
(2012) 01 AHC CK 0668

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 61180 of 2011

Prabhakar Dwivedi and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 118, 128, 188, 30, 38

Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 111, 114, 115, 116, 130

Citation : (2012) 2 ADJ 396

Hon'ble Judges : Sunita Agarwal, J;Ashok Bhushan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Hon"ble Ashok Bhushan, J.—Heard Sri Ashok Khare, Senior Advocate, assisted by Sri Ajit Kumar Singh for the petitioners, Sri R.N. Singh, Senior Advocate, assisted by Sri Rajesh Tripathi for respondent No. 6, Sri Sujeet Kumar Rai, appearing for respondents No. 4 and 5 and learned Standing Counsel appearing for respondent No. 1 to 3.

2. Counter-affidavit as well as supplementary counter-affidavit has been filed on behalf of respondents No. 4 and 5 to which rejoinder affidavit has also been filed by the petitioners. With the consent of learned counsel for the parties, the writ petition is being finally decided.

3. Brief facts of the case as emerge from pleadings of the parties are as follows; the District Co-operative Bank Limited, Gorakhpur is a Central Society within the meaning of U.P. Cooperative Societies Act, 1965 (hereinafter referred to as the 1965 Act). The elections of the Directors of the Committee of Management of the District Co-operative Society Bank, Gorakhpur (hereinafter referred to as the Bank) were held on 5th October, 2009. The elections of the Chairman and Vice Chairman was held on 6th October, 2009 in which respondent No. 6 was elected as Chairman and petitioner No. 1 was elected as Vice Chairman. The three members of the Committee of Management submitted a requisition under Rule

144 of the U.P. Cooperative Societies Rules, 1968 (hereinafter referred to as the 1968 Rules) to the Secretary/General Manager of the Bank requisitioning a meeting of the Committee of Management to consider the disqualification of respondent No. 6 under Rule 454 of the 1968 Rules. The allegations in the requisition letter dated 10th August, 2011 against respondent No. 6 were to the effect that respondent No. 6 by filling a fictitious log book of vehicle (U.P. 53 S 45.75) has embezzled an amount of Rs. 7.50 lacs towards rent and diesel through one Brijesh Bajpai, who is personal driver of respondent No. 6. It was alleged that agreement regarding the above vehicle was made with one Yogendra Yadav whereas the owner of the vehicle with effect from 1st February, 2010 is one Shailesh Prasad Dubey who has given an affidavit to the Secretary of the Bank for not entering into any agreement with the Bank regarding above vehicle nor receiving any amount towards rent and diesel. It was further alleged that by fictitiously giving the name of the vehicle embezzlement of Rs. 7.5 lacs has been made. It was also alleged that respondent No. 6 has incurred disqualification under Rule 453(1)(f) of the 1968 Rules, hence meeting be called for consideration of the matter under Rule 454 1968 Rules. On the aforesaid requisition letter meeting was convened by the Secretary on 19th August, 2011 which was postponed for 9th September, 2011. On 9th September, 2011 eight members of the Committee of Management out of 14 appeared at the Bank Head Office and claimed to have passed a resolution holding respondent No. 6 as disqualified under Rule 453(1)(f). It was mentioned in the resolution that respondent No. 6 and Secretary did not present themselves for the meeting and proceedings were authorised to be recorded by one of the Directors which, after recording, was given to the Secretary for implementation. It is claimed by the respondents that on 9th September, 2011 another Agenda was issued by the Secretary postponing the meeting to 22nd September, 2011 under the directions issued by the Joint Registrar, Cooperative Societies, received by his letter dated 8th September, 2011. On 10th September, 2011 the Secretary made a reference to the Joint Registrar under Rule 130 of the 1968 Rules praying that resolution dated 9th September, 2011 be annulled u/s 128 of the 1965 Act. Before the three Directors gave application for requisition of meeting on 10th August, 2011, a complaint by Shailesh Prasad Dubey claiming himself to be owner of the vehicle was submitted on 31st July, 2011 to the Joint Registrar. The allegations in the complaint was that he has purchased the vehicle in the year 2008 from Yogendra Kumar, who was registered owner of the vehicle and the vehicle is being used by Shailesh Prasad Dubey and the same was never given to the Bank on rent. It was also alleged that payments were illegally taken by respondent No. 6 in connivance with the driver of the vehicle. A complaint was also given by Shailesh Prasad Dubey to the Divisional Commissioner, Gorakhpur to the similar effect. The Divisional Commissioner directed the City Magistrate to inquire the complaint. The City Magistrate on 10th August, 2011 asked for a report from the Secretary of the Bank. The Secretary of the Bank submitted a report on 25th August, 2011 to the City Magistrate stating that the Vehicle No. UP 53 S 4575 is being used by the Chairman from 1st December, 2009, the payment has been

