
(1976) 08 AHC CK 0051

In the Allahabad High Court

Case No : Sp. A. No. 142 of 1976 in CMW No. 12570 of 1975

Ram Baboo Yadava and Another

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 10-08-1976

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 34, 34(1), 34(2)

Citation : (1976) AWC 683

Hon'ble Judges : K.B. Asthana, C.J.; D.M. Chandrashekhar, J

Bench : Division Bench

Advocate : D.P.S. Chauhan, for the Appellant; M.B. Saxena, M.A. Ansari and S.C., for the Respondent

Final Decision : Allowed

Judgement

K.B. Asthana, C.J. and D.M. Chandrashekhar, J.—This is an appeal from the order of K.C. Agrawal, J., dismissing Civil Misc. Writ No. 12570 of 1975. The Petitioners therein are the Appellants.

2. The material facts are these; The Zila Sahkari Federation Ltd., Etawah, (shortly called hereafter as the Society) is a registered Cooperative Society. Its committee of management (hereinafter referred to as the Committee) was reconstituted on 11-9-1974, when 12 members were elected and two members were nominated to the Committee which in turn elected on 16-9-1974, Appellant-1, Ch. Ram Babu Yadav, as its Chairman. In purported exercise of the powers u/s 34 of the U.P. Cooperative Societies Act, 1965 (shortly called the Act), the Government of Uttar Pradesh nominated Respondent-3, Lakhon Singh Yadav, as the Chairman and Respondents 4 to 7 as the members of the Committee. The State Government has subscribed more than 25% of the capital of the Society. But the amount so subscribed is very much less than Rs. 15,00,000/-.

3. In the writ petition the Appellant herein and the Society had challenged the

order of the State Government dated 30-9-1975, nominating Respondent 3 as the Chairman and Respondents 4 to 7 as the members of the Committee and had also prayed for issue of a writ in the nature of mandamus directing the Respondents not to interfere with functioning of Appellant-1 as the Chairman of the Society and also functioning of the elected members of the Committee.

4. By his order dated 10-3-1976, the learned single Judge dismissed the writ petition holding that under Section, 34 of the Act it was competent for the State Government to nominate Respondent 3 as the Chairman and Respondents 4 to 7 as members of the Committee. The learned single Judge also took the view that the writ petition was liable to be dismissed also on the ground that the Petitioners were guilty of making a false statement in the affidavit in support of the writ petition.

5. In this appeal Shri D.P.S. Chauhan, learned Counsel for the Appellants, contested the correctness of the view of the learned single Judge as to the competence of the State Government to nominate Respondent-3 as the Chairman of the Society. Shri Chauhan also submitted that the Petitioners had not made deliberately any false statement or misrepresentation of facts in the affidavit in support of the writ petition.

6. The principal question that arises for determination in this appeal, is that where the State Government has contributed more than 25% of the capital of a Cooperative Society, but less than Rs. 15 Lacs, whether it (the State Government) has the right to nominate the Chairman of the Committee. Shri Chauhan contended that unless the State Government has subscribed not less than Rs. 15 lacs to the capital of a Cooperative Society, it has no right to nominate the Chairman: of the Society whatever may be the percentage of the share capital of the Government in the total share capital of that Society. On the other hand, the learned Advocate General, who appeared for Respondent-1 (the State Government), and Shri Asif Ansari, learned Counsel for Respondent-3, sought to support the view taken by the learned single Judge.

7. We shall set out the relevant portions of Section 34 of the Act:

34. Nominees of the Government on the committee of management:

(1) Where the State Government has-

(a) Subscribe directly to the share capital of a cooperative society under Chapter VI; or

(b) assisted indirectly in the formation or augmentation of the share capital of a cooperative society as provided in Chapter VI; or

(c) Given loans or made advances to a co-operative society or guaranteed the repayment of principal and payment of interest on debentures issued by a cooperative society or guaranteed the repayment of principal and payment of interest on loans or advances to 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, so, however, that the Government servant shall not vote at an election of an office bearer of the society;

Provided that where the share capital subscribed to by the State Government is not less than fifteen lakhs of rupees the State Government shall also have the right to nominate the Chairman of the Committee of Management from amongst the members of the Committee:

Provided further that-

(i) where the share of the State Government in the share capital of the society exceeds twenty five percent but does not exceed fifty per cent, the State Government shall have the right to nominate upto one-third of the total number of the members of the Committee of Management, including the Chairman, and such right once accrued shall continue until the share of the State Government in the share capital of the society goes down to less than twenty percent;

(ii) where the share of the State Government in the share capital of the society exceeds fifty per cent, but is less than sixty per cent of the total share capital of the society, the State Government shall have the right to nominate such number of members of the Committee of Management, including the Chairman, as exceeds and is nearest to one-half of the total, and such rights once accrued shall continue until the share of the State Government in the share capital of the society goes down to less than forty per cent.

