

(1992) 01 AHC CK 0112

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5948 of 1992

Krishna Kant Shukla

APPELLANT

Vs

District Administrative Committee, Uttar Pradesh Primary
Agricultural Cooperative Credit Centralised Service and
Others

RESPONDENT

Date of Decision : 03-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Co-operative Societies Act, 1965 — Section 122A, 3(2)
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 2
Uttar Pradesh Primary Agricultural Cooperative Credit Societies Centralized Service
Rules, 1976 — Rule 13, 14, 4

Citation : (1992) 1 AWC 602

Hon'ble Judges : D.P.S. Chauhan, J

Bench : Single Bench

Advocate : R.N. Ojha, for the Appellant;

Final Decision : Disposed Of

Judgement

D.P.S. Chauhan, J.—The Petitioner is a member of the U.P. Primary Agricultural Cooperative Credit Societies Centralised Service created u/s 122-A of the U.P. Cooperative Societies Act, 1965 and his services are governed by the rules, known as the U.P. Primary Agricultural Cooperative Credit Societies Centralised Service Rules, 1976, (for brevity, hereinafter referred to as "the Rules") and the U.P. Primary Agricultural Cooperative Credit Societies (Centralised Service) Regulations, 1978 framed there under (for brevity, hereinafter referred to as "the Regulations"). Petitioner while working as Secretary in Sadhan Sahkarak Samiti Limited, Upraura, was suspended, vide order dated 20-12-1991, by the Member Secretary, District Committee, constituted under the Rules. This order of suspension is the subject matter of challenge by means of this petition under Article 226 of the Constitution of India.

2. Petitioner has been suspended by the Member Secretary, District Committee,

in exercise of power under Clause (v) of Rule 14 of the Rules, which is as extracted below:

14. Powers and duties of the Member-Secretary of the District Committee- Subject to the control and supervision of the Chairman of the District Committee, the Member-Secretary of the District Committee shall--

(v) have power of suspending a member of the Centralised Service with the prior concurrence of Assistant Registrar...

The objection of the learned Counsel for the Petitioner is that the impugned order of suspension has been passed by the Member Secretary, District Committee, who himself is the District Assistant Registrar, Cooperative Societies, Allahabad, illegally and in an arbitrary manner. The aforesaid provision requires for obtaining prior concurrence from the Assistant Registrar before suspending a member of the Centralised Service, but, on the present case, no such prior concurrence has been obtained, and, as such, the order of suspension is bad on this score also. Further, the power of suspension of a member of Centralised Service, as contained under, Clause (v) of Rule 14 of the Rules is arbitrary, as, under Rule 13 of the Rules, the power of suspension is independently given to the Chairman of the District Committee without any rider, and, since the Member Secretary and Assistant Registrar are one and the same person, there can arise conflict in exercise of such power, and there may arise a situation where the Chairman of the District Committee is not interested in suspending the member, but the Member Secretary of the District Committee is interested in suspending the member of Centralised Service or vice verse

3. Rule 13 of the Rules, which gives the power to the District Committee, and is made the appointing authority of the member of the Centralised Service, to exercise control and supervision over the member of the Centralised Service is, as existed originally, as under:

13. Powers and duties of the District Administrative Committee--

(1) The District Committee shall be the appointing authority of the member of the Centralised Service in the District and shall also have the following duties and responsibilities:

(ii) To transfer the members from one place to another within the district;

(iii) To ensure recovery of the contribution levied on the Society in the district;

(iv) To classify the societies in the district in various categories according to their annual leading as provided in Rule 4;

(v) To arrange absorption of the existing employees of the societies after their screening in accordance with the instructions issued by the Registrar, Cooperative Societies, U.P.;

(vi) To evaluate the work of members of Centralised Service every year in the

district;

(vii) To maintain category-wise correct seniority list of the members of the Centralised Service; and

(viii) To perform such other duties and functions as may be entrusted to it by the Authority or Regional Committee.

