
(2013) 05 MP CK 0050
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8493 of 2013

Laxman Singh

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 07-05-2013

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 48A(5)

Citation : (2013) 4 MPHT 141 : (2013) 3 MPLJ 144

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : Dinesh Upadhyaya, for the Appellant; Sanjeev Kumar Singh, Panel Lawyer, for the Respondent

Judgement

Rajendra Menon, J.—Challenging the order-dated 10.4.2013 - Annexure P/1 passed by the Deputy Registrar, Cooperative Society, Chhatarpur removing the petitioner from the office of President, Seva Sahkari Samiti Maryadit Sunwahara, Tehsil Bijawar, District Chhatarpur, petitioner has filed this writ petition. It is the case of the petitioner that he is elected President of the said Samiti, he was duly elected in the elections held on 10.1.2013, and now respondent No. 4, a candidate who had contested the election alongwith the petitioner and had lost, filed a complaint and on the complaint without hearing the petitioner the impugned action is taken.

2. The impugned action is challenged on two grounds. The first ground is that by an executive and administrative order petitioner cannot be removed from the office to which he has been elected and if respondent No. 4 had any grievance with regard to the election, he should file an election petition and it is only the Election Tribunal which can declare the election as illegal and direct for removal of the petitioner from the elected post. The second ground canvassed is that the impugned order has been passed without hearing the petitioner, without granting him any opportunity and in violation of the principles of natural justice. Accordingly on both these grounds, challenge is made to the impugned action.

3. Shri Sanjeev Kumar Singh, learned Panel Lawyer, invites my attention to the provisions of section 48-A(5) of the MP Cooperative Societies Act, 1960 (hereinafter referred to as "Act"), and submits that in view of the prohibition contained in the aforesaid clause and the fact that the petitioner has continued in office for a period of more than 11 years, now he cannot continue in the office. It is stated that the action taken is proper and the same does not call for any interference.

4. It is argued by learned Panel Lawyer that no person is entitled to be elected to an office in the Cooperative Society for a continuous period of two consecutive sessions or for a period of 11 years. It is pointed out that petitioner has been elected on two consecutive sessions and has also completed 11 years and, therefore, under law he is prohibited from holding the office and it is because of this reason that the impugned order has been passed.

5. I have heard learned counsel for the parties and perused the records.

6. As far as the first ground canvassed by the petitioner is concerned, petitioner may be right in contending that if a losing candidate in an election has any grievance, he should file an election petition, if permitted under law. There is no dispute in accepting the aforesaid proposition of law. But, at the same time if it is shown that an elected office bearer under law is prohibited from holding the office and if on such consideration an order is passed removing him from the office, interference by a writ court is not called for until and unless it is shown that the decision for removing him from the office is contrary to law.

7. In the present case, the petitioner is unable to demonstrate before this Court as to how and why the reason given in the order - Annexure P/1 holding the petitioner disqualified from contesting the election and holding the elected post is unsustainable. Nothing is brought to the notice of this Court either in the writ petition or by way of any other material to show that the prohibition contained in section 48-A(5) is not attracted in the case of the petitioner. If the prohibition contained in section 48-A(5) is attracted, I see no error in the order passed by the respondents for removing the petitioner from the office for the simple reason that contrary to law and in consistent to the requirement of law, petitioner cannot hold any office even if he has been elected. The election itself of the petitioner to the office in question is null, void and non-est in the eye of law, as it is contrary to a statutory provision, which prohibits the petitioner from holding the elected office.

8. That apart, as far as violation of the principles of natural justice is concerned, petitioner has to show the prejudice caused to him by non-grant of opportunity. Even if after a show-cause notice is issued to the petitioner, he is required to show that the findings recorded in the impugned order - Annexure P/1, with regard to the petitioner being disqualified from holding the office, is not made out. Neither in the writ petition nor in the documents annexed to the writ petition is there any whisper on the part of the petitioner that the prohibition contained u/

s 48-A(5) is not attracted in his case. He does not deny the fact that he has remained in office for two consecutive sessions nor does he state that he has remained in office for more than 11 years. As such, on the ground of non-grant of opportunity or violation of principles of natural justice, interference into the matter is not called for.

9. That apart, submission of the petitioner that at the first instance opportunity of hearing was required and if such an opportunity was granted to him, he would be able to demonstrate that the requirement of section 48-A(5) is not attracted in his case. The petitioner is unable to even demonstrate prima facie before this Court the said eventuality and there is no whisper in the writ petition that the period of holding office by him does not fulfil the requirement as contemplated u/s 48-A(5).

10. Accordingly, in the facts and circumstances of the case, it is not a fit case where interference should be made. If the petitioner has any grievance with regard to the findings recorded by the Registrar and feels that the reasons given therein are not correct, he is granted liberty to file an appeal or any other proceeding before the competent statutory authority and it would be for the said authority to consider the same and take action in the matter.

11. It is made clear that the observation made in this writ petition is only a prima facie determination for the purpose of considering the question of interference in the matter. If the petitioner by cogent material and evidence is able to establish before any authority that the requirement of section 48-A(5) is not attracted in his case, the said authority may proceed in the matter in accordance with law without being influenced by the observations made in this writ petition, which are nothing but an observation made in the facts and circumstances of the case based on the material adduced at the time of hearing. With the aforesaid liberty to the petitioner, for the present finding no case for interference, this petition is disposed of.