
(2007) 06 UK CK 0040
In the Uttarakhand High Court

Mohd. Sarwaryar Khan

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 25-06-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Uttaranchal Co-operative Societies Act, 2003 — Section 34(1), 34(2)

Citation : AIR 2008 Utt 41

Hon'ble Judges : J.C.S.Rawat, J;Dharam Veer, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

J.C.S. Rawat, J.—By means of this Writ Petition, moved under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:

I) Issue a writ, order or direction in the nature of certiorari quashing the order No. 219/XIV-1/2007 dated 23-3-2007 and Order dated 24-3-2007 (Annexure No. 4 & 5 to the writ petition) passed by respondent No. 1 and 3 to the writ petition.

II) Issue a writ order or direction in the nature of mandamus directing and commanding the respondent not to interfere in the working of the petitioner as Chairman in Kisan Sewa Shahkari Samiti, Dakshini, Khatima, Udham Singh Nagar till the completion of terms of Committee of Management.

III) Issue a suitable writ order or direction, which this Hon''ble Court may be deem fit and proper in the circumstances of the case.

IV) Award the cost of the petition.

2. The case of the petitioner in nutshell is that the petitioner was nominated by the State Government as Director on 29th September, 2004 in the Co-operative Society (respondent No. 5) and thereafter he contested the election of the Chairman of the Society and he was declared elected by the Election Officer as Chairman of the said Society and he took the charge as such. The petitioner has

been discharging his duties as Chairman of the Society. The term of the Chairman of the Committee of Management was five years according to the provision of Uttaranchal Co-operative Societies Act, 2003 (hereinafter referred U.C.S.A.). The Committee of Management has not passed any no-confidence motion against the petitioner, as such, he cannot be terminated or he cannot be allowed to cease as Chairman of the said Committee. The respondent Nos. 1 to 4 have passed the impugned order withdrawing the nomination of the petitioner as Director and thereafter he was not permitted to function as a Chairman in the said society. Hence, this petition has been filed by the petitioner.

3. The respondents have filed counter affidavit alleging therein that the petitioner was admittedly nominated by the Government as Director of the said Society. Thereafter, he was elected as a Chairman of Farmers Fertilizers Co-operative, South Khatima by virtue of being a Government nominated member/Director of the Committee of the Management. It was further pleaded that the appointment of the petitioner was u/s 34(1) of the U.C.S.A. and his nomination was only during the pleasure of the Government and the said nomination was cancelled by the Government u/s 34(2) of the U.C.S.A. The natural consequences of the said withdrawal of the pleasure was that the petitioner was also ceased to be a Chairman with immediate effect. The Government was competent to withdraw the nomination of the petitioner as provided under the U.C.S.A. It was further pleaded that under Rule 456(3) of Uttaranchal Societies Rules, 2004, the electoral class for the Chairman and other officer bearers consists of elected and nominated members of the Committee of Management. By virtue, the petitioner being the nominated member/Director, he was appointed as Chairman. It was further pleaded that with the aforesaid withdrawal of the pleasure by the Government, the petitioner ceases to be a nominated member of the society. With the withdrawal by the Government of his earlier nomination, the petitioner lost his qualification to be the Chairman of Farmers Fertilizers Co-operative, South Khatima.

4. The petitioner has also filed the rejoinder affidavit reiterating the same averments which he has made in the writ petition.

5. Heard learned Counsel for the parties and perused I he record.

6. Learned Counsel for the petitioner contended that exercise of power is the pleasure of the Government which has been exercised in this case by the respondents arbitrarily and politically. Since there was no allegation against the petitioner and his term was not been completed and no-confidence motion has been moved against the petitioner, as such, his withdrawal from the Committee by the Government was a mala fide act on behalf of the respondents. The petitioner was elected as a Chairman and as such, he cannot be removed before his term without the no-confidence motion. Learned Brief Holder on behalf of the State refuted the contentions.