(2) The meeting of the District Committee shall be called by the Member Secretary as and when he deems fit and upon a directing to this effect from the Chairman or the District Assistant Registrar. Such meeting shall be called at least once in 3 months. The quorum of the meeting shall be 3.

(3) The Chairman, when present, shall preside over the meeting of the District Committee. He shall have power of suspending a member of the Centralised Service with the prior concurrence of Assistant Registrar.

4. The Constitution of the District Committee, as existed originally, was as depicted below;

(4) There shall be a District Administrative Committee In each district which shall consist of the following:

(i) Chairman of the bank of District Ex-Officio Chairman (ii) District Assistant Registrar of the District Member (iii) A Block Development Officer nominated Member by the A.D.M. (P)/District Planning Officer of the District (iv) Chairman of a Society to be nominated Member by the Regional Deputy Registrar of the region (v) District Audit Officer Member (vi) Secretary/Managing Director of the Bank Member.

There had been change in the constitution of the District Committee vide Notification No. 1639/12-C-I-81-UPA-II/1966/Rules (1976 AM (2)/198 dated 10-6-1981, and the constitution became as under:

(i) District Assistant Registrar Ex Officio Chairman (ii) One nominee of Committee of Management Member of the District Cooperative Bank (iii) A Block Development Officer nominated Member by the A.D.M. (P)/District Planning Officer of the District (iv) Chairman of a Society to be nominated Member by the regional Deputy Registrar of the region (v) District Audit Officer Member (vi) Secretary/Managing Director of the Bank Member/Secretary

Thereafter there had been again a change in the constitution of the District Committee vide Notification No. 3625/XII-C-1-83-7(23)-1978 dated 12-9-1987 and the constitution of the District Committee became as under:

(i) Chairman/Administrator of the District Chairman ex-Officio Cooperative Bank (ii) District Asstt. Registrar Cooperative Member/Secretary Societies, Uttar Pradesh (iii) A Block Development Officer nominated Member by the ADM (P)/District Planning Officer of the District (iv) Chairman of a Society to be nominated Member by the Regional Deputy Registrar, Cooperative Societies,

Uttar Pradesh of the region (v) District Audit Officer Member (vi) Secretary/ Managing Director of the Member

District Cooperative Bank.

Now the District Assistant Registrar became member Secretary but there has been no change in Clause (v) of Rule 14 where under the power of the Member Secretary District Committee, was a power rendered with the condition of prior approval from Assistant Registrar but after the amendment in the constitution of District Committee vide Notification dated 12-9-1983 the District Assistant Registrar became the Member Secretary of the District Committee, but no consequential amendment was made in Clause (v) of Rule 14 and it has created an anomaly situation.

5. Earlier, the position was that the Secretary of the District Committee was the person other than the District Assistant Registrar and the power of the Member Secretary, District Committee was rendered one inasmuch as the order of suspension passed by him was subject to the prior concurrence of the District Assistant Registrar. The intention was clear that the Secretary should not have independent power without there being any check. The earlier provision, as existed originally under Rule 13 of the Rules also placed a rider on the power of the Chairman of the District Committee that before suspending a member of the Centralised Service, he was also required to have prior concurrence from the Assistant Registrar. So without prior concurrence of the Assistant Registrar neither the Chairman nor the Member Secretary of the District Committee could have suspended a member of the Centralised Service. By virtue of amendment in Rule 13, vide Notification dated 10-6-1981, the matter relating to obtaining of the prior concurrence of the Assistant Registrar by the Chairman before suspending a member of the Centralised Service was deleted, as the District Assistant Registrar himself became the Chairman of the District Committee but the requirement under Clause (v) of Rule 14 of the Rules regarding prior concurrence continued "as the member/Secretary of the District Committee and Assistant Registrar were different persons out the problem is created on account of amendment in the constitution of District Committee, vide notification dated 12-9-1983, whereby the Member Secretary and Assistant Registrar have become one and the same person but there has been no consequential amendment in Clause (v) of Rule 14 of the Rules.

