
(2007) 02 AHC CK 0169
In the Allahabad High Court
Case No : Writ Petition No. 953 (MB) of 2007

Kranti Kishor Pokhriyal

APPELLANT

Vs

Joint Housing Commissioner/Joint Registrar, Lucknow

RESPONDENT

Date of Decision : 22-02-2007

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 27, 27(5)
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 56

Citation : (2007) 02 AHC CK 0169

Hon'ble Judges : Pradeep Kant, J and Ajai Kumar Singh, J

Final Decision : Dismissed

Judgement

Pradeep Kant and Ajai Kumar Singh, JJ.—After hearing the parties Counsel application filed by Sri Rakesh Srivastava is allowed.

2. Let Shivraj Singh be impleaded as respondent No. 2 to the writ petition.

3. The argument of the learned Counsel for the petitioner that vide order dated 1.1.2004 passed by the Committee of Management of the Society the petitioner was removed from the membership of the society and was not expelled and that, therefore, impugned order dated 23.1.2007 passed by the Registrar, removing from the membership of the society and also from the offices which he is holding in the Committee of Management has been passed on the misconception that the petitioner was expelled under Section 27 (1) of the U.P. Cooperative Societies Act. His submission is that under Section 27 both namely removal and expulsion of a member of the society has been provided and since the resolution passed by the Committee of Management and the order passed thereon clearly say that the petitioner be removed ("Hata Diya Jaye"), therefore, the Registrar could not have taken it as an order of expulsion from membership.

4. Sri Rakesh Srivastava appearing for the newly added party in response submitted that mere use of word "Hata Diya Jaye" in the resolution as, well as in the order passed by the Committee of Management and thereafter also in the impugned order passed by the Registrar would not necessarily and compulsorily

mean that it is not a case of expulsion from the membership of the society. His submission is that it is the substance of the order and the Rule under which it has been passed coupled with the grounds on which the order has been passed would be relevant to determine the question as to whether it is an order of simple removal from membership or expulsion from membership.

5. He further submitted that Committee of Management while passing the order was conscious of the fact that the petitioner has acted against the interest of the society and has breached the byelaws of the society. He was thus expelled from the membership. He has drawn the attention of the Court to the notice issued to the petitioner and also the resolution passed by the society and thereafter the order passed thereon on 1.1.2004.

6. Learned Counsel for the respondent further submitted that the petitioner himself filed an appeal against the order passed by the Committee of Management dated 1.1.2004 under Section 98(1)(c) wherein the appeal lies only against the order of expulsion from membership and not against the order of removal. Submission is that it was well within the knowledge of the petitioner also that the Committee of Management has drawn proceedings for expelling him from the membership and that he stood expelled by the order dated 1.1.2004 and, therefore, he approached the appropriate forum of appeal under the aforesaid provision.

7. In appeal before the Tribunal, the petitioner remained unsuccessful in two miscellaneous applications filed before the Tribunal in having the interim relief against the aforesaid order of expulsion but succeeded in the third application in getting an order of stay. The fact that earlier two applications for interim relief were rejected finds mention in the order of stay, itself.

8. After the aforesaid interim order passed by the Tribunal the appellant participated in the elections and he was elected as President. After being elected as President a meeting was convened on 2.4.2006 in his presidency and again two more meetings on 24.12.2006 and 7.1.2007. In these meetings, he got his membership restored alongwith the restoration of membership of all the members who were either removed or expelled.

9. Once the petitioner succeeded in getting his membership restored, he thought it proper to withdraw the appeal pending before the Tribunal and got it dismissed as not pressed on 4.7.2006. The other members of the society for example Shiv Raj Singh newly added party felt aggrieved by the action of the petitioner and the manner in which he had conducted himself in breach of the byelaws, and the manner in which he had made full use of the interim order passed by the Tribunal in his favour, for having his membership restored in the meeting held under his own presidency and subsequently getting the appeal dismissed as not pressed, moved an application before the Registrar bringing these facts to his notice. The Registrar taking cognizance of the activities and conduct of the petitioner passed an order under Section 27(5) holding that since the petitioner

stands expelled, therefore, he cannot be allowed to be a member for a period of two years nor he can hold any office.

