
(1999) 04 AHC CK 0113

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14528 of 1899

Mansha Item and Anr.

APPELLANT

Vs

District Assistant Registrar, Co-operative Societies

RESPONDENT

Date of Decision : 01-04-1999

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 128, 98

Citation : (1999) 04 AHC CK 0113

Hon'ble Judges : D.K.Seth, J

Final Decision : Allowed

Judgement

D.K. Seth, J.—The learned Counsel for the petitioner had taken a simple but an interesting point. An order has been passed in exercise of Section 128 of the U.P. Cooperative Societies Act by the District Assistant Registrar. According to Mr. Triloki Nath, power under Section 128 can be exercised only by the Registrar since the said section prescribes Registrar as the only authority who could exercised such power. However, there are provisions by which such powers could be delegated by specific order issued by the Government to officers other than the Registrar, by reasons of the definition of the expression "Registrar" contained in Section 2 (r). In the present case, there having been no delegation of power under Section 128 to any officer other than the Registrar, the said power cannot be exercised by any other officers unless an order is passed under subsection (2) of Section 3. In the absence of any such order passed by the State Government under subsection (2) of Section 3, the District Assistant Registrar could not have exercised the power under Section 128. As such impugned order is wholly incompetent and without jurisdiction. The notification dated 24th June, 1969 published in Official Gazette dated 5th July, 1969 issued under subsection (2) of Section 3 has not empowered District Assistant Registrar with the power under Section 128 of the said Act. On this ground he contends that the order is to be declared void, abinitio and nonest and is to be quashed.

2. Mr. K.R. Singh, learned Standing Counsel on the other contents that by

reasons of paragraph 5 of the notification dated 24th June, 1969, it is open to the District Assistant Registrar to pass such an order. He, however, obtained time to find out if there are any other order issued by the State Government under subsection (2) of Section 3. But today he had submitted that he has not been able to lay his hands upon any such order passed by the State Government empowering the District Assistant Registrar to exercise power under Section 128 of the said Act.

" 3. I have heard both the Counsel at length.

4. In order to appreciate the question, it would be necessary to refer Section 128, which is quoted below :

"28. Registrar's power to annul resolution of a Cooperative Society or cancel order passed by an officer of a Cooperative Society in certain cases. The Registrar may

(i) annul any resolution passed by the Committee of Management, or the general body of any Cooperative Society; or

(ii) Cancel any order passed by an officer of a Cooperative Society;

if he is of the opinion that the resolution or the order, as the case may be, is not covered by the objects of the Society, or is in contravention of the provisions of this Act, the Rules or the

Byelaws of the Society, whereupon every such resolution or order shall become void and inoperative and be deleted from the records of the society:

Provided that, the Registrar shall, before making any order, require the Committee of Management, general body or officer of the Cooperative Society to reconsider the resolution, or as the case may be, the order, within such period as he may fix but which shall not be less than fifteen days, and if deems fit may stay the operation of that resolution or the order during such period."

5. The above provision shows that Registrar may annul a resolution or cancel an order passed by an officer of the Society if he is of opinion that the same is in contravention of the provisions of the Act, Rules and Byelaws of the Society. It also provides that before passing such order the Registrar shall require the Committee or the General Body or the officer to reconsider the resolution of the order within a fixed period

6. Admittedly, in the present case no such opportunity was given. Even if it was within the competence of the District Assistant Registrar still then the order could not be sustained in the absence of such opportunity.

7. Be that as it may, Section 128 empowers the Registrar to exercise the power provided therein. "Registrar" has been defined in Section 2 (r) in the following manner.

"Registrar" means the person for the time being appointed as Registrar of

Cooperative Societies under subsection (1) of Section 3 and includes any person appointed under subsection (2) of that section when exercising all or any of the powers of the Registrar;"

8. The above definition includes such officers appointed under subsection (2) of Section 3 within the definition of "Registrar". Section 3 prescribe as follows:

(i) The State Government may appoint a person to be the Registrar of Cooperative Society for the State.

