
(1998) 02 AHC CK 0008
In the Allahabad High Court
Case No : C.M.W.P. No. 28531 of 1997

Harendra Singh

APPELLANT

Vs

State of U. P. and others

RESPONDENT

Date of Decision : 18-02-1998

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 87(A)

Citation : AIR 1998 All 308 : (1998) 2 AWC 1432 : (1998) 2 UPLBEC 857

Hon'ble Judges : Palok Basu, J;D.K. Seth, J

Bench : Division Bench

Advocate : H.N. Singh and Anil Kumar Singh, for the Appellant; V.K. Shukla and S.C., for the Respondent

Judgement

D.K. Seth, J.—Notice dated 26.7.1997 issued by the District Magistrate fixing the date of meeting on 22.9.1997 for carrying on a motion of no confidence against the Chairman of Sahkari Ganna Vikash Samiti Ltd., Syana, district Bulandshahr pursuant to the notice of no-confidence served by the members of the Committee of Management on 27.2.1996, is the subject-matter of challenge in the present writ petition.

2. The said challenge is based on the facts that a notice of no-confidence was submitted to the District Magistrate on 27.2.1996. The ultimate meeting did not materialise till the issuance of the notice dated 26.7.1997 because of various intervening reasons. In a civil suit being Original Suit No. 440 of 1996, an injunction was granted restraining the holding of the meeting. Subsequently, a fresh notice of meeting was issued on 7.11.1996. The said notice was ultimately set aside by the civil court by an order dated 6.12.1996. On appeal, the said order was set aside and the appellate court had given liberty to issue fresh notice by an order dated 21.2.1997. Admittedly, the meeting dated 2.9.1997 has been held and the no-confidence has been carried out by majority.

3. Shri H. N. Singh, learned counsel for the petitioner has, however, challenged the said notice dated 26.7.1997 on various grounds for quashing of the same.

Though after the writ petition was affirmed, the resolution has been carried against the petitioner but no amendment to that effect has been sought for. Mr. Singh, however, has confined his argument in the challenge of the notice dated 26.7.1997 itself.

4. The contention of Mr. Singh can be summarised in two broad aspects. The first aspect is that Rules 456 to 460 of the U. P. Co-operative Societies Rules, 1968 (hereinafter referred to as the said Rule) are ultra vires. The other aspect is that notice dated 26.7.1997 cannot be issued on the basis of no-confidence motion served on 27.2.1996 on account of its being stale.

5. The first point again was challenged on two grounds, namely, that the Rules are contrary and are opposed to the provisions contained in Section 38 of the U. P. Co-operative Societies Act, 1965 (hereinafter referred to as the said Act) and is in conflict with Section 27 thereof. The other contention raised by him is that the said Rules have been framed beyond the scope of Section 130 of the said Act inasmuch as while legislating the Rule through delegated legislation by the Executives, it cannot travel beyond the scope of delegation. In other words. Section 130 never empowered the Executive to legislate Rules relating to removal of a Chairman through no-confidence.

6. Mr. Singh elaborated his argument and had led us through various provisions of the Act and Rules and had also cited few decisions in support of his contention and has sought to distinguish the decision in the case of Sri Narain Sachan v. State of U. P. 1980 UPLBEC 375 and Ajay Singh v. State of U. P. and others 1981 UPLBEC 286. He contended that the said decisions have not considered the grounds on which he is challenging the vires of the said Rule now. According to him, since the tenure of a Chairman has been prescribed to be co-terminus with the cessation of membership of the Committee of Management, therefore, he cannot be removed by means of a Procedure never contemplated in the Act.

7. Shri V. K. Shukla, learned counsel for respondents on the other hand has contended that the vires of the said Rules have been upheld by this Court in Division Bench in the case of Sri Narain Sachan (supra) and Ajay Singh (supra). According to him, all these points were gone in the said two judgments, therefore, it is no more open to the petitioner to assail the vires again.

8. Shri Virendra Kumar, learned standing counsel appearing for respondent Nos. 1 to 4, adopted the argument of Shri V. K. Shukla.

