

(1978) 02 AHC CK 0006
In the Allahabad High Court
Case No : Civil Misc. Writ No. 4828 of 1977

Mahipal Singh

APPELLANT

Vs

Pergana Adhikari and Others

RESPONDENT

Date of Decision : 14-02-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 226(3)
Uttar Pradesh Co-operative Societies Act, 1965 — Section 70, 70(1), 71, 71(1),
71(2)
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 225, 245

Citation : (1978) AWC 287

Hon'ble Judges : M.M. Gupta, J; H.N. Seth, J

Bench : Division Bench

Advocate : S.P.S. Raghav, for the Appellant; B.D. Mandhyan and S.C., for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—By this petition under Article 226 of the Constitution Mahipal Singh prays for a writ for quashing the award dated 8th December, 1977, made by the Arbitrator, Sri Daryao Singh, Sub-Divisional Officer Jansath as also for a direction that the Respondents should not "give effect to it.

2. Sahkari Ganna Vikas Samiti Ltd., Khatauli, hereinafter referred to as the Society, is a Cooperative Society registered under the Cooperative Societies Act 1965 and village Khatauli falls within the area of its operation. A meeting of the members of the village, for electing delegates of the Society, took place on 27th September 1977 in which, it is said Petitioner Mahipal Singh was elected as one of the delegates.

3. Respondent No. 5 Brahma Pal filed an application for arbitration before the Registrar of the Cooperative Societies. He claimed that the meeting of the members of the Society belonging to village Khatauli, held on 27th September 1977, for electing delegates, was illegal. He accordingly prayed that the

proceedings of the meeting be cancelled and election of the delegates be declared to be invalid. In his application, claiming arbitration, Brahmapal impleaded the Society, Ganna Gram Sevak Gram Jandheri and Sri Satyapal Singh, Gram Sarpanch, Ganna Panchayat, as opposite parties, but did not implead Mahipal Singh, whose election he was seeking to be declared invalid, as an opposite party.

4. In due course, the matter was referred to the arbitration of the Sub-Divisional Officer, Jansath, who, by his award dated 1st December, 1977 held that the election of Mahipal as a delegate was invalid for the following reasons:

(1) In the meeting dated 27-9-1977 the proceedings for electing the delegate had taken place on the basis of voters list, as it stood on 30-6-1976 instead of the voters list as it stood on 30th June 1977.

(2) Requisite proclamation pronouncing the time and place of the meeting, at least 3 days before it, as required by byelaw No. 37, had not been made.

(3) Chairman of the meeting who was fully responsible for conducting the same had adjourned it on the ground that there was an apprehension of breach of peace and as such no election in fact took place.

5. Mahipal Singh who has filed this petition claims that the award made by the arbitrator setting aside his election, without making him a party and without affording him an opportunity to be heard, is illegal and is liable to be quashed.

6. Learned Counsel for the Respondents, however, raised a preliminary objection to the maintainability of this petition. He urged that the Sub-Divisional Officer Jansath had made the impugned award u/s 71(1) of the Cooperative Societies Act. According to Section 98(1)(h) read with Section 98(2)(b) of the Cooperative Societies Act, an appeal against such an award lies before the Registrar. As the Cooperative Societies Act provides for a procedure for obtaining redress of the nature claimed by the Petitioner the present petition can not as provided by Article 226(3) of the Constitution, be entertained.

7. Learned Counsel for the Petitioner, however, refuted the preliminary objection and urged that u/s 98 of the Cooperative Societies Act, right to appeal against an award has been given only to a party aggrieved by it. In the arbitration proceedings the Petitioner had not been arrayed as a party. Accordingly could not be considered to be a party aggrieved with the meaning of Section 98 and no appeal lay at his instance. In the circumstances there was under the Cooperative Societies Act no forum where the Petitioner could seek his redress against the impugned award and the jurisdiction of this Court to grant him relief will not be barred under Article 226(3) of the Constitution.

8. In order to deal with the preliminary objection it will be convenient to note the provisions dealing with right to file appeals against awards" made by the arbitrators under the Cooperative Societies Act. Section 97 of the Act lays down that an appeal against an award made by the Registrar u/s 71 shall lie to the

Cooperative Tribunal and that the same can be filed by a person aggrieved within 30 days after the date on which the award is communicated to him. Sub-section (1) of Section 98 then lists various other orders, decisions and awards enumerated in Clauses (a) to (n) thereof against which an aggrieved party can file an appeal with the authorities mentioned in Sub-clause (2) thereof, within 30 days of the communication of the order, decision or award to be appealed against. Section 98(3) then enables the State Government to issue a notification directing that the appeals against awards mentioned in Clause (h) of Section 98(1) shall in respect of such cases or class of cases as may be specified in the notification lie to the Cooperative Tribunal. When such a notification has been issued any person aggrieved by such an award can file an appeal before the Cooperative Tribunal.

