
(1977) 01 RAJ CK 0031
In the Rajasthan High Court
Case No : Civil Writ Petition No. 741 of 1976

Ram Kumar and Others

APPELLANT

Vs

Additional Registrar Co-operative Societies

RESPONDENT

Date of Decision : 05-01-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1977) WLN 3

Hon'ble Judges : M.L. Joshi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Joshi, J.—This is a writ petition under Article 226 of the Constitution of India by the petitioners whereby they have prayed for quashing the order of the Assistant Registrar Annexure 8 and that of the Additional Registrar Ex. 9 dated 28th of March, 1975 and 5th of April, 1976 respectively.

2. The facts giving rise to this writ petition briefly stated are as follows : At all relevant times the petitioner Ram Kumar was the member of the Executive Committee of the Nagaur Swarnkar Namak Utpadak Sahkari Samiti. The petitioner No. 2 Smt. Hira Devi was the ordinary member of the Sahkari Samiti and petitioner No. 3 Fateh Chand was its President, The petitioner No. 4 was the Treasurer of the said Sahkari Samiti. At that time Mohanlal the respondent No. 4 was the Secretary of the said society. It appears that there were rival groups in the society and each one was making a bid to remove the members of the other side. On 30th of June, 1974 vide Ex. 3 petitioners were removed from the membership of the society by a resolution dated 30th June 1974 passed in the general meeting of the said Sahkari" Samiti. The petitioners felt aggrieved by the said resolution and moved the Assistant Registrar Co-operative Societies u/s 32 of the Rajasthan Co-operative Societies Act hereinafter called the Act for quashing the resolution Ex. 3. The Assistant Registrar by his order dated 15-10-74 accepted the petitioners' application and quashed the resolution dated

30th of June, 1974. In the mean time a complaint was also lodged by the petitioner Ramkumar to the Collector Nagaur that Mohan Lal the respondent No. 4 who was the Secretary of the society had mis-appropriated the societies' fund and therefore inquiry should be made in respect of the misappropriated funds of the society. The Collector ordered for the inquiry regarding the misappropriated funds which was pending at the time when the Assistant Registrar had passed his order dated 15th of October, 1974.

3. The Sahkari Samiti felt aggrieved by the order of the Assistant Registrar dated 15th October, 1974 and filed appeal before the Additional Registrar. The Additional Registrar by his order dated 3rd February, 1975 vide Ex. 6 remanded the case to the Assistant Registrar with a direction that the Assistant Registrar shall give his decision taking into consideration the directions passed by the Collector Nagaur in his order dated 10-9-74. In compliance of the order of the Registrar the case went back to the Assistant Registrar. The Assistant Registrar on receipt of the case after giving due notice to the parties held that the general meeting held on 30th of June, 1974 removing the petitioners from the membership of the society was validly convened and so upheld the resolution of the removal of the petitioners vide Ex. 8. The petitioner did not remain satisfied with the order of the Assistant Registrar dated 28th of March, 1975 and therefore took the matter by way of appeal before the Additional Registrar who upheld the order of the Assistant Registrar and dismissed the appeal of the petitioners. The petitioners have therefore come before this Court under Article 226 and have challenged the order of Assistant Registrar Ex. 8 and the Additional Registrar Ex. 9.

4. The case of the petitioners as propounded in the writ petition is that Sayarmal Gandhi who happened to be the Assistant Registrar was an intimate friend of respondent No. 4 Mohanlal the Secretary of the Sahkari Samiti and was highly prejudiced against the petitioners and therefore the order Ex. 8 passed by him was without jurisdiction. The further case of the petitioners is that the Assistant Registrar did not comply with the order of the Registrar dated 3rd of February, 1975 in as much as he did not comply with the direction of the Registrar who had observed that while passing the order the Assistant Registrar should take note of the directions made by the Collector in an inquiry initiated on the complaint of the petitioner Ramkumar. It has also been alleged by the petitioners that they were not allowed adequate opportunity to produce evidence in the matter and therefore the impugned orders are bad in law. It has also been alleged in the petition that the order Ex. 9 upholding the orders of the Assistant Registrar being not a speaking order cannot be sustained in law. Lastly it has been alleged that the impugned orders cannot be sustained as no notice was given to the petitioners as required under Rule 18 of the Rajasthan Co-operative Societies Rules hereinafter referred to as the Rules.

5. The petition has been contested by the respondent on one and all the grounds and it has been alleged that the impugned orders do not suffer from any infirmity

or manifest error of law.

