
(1991) 08 AHC CK 0031
In the Allahabad High Court
Case No : Writ Petition No. 7211 of 1990 (M/B)

Kamil Kidwai

APPELLANT

Vs

State of U.P.and others

RESPONDENT

Date of Decision : 19-08-1991

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 38(1)
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 454

Citation : (1991) 08 AHC CK 0031

Hon'ble Judges : S.N Sahay, J and D.K.Trivedi, J

Final Decision : Allowed

Judgement

S.N. Sahay, J.—The short question which has been raised for determination in this writ petition is whether the impugned notice dated 21/7/1990 and the impugned resolution dated 29/7/1990 (Annexures 2 and 5) to the writ petition are without jurisdiction by reason of the noncompliance of the provisions of Section 38(1) of the U.P. Cooperative Societies Act, 1965. By means of the impugned notice, a meeting of the Board of Directors of the U.P. Sahkari Avas Sangh Ltd., Lucknow was proposed to be held on 29/7/1990 to consider the matter of disqualification of the petitioner Kamil Kidwai, Member/Chairman of the Board of Directors of the Sangh in accordance with rule 454 of the U.P. Cooperative Societies Rules, 1968. The meeting was held on 29/7/90 and the impugned resolution was passed by the Board of Directors to the effect that the petitioner is removed from the membership and office of Chairman of the Board as he has incurred disqualification under the said rules and bye-laws of the Avas Sangh for being Member/Chairman of the Board of the Committee of Management. The writ petition was filed by the petitioner for quashing the impugned notice (Annexure 2). But as the impugned resolution (Annexure 5) was passed during the pendency of the writ petition, it was amended by the petitioner and a prayer was also made for quashing the impugned resolution. The parties have exchanged counter-affidavit and rejoinder-affidavit and various objections have been raised on behalf of respondents. However, the only point which has been raised on behalf

of the petitioner is with regard to the application of Section 38(1) of the aforesaid Act.

2. Learned counsel for the petitioner has urged that the petitioner is an officer of the Avas Sangh, a cooperative society, within the meaning of Section 2(o) of the Act and, therefore, no action could be taken for the removal of the petitioner without complying with the provisions of Section 38(1). This Section reads as follows:

S. 38 Removal of an officer of a cooperative society (1) if in the opinion of the Registrar, any officer of a cooperative society has contravened or omitted to comply with, any provisions of this Act, the rules or the byelaws of the society, or has forfeited his right to hold office, the Registrar may, without prejudice to any other action that may or can be taken against him, call upon the society to remove, within a specified period such officer from the office held by him and where necessary, also to disqualify him from holding any office under that society for a period not exceeding three years, whereupon the society shall, after affording opportunity of being heard to the officer concerned, pass such orders as it may deem fit.?

3. It may be convenient at this stage to refer to rules 453 and 454 of the above mentioned rules also. Rule 453(1) provides that no person shall be eligible to be, or to continue as, a member of the committee of management of any cooperative society, if he is subject to any of the disqualifications specified in clauses (a) to (o). Rule 454 is as follows:

454. It shall be the duty of the committee of management of a cooperative society to ensure that no person incurring any of the disqualifications continues to hold office of a member of the committee of management. As soon as the fact that a member is subject to any disqualification whether it was incurred prior or subsequent to his being such member, comes to the knowledge of the committee of management, the committee shall consider the matter in a meeting to be called for the purpose. A copy of the agenda of such meeting shall be served on the member (against whom action is proposed) either personally or by registered (acknowledgement due) post. Where resolution for removal of the person concerned from the membership of the committee has been passed for reasons of such disqualifications, a copy of such resolution shall also be sent to the person concerned by registered (acknowledgment due) post and thereupon such member shall not be allowed to attend any meeting of the committee of management or to function as the member of the committee of management in any other way. The office held by such member shall be declared vacant. If that person feels aggrieved by such action, he may, within thirty days from the date of the receipt of the notice seek arbitration under the provisions of the Act and Rules.?