10. Learned Counsel for the petitioner has laid great emphasis upon the word "hata diya jaye" in the order passed by the Committee of Management on 1.1.2004 which according to him in English would mean "be removed" in support of the submission that Committee of Management had not expelled him from the membership but had only removed him from the membership and, therefore, the view expressed by the Registrar that it was a case of expulsion cannot be sustained.

11. The respondents" however pleaded that it was a clear case of expulsion and that the literal translation of the word "hata diya jaye" into english would not be conclusive in itself to determine the text and nature of the order.

12. In the alternative he has argued that in any case on dismissal of the appeal by the Tribunal, the interim order also stands discharged, and, therefore, the petitioner would stand relegated to the same status, which he was enjoying before the passing of the interim order, i.e. he shall stand removed from membership and, therefore, no longer can be treated to be a member or an office bearer.

13. It is to be seen that if the concerned Act or the Rule, prescribed, a particular mode and manner and the circumstances under which a particular order can be passed, such an action has to be taken in the same manner as has been provided under Rules and not otherwise. Reliance has been placed on the case of Chandra Kishore Jha v. Mahavir Prasad and Others, reported in (1999) 8 SCC 266.

14. While interpreting the order and nature thereof, the Court would not confine its interpretation only to the words used nor would be guided by the peripheral language mentioned therein but shall also take into account the rule, context and the nature of the order. The Court would be at liberty to look into the factors, which led to the passing of the order, and also the considerations, for passing such an order, the reason of the breach which resulted into such an order and the relevant provisions of the Act and the Rules, from where it could be gathered that under which provision the action has been taken.

15. Section 27 of the Cooperative Societies Act deals with the removal and expulsion of a member of the society or Registrar. It provides that:

"(1) A cooperative society may, by resolution, remove, or expel a person from its membership in accordance with such procedure and for such causes and within such period as may be prescribed.

(2) The Registrar may also remove or expel a person from the membership of a cooperative society

(a) If a person has ceased to fulfill the qualifications required for membership, or

is disqualified to be a member under this act or the rules or the byelaws of the society, and the cooperative society, even when required by the Registrar by order in writing, fails to remove or expel him, in accordance with the provisions of subsection (1) within thirty days from the receipt of the order of the Registrar; or

(b) If the person was admitted to the membership of the society in contravention of the provisions of this Act, the rules or the byelaws of the society."

16. Thus, the grounds for removal or expulsion and the power which can be exercised by the cooperative society or the Registrar have been detailed in subclause (1) and subclause (2) of the aforesaid Section in very specific terms. Since in the instant case the order of expulsion which is said to be an order of removal by the petitioner was passed by the Committee of Management, therefore, we need not enter into the powers of the Registrar which he can exercise under subsection (2) of Section 27.

17. The next relevant provision viz. Section 27(5) is being quoted below:

"(5) No member of a cooperative society, expelled under subsection (1) or subsection (2), shall be eligible for readmission as a member of that society for a period of two years from the date the resolution or order of expulsion takes effect and he shall further be not eligible to hold any office under that society, or to seek election to its Committee of Management for a period of three years from the date of his readmission as a member."

18. The notice issued to the petitioner has not been filed by him though he is possessed of the said notice but the contents thereof as they stand reflected in the order passed by the Committee of Management in its order dated 1.1.2004 show that the petitioner in violation of the provisions of U.P. Cooperative Societies Act, 1968 and the provisions of registered bylaws got himself nominated as Director and thus he acted in breach of the rules and bylaws of the society and therefore, he was issued notice under Section 27.

19. Rule 56, the corresponding Rule, deals with both the situations, namely, removal as well as expulsion, separately and distinctly.