6. Mr. Rastogi learned Counsel for the petitioner has firstly contended that Sayarmal the Assistant Registrar was a biased person as he was an intimate friend of Mohanlal the respondent No. 4 and therefore inquiry made by him is without jurisdiction. In support of the contention learned Counsel for the petitioners has invited my attention to Ex. 7 an application made to the Collector to the effect that Shri Sayarmal Gandhi the Assistant Registrar was intimate friend of the respondent No. 4. No affidavit was submitted in support of the application and it appears that it was not even pressed before the Collector as it will appear that the Collector was not asked to pass orders on this application and the petitioner allowed Sayarmal Gandhi to proceed with inquiry. Moreover no objection was raised before Mr. Gandhi as to his incompetency to hear the matter and it is too late in the day to take such objection in the writ petition.

7. The next contention of the learned Counsel for the petitioner is that the Assistant Registrar did not comply with the order of remand of the Registrar. It is urged that the Additional Registrar had in his order of remand issued directions to the Assistant Registrar to take notice of the directions of the Collector made in the complaint of the petitioner. Learned Counsel for the petitioners submits that the Assistant Registrar before passing the impugned order Ex. 8 should have inquired into the acts of misappropriation imputed against respondent No. 4 Mohanlal. I have perused the order of remand. The direction of the Registrar in this behalf are pretty vague and it cannot be deciphered as to what he actually meant by it. It is to be borne in mind that the scope of appeal is circumscribed by subject matter of dispute in the original cause. The matter before the Assistant Registrar was only relating to the removal of the petitioners by a resolution passed in the meeting dated 30th of June, 1974. The order of the Additional Registrar therefore could not have travelled beyond that. The Registrar could not have meant to make inquiry which was extraneous to the subject matter of the meeting of 30th of June, 1974. The Assistant Registrar has directed himself to the main point in issue and therefore it cannot be said with any amount of justification that the Assistant Registrar did not comply with the order of remand passed by the Additional Registrar who was the appellate authority.

8. The next contention of the learned Counsel for the petitioner is that the petitioner was denied the reasonable opportunity of being heard. The contention of the learned Counsel for the petitioners is that petitioner was not given adequate opportunity of leading evidence in support of his various contentions. This contention has no substance in it. After the remand the case came up before the Assistant Registrar on 3rd of March, 1975. None of the petitioners remained present on that day to pursue the matter before the Assistant Registrar. It is said that the petitioners No. 1 and 3 who were looking after the case were ill and therefore they sent a telegram seeking an adjournment. The Assistant Registrar adjourned the case and fixed it on 28th of March, 1975. On 28th of March again none of the petitioners presented before the Assistant Registrar to pursue the

matter. No good cause has been shown for their absence on 28th March. There was therefore no alternative left with the Assistant Registrar except to close the evidence.

9. It was next contended by the learned Counsel for the petitioner that Ex. 9 the order of the Additional Registrar is bad as it is not a speaking order. I have perused the order of the Additional Registrar. It is an order upholding the order of the Assistant Registrar. He has observed in the order that he has perused the order of the Assistant Registrar which is an elaborate one and has been given after taking into account all the facts. From the perusal of the order it is evident that the Additional Registrar has shown his concurrence with the reasons given by the Assistant Registrar and in such circumstances the contention that the order of the Additional Registrar is not a speaking order is of no consequence. It is to be borne in mind that when an appellate authority endorses the reasoning of the subordinate authority then it need not give elaborate reasons if it has perused the judgment and shown its concurrence with it.

10. Lastly it has been contended by the learned Counsel for the petitioners that the removal of the petitioners was bad as no notice as required under Rule 18 of the Rules was given to them before their removal. On this point controversy has been joined by Mr. Kashi Nath Joshi on behalf of the Sahkari Samiti that it is incorrect to say that no notice as required by Rule 18 was given by the Sahkari Samiti before removing the petitioners. In this connection the learned Counsel for the Sahkari Samiti has invited my attention to Ex. R. 2 It contains notices under Rule 18 to all the petitioners. According to the learned Counsel for the respondent these notices were sent under a certificate of posting which has been placed on the record and is at page 65 of the paper book. It has been contended by Mr. Joshi that under Rule 32 notice of the meeting may be sent under certificate of posting. I have perused the Rule 32(3)(b) which provides that the notice of the general meeting shall be sent to the members by one or more of the following modes, namely: (a) Local delivery (b) By post under certificate of posting. A categorical assertion has been made in the reply that notices under Rule 18 were sent to all the petitioners under certificate of posting but it has not been controverted by filing a rejoinder. Besides this the learned Assistant Registrar has also held in his impugned order Ex. 8 that the notices as required by Rule 18 were given to all the petitioners. The learned Counsel for the petitioners has failed to satisfy me that the postal receipts filed by the petitioner evidencing the despatch of the notices are in any way fabricated or are not worthy of credence. In this view" of the matter there is no escape from the conclusion that the notices as required by Rule 18 of the Rules were sent to the petitioners. This contention also therefore has no merit in it.

11. In the result there is no force in this petition. It is dismissed. In the facts and circumstances of the case the parties are left to bear their own costs.