9. We have heard all the learned counsel at length.

10. A scanning of the argument of Mr. Singh shows that Mr. Singh had argued that the Committee of Management has no right to remove its Chairman through no-confidence motion in the absence of any specific provisions in the said Act. A Chairman can only be removed u/s 38 of the Act on account of certain disqualification and not otherwise. The rule-making power conferred u/s 130 of the Act has never delegated any power to enact Rules with regard to removal

through no-confidence by reason of the specific expression used in clause (v) and clause (xii) of sub-section (2) thereof which is conspicuously silent about removal through no-confidence and as such those Rules are beyond the rule-making power conferred by Section 130 of the said Act. According to him, power to elect does not include power to remove. The question here is not a natural right but a statutory right which is to be tested strictly within the scope and ambit of the statute which confers the right. He also contends that Rule 452 having provided with the tenure of a Chairman being co-terminus with the membership, he cannot be removed otherwise than as provided in the statute namely Section 38. Therefore, the said rules are ultra vires.

11. In order to appreciate the said contention, it would be necessary to examine the decisions in the case of Sri Narain Sachan (*supra*) and Ajay Singh (*supra*).

A reference to paragraphs 3 and 4 of the decision in that of Sri Narain Sachan (*supra*) makes the position clear. In the said case, Rules 455 to 460 of the said Rule were challenged as ultra vires and beyond the scope of rule-making power provided in the Act. The basic contention raised in the said case was that since Section 38 of the Act provides for removal of a Chairman in a particular manner, it was not open to provide for removal of the Chairman in any other manner by means of subordinate legislation. The said contention was repelled with the observation that the scope of Section 38 is altogether different with regard to the removal of the Chairman from those of Rules 455 to 460. Inasmuch as Section 38 contemplates removal by way of penal action whereas the said Rules contemplates removal by loss of confidence. The contention was met in the said decision through the observation that Section 4 of the said Act allows registration of a Co-operative Society only when it is established in accordance with the co-operative principles with the object of facilitating the operations of such a society ensuring promotion of economic interests of its members. The co-operative Principles have been explained in the Explanation to Section 4 in clause (e) as "democratic constitution of the society". The said decision proceeds to hold that a co-operative society can be registered under the Act only after it has a democratic constitution. A democratic constitution must primarily provide that the office-bearers should be elected by a majority and an office-bearer cannot be permitted to continue if he loses the confidence of the majority. Before registering a society, according to Section 7 of the Act, the Registrar has to satisfy himself from the bye-laws of the society submitted before him in terms of Section 6 (2) of the said Act that the proposed society conforms to Section 4 of the Act. Thus if by means of bye-law, the society makes provision for removal of its office-bearers by means of no-confidence, it could not be said beyond its power. If it is so, then it cannot be said while permitting framing of Rules u/s 130, the State Government is not empowered to do so. Particularly when the rules are framed for carrying out the purpose of the Act. Then again sub-section (2) of the said Act provides framing of rules in particular and without prejudice to the generality of the power under sub-section (1) even in respect of matters for which Co-operative Society may make a bye-law. Thus it was held that the said

rules have been framed in conformity with the purpose of the Act and the democratic constitution.

12. In the case of Ajay Singh (*supra*), the question that fell for decision was whether Rule 455 to 460 travels beyond the prescribed limit of the Act and as such are invalid. While meeting the said question, the Division Bench has observed that clause (v) of sub-section (2) provides constitution of Committee of Management as provided in Section 29 of the Act and thus it lays down in the manner in accordance with which a Co-operative Society has to function and as such is not beyond the scope of the Act. The contention that the Rules 455 to 465 are in conflict with Section 27 was found to be unsound on the ground that the Rules 455 to 465 do not at all concern themselves with the removal of a person from membership. It is only a removal from the post of an office-bearer despite which the person continues to remain a member and thus the object and purpose of Section 27 is different. That these Rules 455 to 465 have been enacted for carrying out the purpose of society was upheld in the said decision having placed reliance on the Full Bench decision of this Court in the case of *Dr. Shamshuddin v. Dr. (Smt.) Zalbunnissa* 1979 (5) ALR 327 it was held that the right to elect includes right to remove which is inherent in the system itself. In order to effectuate the object and purpose of the Act it was well within the power of the State Government to make those rules relating to no-confidence which are in effect matters relating to the constitution of the Committee of Management. If the Chairman loses confidence he cannot continue to function.