made till 28th June, 2011, the log book has been filled by the Chairman and the agreement was executed by earlier Secretary O.P. Verma. It was also stated that on the application given by Yogendra Kumar on 23rd December, 2009, the rent was increased from Rs. 250 to 600. It was further stated in the report that the Chairman was exerting pressure for increase of the rent which was avoided by the Secretary in the interest of the Bank. The report concluded that in withdrawal of the money there was connivance of Chairman and the Driver. On the complaint dated 31st July, 2011 which was submitted to the Joint Registrar, Cooperative Societies by Shailesh Prasad Dubey, a report was called by the Joint Registrar vide letter dated 26th August, 2011 from the Additional District Cooperative Officer of the office of Joint Registrar. A report dated 5th September, 2011 is said to have been submitted by the Additional District Cooperative Officer observing that officers and employees of the Bank have caused loss to the Bank by paying the amount of rent and diesel of the aforesaid vehicle with regard to which inquiry may be held. It was also stated in the report that no payment has been received by the Chairman regarding the aforesaid vehicle. The City Magistrate has submitted a report dated 14th September, 2011 to the Divisional Commissioner recommending for recovery of Rs. 7.05 lacs which was illegally paid regarding the aforesaid vehicle and action be taken against the officer and employees of the Bank who entered into agreement in view of the denial of Yogendra Kumar regarding signing of agreement with whose signature the agreement is alleged to have been made. It was also stated that criminal case be got registered and proceedings be initiated in accordance with law. It was also stated that against those employees action be also taken who have made the payment although the vehicle was not on the spot. The report of the City Magistrate was forwarded by the Divisional Commissioner to the Joint Registrar, Cooperative Societies for appropriate action. The letter dated 16th December, 2011 has been written by the Joint Registrar in reference to the letters of the Secretary of the Bank dated 19th September, 2011 and 7th October, 2011 opining that since in the letter of the Secretary it is mentioned that meeting dated 9th September, 2011 was illegal, the resolution passed therein shall also be illegal. The Joint Registrar, however, observed that no ground is made out for annulling the resolution dated 9th September, 2011 u/s 128 of the 1965 Act.

4. The petitioners, namely, Prabhakar Dwivedi and Balram, claimed to be Vice Chairman and Director of the Bank respectively, have filed this writ petition praying for following relief:

(a) Issue a writ, order or direction in the nature of mandamus directing the Secretary/General Manager, District Cooperative Bank Ltd. Gorakhpur (respondent No. 5) to implement the resolution dated 9.9.2011 as per Rule 130 of the U.P. Cooperative Societies Rules, 1968.

(b) Issue a writ, order or direction in the nature of mandamus directing the respondents to restrain the respondent No. 6 (Sri Divesh Chandra Srivastava) from holding the charge of Chairman of the Committee of Management, District

5. Learned counsel for the petitioners, in support of the writ petition, submitted that resolution having already been passed against respondent No. 6 on 9th September, 2011 in accordance with law holding him disqualified under Rule 453(1)(f) of the 1968 Rules and more than 35 days having elapsed after reference made by the Secretary dated 10th September, 2011, the Secretary is obliged to implement the resolution dated 9th September, 2011 and not to permit functioning of respondent No. 6 as Chairman and further the Chairman having been held to be disqualified by the Committee of Management vide resolution dated 9th September, 2011, he be restrained from functioning as Chairman. It is stated that even after the resolution dated 9th September, 2011 having not been annulled by the Registrar, the respondent No. 6 is continuing to function and is issuing transfer order of the employees" and performing all other functions of the Chairman. It is submitted that letter dated 16th December, 2011 issued by the Registrar in response to the reference dated 10th September, 2011 having stated that no ground is made out to annul the resolution dated 9th September, 2011 u/s 128 of the 1965 Act, the resolution has to be implemented and it is statutory obligation of the respondents No. 1 to 5 to implement the resolution dated 9th September, 2011 and respondents having failed to discharge their statutory obligations, the petitioners, who are elected Vice Chairman and Directors, have come up in this writ petition praying for the aforesaid relief.

