
(1998) 09 AHC CK 0150
In the Allahabad High Court
Case No : C.M.W.P. No. 25207 of 1998

Ram Pal Singh Tyagi

APPELLANT

Vs

U.P. Co-operative Federation Ltd. and another

RESPONDENT

Date of Decision : 01-09-1998

Acts Referred:

Citation : (1998) 3 AWC 2119

Hon'ble Judges : Palok Basu, J;B.K. Sharma, J

Bench : Division Bench

Advocate : A. Kumar, for the Appellant; V.C. Tripathi, for the Respondent

Final Decision : Allowed

Judgement

Palok Basu and B. K. Sharma, JJ.—Short but interesting question which arises in this writ petition is as to whether the power which has been conferred on Managing Director by Amending Act. i.e., U. P. Act No. I of 1997, promulgated with effect from 16.4.1997 permitting that "the Managing Director of a society shall be incharge only of current duties of the Committee of Management" would mean that the Managing Director can assume the powers as conferred by Regulation No. 86 of U. P. Co-operative Societies Employees' Service Regulations, 1975 or U. P. Co-operative Federation Limited Karmchari Seva Niyamawali. 1980. whichever may be held applicable to the facts of the present case.

2. Before proceeding further with the facts of the case. It may be pointed out that it is in the year 1976 that the State of U. P. came out with the Amending Act No. XII of 1976, which permitted the appointment of a Managing Director, instead of Secretary, of Apex Societies. It is undisputed that U. P. Cooperative Federation Ltd. is an Apex Society. The powers exercisable by a Managing Director when the Committee of Management may be in existence is governed by sub-section (4) of Section 31A of U. P. Co-operative Societies Act (hereinafter referred to as "the Act"). It may be interesting to note here that subsection (2)

thereof provides that "the Managing Director shall be ex officio member of the Committee of Management." The petitioner, Ram Pal Singh Tyagi, has described himself to be the District Manager, U. P. Co-operative Federation Limited, Meerut. This has not been disputed. It is said that on account of dispatching truck load of sugar later than the time expected, an adverse entry was awarded to the petitioner on 25.7.1998 by the Managing Director of the Federation. On 29.7.1998, the Managing Director again passed the order impugned in this writ petition, by which the petitioner was suspended on the ground that disciplinary proceedings were contemplated against him (See Annexure-7 to the writ petition). The U. P. Co-operative Federation and the Managing Director by name have been impleaded as opposite party Nos. 1 and 2.

3. When the writ petition was filed 611 6.8.1998, the respondents appeared to oppose it and. therefore, time was allowed to file counter-affidavit which has been filed to which rejoinder-affidavit has also been filed. Both the sides have filed written arguments also.

4. Sri A. Kumar, learned counsel for the petitioner, has been heard at length in support of this writ petition and likewise Sri Murlidhar. Senior Advocate, assisted by Sri Pradeep Chandra has been heard for the respondents.

5. Before coming to the actual discussion of the question posed above, it may be pointed out that the petitioner had his own story to advance concerning delay in dispatch of sugar truck load to the destination. According to the petitioner, since movement of Kawarias was so thick and strong on the road towards Meerut to and fro, the movement of truck was impossible. He has relied upon the fact that the information sent to the petitioner was that a truck load of wheat was set at fire by Kawarias on the highway, which information was conveyed to him on 18.7.1998. The recommendation of the District Magistrate was that the petitioner had succeeded in attaining the wheat procurement target and. therefore, appreciation was to be awarded to the petitioner which was followed by a FAX message dated 20.7.1998 informing the District Magistrate concerned that it was not possible to reach the sugar till 22.7.98 and supply would commence on 23.7.1998.

6. The impugned suspension order, on the other hand, indicates that delayed supply of sugar created difficulty amongst the consumers Inasmuch as reputation and honour of the Federation was thereby lowered in the estimation of the general public. That was the reason why the Managing Director took upon him to award adverse entry on 28.7.1998. A true copy of the said adverse entry has been filed as Annexure-6 to the writ petition. The adverse entry Indicates that because of the delay in dispatching the truck load of sugar by the petitioner, his conduct is held reprehensible for which adverse entry is being made.

