
(1995) 02 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5381 of 1994

Nirmal Nahar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-02-1995

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 14(2), 75

Citation : (1995) 3 WLC 353 : (1995) 1 WLN 265

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Jain, J.—By this writ petition, the petitioner seeks a direction to be issued to the respondents to allow the members referred to in Anx. 1 to participate in the election scheduled to be held on 26.11.1994 and any action prejudicial to them may also sought to be quashed. It has been prayed that the respondents may also be directed not to allow those persons whose names have been mentioned in Anx. 4 and the same may be declared illegal and void.

2. Briefly stated the facts of the case as alleged by the petitioner are that he along with 475 members applied for the membership of respondent No. 2 Jodhpur Nagrik Sahakari Bank Ltd., Jodhpur (hereinafter referred called as Bank). It is alleged that they completed all necessary formalities for becoming the members and deposited the requisite fees and share money according to rules, so membership of the petitioner and 475 persons mentioned in Anx. 1 was unanimously accepted in the meeting held on 5.2.1994. It is also alleged that election programme was published vide Anx. 3 in daily news-paper "Rajasthan Patrika" on 11.11.1994 whereby the date 10.11.1994 was fixed for filing the objections to the voters list, 16.11.1994 was fixed for hearing on the objection and publication of voters list. The petitioner has alleged that the objections were filed before the respondent about the non-Inclusion of names of members referred to in Anx. 1 but the same were rejected by the respondent No. 4

Election Officer. The petitioner has also alleged that out of Anx. 1 about 10 to 15 persons are already accepted as members but the rest are left, it has also been alleged that in the meeting dt. 27.10.1994, the Executive Committee illegally accepted 600 persons as members but deleted name of the petitioner and like others from participating in the election. The petitioner has further alleged that representations were also moved before the respondent No. 3 Dy. Registrar and Joint Registrar but they rejected the same. Hence, the petitioner has filed this writ petition.

3. This writ petition has been filed on 19.11.1994. Notice to show cause was issued on 12.12.1994 and it was ordered that the persons mentioned in Anx. 1 be permitted to exercise their right of vote and a separate box be made available for that purpose. Their votes be kept separate and the result be not announced till the next date hearing.

4. In pursuance of the notice, the non-petitioner No. 1 State filed reply on 10.1.1995 and the non-petitioner No. 2 Bank also filed reply on 11.1.1995. Rejoinder to the reply has also been filed by the petitioner on 17.1.1995. As agreed by the learned Counsel for the parties, the matter is heard finally.

5. Mr. Sangeet Lodha, learned Counsel for the non-petitioner No. 1 raised preliminary objections about the maintainability of the writ petition on the ground that right to claim membership and exercise of franchise is an individual right and the petitioner cannot maintain this petition on behalf of other persons mentioned in Anx. 1. He has submitted that preparation of voters list for election of members of the Managing Committee of Cooperative Society is a part of election process and such dispute can only be properly adjudicated in the alternative remedy available to the petitioner u/s 75 of the Rajasthan Cooperative Societies Act, 1965 (hereinafter referred to as the Act of 1965). He has also contended that as the meeting held on 5.2.1994 was void, the persons on whom the membership was conferred in that meeting cannot be treated as members of the Society and against which the petitioner can avail alternative remedy of application u/s 19 of the Act of 1965 before the Registrar. He has relied upon *Bharatlal Dugal v. Registrar Sahakari Samiti* 1987 1992 (1) RLR 730 (1994) (1) RLR 565 decided on 15.4.1994.

6. Mr. Singhvi, learned Counsel for the non-petitioner No. 2 in addition to argument of Mr. Lodha has strongly opposed the maintainability of this writ petition on the ground of wholesome concealment and suppression of material facts. He has submitted that the meeting held on 5.2.94 was no meeting because there was no notice of 8 days as required by Bye-law No. 34, which was earlier cancelled by the then Managing Director vide notice dt. 4.2.94. He has also submitted that the Minutes of the meeting of the Board of Directors dt. 5.2.94 were never confirmed in the next meeting rather in the next meeting held on 2.3.94, the meeting of 5.2.94 was declared as illegal and Minutes of 2.3.94 were confirmed in the meeting of 30.3.94. He has further contended that the petitioner has stated in para 3 that all the formalities were completed whereas as