4. The learned counsel for the petitioner has submitted that the provisions of Section 38 (1) are mandatory and it is for the Registrar to call upon the society

to remove within the a specified period any officer of a cooperative society, if in the opinion of the Registrar such officer has contravened or omitted to comply with, any provisions of the Act, rules or byelaws or has forfeited his right to hold office. According to the learned counsel, if any action is taken by a cooperative society, independently of the Registrar, its action will be without jurisdiction, and a nullity and in such case the question of alternative remedy under rule 454 raised by the respondents as bar to the maintainability of the writ petition will not arise. In support of this contention, learned counsel has placed reliance on *Madan Pal Singh v. Additional District Magistrate* 1980 ALJ 1098. In that case a resolution was passed by the Committee of Management, removing the petitioner from the office of Chairman on the ground that in the conduct of the affairs of the Bank, the petitioner had not exercised the prudence and diligence of an ordinary man of business and had acted in disregard of rule 115 and consequently was disqualified under rule 453 from continuing as a member of the Committee. The Division Bench upheld the contention of the petitioners that the action of the Committee of Management in removing the petitioner from its membership was beyond the purview of rule 454. It held as follows:

?In our judgment respondent 2 to 12 had no jurisdiction acting as members of the Committee of Management to remove petitioner No 1 from its membership on the ground that he had violated Rule 115. He was an Officer of the Society within the meaning of Section 2(o) of the Act. Assuming he had violated Rule 115 he could be removed from his office only in accordance with Section 38 of the Act. The Committee of Management could take action against petitioner No. 1 under Rule 454 only if it found that he had incurred one of the disqualifications mentioned in Rule 453, subrule (1). The impugned resolution contains no such finding. The Committee consequently acted beyond its statutory limitations.?

5. The learned counsel for the respondents has urged that the provisions of Section 38 are not of exclusionary character. He has laid emphasis on the words "without prejudice to any action that may or may be taken against him" used in Section 38 and has submitted that these words indicate that the action under Section 38 (1) is in addition to and not in lieu of any other action that may be taken against an officer of a cooperative society. He has further submitted that there can be no dispute that action may be taken against the Chairman of a cooperative society under Section 38(1), but if he has incurred disqualification for being a member then it will be open to the cooperative society to take action for his removal under Rule 454, because no person can be Chairman., unless he is a member of the Board or if he is otherwise subject to any of the disqualifications specified in rule 453. Learned counsel has relied on *Pundalik v. District Deputy Registrar, Cooperative Societies, Chandrapur* JT 1991(1) SC 576.

6. In *Pundalik's* case (cited above) it was found that he was elected on 1881986 as a Director of the District Central Cooperative Bank, Chandrapur. His election was not called in question according to the procedure prescribed by the Maharashtra Cooperative Societies Act, 1960. On 811987, the Deputy Registrar

issued a notice to him under Sec. 78 (1) of the said Act to show cause why he should not be removal from the Board of Directors of the Bank as per the provisions of Section 73FF. The notice stated that he had borrowed a loan from the Bank and he kept the loan constantly in arrears till 21101988. Pundalik showed cause and also filed an additional reply stating that he had not committed any default after the amended Section 75FF came into existence. The Assistant Registrar by his order dated 7121987 removed Pundalik from the Board of Directors of the Bank. It was contended that the impugned order of the Assistant Registrar is without jurisdiction inasmuch as the Act prescribes a separate procedure for calling in question the election of Pundalik as a Director of the Bank and the procedure having not been followed, the Assistant Registrar could not have acted under Section 78(1) of the Act which did not envisage the setting aside of an election, as has been done by the impugned order. It was also contended that even assuming that the disqualification on the ground of default is common both for election and for continuation as a Director, the Special provision for setting aside an election must prevail over Section 78, as there would be apparent conflict and the maxim generalia special bus non derogant, (general words do not derogate from special) would apply.

7. It may be stated that Section 78(1) of the Maharashtra Act empowers the Registrar to remove a member of a Committee who makes default or where any Member of such Committee stands disqualified by or under the Act for being a Member. Subsection (1) of Section 73FF of said Act provides that without prejudice to the other provisions of this Act or the rules made thereunder in relation to the disqualifications of being a Member of a Committee, no person shall be eligible for being appointed, nominated, elected, coopted or being a Member of a Committee if a defaulter of any society. Subsection (2) of the said Section says that a Member who has incurred any disqualification under subsection (1) shall cease to be a member of the committee and his seat shall thereupon be deemed to be vacant. Their Lordships referred to the show cause notice issued to Pundalik and observed that the notice has ex facie been issued under Section 78 of the Act and from the contents of the notice there is no room for holding that the appellants election has been set aside by the impugned order; on the other hand the emphasis is on his being disqualified to continue as Director or ceasing to be the Director on a account of his having committed default. It was further observed that the question of general bus specialia derogant, special things taken from general or generalia special bus non derogantgenera words do not derogate from special, therefore, does not arise. It was also observed that the provisions relating to election have to be interpreted harmoniously with other provisions of the Act, such as in Section 78(1) as to interpret and in such a way as to harmonize laws with laws is the best mode of interpretation. Therefore, the moment he (Pundalik) after election continued to be in default, stood disqualified and thereby ceased to be a Member of the Committee and his seat deemed to have fallen vacant.

