
(2016) 09 UK CK 0005

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1519 of 2016

Ranveer Singh

APPELLANT

Vs

State of Uttarakhand

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226, Article 243ZJ
Uttaranchal Co-operative Societies Act, 2003 — Section 35(1)
Uttaranchal Co-operative Societies Rules, 2004 — Rule 473, Rule 474

Citation : (2016) AIR(Uttaranchal) 133 : (2017) 1 UAD 648

Hon'ble Judges : Sudhanshu Dhulia, J.

Bench : Single Bench

Advocate : Mr. Ajay Veer Pundir, Advocate, for the Respondent No. 4; Mr. Shobhit Saharia, Advocate, for the Petitioner; Mr. Tarun Lakhera, Brief Holder, for the State/Respondent Nos. 1 and 2; Mr. Yogesh Pandey, Advocate, for the Respondent No. 3

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.(Oral) - The petitioner is the Chairman of the Management Committee of a Cooperative Society, namely, Dugdh Utpadak Sahkari Sangh Limited Shikarpur, Haridwar. It is the Management Committee, which is vested with the powers of controlling and performing day-to-day administration of the Cooperative Society. A Cooperative Society is an elected body, which is elected as per the provisions contained in Uttaranchal Cooperative Societies Act, 2003. In the three-tier cooperative societies in the State, which are Primary level, District level and the Apex level, the District Cooperative Society is a District level society where members are of a particular Society as well as elected representative of the Primary Society, who ultimately elects the Management Committee.

2. The election to the Management Committee was held on 07.11.2013. There were six members in the Management Committee, out of which four members, namely, Ravindra, Ranveer Singh (present petitioner), Smt. Munesh and Smt. Rekha Devi were elected and two members, namely, Subhash Kumar and Smt.

Bala Devi respectively, were co-opted as members in the Management Committee. On 18.05.2016, two members of the Society, one elected (Smt. Rekha Devi) and another co-opted (Smt. Bala Devi) tendered their resignations directly to the Registrar, Dairy Development Department, Uttarakhand. Thereafter, the Registrar sought certain information from the Manager of the Society, which was provided to him on the same day itself and consequently he passed an order next day i.e., on 19.05.2016, holding that there were six members of the Society and since two members have already resigned, therefore only four members are left in the Management Committee, out of these four members he has disqualified one member namely Subhash Kumar as he had supplied milk to the District Society, less than the minimum quantity required. After declaring Sri Subhash Kumar as disqualified and hence ineligible, there remain only three members in the Society. According to respondent no. 2, three member society is no society and therefore he appointed Assistant Director of Dairy Development Department as an administrator on 19.05.2016 and directed to take action in view of Article 243 ZL (2) of the Constitution of India. The very next day i.e., 20.05.2016 the administrator was replaced by an Administrative Committee of five members, namely, Kehar Singh, Krishna Pal Singh, Rekha Rana, Rahul and Assistant Director. Out of these five members two are the ones who had tendered their resignations on 18.05.2016.

3. It appears that the Cabinet Minister, who was in-charge of the Cooperative Society, had sent a letter dated 20.05.2016 to the Director Dairy Development with a request to appoint Sri Kehar Singh as a Chairman of the Committee and other four persons as members of the Cooperative Society. In compliance of the said order, an order was passed by the Registrar, who is also the Director, on the same day itself i.e., 20.05.2016 appointing Sri Kehar Singh as Chairman of the Committee and other four persons as members of the Society (referred above).

4. The petitioner has challenged the orders dated 19.05.2016 and 20.05.2016 passed by respondent no. 2. A learned Single Judge of this Court vide order dated 02.06.2016 had stayed the operation and effect of the impugned orders (referred above) and thereafter notices were issued to the respondents.