(ii) The State Government may, for the purposes of this Act, also appoint other persons to assist the Registrar and by general or special order confer on any such person all or any of the powers of the Registrar. Subsection (1) requires the Government to appoint the Registrar. Under subsection (2) State Government may appoint other persons to assist the Registrar, by general or special order confer on such persons or any of the powers of the Registrar. Thus, under subsection (2), it is open to the Government to issue orders appointing Assistant Registrar or Deputy Registrar to assist the Registrar with such power as may be prescribed in the order under subsection (2) of Section 3.

9. The order dated 24th June, 1969 was issued in exercised of powers conferred under subsection (2) of Section 3 thereby Deputy Registrar and Assistant Registrar were appointed with the powers specified in the respective paragraph of the sa, id notification. For our present purpose it is necessary to quote the said notification as follows:

"In exercise of the power under subsection (2) of Section 3 of the Uttar Pradesh Cooperative Societies Act, 1965 (U.P. Act XI of 1966), the Governor is pleased to confer, subject to the provisions of the said Act and the Rules made there under, the powers of the Registrar under that Act and the rules, to be exercised as follows:

(1) An officer for the time being holding the post of Additional Registrar, Cooperative Societies at the headquarters of the Registrar, Cooperative Societies, U.P. or the Deputy Registrar of the Cooperative Societies at the said headquarters shall exercise the powers of the Registrar under the Act and the Rules in respect of such class or classes or type or types of Co operative Societies which by the order of the Registrar, are placed under the charge of such officer:

Provided that the powers under Sections 14, 125 and 126 and under Rules 30, 31, 32 and 33 shall not be exercised by the said Deputy Registrar in respect of an apex Cooperative Society or a Central Cooperative Society and the powers under Rules 124, 125 and 126 shall not be exercised by him in respect of an apex Cooperative Society;

(2) An officer for the timebeing holding the post of Deputy Registrar/Assistant Registrar, InCharge of a Division, shall exercise the powers of the Registrar under the Act and the rules within the area of his jurisdiction: Provided that the powers

under Sections 14, 125 and 126 and under Rules 30, 31, 32 and

33 shall not be exercised by the said Deputy Registrar/Assistant Registrar in respect of an apex Cooperative Society or a Genuel Cooperative Society and the powers under Rules, 124, 125 and 126 shall not be exercised by such officer in respect of an apex Cooperative Society;

(3) An officer for the time being holding the post of District Magistrate of a District shall exercise the power of the Registrar under Sections 70, 71 and 98 of the Act in respect of the disputes relating to the constitution of the Committee of Management or election or appointment of any officebearer or a delegate of a Cooperative Society, other than an apex Cr operative Society, having headquarters within the district;

(4) An officer for the time being holding the post of the District Assistant Registrar, Cooperative Societies, U.P. shall exercise the powers of the Registrar:

(a) under Sections 32, 33, 37, 66, 69 and 103 of the Act and Rules 104, 134 and 287 in respect of all the Cooperative Societies, other than apex Cooperative Societies, having headquarters within the area of his jurisdiction;

(b) under Sections 70, 71, 98, 109 and 115 of the Act and Rules 312 (c), 331, .U2, 336, 365, 366, 369, 370, 371, 372, 373, 374, 377 and 378 in respect of all the Cooperative Societies, having headquarters within the area of his jurisdiction; and

(c) under Sections"27, 29, 31, 65, 68, 74, 91, 92 and 127 of the Act and Rules 42, 43, 60, 61, 62, 90, 97, 110, 111, 124, 125, 151, 178, 180, 213, 214, 215 and 224 in respect only of the primary Cooperative Societies, having headquarters within the area of his jurisdiction;