7. In the writ petition, challenge has been extended to order dated 29.7.1998 by which the petitioner has been suspended and it has been, therefore, prayed as per prayer No. 2 that the respondents be restrained from interfering in any

manner with the petitioner's functioning as District Manager, P.C.F. Meerut. on the basis of the aforesaid order. The prayer No. 1 is confined to quashing of the aforesaid order dated 29.7.1998.

8. Sri A. Kumar, learned counsel for the petitioner, has contended that the distinction made by the Legislature between the Committee of Management and its Managing Director should be maintained throughout. The provisions contained in the Act were examined thoroughly and wherever powers of the Committee of Management have been conferred on the Managing Director, specific provisions exist. In this context, reference should be made to the provisions contained in Section 31A of the Act which has been cited above. Even when the Committee of Management is in existence the power that is conferred on the Managing Director by clause (v) of sub-section (4) of Section 31A is "to be responsible for the general conduct, supervision and management of the day to day business and affairs of the society."

9. Section 29 of the Act exists in Chapter IV which deals with the management of the Society. Further. Section 29 provides that the management of every Co-operative Society shall vest in a Committee of Management constituted in accordance with this Act or Rules made thereunder. U. P. Cooperative Societies Employees' Service Regulations, 1975 defines "appointing authority" in Regulation 2 (iii) which reads as under :

"appointing authority means "Committee of Management" or any other authority which is empowered under these regulations or the bye-laws of the society concerned to make appointment."

10. Likewise. Regulation 2 (Ca) of U. P. Co-operative Federation Limited Karmchari Seva Niyamawali, 1980 provides that :

^^fu;qf? izkf/kdkjh** dk rkRi;Z izcU/k desVh ;k fdlh vU; izkf/kdkjh ls gS tks vf/kfu;e ;k QsMjs"ku dh mi fof/k;ksa ds v/khu fu;q? djus ds fy;s l" k? gS A**

Translation by the Court :

"appointing authority" means Committee of Management or any other authority which is empowered under these regulations or the bye-laws of the society concerned to make appointment."

11. As to the powers which have been conferred on the Committee of Management with regard to penalties, disciplinary proceedings and appeals, Chapter VII of U. P. Co-operative Societies Employees' Service Regulations, 1975, delineate them through Regulations 84 and 85.

12. Regulation 84 aforesaid provides that :

"Penalties.--(i) Without prejudice to the provisions contained in any other regulation, an employee who commits a breach of duty enjoined upon him or has been convicted for criminal offence or an offence u/s 103 of the Act or does anything prohibited by these regulations shall be liable to be punished by any

one of the following penalties :

- (a) censure.
- (b) withholding of increment.
- (c) fine on an employee of Category IV (peon, chaukidar etc.),
- (d) recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the Co-operative Society by the employee's conduct,
- (e) reduction in rank or grade held substantively by the employee,
- (f) removal from service, or
- (g) dismissal from service."

Regulation 85 (vi) provides that :

"An employee other than one referred to in clause (v) may be placed under suspension in the following circumstances by the appointing authority or any other officer authorised for the purpose : (underlining by the Court) :

- (a) Not quoted.
- (b) Not quoted.
- (c) Not quoted.

13. The U. P. Co-operative Federation Limited Karmchari Seva Niyamawali. 1980. has Chapter VII which provides for "kkfLr] vuq"kklfud dk;Zokgh vkSj vihy] i.e. punishment. disciplinary proceedings and appeal. Regulation 83 of the said Niyamawali provides as under :

^^?1? fdlh vU; lsok fu;e esa fn;s x;s micU/kksa ij izfrQy izHkko Mkys fcuk fdlh deZpkjh dks tks vius d?kZO;ksa dks dkbZ mYya?ku djrk gS ;k n.M vijk/k vf/kfu;e dh /kkjk 103 ds v/khu fdlh vijk/k ds fy;s fl) nks"k gqv k gS ;k lsok fu;ekoyh }kjk izfrc) dksbZ dk;Z djrk gS] rks mls fuEu "kkfLr;ksa esa ls ,d ;k vf/kd "kkfLr;ksa } kjk nf.Mr fd;k tk ldsxk A

?d? fuUnk]

?[k? osru o`f) ij jksd]

?x? Js.kh 4 ds fdlh deZpkjh ?pijklh] pkSdhkj vkfn? ij tqekZuk]

??k? Not quoted.