6. Learned counsel for respondent No. 6, refuting the contentions of learned counsel for the petitioners, contended that resolution dated 9th September, 2011 is not a valid resolution. There is no fact or foundation for holding the respondent No. 6 to be disqualified under Rule 453(1)(f) of the 1968 Rules. It is submitted that there is no reference of any contract made by the respondent No. 6 with the Society so as to incur disqualification under Rule 453(1)(f) of the 1968 Rules and the allegations made regarding payment of the amount towards rent and diesel of the vehicle has nothing to do with the respondent No. 6 since the agreement was entered into with the Bank and owner of the vehicle and no payment has been received by the respondent No. 6 in this context. It is further submitted that with regard to three Directors of the Bank, namely, Sursari Prasad Mishra, Balrarn and Gayatri Devi, the Registrar has already issued notice u/s 38 of the 1965 Act dated 12th August, 2011 for removal of the aforesaid three Directors which was challenged by the aforesaid three Directors by means of Writ Petition No. 48177 of 2011 which writ petition is pending. It is stated that those Directors were not entitled to participate in the meeting dated 9th September, 2011 and till disqualification of the aforesaid three Directors is pronounced finally, the meeting dated 9th September, 2011 cannot be said to be valid. It is further submitted that in the report dated 5th September, 2011 submitted by the Additional District Cooperative Officer to the Joint Registrar, the respondent No. 6 has been exonerated from the allegations, hence there is no ground to direct for implementation of the resolution dated 9th September, 2011. It is further submitted that the matter for disqualification of three Directors, namely, Sursari

Prasad Mishra, Balram and Gayatri Devi being pending before the Registrar, the same may be directed to be considered and the Writ Petition No. 48177 of 2011 challenging the notice dated 12th August, 2011 be also decided. It is further submitted that on the reference made by the Secretary dated 10th September, 2011 the Registrar has not taken any proper decision and at best the Registrar can be directed to take a decision on reference dated 10th September, 2011.

7. Learned counsel for the Bank, refuting the submissions of learned counsel for the petitioners, contended that resolution dated 9th September, 2011 having already been held to be not a valid resolution by the Registrar vide its letter dated 16th December, 2011, there is no question of implementing the resolution dated 9th September, 2011. He further submits that respondent No. 6 had filed a writ petition being Writ Petition No. 53509 of 2011 challenging the meeting convened for 22nd September, 2011 for considering the disqualification of respondent No. 6 which petition was disposed of on 15th September, 2011 by this Court directing the Registrar to take a decision within one month. Reference to an order dated 26th December, 2011 was made by counsel for the Bank which has also been brought on the record, stating that Registrar has taken a decision that since no resolution has been passed by the Committee of Management, there is no occasion of annulling any resolution at the level of the Registrar and the representation submitted by respondent No. 6 was rejected by the said order.

8. We have considered the submissions of learned counsel for the parties and perused the record.

9. The first issue, which has arisen for consideration in this writ petition, is as to whether respondent No. 6 is disqualified under Rule 453(1)(f) of the 1968 Rules as has been resolved by eight Directors in the meeting dated 9th September, 2011 of the Committee of Management and further as to whether the meeting dated 9th September, 2011 was validly held.

10. Rule 453 of the 1968 Rules contains a prohibition to the effect that no person shall be eligible to be or to continue as a member of the Committee of Management of any cooperative society, if he is covered by any of the clauses mentioned in Rule 453. In the present case the disqualification alleged against respondent No. 6 as per resolution dated 9th September, 2011 is disqualification under Rule 453(1)(f). The relevant provisions of Rule 453(1) are as under :

453. (1) No person shall be eligible to be or to continue as a member of the Committee of Management of any cooperative society, if-

(a) he is under 21 years of age;

.....

.....

(f) he enters into any transaction of contract with the society against the provisions of the Act or the bye-laws of the society;

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.....

(o) he is otherwise disqualified under any of the provisions of the Act or the rules or bye-laws of the society.

11. The disqualification under Rule 453(1)(f) may arise when a member of the Committee of Management enters into any transaction of contract with the society. Thus the precondition of attracting disqualification under Rule 453(1)(f) is entering into any transaction of contract by the member of the Committee of Management against whom disqualification is alleged. In the requisition notice dated 10th August, 2011 (Annexure-1 to the writ petition) as well as in the resolution dated 9th September, 2011, there is no allegation that respondent No. 6 had entered into any contract with the Bank. Although the allegations have been made against respondent No. 6 that he in connivance and conspiracy with his Driver has embezzled an amount of Rs. 7.5 lacs towards rent and diesel of the vehicle but the report submitted by the Bank to the City Magistrate and the report of the Additional District Cooperative Officer dated 5th September, 2011 (Annexure CA-1 to the counter-affidavit) disclose that agreement of taking the vehicle on rent by the Bank was entered on 1st December, 2009 with the then Secretary of the Bank and one Yogendra Kumar in pursuance of which agreement the amount of rent and diesel was paid to the driver of the vehicle, namely, Brijesh Bajpai by opening an account in the Bank. Thus there is no allegation against respondent No. 6 that he entered into any agreement with the Bank, hence there is no basis for attracting disqualification under Rule 453(1)(f) of the 1968 Rules.