per bye-law 40(5) the required recommendations and report were there in the form. Mr. Singhvi has contended that in para 6 the petitioner has stated that in the voters list their name does not find place which is wrong as names of many a persons were included in the voters list from 1 to 162 and later on the petitioner himself in para 10 has made another statement that names of 10-15 persons were included. Mr. Singhvi has also contended that the petitioner has stated in the writ petition in para 6 that he was desirous to contest the election where as he was not eligible as per bye-law 31 one should be member for two years and he should have Rs. 500/- in his account but the alleged membership was even illegally conferred upon him on 5.2.94. He has further contended that writ cannot be issued to restore the Minutes of the meeting of 5.2.94, which was illegal act in the absence of quorum as per bye-law 34. He has contended that the petitioner cannot be permitted to approbate and reprobate inasmuch as in para 11 he says that the meeting of 27.10.94 was illegal in the absence of quorum whereas in the meeting in which he was born i.e. meeting dt. 5.2.94 was also illegal for want of quorum. He has also contended that this petition suffers from the vice of non-joinder of necessary party as the petitioner wants to get the membership conferred on 600 persons cancelled but they are not made a party to this writ petition. He has lastly questioned the maintainability of the writ petition on the ground of misjoinder of separate cause actions and further that the petition itself is misconceived and the same may be dismissed on the conduct alone of the petitioner. He has urged that the entire process of election was undertaken in accordance with the provisions of the Act. Rules and Bye-laws. It has also been urged that the order passed by the Dy. Registrar in the case of one Shyamlal was an ex parte order and no controversy was decided nor that was an order in rem, therefore, that is of no help to the petitioner. He has relied on *Sumermal v. State* 1977 WLN 154, *G.N. Reddy(Dead L.R's v. Govt. of Karnataka* 1991 SC-1726 , *Surinder Singh Vs. Central Government and Others*,

7. Mr. Joshi, learned Counsel for the petitioner has submitted that the petitioner is only seeking a relief that voters list should be properly made which is not like public interest litigation. He has also submitted that Section 75 of the Act is not available and the same is attracted after completion of election only and the petitioner can very well avail writ jurisdiction. On merits he has contended that once the petitioner and others mentioned in Anx. 1 were made members in the meeting held on 5.2.94 of the respondent Bank that cannot be revoked as all the formalities were completed by them and they are entitled to participate in the election. He has further contended that the membership could be revoked only by the Registrar u/s 34 of the Act of 1965. He has lastly contended that names of 600 persons were also added illegally as they were not entitled to become members nor the Executive Committee accepted their membership. He has relied on *Chainaram v. State of Rajasthan* 1988 (1) RLR 343 , *Janata Dal Vs. H.S. Chowdhary and Others*,

8. I have heard learned Counsel for the parties and perused the material on record as well as the relevant provision of law as also the case law cited at the

Bar.

9. It is not necessary to discuss the case law as it is well settled that if proceedings impugned are without jurisdiction or there is patent illegality, the same can be challenged by way of writ petition and alternative remedy is no bar. It is also well settled that the High Court will not interfere for settling election dispute when an alternative remedy is available. While invoking writ jurisdiction, one should come with clean hands and one is not entitled for any relief if there is any suppression of material facts or concealment. A writ petition is also not maintainable if the same is filed to circumvent or It suffers from the vice of non-joinder of the necessary parties and each case depends upon the facts of its own.

10. In the ease in hand, the petitioner has not been able to show any circumstance to establish that there is any patent illegality or the action challenged in the petition is without jurisdiction particularly when remedy is open u/s 75 of the Act, which is adequate, equally speedy and efficacious for the decision of the dispute raised by the petitioner in view of the Division Bench decision of this Court rendered in Babu Lal Vs. The State of Rajasthan and Others, Therefore, the writ petition is liable to be dismissed on the ground of availability of alternative remedy alone. The writ petition can be dismissed on the other preliminary objections viz suppression and concealment of material fact and no-joinder of parties, as they speak themselves which is clear from the material placed on record as stated above, so also on the ground that right to vote is an individual right which is created by the statute and can only be exercised individually and one has no right to file writ petition on behalf of others. Therefore, the writ petition cannot be maintained filed by the petitioner on behalf of other persons, but since Mr. Joshi has argued at length on merits of the case, I proceed to examine the matter accordingly.

11. For proper adjudication of the controversy raised in this petition, it would be proper to read Bye law No. 34 and 35, which are as follows:

34. Meeting of the Board of Directors and Notice of the Meeting: The Board shall meet as often as it necessary to transact business, but it shall meet at least once a month. Notice of a meeting of the Board of Directors together with the Agenda of the meeting and detailed notices thereon shall be sent to all the directors at least eight days prior to the date of the meeting.