(2) Notwithstanding anything contained in Sub-section (1), the State Government shall have the right to nominate upto two-thirds of the total number of members of the Committee of Management including the Chairman, if-

(a) the share of the State Government in the share capital of the society is not less than sixty percent; or

(b) the State Government has given loans or made advances to the society, or guaranteed the repayment of principal and payment of interest on debentures issued by the society or guaranteed the repayment of principal and payment of interest on loans or advances to the society in amounts not less than sixty per cent in the aggregate of the total amount so borrowed by the society; or

(c) the working capital provided to the society by the State Government or the Central Government or by both is not less than sixty per cent of the amount of the total working capital (to be determined in the prescribed manner) of the society.

(The proviso to this sub-section is not relevant).

8. The section is not, in our opinion, well drafted and its language is not free from ambiguity. Even the learned Advocate General submitted that the proviso and the further proviso to Sub-section (1) of the section must be read as

independent clauses in that sub-section. However, we have to construe Section 34 as best we can.

9. Elaborating his contention, Shri Chauhan submitted that the words "one-third of the total number of the members of the Committee of Management, including the Chairman", "such number of members of the Committee of Management, including the Chairman, as exceeds and is nearest to one-half of the total" and "upto two-thirds of the total number of members of the Committee of Management including the Chairman" occurring in different parts of Sub-sections (1) and (2), are intended to emphasise that in reckoning the proportion of 25 per cent, one-half or two thirds of the total number of the members of the Committee, the Chairman, if he has been nominated by the State Government under the first proviso to Sub-section (1), should also be included. In other words, Shri Chauhan's submission was that where the State Government has subscribed not less than Rs. 15 lacs to the share capital of the Society and the State Government's subscription also exceeds 25 per cent of the share capital of the society, then only the State Government shall have the right to nominate the Chairman and such number of members who together with the Chairman, will not exceed one-third of the total number of the members of the Committee; that likewise where the State Government has subscribed not less than Rs. 15 lacs to the share capital of the Society and the amount so subscribed exceeds 50 per cent but not 60 per cent of the share capital of the society, the State Government has the right to nominate the Chairman and such number of members who together with the Chairman, will not exceed one-half of the total members of the Committee; and that likewise where the State Government has contributed to the share capital of the society not less than Rs. 15 lacs and the amount so subscribed is not less than 60 per cent of the share capital of the society, the State Government shall have the right to nominate the Chairman and such number of members who together with the Chairman, will be upto two-thirds of the total number of the members of the Committee.

10. On the other hand the learned Advocate General contended that Clause (i) of the further proviso to Sub-section (1) provides that where the State Government's subscription to the capital of a society exceeds 25 per cent, but does not exceed 50 per cent, the State Government shall have the right to nominate the Chairman of the Committee and also One-third of the total number of the members of the committee; that likewise Clause (ii) of the further proviso to Sub-section (1) provides that where the State Government's subscription to the share capital of the society exceeds 25 per cent but not exceeds 50 per cent, the State Government shall have the right to nominate the Chairman and also such number of members as exceeds and is nearest to one-half of the total number of members of the Committee; and that likewise Sub-section (2) provides that where the Government's subscription is not less than 60 per cent of the share capital of a society it (the Government) shall have the right to nominate the Chairman and also members upto two-thirds of the total number of members of the Committee.

11. The learned Advocate General maintained that the power to nominate the Chairman under the first proviso to Sub-section (1), is independent of the power to nominate the Chairman under Clauses (i) and (ii) of the second proviso to Sub-section (1) and Sub-section (2). In other words, according to him, even where the share capital subscribed by the State Government in a society is less than Rs. 15 lacs, it (the State Government) will have the right to nominate the Chairman in addition to certain percentage (depending upon the proportion of the Government's share in the total share capital of the society) of members of the Committee if the percentage of the State Government's share capital exceeds 25 per cent of the share capital of the society.

12. The crux of the problem is interpretation of the portion of Clause (i) of the further proviso to Sub-section (1), which reads: "the State Government shall have the right to nominate upto one-third of the total number of members of the Committee of management including the Chairman". Does it mean that the State Government shall have the right to nominate the Chairman and also one-third of the total number of members of the Committee? Or does it mean that one-third of the total number of members of the Committee which the State Government can nominate, shall be inclusive of the Chairman if there is a nominated Chairman?