12. Learned counsel for the petitioners submitted that resolution having been passed by the Committee of Management on 9th September, 2011, which resolution has not been annulled by the Registrar, even though a reference was made by the Secretary on 10th September, 2011 for annulling the resolution u/s 128 of the 1965 Act, the resolution has to be implemented by the Bank. Moreso, the respondent No. 6, if aggrieved by the resolution, was required to avail remedy of arbitration as provided under Rule 454 of the 1968 Rules.

13. A member of the Committee of Management is statutorily entitled to hold his office for a period of three years. Holding of office by an elected member of the Committee of Management is a statutory right which can be taken away according to the scheme as statutorily provided. A member of the Committee of Management can be removed by the Committee of Management under Rule 454 of the 1968 Rules on attracting of any of the disqualifications mentioned in Rule 453 or he may be removed u/s 38 of the 1965 Act by the Committee of Management or the Registrar of the Cooperative Societies or a no confidence motion can be brought against the Chairman in accordance with Rules 455 to 461 of the 1968 Rules. Present is a case where disqualification u/s 453(1)(f) is alleged.

14. Before a Division Bench of this Court in the case of Jagat Narain Singh v. District Assistant Registrar, Jaunpur and others, (1995)3 UPLBEC 1465, provisions of Rule 454 and 453(h) of the 1968 Rules came for consideration. In the said case the District Assistant Registrar asked the Committee of Management to convene a meeting for considering the disqualification of the petitioner of that writ petition under Rule 453(h) on the ground that he having retired as Principal of Junior High School, his membership came to an end on his retirement from the service of the society. The writ petition was filed challenging the order of District Assistant Registrar. It was contended before this Court that there was no such fact which attract disqualification of the petitioner, hence the District Assistant Registrar was not entitled to declare the petitioner ineligible and direct for convening meeting. In above context, following was laid down in paragraphs 15 and 16 :

15. Rule 454 of the Rules enjoins upon the Committee of Management of a Cooperative Society to ensure" that no person incurring any of the disqualifications continues to hold office of a Member of the Committee of Management and that as soon as the fact that the member is subject to any disqualification, comes to the knowledge of the Committee of Management, the Committee shall consider the matter in a meeting to be called for the purpose. From this Rule it is clear that the meeting can be called only when it comes to the knowledge of the Committee of Management that a member has incurred disqualification. The impugned order indicates that the fact that the petitioner incurred disqualification, which is a condition precedent to convene a meeting, had come to the knowledge of the Committee of Management. The fact pointed out by respondent No. 1 in the impugned order that the petitioner ceased to be a Member of the parent Society and for that reason he also ceased to be a delegate of the Society and consequently, he cannot continue to be a Member of the Committee of Management, cannot be said to have been prima facie established on the facts and circumstances of this case and, therefore, the Committee of Management is no more under legal obligation to hold a meeting pursuant to the impugned order. The Committee of Management can act under Rule 454 only when the fact that a member has incurred a disqualification, comes to its knowledge and not before. Such facts cannot be said to have come to the knowledge of the Committee of Management from the impugned order, inasmuch as the respondents failed to show prima facie, that the petitioner ceased to be a member of the general body of the Society and he incurred disqualification under Rule 453, Clause (h). Respondent No. 1, therefore, was not right in calling upon the Committee of Management to hold a meeting to consider the case of disqualification of the petitioner.

16. The petitioner does not have a right to seek Court's intervention to stop the Committee of Management from holding a meeting in the absence of the vital fact having come to its knowledge that he incurred disqualification to continue as a Member of the Committee of Management either under Clause (h) of Rule 453 or any other clause. The Committee of Management cannot hold meeting at any

time it likes, but the meeting can be held only when the correct fact is brought to its knowledge that the petitioner has incurred disqualification. The petition in our view is, therefore, not premature and it cannot be rejected on the ground of alternative remedy. The right to continue as a Member of Committee of Management for three years is a statutory right and the petitioner has a right to protect it. Unless the requisite fact to hold the meeting is established, the Committee of Management cannot be permitted to hold the meeting pursuant to the impugned order.

