members having voting right have participated, i.e. more than 2/3rd Members. Therefore, both the contentions of the learned Counsel for the Petitioner that the meeting of no confidence motion was not held within the prescribed period of 30 days and that there was lack of quorum of the Members in the no confidence motion fall to the ground.

24. No other point was argued or pressed by the learned Counsel for the Petitioner.

25. In view of the aforementioned discussion made in foregoing paragraphs, the writ petition is devoid of merit and is liable to be dismissed ought right.

26. The writ petition is dismissed. Costs easy.

27. Interim order dated 23-05-2007 is vacated.

28. All applications stand disposed of.