13. Thus, an examination of the said decisions clearly indicate that almost all aspects as have been raised by Mr. Singh have been decided. Then again even if one or other ground of attack has not been considered, the same does not envisage reconsideration of the said decision. The Rules so framed are not *ultra vires* and are well within the legislative power of the State Government conferred by it u/s 130 of the said Act. It is no more open to challenge the same on the ground that one or other ground of attack were absent or have not been dealt with or lost sight of in the decision.

14. Then again clause (v) of Section 130 (2) of the Act refers to constitution of the Committee of Management. Section 29 provides vesting of the Management of a Co-operative Society in a Committee of Management constituted in accordance with the Act. Rules and bye-laws. The Committee of Management is admittedly a body which is entrusted with the management of Co-operative Society. So long the Committee continues, it remains constituted. The constitution of Committee of Management does not come to an end with the election of the office-bearers. It remains constituted till its tenure is over. Such constitution is to be conformed to the democratic principles as contemplated in Section 4. Thus, the expressions constitution used in clause (v) of Section 130 (2) is of wide amplitude to contemplate all exigencies for democratic functioning of a democratic body. It would be preposterous to conceive that the Chairman would continue through the whole tenure even if he loses the confidence of the

majority of the office-bearers. Inasmuch as in such event, it would not be able to function. The Committee functions in a democratic manner which resolves, in case if not unanimous, through majority. The committee is constituted to carry on the management. If the Chairman loses confidence, the committee cannot function. The purpose of constitution of committee would be frustrated. The object of constitution of committee is for the purpose of functioning and the function is to manage the Co-operative Society. Then again clause (xii) of Section 130 (2) empowers the State Government to frame rules with regard to election of Chairman. Election include all incidence related to election. Removal of the Chairman is an incidence of election of office-bearer. I does not stand on a separate footing.

15. Similar question fell for consideration though in a different statute, namely, U. P. Municipalities Act, 1916 before the Apex Court in the case of Mohan Lal Tripathi Vs. District Magistrate, Rae Bareilly and others, wherein Section 87 (A), sub-section (2) of the said Act conferring right to move no-confidence was challenged as ultra vires. In the said case, it was held that the provision for removal did not militate against the concept of democracy. Recalling of an elected representative in accordance with the statutes cannot be assailed or abstract notion of democracy. An elected representative is accountable to its electorate. This is the inherent philosophy in the policy of recalling. Though the President of the Municipality is elected directly by the electorate yet it was held that the right of the members of the Board to remove such an elected President is in conformity with the philosophy referred to above. Inasmuch as the members of the Board represents electorate and the electorate was acting through their representatives, therefore, such a provision did not violate the spirit or purpose of recall of the elected representative.

16. The contention of Mr. Singh also cannot be sustained in view of the fact that such a situation cannot be conceived simply because of the fact that the provision for removal is absent in the Act and has been sought to be supplemented or supplanted by the Rules. Inasmuch as all enactments relating to local bodies provide for similar provision, may be in the Act itself. The Cooperative Society does not stand on a different footing. It is also a local body separately constituted on the principle of democratic process and purpose. The concept of removal is nothing new to such local bodies and is a well-known concept upheld to be consistent with the philosophy of democracy. The right claimed by the petitioner is a right flowing from the statute. It is neither a fundamental right nor a legal right.

17. In the case of Jyoti Basu and others v. Debi Ghosal and others 1962 ALJ 113, the Apex Court has held that a right to elect is neither fundamental right nor a legal right. It is pure and simply a statutory right so is the right to be elected. Such rights are, therefore, subject to statutory limitation. Therefore, it cannot claim any other right on any other ground except that emanates from the statute itself.

18. The contention of Mr. Singh that the power to create includes power to destroy cannot be applied in case when the creation is under the statute and such statute does not provide for destruction relying on the decision in the case of Arun Kumar Bose Vs. Mohd. Furkan Ansari and Others, , does not help him in the context of the present case. Inasmuch as in the said case, a limitation was provided about cancellation. A resolution to remove before the expiry of six months from the date of defeat of it could not be resolved because such destruction was prohibited by the statute. In the said case, such passing of no-confidence or removal of Vice-President, if not envisaged in the Act. could not be passed at all. But here in the present case, the Act itself postulate providing of provisions for constitution of committee according to the provisions of the Act, Rules and the bye-laws. The decisions in the case of Arun Kumar Bose Vs. Mohd. Furkan Ansari and Others, , which is altogether on different point and Mohan Lal Tripathi (supra) do not help Mr. Singh. Similarly the contention that the Rules 455 to 465 were enacted in excess of delegated legislation does not stand to reason as discussed above. The decisions cited by him in support of such contention that any legislation in excess of the power conferred is bad cannot be attracted in the present case since it has been held that the said rules have been framed within the power conferred through delegated legislation. Therefore, it would not be useful or necessary to refer to the decisions cited by him on this score. The proposition propounded in those decisions are well-established with which no issue can be joined.