15. In above case this Court intervened on the allegation of the writ petitioner that there was no such fact on the basis of which petitioner can be said to have incurred any disqualification, hence the meeting cannot be convened under Rule 454. In the present case not only allegation of disqualification under Rule 453(1)(f) has been made against respondent No. 6 but a resolution by eight Directors is also claimed to have been passed on 9th September, 2011 and the petitioners in the writ petition have sought a mandamus commanding the respondents to restrain the respondent No. 6 from holding the charge of Chairman of the Committee of Management of the Bank, hence this Court is called upon to examine as to whether disqualification under Rule 453(1)(f) is attracted or not. Even though on a reference made by Secretary dated 10th September, 2011 to the Registrar to annul the resolution dated 9th September, 2011 in exercise of power u/s 128 of the 1965 Act, the Registrar has not properly considered the issue nor has passed appropriate orders and only a letter dated 16th December, 2011 was issued by the Registrar, which has been brought on the record by both the parties, in which only allegations of the Secretary has been noticed and it was observed that when Secretary himself is saying that the meeting dated 9th September, 2011 is not valid, any resolution passed thereunder shall also be invalid and in the same breath the Registrar says that no ground is made out to annul the resolution u/s 128 of the 1965 Act. The letter dated 16th December, 2011 clearly indicates that the Registrar has neither considered the relevant issues nor has applied his mind to the relevant provisions of the 1965 Act and 1968 Rules. However, when this Court is called upon in this writ petition to examine the disqualification of respondent No. 6 under Rule 453(1)(f), the provisions of the 1968 Rules and 1965 Act have to be looked into. There being no allegation against respondent No. 6 of entering into any contract with the Society and the precondition of attracting Rule 453(1)(f) being not satisfied, it is clear that no disqualification u/s 453(1)(f) is attracted and respondent No. 6 cannot be said to be disqualified on the aforesaid ground. The respondent No. 6 having been held not to be disqualified u/s 453(1)(f) of the 1968 Rules, there is no occasion to issue any mandamus by this Court to implement the resolution dated 9th September, 2011.

16. One of the submissions, which was raised by learned counsel for the respondents is regarding the meeting dated 9th September, 2011 that meeting could not have been held on 9th September, 2011 since it was postponed by the Secretary himself on 9th September, 2011 and further Secretary was neither

present in the meeting nor recorded the proceedings.

17. Learned counsel for the petitioners in this context has submitted that the Secretary has not postponed the meeting of his own, rather he acted on the direction of the. Joint Registrar issued by letter dated 8th September, 2011 and the Joint Registrar has no jurisdiction to direct for postponement of the meeting which was fixed for considering the disqualification under Rule 454. Reference has been made to Rule 111 of the 1968 Rules under which the Registrar has jurisdiction to postpone the consideration of any agenda item in a meeting which has been called at his instance. It has been submitted that the Registrar has not called the meeting dated 9th September, 2011 and it was a requisitioned meeting under Rule 114 of the 1968 Rules. Rules 111 and 114, which are relevant for the purpose, are quoted below :

111. The Registrar for reasons to be recorded, may direct the meeting of a cooperative society called at his instance to postpone the consideration of any item of the agenda. Any decision of the meeting taken in contravention of such a direction of the Registrar shall be invalid and inoperative.

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114. Any three members of the Committee of Management of a cooperative society may requisition the meeting of the said committee.

18. The present is a case where requisition made was by three members of the Committee of Management. The meeting was not convened by the Registrar, hence in facts of the present case, we are satisfied that Registrar had no authority to direct for postponement of the meeting. Insofar as the submission of the respondents that Secretary did not participate in the meeting and did not record the proceedings, the said submission itself is not sufficient to declare the holding of the meeting illegal. Reliance has rightly been placed by the learned counsel for the petitioners on the judgment of the Apex Court in the case of Veerpal Singh Vs. Deputy Registrar, Co-operative Societies, Meerut and Others, . Paragraphs 20 and 21 of the said judgment are quoted below :

20. The other question which arises for consideration is whether the Registrar has power u/s 128 of the Act to annul the resolutions of the society. The Registrar proceeded on the) footing that the minutes of the meeting of the Federation held on 15 March, 1971 were not correctly recorded. The Deputy Registrar alleged that the Federation did not comply with the provisions of bye-law No. IO (Cha) read with bye-law No. 1 1 of the Federation in regard to the conduct of the meeting. Bye-law No. 1 1 deals with recording the proceedings of the meeting. That bye-law states that the minutes shall be recorded in the book to be kept for the purpose and the minutes shall be signed by the person presiding at the meeting as well as by the Secretary of the Federation. Bye-law No. IO (Cha) states that the Secretary shall, be the Chief Executive officer of the

Federation and subject to control and supervision of the Chairman and the committee of management as provided in the rules or the bye-law. It is also stated in bye-law No. 10 (cha) that the Secretary shall inter alia sign and authenticate all documents in and on behalf of the Federation and is responsible for the, proper maintenance of various books and records of the Federation.