?M+? Not quoted.

?p? Not quoted.

?N? Not quoted.

(2) Not quoted.

(3) Not quoted.

(4) Not quoted.

(5) Not quoted.

15. Disciplinary proceedings, i.e., vuq"kklfud dk;Zokgh is dealt with under Regulation 84. It has 9 sub-regulations. Sub-regulation No. 5 deals with the power of suspension which reads as under :

^fuyEcu%& dksbZ dEkZpkjh fuEufyf[kr ifjLFkfr;ksa esa fu;qfDr izkf/kdkjh vFkok bl iz;kstu ds fy;s izkf/kdd`r fdlh vU; vf/kdkjh }kjk fuyfEcr fd;k tk ldsxkA

?d? Not quoted.

?[k? Not quoted.

?x? Not quoted.

(Translation into English) :

"Suspension : Any employee under following circumstances can be suspended by appointed authority or by an Officer authorised for this purpose."

15. While Sri A. Kumar argued that it is the Employees' Regulation which is attracted to the facts of the case, Sri Murlidhar, learned senior counsel appearing for the opposite parties, insisted that it is the Federation Employees' Regulation which will hold the field. However, since the writ petition deals with only order of suspension, such controversies need not detain the Court because in both the aforesaid Regulations, provisions for suspension are identical in terms. The fact that censure, entry has been awarded which has not been made subject-matter of challenge in this writ petition should also not detain this Court any longer with the aforesaid arguments, i.e.. applicability of either of the two Regulations, because the Court is proceeding on the basis of the argument of the learned counsel for the respondents that it is the provision of Federation Regulations which will govern the petitioner's case.

16. Sub-regulation (5) of Regulation 85 read with 2 (Ga) as quoted above, leaves no manner of doubt that it is the Committee of Management alone or the Officer specially empowered in this behalf which is authorised to pass an order of suspension.

17. In this view of the matter, the primary question posed now opens for discussion.

18. The State of Uttar Pradesh has come out with aforesaid Amending Act, i.e., U. P. Act No. I of 1997, which by Section 2 thereof has added sub-section (5) to Section 29 of the Act. For ready reference, the entire sub-section (5) has to be quoted as under :

"(a) Where for any reason whatsoever the election of the elected members of the Committee of Management has not taken place or could not take place before the expiry of the term of elected members, the Committee of Management shall, notwithstanding anything to the contrary in this Act or the rules, or the bye-laws of the society, cease to exist on the expiry of such term.

(b) On or as soon as may be after the expiry of such term, the Registrar shall appoint an Administrator or a Committee of Administrators (hereinafter. In this section, referred to as the Committee) for the management of the affairs of the society until the reconstitution of the Committee of Management in accordance with the provisions of the Act. the rules, and the bye-taws of the society and the Registrar shall have the power to change the Administrator or, as the case may be, any member of the committee or to appoint a committee in place of an Administrator or vice versa from time to time.

(c) Where a committee is appointed under clause (b) it shall consist of a Chairman and such other members not exceeding eight as may be nominated by the Registrar, out of which at least two shall be the Government servants.

(d) The procedure for summoning and holding of meetings of the committee, the time and place of holding such meeting, the conduct of business of such meeting and the number of members necessary to form quorum thereof shall be such as may be prescribed.