7. Perusal of Section 34 of U.C.S.A. clearly reveals that the Government has the

power to nominate two members in any of the Society. Section 34(1)(c) is quoted here under:

(c) given loans or made advances to a co-operative society or guaranteed the repayment of principal and payment of the interest on debentures issued by a co-operative society or guaranteed the repayment of principal and payment of interest on loans or advances to a co-operative society.

The State Government shall have the right to nominate on the Committee of Management of such society not more than two persons one of whom shall be a Government servant, (which will include a professional also if nominated by the Govt.) so, however, that the Government servant shall not vote at an election of an office-bearer of the society.

Provided that where the society is engaged in production of sugar, and-

(i) the share capital subscribed to by the State Government is not less than one crore rupees; or

(ii) the share of the State Government in the share capital of the society exceeds fifty per cent of the total share capital of the society; or

(iii) the State Government has given loans or made advances to the society or guaranteed the repayment of principal or payment of interest on debentures issued by the society or guaranteed the repayment of principal and interest on loans and advances to the society and the amount exceeds fifty per cent in the aggregate of the total amount so borrowed by the society.

The State Government shall also have the right to nominate the Chairman of the Committee of Management, who shall be a Government servant.

8. Perusal of Sub-rule (2) of Section 34 provides that a person nominated under Sub-section (1) shall hold office during the pleasure of the State Government. Sub-rule (2) is quoted hereunder:

(2) A person nominated under Sub-section (1) shall hold office during the pleasure of the State Government.

9. Thus, it is apparent from the above quoted rules that the petitioner shall hold the office during the pleasure of the Government. Since the Government vide order dated 23-3-2007 has directed the Registrar to cancel all nominations of those non-Government Directors who were appointed u/s 34(1) and had withdrawn its pleasure in accordance with the said direction. The petitioner's nomination was cancelled by the Registrar on 24-3-2007 with immediate effect. According to Rule 456(3) of Uttaranchal Co-operative Societies Rules, 2004, the electoral class for the Chairman and other office-bearer consists of elected and nominated members of the Committee of Management. The petitioner was appointed as Director u/s 34(1) of the U.C.S.A. Rule 456(3) of Uttaranchal Cooperative Societies Rules, 2004 is quoted below:

(3)(i) The Chairman and other office-bearers shall be elected from amongst the elected and nominated non-official members of the Committee of Management.

(ii) The elected members and nominated non-official members of the Committee of Management shall elect delegates to represent the society in the General Body of another co-operative society of which the society is a member, from amongst the qualified members of the General Body:

Provided that quorum for the election of the Chairman, Vice-Chairman and the Delegates shall be more than half the number of members having voting rights.

10. In view of the above quoted rules a person who is to be elected a Chairman, he must be either member elected from or nominated non-official member of the Committee of Management. The petitioner was admittedly a nominated non-official member of the Committee of Management. With the withdrawal by the State Government of his earlier nomination, the petitioner lost his qualification to be a Chairman of the said society. The Government has rightly stopped the petitioner to function as a Chairman. Sub-rule (o) of Rule 473(1) provides as under:

(o) he is otherwise disqualified under any of the provisions of the Act or the Rules or the Bye-laws of the society;

The aforequoted rule provides that a Chairman can also be removed if he otherwise disqualified under any of the provisions of the Act or the Rules or the Bye-laws of the Society. The withdrawal or the cancellation of the nomination of the petitioner reveals that he no longer remain as nominated Director of the Committee of Management and thus he became otherwise disqualified or continues as Chairman.

11. Whereas the malice is concerned, learned Counsel for the petitioner contended that the Government has passed the mass cancellation of Directors of the Co-operative Societies which is clearly a mala fide order. If the mala fide has been alleged, then the details of the mala fide must be pleaded in the petition. If the cancellation order has been passed in mass and the petitioner has not been discriminated, it cannot be held that the order was mala fide.

12. In view of the above, we do not find any ground-of interference in the writ petition. The writ petition devoids of merit & is liable to be dismissed and is dismissed summarily accordingly. No order as to cost.