21. The facts with regard to the meeting of the Federation held on 15 March, 1971 are that the Secretary wilfully absented himself at the meeting. The Federation therefore contended that the Secretary disobeyed the instructions. The Chairman under bye-law No. 10 is responsible for the control, supervision and efficient administration of the Federation. The Chairman appointed an elected Director Shri Prahlad Swarup, Advocate for the purpose of recording the minutes. u/s 118 of the Act no act of a cooperative society or any committee of management shall be deemed to be invalid by reason of the existence of any defect in the constitution inter alia of committee or in the appointment of an officer of a cooperative society or on the ground that such officer was disqualified for such appointment. The meeting of the Federation on 15 March, 1971 was properly conducted. The Chairman rightly appointed an elected Director to record the minutes in view of the wilful absence of the Secretary. Section 188 of the Act also protects the proceedings of the meeting. The Deputy Registrar acted illegally in annulling the resolutions of the Federation held on 15 March, 1971.

19. From the aforesaid, we are not persuaded to accept the submission of the learned counsel for the respondents that holding of the meeting dated 9th September, 2011 was not valid.

20. Another submission, which was made by the learned counsel for the respondents is that notice dated 12th August, 2011 has already been issued against three members of the Committee of Management of the Bank, namely, Sursari Prasad Mishra, Balram and Gayatri Devi u/s 38 of the 1965 Act calling upon them as to why they be not removed u/s 38(2) of the Act, hence they could not have participated in the meeting dated 9th September, 2011.

21. Admittedly, no order has yet been passed u/s 38(2) of the 1965 Act and the notice dated 12th August, 2011 has already been challenged by means of Writ Petition No. 48177 of 2011 by Sursari Prasad Mishra, Balram and Gayatri Devi, which writ petition is also being disposed of by an order of the date. No order having been passed against Sursari Prasad Mishra, Balram and Gayatri Devi, they cannot be said to be disqualified u/s 38(2). A person continues to be a member of the Committee of Management unless he is removed in accordance with the provisions of the 1965 Act and 1968 Rules.

22. From the above discussions the conclusion is irresistible that respondent No. 6 cannot be said to be disqualified under Rule 453(1)(f) of the 1968 Rules and the resolution dated 9th September, 2011 cannot be directed to be implemented by the Bank.

23. Although respondent No. 6 cannot be said to be disqualified under Rule

453(1)(f) of the 1968 Rules on the basis of allegations made against him, however, allegations which have been made against respondent No. 6 are serious in nature and may attract other actions under the 1965 Act and 1968 Rules. In this context certain provisions of the 1965 Act and 1968 Rules further need to be noted.

24. Section 30 of the 1965 Act provides for Chairman. Section 30(2) makes the Chairman responsible for the control, supervision and guidance of the affairs and business of the society. Section 30(2) is quoted below:

30. Chairman. (1).....

(2) The Chairman shall be responsible for the control, supervision and guidance of the affairs and business of the society and shall exercise such powers and perform such duties as may be conferred or imposed on him by this Act, the rules, the bye-laws and the resolutions of the Committee of Management. When present, he shall, except as otherwise provided in the rules, preside at the meeting of the general body and the Committee of Management.

25. Rule 115 of the 1968 Rules enjoins upon every member of the Committee of Management to exercise prudence and diligence of an ordinary man of business and contains a prohibition that no member shall act contrary to the provisions of the Act, Rules or the bye-laws of the society. Rule 116 of the 1968 Rules provides that no officer of a cooperative society shall have any interest directly or indirectly in any contract made with the society. Rule 115 and Rule 116(a) of the 1968 Rules, which are relevant, are quoted below :

115. In the conduct of the affairs of a cooperative society every member of the Committee of Management shall exercise prudence and diligence of an ordinary man of business, shall not perform any act contrary to the provisions of the Act, rules or the bye-laws of the society and shall not default in the performance of the duties entrusted under the Act, the rules or the bye-laws of the society.

116.(a) No officer of a cooperative society shall, except as permitted by the bye-laws of the society, have any interest, directly or indirectly-

(i) in any contract made with the society,

(ii) in any property sold or purchased by the society,

(iii) in any transaction of a cooperative society other than the provision of residential accommodation by the society to any paid employee of the society, if the officer himself is a paid employee.

