
(2016) 11 AHC CK 0075
In the Allahabad High Court
Case No : Misc. Single No. 27384 of 2016

Jai Prakash Yadav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-11-2016

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 130

Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 456, Rule 457, Rule 459

Citation : (2017) 1 AILLJ 262

Hon'ble Judges : Devendra Kumar Upadhyaya, J.

Bench : Single Bench

Advocate : C.S.C, for the Respondent; Harish Chandra, Advocate, for the Petitioner

Final Decision : Dismissed

Judgement

Devendra Kumar Upadhyaya, J. - Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

2. The petitioner is the Chairman/President of U.P. Vidut karmchari Rin Sahkari Samiti Limited,-LESA, Lucknow which is a Cooperative Society registered under the U.P. Co-operative Societies Act, 1965 (in short "Act").

3. The petitioner has instituted these proceedings under Article 226 of the Constitution of India challenging the order dated 28.10.2016 passed by the District Magistrate, Lucknow whereby he has called a meeting of the Board of Directors of the Co-operative Society to consider. No Confidence Motion moved by certain individual members against the petitioner. The said meeting has been scheduled to be held on 18.11.2016 at 11:00 a.m. The order dated 28.10.2016 also appoints the District Khadi Gramudyog Adhikari, Lucknow as Presiding Officer to conduct the said meeting where no confidence motion against the petitioner is to be considered.

4. Submission of learned counsel for the petitioner is that though notice/order

dated 28.10.2016 has been issued by the District Magistrate, Lucknow calling upon the meeting to consider no confidence motion allegedly moved against the petitioner, however, the grounds or the material which is said to be appended with the notice for no confidence motion as contemplated under Rule 456 of the U.P. Co-operative Societies Rules, 1968 had not been provided either to the petitioner or to any other member of the Board of Directors and thus not providing the grounds or the material relied upon in the notice for no confidence motion amounts to violation of principles of natural justice and hence, pursuant to the impugned order/notice, the meeting to consider no confidence motion cannot be permitted to be held.

5. In support of his submission, learned counsel for the petitioner has relied upon certain judgments of the Hon'ble Supreme Court, namely *Zenit Mataplast Private Limited v. State of Maharashtra and others* (2009) 10 SCC 388 ; *State Bank of Patiala and others v. S.K. Sharma* (1996) 3 SCC 364 and *Satwati Deswal v. State of Haryana and others* [2009 (27) LCD 1711].

6. The matters relating to removal of Chairman or Vice Chairman of a Co-operative Society by vote of no confidence motion is governed by Part-VII of U.P. Co-operative Societies Rules, 1968.

7. Rule 456 of the said Rules provides that notice for no confidence motion shall be addressed to the specified authority which will clearly indicate the grounds on which such motion is proposed to be moved and signed by at least more than half of the members of the Committee of Management of the Board of Directors.

8. Rule 457 provides that at least three members of the Committee of Management signing the notice of no confidence motion shall be present personally before the specified authority along with the notice and shall also file an affidavit signed by them to the effect that the signatures on the no confidence motion are genuine and have been made by signatories after hearing or reading the contents of the notice.

9. The District Magistrate, Lucknow while passing the order dated 28.10.2016 for convening the meeting of the Committee of Management of the Society concerned for consideration of no confidence motion against the petitioner has clearly indicated therein that the notice for no confidence motion fulfils the requirement of Rules 456 and 457 of the Rules, 1968. Thus, it cannot be said that notice of no confidence motion is not in conformity with the said provision.

10. Rule 459 of the Rules permits the specified authority to nominate any Gazetted Officer to act as a Presiding Officer of the meeting in which the no confidence motion is to be considered and in this case as well, District Khadi Gramudyog Adhikari, Lucknow has been nominated by the specified authority, who is a Gazetted Officer, to act as Presiding Officer of the meeting to be held for consideration of no confidence motion against the petitioner. Thus, so far as the provisions contained in Part-VII of U.P. Co-operative Societies Registration Rules 1968 are concerned, the impugned order dated 28.10.2016 appears to be in

consonance thereof.

11. Coming to the submission made by learned counsel for the petitioner that the order/notice dated 28.10.2016 served upon the petitioner and other members of the Committee of Management of the Society does not contain any material or ground as such the same would be in violation of principles of natural justice, I may observe that the Rules do not contemplate or provide for any such exercise to be undertaken by the specified authority.

12. The provisions contained in Rule 455 inter-alia provides that no resolution expressing want of confidence in any person elected as Chairman or Vice Chairman of a Co-operative Society shall be moved except in the manner laid down in the Rules. Thus, the only requirement is that resolution expressing want of confidence has to be moved in the manner laid down in the said Rules.

13. It has already been noticed above that there does not appear to be any non compliance of the Rules contained in Part-VII of the Rules, 1968.

14. Further submission made by learned counsel for the petitioner is that even if the Rules do not contemplate or contain provisions of principles of natural justice while issuing notice or passing order for convening a meeting of no confidence motion, even then they are to be read as embedded in the Rules. The aforesaid submission of learned counsel for the petitioner will have no application so far as the present case is concerned. There is no dispute on the legal principle that any action by the authorities has to be in conformity with the principles of natural justice in case the proposed action is to visit the person concerned with any civic consequences. The impugned order/notice dated 28.10.2016 only calls upon the members of the Committee of Management to sit together and consider the no confidence motion. Unless and until, no confidence motion is passed it cannot be said that only by virtue of the order/notice dated 28.10.2016, petitioner has been visited with any civil consequences.

15. In the aforesaid view of the matter, the submission made by learned counsel for the petitioner deserves to be rejected. So far as the judgments cited by learned counsel for the petitioner are concerned, the same also do not have any application in the present case for the reason that the judgment reported in *Zenit Mataplast (Supra)* relates to allotment of land etc. Similarly, the judgment reported in *Satwati Deswal (Supra)* pertains to disciplinary matters and so far as the case reported in *State Bank of Patiala (Supra)* is concerned, the subject matter of the said case also relates to disciplinary proceedings against a bank employee.

16. Lastly, learned counsel for the petitioner has relied upon one of the most celebrated judgments on the principles of natural justice namely the case of *Maneka Gandhi v. Union of India* and another (1978) 1 SCC 248.

17. The principles laid down in the said judgment are difficult to be borrowed and applied in the facts of the present case for the reason that the said case

pertained to grant of passport and denial of passport to any individual without informing him the reason therefore, would amount to curtailing fundamental right of freedom of movement. In the instant case, as already observed, the impugned order/notice dated 28.10.2016 does not visit the petitioner with any civil consequences as such the aforesaid judgment of Hon"ble Supreme Court in the case of Maneka Gandhi (Supra), in my considered opinion, will have no application here.

18. For the reasons discussed above, I am not inclined to interfere with the writ petition. The writ petition is accordingly, dismissed.

19. There shall be no order as to costs.

20. However, it is provided that the Presiding Officer while convening the meeting of the Committee of Management/Board of Directors of the Society for consideration of the no confidence motion against the petitioner shall circulate a true copy of the notice of no confidence motion moved by certain individuals containing the grounds and material, if any. The said notice of no confidence motion shall be circulated to those members of the Committee of Management who will participate in the meeting.

21. The certified copy of this order shall be furnished to learned counsel appearing for the parties on payment of usual charges today itself.