8. The decision in Pundalik's case rests on the terms of the show cause notice,

which was issued to him. The direct effect and not the indirect consequence of the action to be taken in pursuance of the notice was considered. It was found that the matter which was directly dealt with by the notice was the disqualification incurred by Pundalik and it was not the setting aside of his election as Director. The conflict in the provisions having a bearing on the two matters was tried to be resolved by the application of doctrine of harmonious interpretation. As it will represently appear, Pundalik's case is distinguishable because the matter raised in the instant case is somewhat at different.

9. From a perusal of Section 38(1) which has been reproduced above it will appear that Section 38(1) relates to the removal of an officer of a cooperative society and applies to a case where any officer of a cooperative society has contravened or omitted to comply with any provisions of the Act or the rules or the byelaws of the society or has forfeited his right to hold office. When it is proposed to take action against an officer of a cooperative society for his removal on the ground that he has forfeited his right to hold office, the provisions of Section 38(1) which deal directly with the matter are attracted. The grounds on which an officer of a cooperative society may forfeit his right to hold office are not specified and, therefore, the provisions being of a general nature would also apply where the right has been forfeited on account of disqualifications, referred to in rule 453, incurred by an officer making him ineligible to be or to continue as a Member of the Committee of Management.

10. Rule 454 which is a piece of delegated legislation under Sec. 130 of the Act defines the procedure to be followed by a Committee of Management regarding the removal of a member subject to disqualification from the Committee of Management. It is a supplemental provision and has to be read alongwith the provisions of Section 38(1) and not independent of it. There is no conflict or inconsistency between the two provisions. It is no doubt true that in Section 38(1) provision is that the Registrar may call upon the society to remove within a specified period the officer concerned and in rule 454 it is provided that it shall be the duty of the Committee of Management of a cooperative society to ensure that no person incurring any of the disqualifications continues to hold office of the Member of Committee of Management. At first sight the use of the word ? may? in Section 38 (1) may suggest that the Registrar has discretion in the matter of taking action and this may be in conflict with the duty of the Committee of Management mentioned in rule 454. But there is no conflict in reality, for the context in which the power has been conferred on the Registrar by Section 38(1) would envisage that the provisions are mandatory and it is the duty of the Registrar to take action where in his opinion the conditions laid down in the section exist. The failure of the Registrar to take action will amount to permitting the officer of the cooperative society to continue to hold office inspite of the fact that he is guilty of having contravened or omitted to comply with the provisions of the Act, rules or byelaws or he has forfeited his right to hold office. No statutory authority will ever countenance such a situation and will not permit an officeholder to be continued even after infraction of law caused by his own act

or omission. In accordance with the dictum of their Lordships in Pundalik's case cited above, the provisions of Section 38(1) and rule 454 should be and they are capable of being interpreted harmoniously. Whenever it occurs to the Committee of Management that an officer of the Society has become subject to any disqualification and is ineligible to hold office, the Committee will approach the Registrar, obtain his sanction under S. 38(1) and proceed to take action for the removal of the officer in accordance with rule 454. This procedure may be considered necessary for the protection of the officer as well as for the smooth management of the affairs of the society. If the Registrar omits to perform the statutory duty imposed on him under Section 38 (1) or exercises his powers under that section contrary to the settled principles of law, his action or inaction will always be subject to judicial review and appropriate orders or directions may be issued to him under Article 226 of the Constitution, and this aspect of the matter has not been challenged by the counsel for the respondent.

11. We are accordingly in respectful agreement with the view taken by the Division Bench of this Court in the case of Madan Pal Singh (cited above). As it has not been shown in the instant case that the provisions of Section 38 (1) have been complied with, we are of the opinion that the impugned notice and resolution are without jurisdiction; void and inoperative.

12. In the result the writ petition is allowed and the impugned notice and resolution, contained in Annexures 2 and 5 respectively to the writ petition are hereby quashed. The parties are directed to bear their own costs.