9. Learned Counsel for the Petitioner urged that a persual of the aforementioned provision shows that whereas in cases falling under Sections 97 and 98(3) of the Act the right of filing an appeal has been conferred on persons aggrieved by the award. Section 98(1) clearly confers a right only on a party aggrieved to file an appeal against various orders, decisions and award enumerated therein. In the context, the expression "party aggrieved" has a connotation narrower than the expression "person aggrieved." Accordingly, whereas in respect of matters mentioned in Sections 97 and 98(3) any person whose rights are adversely affected, whether he was a party to the proceedings, or not can file an appeal, Section 97 limits the right of filing an appeal to only such persons who were parties to the proceedings in which the impugned order, decision or award was made. As the Petitioner was not a party in the proceedings in which the impugned award was made, it cannot be said that he was a party aggrieved, entitled to file an appeal within the meaning of the expression as used in Section 97(1) of the Cooperative Societies Act.

10. Learned Counsel for the Respondent, on the other hand, urged that the expression "party aggrieved", occurring in Section 97(1) of the Act has been used loosely in the sense of a person aggrieved. Accordingly, whether or not a person had been actually impleaded as a party in the proceedings, he will have a right to file an appeal before the authorities concerned in Section 98(2) of the Act, if his rights are adversely affected by an order, decision or award made in respect of matters mentioned in Clauses (a) to (n) of Section 97(1). He urged that the submission made by him finds support from the fact that even though u/s 98(2), right to file an appeal in respect of awards contemplated by Section 98(1)(h) has been conferred on a party aggrieved. Section 98(3) of the Act lays down that when the State Government issues a notification enabling such appeals to be filed before the Cooperative Tribunal, the appeal can, instead of by a party aggrieved, be filed by a person aggrieved. It is difficult to conceive that the Legislature, while providing u/s 98(3) of the Act, for a change in the appellate forum intended to confer right of appeal on persons who had, before the date of the notification no right to file an appeal. This shows that the expression "person aggrieved" and "party aggrieved" have been used in Sections

97 and 98 of the Act, more or less in the same sense and even though the Petitioner had not been impleaded as a party in the arbitration proceedings, he was nonetheless a person who was aggrieved by the impugned order and was as such fully competent to question the validity of the award before the Registrar as provided in Section 98(2) of the Act.

11. The expression "party aggrieved" and "person aggrieved" have not been defined anywhere in the U.P. Cooperative Societies Act 1965. The meaning of these expressions has, therefore, to be gathered from the context in which they have been used. The portion of Section 98(1) of the Co-operative Societies Act which is relevant for the present discussion reads thus:

98(1) An appeal against-

(a) to (g)....

(h) An award made by an arbitrator or Board of Arbitrators under Sub-section (1) or Sub-section (2) of Section 71,

(i) to (m)....

(n) ...may within thirty days of the communication of the award to be appealed against be preferred by the aggrieved party to the authorities mentioned in Sub-section (2) in the manner prescribed.

12. Award referred to in Section 71 is made when a dispute between persons belonging to classes mentioned in Clauses (a) to (d) of Section 70(1), in respect of matters enumerated therein, is referred to an arbitrator. When such a dispute arises, the persons, controversy amongst whom gives rise to the dispute, undoubtedly are parties to the dispute. It is in order to resolve the dispute between such parties that a reference is made to an arbitrator. In absence of anything to the contrary contained in the section, for purposes of the award made for resolving that dispute, be not considered to be a party. Section 98 nowhere lays down that in relation to an award referred to in Clause (h) a person can become an aggrieved party only when he has been formally arrayed as a party in the proceeding. We are, therefore, of opinion that the expression "aggrieved party" as used in Section 98(1) of the Act includes within its ambit a person who is a party to the dispute necessitating the reference and who is not satisfied with the award made for resolving that dispute.

13. In taking the aforesaid view we derive considerable support from the provisions contained in Rule 225 of the Rules framed under the Cooperative Societies Act which reads thus:

When a dispute relating to any matter referred to in Sub-section (1) of Section 70 arises, the aggrieved party shall, on the form, if any prescribed for the purpose by the Registrar, apply to the Registrar stating the substance of the dispute and the claim; besides, mentioning the name and address of the opposite party or parties. If the party desires the dispute to be decided by a

board of arbitrators under Clause (c) of Sub-section (1) of Section 71, it shall also mention in the application the name of its nominee for the board of arbitrators.

14. A perusal of the rule shows that for purposes of Section 70 of the Co-operative Societies Act, persons are considered to be parties even before an application for reference is drawn up. In the context, the expression "parties" and "opposite parties", in Rule 225, can only mean persons, the dispute amongst whom necessitates the making of a reference u/s 70 of the U.P. Co-operative Societies Act. Whereas the party to the dispute which wants a change in the existing state of affairs will be the aggrieved party, the party which wants the existing affairs to continue, will be the other party who is not aggrieved and who has, under Rule 225, to be described in the reference application as opposite party. Merely because the person making an application for reference to arbitration chooses to ones describe the real opposite party it does not mean that the real opposite party ceases to be a party in relation to the award, that follows the reference. If a party to the dispute succeeds in obtaining an award against another party to the dispute, without notice to him, the party against whom an award has been obtained will be an aggrieved party which can file an appeal and urge that the award having been obtained without affording it an opportunity to be heard, is invalid.