(5) Without prejudice to an order made under subsection (3) of Section 98, the powers of the Registrar to hear an appeal under clause (b) of subsection (2) of Section 98 of the Act shall be exercised as follows:

(a) in the case of an award referred to in clause (h) of sub section (1) of Section 98, an officer, including his successor by whom the arbitrator or the Board of the Arbitrators, as the case may be, was appointed, shall exercise the powers;

(b) in the case of a decision referred in clause f) of sub section (1) of Section 98

(i) the Additional Registrar, Cooperative Societies concerned, shall exercise the powers in the dispute relating to an apex Central Cooperative Society;

(ii) the Deputy Registrar/Assistant Registrar, In charge of a Division, shall exercise the powers in the disputes relating to a Central Cooperative Society, having headquarters within the area of his jurisdiction;

(iii) the District Assistant Registrar of the district shall exercise the powers in the dispute relating to a primary Co operative Society having headquarters within the area of his jurisdiction ;

(c) in case of an order referred to in clause (j) of subsection (1) of Section 98

(i) the Deputy Registrar/the Assistant Registrar, In charge of a Division, in whose area of jurisdiction the headquarters of the Society is situate, shall exercise the powers, where the liquidator of the Society is subject to the control of the District Assistant Registrar exercising the powers of Registrar under subsection (2) of Section 74;

(ii) the Additional Registrar concerned shall exercise the powers, where the liquidator is subject to the control of the Deputy Registrar at the headquarters of the Registrar or of Deputy Registrar/Assistant Registrar, In charge of a Division exercising the powers of the Registrar under subsection (2) of Section 74.

(6) The powers relating to reference of the disputes to the Registrar under Section 70 and the decision on such disputes under Section 71 shall be exercised as provided in Rules 229 and 230."

10. The paragraph 4 is necessary for our present purpose. Paragraph 4 does not indicate that the power under Section 128 has been delegated either to the District Assistant Registrar or to the Deputy Registrar. Even from paragraph Nos. 1, 2 and 3, it does not appear that the power exercised by the Registrar under Section 128 has been given either to the Additional Registrar or to the Deputy Registrar or any one else. Whereas paragraph No. 4 while empowering the District Assistant Registrar with various powers under various sections and rules, it does not include the power under Section 128.

11. The reliance on para 5 by Mr. K.R. Singh does not seem to be of any assistance. Inasmuch as paragraph No. 5 deals with appellate power. In the present case, the District Assistant Registrar did not exercise any appellate power but exercises the original power. Unless it exercises the appellate power, the District Assistant Registrar cannot be said to be competent authority in view of paragraph 5 of the said notification to proceed with the enquiry. But then it is the order that has been passed by the District Assistant Registrar, which cannot be appealed against before the District Assistant Registrar. At the same time District Assistant Registrar having not been conferred with the power under Section 128, it is wholly without jurisdiction and incompetent and is void, abinitio and no nest and could not be brought within the purview of paragraph 5 even if the same is, assuming but not admitting, stretched to that extent. Then again the power that has been conferred on the District Assistant Registrar in paragraph 5 relates to Appellate Authority in respect of an order or in respect of matters mentioned in subsection (1)(h)(c)(j) of Section 98. The said clause does not include the power execute under Section 128, which is provided under Section (1)(n) of Section 128. Therefore, paragraph 5 also cannot help the contention of Mr. Singh.

12. In such circumstances, the impugned order seeking to cancel the resolution taken by the Committee of Management and an order passed by District Assistant Registrar contained in Annexures 10 and 11 respectively cannot be

sustained on account of its being without jurisdiction, incompetent and void. Therefore, the impugned order cancelling the resolution or the order contained in Annexure 10 and its consequential order are hereby declared without jurisdiction, incompetent, void, abinitio and nonest and are accordingly hereby quashed.

13. Let a writ of mandamus and certiorari do accordingly issue to the extent indicated above. The writ petition, thus, succeeds and is allowed. However, there will be no order as to costs.