26. The allegations against respondent No. 6 as revealed from the complaint submitted by Shailesh Prasad Dubey and the reports submitted by the City Magistrate as well as the Additional District Cooperative Officer dated 14th September, 2011 and 5th September, 2011 respectively reveal that one Yogendra Kumar was owner of the vehicle which was registered in his name on 31st July, 2003. It is claimed that Yogendra Kumar sold the vehicle to Shailesh Prasad

Dubey in the year 2008 and registration has been made in the name of Shailesh Prasad Dubey on 1st February, 2010. An application is said to be made by Yogendra Kumar on 30th November, 2009 praying that vehicle be taken on rent and in pursuance of the said application agreement was executed on the next date i.e. 1st December, 2009 taking the vehicle on rent and as per agreement payment was to be made to the Driver of the vehicle. On an application of Yogendra Kumar the rent was increased to Rs. 600/- per day. Shailesh Kumar Dubey filed a complaint on 31st July, 2011 and thereafter on 6th August, 2011 stating that the vehicle is in his use and has never been given to the Bank by him and he never received any amount towards the vehicle and fictitiously an amount of Rs. 7.5 lacs has been withdrawn in the name of the vehicle by respondent No. 6. Yogendra Kumar, who was earlier owner of the vehicle, claims to have appeared before the City Magistrate and stated that he never entered into any agreement with the Bank nor received any amount towards the vehicle, he claims to have not signed the agreement nor made any application to the Bank. The report of the Additional District Cooperative Officer dated 5th September, 2011, which has been brought on the record, indicates that on 25th August, 2011 he was asked to submit a report by 31st August, 2011 and on his letters Shailesh Prasad Dubey and Yogendra Kumar did not appear before him and he submitted a report on 5th September, 2011 holding that Chairman has not received any amount from the Bank. However, the report dated 5th September, 2011 also indicates that Bank has suffered loss for which officer and employees of the Bank are responsible.

27. The 1965 Act empowers the Registrar to take various actions including removal of an officer of the Bank and to direct for audit, inspection, inquiry and also to realise surcharge. Section 38 of the 1965 Act is quoted below :

38. Removal of an officer of a co-operative society.--(1) If in the opinion of the Registrar, any officer of a cooperative society has contravened or omitted to comply with, any provisions of this Act, the rules or the bye-laws of the society, or has forfeited his right to hold office, the Registrar, may without prejudice to any other action that may or can be taken against him, call upon the society to remove, within a specified period, such officer from the office held by him and where necessary also to disqualify him from holding any office under that society for a period not exceeding three years, whereupon the society shall, after affording opportunity of being heard to the officer concerned, pass such orders as it may deem fit.

Provided that on the request of the Reserve Bank of India, the competent authority shall remove a Director or the Secretary/Chief Executive Officer of a Central Co-operative Bank or the Uttar Pradesh Co-operative Bank, who do not fulfil the criteria stipulated by the Reserve Bank of India after giving him an opportunity of being heard.

(2) On the failure of the society to take action under sub-section (1), the Registrar may, after affording opportunity of being heard to the officer and for

reasons to be recorded and communicated to the person and the society concerned, remove, or remove and disqualify for a period not exceeding three years, the officer from holding any office under that society.

(3) An officer removed under sub-section (1) or sub-section (2), shall, with effect from the date of communication of the order-, cease to hold that office and, if disqualified, shall not be eligible to hold any office under that society for the period specified in the order.

28. The scope of Section 38(1) is very wide. It provides that if in the opinion of the Registrar any officer of a cooperative society has contravened or omitted to comply with any provisions of the 1965 Act, the 1968 Rules or the bye-laws of the society, the Registrar may call upon the society to remove such officer from the office held by him and in the event Society fails to take action, the Registrar himself can remove the officer. In the facts of the present case, the Registrar has to apply his mind as to whether any case is made out u/s 38 of the 1965 Act of taking action against respondent No. 6, moreso when it is alleged that the Registrar has already initiated proceedings against three other Directors u/s 38 of the 1965 Act.

29. The allegations pertaining to payment towards the aforesaid vehicle and the facts and circumstances as brought before us, clearly make out a case for directing an inquiry u/s 65 of the 1965 Act and if in the course of inquiry it is found that any person who is or was entrusted with the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has made or cause to be made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriated or fraudulently retained any money or other property belonging to such society, appropriate action can be taken u/s 68 of the 1965 Act. Sections 65 and 68, which are relevant for the purpose, are quoted below :

65. Inquiry by Registrar.--(1) The Registrar may, of his own accord, himself, or by a person authorised by him by order in writing, hold an inquiry into the constitution, working and financial condition of a cooperative society.