20. The aforesaid Rule says that:

"A person may, in the manner laid down in the rules

(a) Be removed from the membership of a cooperative society, if

(i) He has ceased to fulfill the qualifications laid down under the Act, rules or the byelaws of the society, for the "membership of the society, or

(ii) He was admitted to the membership of the society, in contravention of the provisions of the Act, rules or the byelaws of the society, or

(iii) He becomes of unsound mind, or

(iv) His membership of the society is inconsistent with the provisions of Rule 8(b);

(b) Be expelled from the membership of a society

(i) If he has misappropriated any funds or property of the society or has caused damage to the property of the society and has for that offence been convicted under the Indian Penal Code, 1860:

Provided that he shall be eligible to become member of that or any other society after his acquittal in appeal or after he has served out the sentence and/or paid the fine, as the case may be, under the order of conviction, or

(ii) Where a declaration made by a member in pursuance of any provision of the byelaws of the society is found to be either false or, there is suppression of any material information in the declaration and such falsehood or suppression has enabled the member to get undue benefit from the society, or has put the society to economic or a financial loss or other difficulties."

21. Subclause (b) says that member may be expelled from the membership of the society if either of the three conditions given in subrules (1), (2) and (3) exist. If all or any of the conditions given in subrule

(a) is the reason for taking action against its member, then the lawful outcome is his removal from membership but if the conditions prescribed under subrule (b) are the basis and reason for taking action, then the action taken would be of expulsion.

22. A perusal of the two set of conditions given in subrules (a) and

(b) Of the Rule 56 thus, prescribe distinct and clear conditions for passing an order of removal or that of expulsion as the case may be, looking to the charge which the member faces. If the member falls in either of the conditions given in subrule(a) he would face removal and not expulsion and likewise if he is found guilty of any of the charge/condition given in subrule (b) then he may be expelled. The consequence of expulsion have also been provided under Section 27(5).

23. The petitioner was found guilty under subclause (b)(ii) which says that a person may be expelled from the membership of society if he has caused detriment to the interest of the society by breach of the byelaws of the society. The petitioner got himself elected as a Director without following the procedure prescribed under the Act and the byelaws and other they were breached. It is on this charge on which he was removed. The charge fell in subclause (b)(ii) of Rule 56 which speaks of expulsion and not of removal. The aforesaid reasons coupled with the fact that the petitioner himself filed the appeal under Section 98(1)(c) challenging the order treating it to be an order of expulsion leaves no room of doubt that the Committee of Management as well as the petitioner both were clear in their mind that these proceedings have been taken for expulsion from

membership and, therefore, we have no hesitation in holding that the order of removal passed by the Committee of Management on 1.1.2004 was in fact and in law, an order of expulsion.

24. Having recorded the aforesaid finding, the conduct of the petitioner also requires us to hold that his action of getting himself elected as President, after being able to get an interim order against the order of the Committee of Management dated 1.1.2004 on the third application from the Tribunal and soon thereafter his action of presiding the meetings, in violation of the specific proviso to Rule 98 of the Rules framed under the Act and getting his membership restored, constitute a serious breach of the provisions of the Cooperative Societies Act and the Rules framed thereunder. The very fact that the petitioner after getting his membership restored, got the appeal dismissed as withdrawn shows that he had acted again in breach of the rules, and by taking undue advantage of the interim order, he circumvented the provisions of the Act and the Rules and also acted to the detriment to the interest of the society, in breach of byelaws.

25. We also find force in the argument of the learned Counsel for the respondents that apart from any other plea the petitioner having got himself elected in pursuance of the interim order passed in appeal and having restored his membership under the same order and thereafter got the appeal dismissed as not pressed, the benefit of the interim order cannot remain with him any more as it merged in the final order i.e. dismissal of the appeal and thus all the benefits which he had derived under the interim order would stand wiped off, the moment appeal was dismissed. The restoration of his membership, therefore, would not survive, after the dismissal of the appeal. His challenge to the order against his expulsion having failed in appeal, he can not take advantage of the interim order any more. Proviso to Rule 98 specifically debars any person to preside over a meeting as President or VicePresident for a matter in which he has personal interest. There cannot be any doubt that restoration of membership of the petitioner himself under his own Chairmanship was the matter directly covered by the aforesaid proviso.

26. We, thus, do not find any merit in the writ petition so as to interfere in the matter under Article 226 of the Constitution of India. The writ petition being devoid of force is hereby dismissed.