6. The submission as pressed that since no consequential amendment has been made in Clause (v) of Rule 14 of the Rules, the requirement of obtaining the prior approval from Assistant Registrar still exists and the power of the District Assistant Registrar, who has become the Secretary of the District Committee, cannot be allowed to be uncontrolled or unrendered so to be exercised in an arbitrary manner. In the matter of suspension of a member of the Centralised Service, the Rules have provided for control, as the order of suspension passed by the Member Secretary is subject to the control and supervision of the Chairman. The words "control and supervision as used in Rule 14 of the Rules

are of wide amplitude. The order passed by the Member Secretary is thus subject to the control and supervision of the Chairman, and as such the order of the Member Secretary is revisable by the Chairman, District Committee. The word "Assistant Registrar" or

"District Assistant Registrar" has not been defined under these rules, but has been defined in Rule 2(e) of the U.P. Cooperative Societies Rules, 1968, which is as extracted below:

(a) Assistant Registrar "means a person appointed as Assistant Registrar under Sub-section (2) of Section 3 and "District Assistant Registrar" means an Assistant Registrar appointed to hold charge of co-operative activities of a district.

In Mahesh Vikram Singh v. District Assistant Registrar Cooperative Societies 1990 SCD 712, this Court held:

Under Rule 2(a) of 1968 Rules, District Assistant Registrar is appointed from amongst the Assistant Registrars appointed u/s 3(2). This is apparent from the expression "District Assistant Registrar means an Assistant Registrar" used in rule 2(e). It is not disputed that the Member Secretary who passed the impugned order is District Assistant Registrar. He is, therefore, Assistant Registrar also for the purposes of Rule 2(a). The term "District" has no special significance. It only denotes the area of his jurisdiction. It extends over the entire district, of course, it is confined to co-operative activities. It is to the petitioner's case that the Member-Secretary who passed the impugned order has not been appointed Assistant Registrar u/s 3(2). His appointment as District Assistant Registrar does not have the effect of nullifying his appointment as "Assistant Registrar." Rather it is by virtue of his appointment as "Assistant Registrar" that he is appointed "District Assistant Registrar.

It was also held--

In fact the only meaning that can be assigned to the expression is that the order remains valid till it is set aside by the Chairman.

7. The controversy regarding prior approval of the Assistant Registrar, as provided in Clause (v) of Rule 14 of the Rule. This Court in Writ No. of 1988, Rishi Kumar Sharma v. State of U.P. and Ors. decided on 19-8-1988, has held that the provision of obtaining the concurrence of Assistant Registrar by the Secretary has become redundant but requirement under Rule 14(v) of the Rules is not of concurrence but is of "prior approval." These two words have different meaning and relate to two different situations. Since I am not declined to deal with the question in the present case, I refrain from expressing any opinion.

8. In this view of the matter, I am not inclined to express any opinion on the merit of the submission. Petitioner, who is aggrieved from the order of the District Assistant Registrar/Member Secretary. District Committee, can approach the Chairman, District Committee, seeking his intervention) who has full power to set aside or revoke the same.

9. Since I have taken the view that the order passed by the District Assistant Registrar in the capacity of Member Secretary is revisable by the Chairman, District Committee, it is not necessary at present to interfere with the impugned order of suspension. The petitioner, if feels aggrieved from the impugned order, may represent the Chairman of the District Committee and it is only thereafter, if not satisfied, Petitioner may have recourse to the extraordinary forum under Article 226 of the Constitution of India.

10. In this view of the matter, I am not inclined to interfere in the matter as option is allowed to the Petitioner to avail the remedy as provided by this order. If representation is made together with a certified copy of this order within three months from today by the Petitioner against the impugned order of suspension, it shall be decided by the Chairman through a speaking order within one month and the copy of such shall be made available to the petitioner.

11. With the above observations, the writ petition is disposed of

12. A copy of this order may be given to the learned Counsel within a week on payment of usual charges.