(2) An inquiry of the nature referred to in sub-section (1) shall be held by the Registrar or by a person authorised by him in writing in this behalf on the application of-

- (a) a cooperative society to which the society concerned is affiliated;
- (b) not less than one third of the total members of the society;
- (c) a majority of the members of the Committee of Management of the society.

(3) The Registrar, or the person authorised by him under sub-section (1) shall, for the purposes of any inquiry under this section, have the following powers, namely-

(a) he shall, at all times, have access to the books, accounts, documents, securities, cash and other properties belonging to or in the custody of the society and may summon any person in possession of, or responsible for the custody of any such books, accounts, documents, securities, cash or other properties, to produce the same at any place at the headquarters of the society or any branch thereof;

(b) he may summon any person who, he has reason to believe has knowledge of any affairs of the society to appear before him at any place at the headquarters of the society or any branch thereof and may examine such person on oath;

(c) he may, notwithstanding any rule or bye-law specifying the period of notice for a general meeting of the society require the officers of the society to call a general meeting at such time and place at the headquarters of the society or any branch thereof and to determine such matters as may be directed by him and where the officers of the society refuse or fail to call such a meeting, he shall have power to call it himself; and

(d) he may in the manner and for the purpose mentioned in clause (c) require to be called or himself call, a meeting of the Committee of Management.

(4) Any meeting called under clause (c) or clause (d) of sub-section (3) shall have the powers of the general meeting or meeting of the Committee of Management, as the case may be, under the bye-laws of the society and its proceedings shall be regulated by such bye-laws.

(5) When an inquiry is made under this section, the Registrar shall communicate the result of the inquiry to the society and, in the case of inquiry on an application under clause (a) of sub-section (2), also to the applicant cooperative society.

68. Surcharge.--(1) If in the course of an audit, inquiry, inspection or the winding up of a cooperative society it is found that any person, who is or was entrusted with the organisation or management of such society or who is or has at any time been an officer or an employee of the society, has made or caused to be made any payment contrary to this Act, the rules or the bye-laws or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has misappropriate or fraudulently retained any money or other property belonging to such society, the Registrar of his own motion or on the application of the committee, liquidator or any creditor, inquire himself or direct any person authorised by him by an order in writing in this behalf of inquire into the conduct of such person:

Provided that no such inquiry shall be commenced after the expiry of twelve years from the date of any act or omission referred to in this sub-section.

(2) Where an inquiry is made under sub-section (1), the Registrar may, after affording the person concerned a reasonable opportunity of being heard, make an order of surcharge requiring him to restore the property or repay the money

or any part thereof with interest at such rate, or to pay contribution and costs or compensation to such an extent as the Registrar may consider just and equitable.

(3) Where an order of surcharge has been passed against a person under subsection (2) for having caused any deficiency in the assets or the society by breach of trust or wilful negligence, or for having misappropriate or fraudulently retained any money or other property belonging to such society, such person shall, subject to the result of appeal, if any, filed against such order, be disqualified from continuing in or being elected or appointed to an office in any cooperative society for a period of five years from the date of the order of surcharge.

30. From the facts, which have been brought on the record, it does appear that Joint Registrar received the report from the City Magistrate dated 14th September, 2011, which report was sent by the Divisional Commissioner to the Joint Registrar for appropriate action by letter dated 26th September, 2011 which has been brought on the record. Nothing has been brought on the record to indicate that Joint Registrar has taken any appropriate action after considering the relevant reports which have been received by him including the report submitted by the Bank on the allegation of payment made by the Bank towards the aforesaid vehicle. The facts situation and allegations require application of mind by the Registrar and appropriate action in accordance with the 1965 Act and 1968 Rules.

31. In view of the foregoing discussions, the writ petition deserves to be and is hereby disposed of as follows :

(i) The prayer of the petitioners to implement the resolution dated 9th September, 2011 of the Committee of Management declaring respondent No. 6 as disqualified under Rule 453(1)(f) of the 1968 Rules is refused.

(ii) The respondents No. 2 and 3 are directed to take appropriate action under Sections 38, 65 and 68 of the 1965 Act with regard to allegations made against respondent No. 6 and other officer and employees of the Bank regarding payment by the Bank in respect of the vehicle in question. The Registrar/Joint Registrar shall consider and take appropriate actions as may be deemed fit in facts of the present case within a period of four weeks from the date a certified copy of this order is produced before them.

32. Parties shall bear their own costs.