(e) So long as no administrator or as the case may be. the committee is appointed under clause (b), the Secretary or the Managing Director, as the case may be, of the society shall be incharge only of the current duties of the Committee of Management--

Explanation--Where results of the election of members of the Committee of Management have not been or could not be declared. for any reason whatsoever, before the expiry of the term of the elected members of the outgoing Committee of Management. It shall be deemed that the election of the elected members of the Committee of Management has not taken place within the meaning of this subsection,"

19. The entire argument of both the sides centers round the meaning which may be put to the words in clause (e) of sub-section 5 of Section 29. It is admitted to the parties that when the impugned order was passed, there was neither any Committee of Management in existence nor was there any Administrator and it is only the Managing Director who was looking after the Federation, which as noted above, is an Apex society. Clause (e) lays down that the Managing Director of the society shall be incharge only of the current duties of the Committee of Management. Two words which have been specifically used are of paramount importance in order to evaluate the respective arguments. They are the words, "only" and "current duties".

20. The use of the word, "only" is indicative of restricting the powers of the

Managing Director to the current duties. It should not lie in the mouth of the respondents to clamour that the Managing Director should be incharge of all the powers and duties of the Committee of Management itself, for two reasons. First, because that is not what Section 31A provides. Even when a Committee of Management is in existence, the Managing Director can go ahead with the "day-to-day function" as has been noted above in sub-section (4) of Section 31A of the Act. Second, initiating disciplinary proceedings and suspending a District Manager is very serious matter requiring deep application of mind by the Committee of Management whereas the Managing Director is empowered to do only current duties on behalf of the Committee of Management. In fact, passing of such suspension order indicates exercise of wholesome power which is something much above "current duties". Even otherwise, empowering Managing Director to do "only current duties" being an ex officio member of erstwhile Committee of Management leave him empowered with the current duties equivalent to day-to-day functions as envisaged by Section 31A of the Act, Therefore, the aforesaid provisions contained in clause (e) would not permit the Managing Director to pass such orders as are specifically conferred on Committee of Management. It is not disputed that the petitioner is the District Manager working under the Federation and his appointing authority is Committee of Management.

21. It has already been noted above that the U. P. Co-operative Federation Limited, Karmchari Seva Niyamawalt, 1980, has restricted the use of power of suspension on the Committee of Management by Regulation 84 (5) noted above. The question of exercising such power of Committee of Management by any delegated authority did not arise because there was no Committee of Management at all when the impugned order was passed nor was there an Administrator.

22. In view of the aforesaid discussion, there is no doubt in the mind of the Court that the Managing Director has exceeded his jurisdiction in passing the impugned suspension order and instituting disciplinary proceedings against the petitioner.

23. It may be pointed out here that Sri Murlidhar wanted to interpret the words, "current duties" of the Committee of Management as to institute disciplinary proceedings and power of suspension on the supposed justification that there may be a grave situation and necessity to pass suspension order or to institute disciplinary proceedings may appear imperative and, therefore, to hold that Managing Director is not empowered to Pass such an order would be giving a long rope to a dishonest employee. Equally forceful was the reply of the petitioner's side. It is contended that life term of the Managing Director is envisaged by sub-section (5) of Section 29 of the Act brought about through a legislative amendment, i.e., by U. P. Act No. I of 1977, cannot be permitted to extend for a very long period and must be interpreted to be restricted to as short a period as possible because the Federation itself is a conglomeration of various Co-operative Societies and if an individual officer is thus permitted to run the

Federation for a very long term, it shall not be in the fitness of things. In that case, the very purpose of establishing an Apex Co-operative Society to be run by a Committee of Management, as defined in the Act, may stand defeated.

24. In view of the reasons stated above, there is enough force in the petitioner's contention that the Managing Director under the present provisions in the Act could not become the Committee of Management, i.e., the appointing authority and, therefore, could not pass the impugned suspension order.

25. In view of what has been stated above, the writ petition succeeds and is allowed, and the impugned order dated 29.7.1998 passed by the Managing Director, U. P. Co-operative Federation, Lucknow, placing the petitioner under suspension is hereby quashed.

26. Parties will bear their own costs.