35 Quorum: Five directors shall form the quorum.

12. Undisputedly at the relevant time the respondent Bank was having 8 elected Directors and 3 Co-opted Directors and 3 noimnees of the Department. On 24.1.1994 a notice was issued by the Managing Director to hold the meeting of the Board of Directors on 5.2.94 vide Ex. R. 2/1. A representation was made by the Directors of the respondent Bank viz Ss. Madho Singh Kachwaha, Akal Raj Mehta, Amarchand Purohit, Ranchordas Arora and Smt. Padma Jain on 19.1.94 9 Ex. R. 2/2) stating that the co-opted members cannot be invited as their term had already expired on 7.1.1993 and that the co-opted members of the Bank

have no right to vote in the meeting of the Board of Directors. The Dy. Registrar, Cooperative Societies, Jodhpur by the letter dt. 4.2.1994 informed the Managing Director to post-pone the meeting. The Managing Director in pursuance of the letter of the Dy. Registrar issued a notice on 4.2.1994 by which the meeting dt. 5.2.94 was adjourned vide Ex. R. 2/4. However, the Chairman of the respondent Bank directed the Managing Director on 5.2.1994 to issue a notice to the members of the Board of Directors that the meeting dt. 5.2.1994 will be held as per agenda and time already fixed. On 5.2.1994, six Directors participated in the meeting out of them only three were elected and the remaining Directors were co-opted Directors whose term had already been expired on 7.1.1993. In the meeting held on 5.2.94, membership was conferred on the persons mentioned in Annex. 1 placed in this writ petition.

13. Keeping in view the aforesaid background, in my opinion, no case for interference in the writ jurisdiction is made out and the argument of Mr. Joshi that without following the procedure, the membership so granted on 5.2.94 cannot be revoked, has no substance. As stated above, the meeting dt. 5.2.94 was earlier adjourned on 4.2.94 but under the directions of the Chairman, the meeting dt. 5.2.94 was held. A bare perusal of Bye-law No. 34 makes it clear that the notice of a meeting of the Board of Directors together with the Agenda of the meeting and the detailed notes shall be sent to all the Directors at least eight days prior to the date of the meeting. In the instant case, admittedly, notice of the meeting was not sent at least "eight days" prior to the date of meeting rather it is alleged that the notice of the meeting was not served upon the other Directors till 12 noon even at the time of meeting on 5.2.1994 which has not been controverted by the petitioner nor any material has been produced to show that notices were sent to all the Directors in view of Bye-law No. 34. That apart in the meeting held on 5.2.1994, the "quorum" as required by Bye-law No. 35 was also not there as there were only three elected Directors and the other three Directors whose term had already expired. The co-opted Directors ceased to be the members of the Board of Directors having no voting right. The same view has been expressed by a Division Bench of this Court in *K.M. Jain V State of Rajasthan* bearing No. D.B.C. Writ Petition No. 49 of 1994 decided on 15.4.94 wherein it has been held that such co-opted members whose term has expired had no right to participate in the meeting. Thus, the meeting held on 5.2.94 was not a valid meeting and no right accrues on the basis of minutes of meeting dt. 5.2.94, since the same was in violation of the Bye-laws which are framed u/s 14(2) of the Act of 1965 having statutory force and, therefore, the meeting held on 5.2.94 was illegal and void ab initio. Moreover, the minutes of the meeting held on 5.2.94 were not confirmed rather a notice was issued by the Managing Director on 22.2.94 notifying that the meeting of the Board of Directors shall be held on 2.3.94. It is pertinent to note that in the notice it was specifically mentioned that the proceedings of the Board of Directors' meeting held on 5.2.94 will be reconsidered, which was within the jurisdiction of the Managing Director. In the next meeting held on 2.3.94 the resolution passed on

5.2.94 was cancelled. Furthermore, the respondents have specifically stated that the forms of the most of the persons mentioned in Annex. 1 were not complete according to the rules, which is a question of fact and needs investigation and the persons whose forms were complete in all respect were included in the voters list. Meaning-thereby that the permission to become member was not accorded to some of the persons. Further, the proceedings of the meeting held on 2.3.94 whereby resolution of 5.2.94 was cancelled, were confirmed in the subsequent meeting held on 30.3.1994, so on this count also no direction as prayed for, that persons mentioned in Anx.1 be declared as members of the respondent Bank, can be issued as Courts are not meant to perpetuate the illegality.

14. It has been contended by Mr. Joshi, learned Counsel for the petitioner that the Registrar can only rescind the resolution. It is true that Registrar can rescind certain resolution if the resolution is opposed to the object of the Society and prejudicial to its interest or beyond its powers but in the given facts of the case, the arguments of Mr. Joshi is not helpful since the resolution passed by the Board of Directors was cancelled by themselves which is within their competence and further there was no occasion for the Registrar to exercise his powers as meeting held on 5.2.94 was not valid and, therefore, non-exercise of the powers by the Registrar is of no avail. Apart from that the petitioner has not challenged the subsequent proceedings taken in the next meeting wherein as stated the minutes of the meeting held on 5.2.94 were cancelled and subsequently confirmed. Therefore, on this count also the petitioner has not been able to make out a case for interference by placing cogent material to controvert the submissions made by the non-petitioners.

15. No other point was pressed before me.

16. In view of what I have discussed above, I am of the view that the petitioner is not entitled for any relief as claimed in the writ petition and therefore, no interference is called for.

17. Consequently, the writ petition has no force and the same is hereby dismissed.