19. Thus, so far as the first point raised by Mr. Singh with regard to the vires of the Rules 455 to 465 cannot be sustained.

20. Now with regard to the second contention of Mr. Singh that the notice of motion submitted on 27.2.1996 has become stale and cannot be acted upon also does not seem to be a sound proposition for the reasons hereafter mentioned.

21. Admittedly the notice was issued on 27.2.1996 and the meeting could not be materialised because of intervening fact till 26.7.97 and a notice of meeting was issued afresh. Under Rule 455, no-confidence motion can only be moved in the manner laid down in the Rules contained in Part VII of the said rules and that too after expiry of 12 months of the election of the Chairman. However, with the prior permission of the District Magistrate, such a motion can be moved even within 12 months. Rule 456 prescribes that a notice of no-confidence motion is to be addressed to the District Magistrate and submitted to him in the manner provided under Rule 457. The District Magistrate then has to fix time, date and place for holding a meeting for the purpose giving atleast 30 days notice. Thus it appears that there are two parts for the carriage of a motion of no-confidence. The first part is presentation of the no-confidence motion before the District Magistrate by the members of the Committee of Management. The second part is the convening of the meeting by the District Magistrate for carriage of the motion. Only after these two steps are completed, the meeting can be held and the motion can be carried or defeated in the manner provided in Rules 459 and

460. However, we are not concerned with this subsequent stage at the moment. It is abundantly clear that the Members of the Committee of Management cannot convene a meeting themselves. Their action comes to an end with the compliance of Rules 456 and 457, namely, addressing and presenting the notice of no-confidence motion to the District Magistrate. The Members of the Committee of Management thereafter become *functus officio* awaiting the action of the District Magistrate under Rule 458. If on account of any default on the part of the District Magistrate, the meeting" cannot be convened, the same cannot affect the right of the members who had served the notice of no-confidence for all time to come. The notice is for convening a meeting and the democratic process is exercised only in the meeting itself. Whether the loss of confidence at a particular point of time continues after such a long time is immaterial for the purpose of convening the meeting. Inasmuch the same can be decided in the meeting itself. In the present case, it is because of the intervening situation, the meeting could not be held. Therefore, as law stood, there was no outer limit for convening the meeting while an inner limit of 30 days notice was provided. In the absence of any outer limit, it cannot be said that convening of a meeting after lapse of one and a half (1 1/2) years would stand in the way.

22. Then Mr. Singh has sought to contend that in the meantime the rules have been amended, therefore, the notice cannot be issued. But it is a settled proposition of law that the meeting has to be carried out according to the rules and procedure prevalent at the time of its commencement. Amendment of such procedural rule would not be applicable to such proceedings initiated prior to the amendment unless the amendment is made retrospective either by express provision or by implication. It has not been contended that the amendment is retrospective. In the case of *A.A. Calton Vs. Director of Education and Another*, , the Apex Court had held that a proceeding has to be continued in accordance with the law as it stood at the commencement of the said proceedings. Therefore, the law as it stood on 27.2.1996 undisputedly having not provided any outer limit, the Court interpreting the same cannot read any outer limit within such provisions. The Court, if such outer limit is interpreted to be in existence, in that event, (it) will be enacting a provision which is thoroughly absent in the rule. The clear specific and express provision does not brook any scope of confusion or doubt. Specific provision of 12 months" bar from the first election and six months bar after the defeat of no-confidence and providing 30 days clear notice without providing outer limit indicates that the Legislature had in mind about the legislation which it had intended to enact or incorporate. In the absence of any other limitation, this Court cannot import in the statute, the limitation which has been sought to be prepounded by Mr. Singh in the present case.

23. For the above reasons, the writ petition fails and is accordingly dismissed.

24. There will, however, be no order as to cost.