
(2013) 01 AHC CK 0490
In the Allahabad High Court
Case No : C.M.W.P. No. 5131 of 2013

Ram Chandra Jaiswal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-01-2013

Acts Referred:

Citation : (2013) 100 ALR 47

Hon'ble Judges : Zaki Ullah Khan, J; Satya Poot Mehrotra, J

Bench : Division Bench

Judgement

Satya Poot Mehrotra and Zaki Ullah Khan, JJ.—The present writ petition has been filed by the petitioner, inter alia, praying for quashing the Resolution No. 1 dated 3rd of January, 2013 (Annexure-1 to the writ petition) passed by the respondent No. 3 whereby the petitioner has been declared as disqualified from Membership of the Committee of Management of the Cooperative Society in question, namely, District Wholesale Central Consumer Co-operative Store Ltd., Deoria. From the averments made in the writ petition, it appears that the petitioner has been a Member of the Committee of Management of the Cooperative Society in question and has been holding the post of President of the Society. By the impugned Resolution dated 3.1.2013, the Committee of Management has declared the petitioner as disqualified on account of the reasons mentioned in the said Resolution.

2. We have heard Sri Manish Kumar Nigam, learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondent No. 1.

3. Learned Standing Counsel appearing for the respondent No. 1 submits that the petitioner has an alternative remedy available under Rule 454 of the U.P. Co-operative Societies Rules 1968, framed under the U.P. Co-operative Societies Act, 1965, for redressal of his grievances, in regard to the resolution in question. Learned Standing Counsel further submits that u/s 128 of the U.P. Co-operative Societies Act, 1965, the Registrar has power to annul any Resolution passed by the Committee of Management. It is submitted that in view of the availability of

alternative remedies to the petitioner, no interference is called for by this Court in exercise of its Writ Jurisdiction under Article 226 of the Constitution of India.

4. Sri Manish Kumar Nigam, learned Counsel for the petitioner submits that the existence of alternative remedy is not an absolute power, and the writ petition may be entertained despite the existence of such alternative remedy.

5. We have considered the submissions made by the learned Counsel for the parties.

Rule 453 of the U.P. Co-operative Societies Rules, 1968, provides for various grounds on which a person would be disqualified to be or continue to be a Member of the Committee of Management of a co-operative society.

Rule 454 of the U.P. Cooperative Societies Rules, 1968, lays down as under:

454. It shall be the duty of the Committee of Management of a co-operative society to ensure that no person incurring any of the disqualifications continues to hold office of a member of the Committee of Management. As soon as the fact that a member is subject to any disqualification whether it was incurred prior or subsequent to his being such member, comes to the knowledge of the Committee of Management, the Committee shall consider the matter in a meeting to be called for the purpose. A copy of the agenda of such meeting shall be served on the member (against whom action is proposed) either personally or by registered (acknowledgment due) post. Where resolution for removal of the person concerned from the membership of the committee has been passed for reasons of such disqualifications, a copy of such resolution shall also be sent to the person concerned by registered (acknowledgment due) post and thereupon such member shall not be allowed to attend any meeting of the Committee of Management or to function as the member of the Committee of Management in any other way. The office held by such member shall be declared vacant. If that person feels aggrieved by such action, he may, within thirty days from the date of the receipt of the notice, seek arbitration under the provisions of the Act and rules.

(Emphasis supplied)

6. It is thus evident that any person feeling aggrieved by the Resolution passed by the Committee of Management for removal of such person from the Membership of the Committee of Management may seek arbitration under the Provisions of the U.P. Co-operative Societies Act, 1965 and the Rules framed thereunder.

7. Thus, the petitioner, who has been disqualified by the Resolution of the Committee of Management of the Co-operative Society in question, has alternative remedy of seeking arbitration under the Provisions of the U.P. Cooperative Societies Act, 1965 and the Rules framed thereunder.

Again, section 128 of the U.P. Co-operative Societies Act, 1965 provides as

follows:

128. Registrar's power to annul resolution of a co-operative society or cancel order passed by an officer of a co-operative society in certain cases.-

The Registrar may--

(i) annul any resolution passed by the Committee of Management, or the general body of any co-operative society; or

(ii) cancel any order passed by an officer of a co-operative 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 bye-laws 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 co-operative 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 he deems fit may stay the operation of that resolution or the order during such period.]

8. Thus, under the above quoted section 128, the Registrar has power to annul any Resolution passed by the Committee of Management of a Cooperative Society.

9. The petitioner thus has another alternative remedy available to him under the aforesaid Provisions of section 128 of the U.P. Co-operative Societies Act, 1965.

10. Having considered the submissions made by the learned Counsel for the parties and having regard to the facts and circumstances of the case and keeping in view the nature of controversy involved in the present writ petition, we are of the opinion that it will be appropriate that the petitioner be relegated to the alternative remedy (ies) available to the petitioner, as discussed above. In view of the above, the writ petition is liable to be dismissed on the ground of availability of alternative remedy (ies) to the petitioner, and the same is accordingly dismissed on the said ground.