15. In this view of the matter, answer to the question whether the Petitioner is a party aggrieved by the impugned award, will depend on whether he was a party to the dispute leading to the reference in which the impugned award u/s 71 of the Cooperative Societies Act was made. In the case before us we find that in his application for reference (annexure 2 to the writ petition) Sri Brahmapal Singh merely mentioned the facts because of which he claimed that Petitioners election as a delegate was invalid. Curiously enough Sri Brahmapal Singh, had, in that application, without disclosing the names of the persons, controversy amongst whom had given rise to the dispute arrayed the following as opposite parties:

- (1) Sahkari Ganna Vikas Samiti Khatauli Tehsil Jansa Muzaffarnagar.
- (2) Ganna Gram Sevak village Jandheri Tehsil Jansath, Distt. Muzaffarnagar.
- (3) Satyapal Singh son of Hari Singh, Sarpanch Oanna Panchayat Gram Jandheri.

Normally such a controversy must have arisen when Brahmapal Singh on the one hand asserted that Mahipal Singh's election as a delegate was invalid and Mahipal Singh on the other hand claimed that he was a validly elected delegate. Neither in the application for reference nor in the various affidavits in the case is there any indication that at any stage there was any controversy with regard to Petitioner's election as a delegate between the Petitioner and the three opposite parties named by him in his application. As a matter of fact a copy of the proceedings of the meeting wherein the Petitioners claims to have been elected as a delegate, has been filed as Annexure 7 C to the counter affidavit. It shows that it was opposite party No. 3 Sri Satyapal Singh Ganna Sarpanch who had

presided over the meeting and that according to him the Petitioner had not been elected as a delegate in that meeting. In the circumstances there was absolutely no scope of there being any controversy or dispute between Brahmapal Singh and Satyapal Singh with regard to Petitioner's election as a delegate. This leads to an irresistible conclusion that while mentioning the three names in his application and describing them as opposite parties, Sri Brahmapal Singh did not mention the name of such persons, the dispute with whom had actuated him to make the reference application. It is almost axiomatic that Sri Brahmapal Singh had questioned the right of the Petitioner to act as a delegate as the Petitioner had been asserting that he had been validly elected as a delegate. It was the dispute between Brahmapal Singh on the one hand and the Petitioner on the other, which ultimately led to the impugned award. Thus the Petitioner was a party in relation to the impugned award. As he was aggrieved by the award setting aside his election, he was an aggrieved party within the meaning of Section 98(1).

16. Learned Counsel for the Petitioner next argued that an appeal against an award has to be filed within 30 days of its communication to the party. Rule 245 lays down that a copy of the award shall be given to each party, certified and sealed in such a manner that the Registrar may direct by general or special order. Copy of the award can be supplied only to the persons who have been arrayed as parties to the proceedings in which it is made. The arbitrator could not supply a certified copy of the award to the Petitioner who had not been arrayed as a party. So long as the copy of the award was not communicated to the Petitioner, he could not be in a position to file an appeal. In the circumstances the Petitioner, who under the law is not to be supplied with the certified copy of the award should not be considered to be a party within the scope of expression as used in Section 97 and the expression should be confined to persons who have actually been arrayed as parties to the proceedings.

17. We are unable to accept this submission. Under Rule 245 the Registrar is bound to communicate the award to the party, the dispute with whom led to the making of an application for reference. Accordingly, as the dispute culminating into the present award was between Brahmapal Singh and the Petitioner the arbitrator is bound to supply a copy of the award to the Petitioner. If the arbitrator has not supplied the copy of the award to the Petitioner so far he must do so now. The limitation for filing an appeal against the award accrues from the date of communication of the award which in the context means the communication of the award under Rule 245 and not from the date of its knowledge. Learned Counsel for the Respondent urged that limitation for filing an appeal against an award should be construed to commence from the date of knowledge of the award. We find ourselves unable to accept this submission. The award is communicated to the parties with a view to acquaint them of its basis. So long as the party is not made aware of the basis for the award, it is not possible for it to exercise its right of appeal effectively. Merely because the party acquires knowledge of the fact that an award has been made it does not mean

that it has been acquainted of the basis of the award and this is why the rules enjoin the arbitrator to communicate an authenticated copy of the award to the party concerned and the statute lays down that the period of limitation for filing the appeal is to be reckoned from the date it is so communicated to it.

18. As the Co-operative Societies Act provides for the redress of Petitioner's grievance the present petition is, in view of the provisions contained in Article 226(3) of the Constitution not maintainable. It is therefore not necessary for us to go into the question and to pronounce upon the merits of the award made by the arbitrator.

19. We, however, direct the Sub-Divisional Officer Jansath, who acted as an arbitrator in this case, to take immediate steps to supply a certified copy of the award to the Petitioner (the real aggrieved party), so that he may be able to question its validity before the Registrar on such grounds as he may be advised.

20. Subject to the aforesaid observations, the petition fails and is dismissed. In the circumstances, we direct the parties to bear their own costs.