13. If the intention of the Legislature was that under Clauses (i) and (ii) of the further proviso to Sub-section (1) and under Sub-section (2) of Section 34 the State Government should have the right to nominate the Chairman in addition to nominating members of the managing Committee in varying proportion between one-third to two-thirds of the total number of members of the Committee, the relevant words in these provisions would have been "the State Government should have the right to nominate the Chairman and also upto one-third, one-half or two-thirds, as the case may be, of the total number of members of the managing committee."

14. In our opinion it is more reasonable to construe the words "including the Chairman" occurring in Clauses (i) and (ii) of the further proviso to Sub-section (1) and Sub-section (2) of Section 34 as indicating that the nominated Chairman should also be counted as a nominated member in determining the permissible proportions of members that the State Government can nominate under the aforesaid provisions of Section 34 and that the words "including the Chairman" do not convey the meaning that the State Government has the right to nominate the Chairman in addition to the right to nominate those respective proportions of members of the Committee of management. The right to nominate the Chairman is only by virtue of the first proviso to Sub-section (1) of Section 34 and de hors the provisions of Clauses (i) and (ii) of the further proviso to sub-section (1) and of Sub-section (2). Perhaps the intention of the Legislature is that unless the financial stakes of the State Government in society is substantial as when the State Government subscribes not less than Rs. 15 lacs towards the share capital of a society, the democratic right of the share holders of that society to elect a

Chairman should not be interfered with by the State Government.

15. As a result of the foregoing discussion it follows that the right to nominate the Chairman of a society, is available to the State Government, only when the share capital subscribed by the State Government in that society, is not less than Rs. 15 lacs and unless the State Government has subscribed such amount of share capital, it has no right to nominate the Chairman of that society merely by reason of the share capital of the State Government exceeding 25 per cent of the total share capital of a society.

16. In the present case since the amount of share capital subscribed by the State Government in Appellant-2 Society, was admittedly far below Rs. 15 lacs, the State Government must be held to have had no right to nominate the Chairman of that Society. Since the shares subscribed by the State Government in the share capital of Appellant Society exceeded 25 per cent, it had the right to nominate Respondents 4 to 7 as members of the Committee, the total number of members of the Committee exceeding twelve.

17. We are unable to agree with the view taken by the learned single Judge that u/s 34 of the Act the State Government had the right to nominate Respondent-3 as Chairman of the Society merely because the State Government's contribution to the share capital of the Society exceeded 25 per cent of such capital even though the amount subscribed by the State Government was less than Rs. 15 lacs.

18. According to the learned single Judge, the misstatement of facts by the Petitioners in the affidavit dated 28-10-1975, in support of the writ petition, consisted in stating that the Supreme Court had stayed the operation of the order of this Court in Civil Misc. Writ No. 3663 of 1975, but not bringing to the notice of this Court the fact that the Supreme Court had dismissed on 10-10-1975 the appeal from the aforesaid order of this Court. Sri Chauhan submitted that the Appellants (the Petitioners in Civil Misc. Writ No. 12570 of 1975) were not parties either in Civil Misc. Writ No. 3563 of 1975 or in the appeal before the Supreme Court from the order therein, that they were not aware of the fact of dismissal of that appeal by the Supreme Court on 10-10-1975, and that the omission of the Petitioners to state in their affidavit the fact of such dismissal, was entirely due to their ignorance of the same and not due to any deliberate intention to suppress that fact.

19. There is no reason to disbelieve the statement of Sri Chauhan that the Appellants were not aware of the fact of dismissal by the Supreme Court of the appeal from the order of this Court in Civil Misc. Writ No. 3663 of 1975. It is also not improbable that the present Appellants did not keep track of the progress of the aforesaid appeal before the Supreme Court in which they were not parties. Hence we are unable to agree with the view taken by the learned single Judge that the conduct of the Petitioners before him, was such as to constitute a ground for dismissal of the writ petition.

20. In the result we allow this appeal partly, reverse the order of the learned single Judge partly and quash the order of the State Government dated 30-9-1975 in so far as it nominated Respondent-3 as the Chairman of Appellant-2 Society. We also issue a writ in the nature of mandamus directing the Respondents not to interfere with the functioning of Appellant-1 as the Chairman of Appellant-2 Society. But the said Government Order, in so far as it nominated Respondents 4 to 7 as members of the Committee of Management of Appellant-2 Society, shall remain undisturbed.

21. As interpretation of Section 34 of the Act is not free from difficulty, we direct the parties to bear their own costs both in this appeal and in the writ petition.