5. The main contention of the petitioner before this Court is that the entire exercise undertaken by the Registrar is on the directions of the concerned Cabinet Minister. There has been a total violation of principle of natural justice and fair play as well as the relevant provisions of Uttaranchal Cooperative Societies Act. More so, even the general principles of administrative law such as principle of natural justice and fair play have not been followed.

6. The case of the petitioner is that the Registrar can supersede or suspend a Committee of Management only under the provisions of Section 35(1) of the Uttaranchal Co-operative Societies Act, 2003 which reads as under:-

"Section 35. (1) Where, in the opinion of the Registrar, the Committee of Management of any co-operative society persistently makes default or is

negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws of the society or commits any act which is prejudicial to the interest of the society or its members, or is otherwise not functioning properly, the Registrar after affording the Committee of Management a reasonable opportunity of being heard and obtaining the opinion of the general body of the society in a general meeting called for the purpose in the manner prescribed may, by order in writing, supersede the Committee of Management."

7. Admittedly the powers have been exercised by the Registrar under sub-sections (1) and (3) of Section 35 of the Uttaranchal Co-operative Societies Act, 2003 but primarily under sub-section (1) of Section 35 of the Uttaranchal Co-operative Societies Act, 2003. However, before doing so, it was absolutely necessary for the Registrar to have given an opportunity of hearing to the Management Committee and should have also obtained the opinion from the general body of the Society in a general meeting called for the purpose in the manner prescribed in writing, which is for superseding the Committee of Management. This has clearly not been done in the present case.

8. Learned counsel for the petitioner would further argue that under the bye-laws of the Society, in case the quorum of the Management of Committee is short of members, the powers vest with the remaining members of the Management Committee to co-opt the member from the general body for the remaining period of the management committee. Bye-law No. 35, as relied upon by the petitioner, reads as under:-

"35. If any casual vacancy occurs amongst elected members of the Committee of Management or such number of members could not be elected, for which vacancies are there, then it shall be filled up by co-option from amongst those remaining members of the general body who are qualified for the membership of the Committee of Management".

9. Even in holding Mr. Subhash Kumar as disqualified due procedure has not been adopted by the Registrar. The procedure for disqualification of a member of Management of Committee is given under the Rules known as "Uttaranchal Co-operative Societies Rules, 2004" in Part V. Rule 473 of the Rules prescribes various kinds of disqualifications which a member can incur.

10. Rule 474 to Rule 477 thereafter prescribe the procedure by which a member can be disqualified. These Rules read as under:-

"474. A co-operative society which is affiliated to any other co-operative society shall not appoint any person who is or has been delegate of any co-operative society in the General Body of the latter society, if-

(i) he ceases to be a member of the General Body or the Committee of Management, or

(ii) he incurs any of the disqualifications for being the member of the Committee of Management of the latter society as laid down in Rule 473.

475. 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 (acknowledgement 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.

476. If it comes to the notice of the Registrar that the Management Committee of the society is not taking action against the person incurring disqualifications laid down in the Act or the Rules or the Bye-Laws of the society, the Registrar will direct the Management Committee of the society in writing to take action within 30 days and the Management Committee shall be bound to act accordingly.

477. If the Management Committee fails to take action in accordance with Rule 476, the Registrar may remove the concerned member from the Committee of Management of the society giving proper opportunity of hearing."

11. As we can easily see in the above Rules a procedure is given which has to be followed before holding a member as disqualified. Mr. Ajay Veer Pundir, learned counsel for respondent No. 4 as well as Mr. Tarun Lakhera, learned State Counsel would argue that there was no occasion for giving an opportunity to the Management of Committee, as after the resignations of two members, namely Smt. Rekha Devi and Smt. Bala Devi, there was actually no Committee of Management, as the Committee of Management must have minimum of half of the elected members. Learned counsels for the respondents, however, have not been able to show any provision of law on which their argument could be sustained. Even assuming for the sake of argument that the Committee of Management had fallen short of minimum quorum even then for the remaining members it is an admitted fact that out of four elected members, three members remained and under the provisions of bye-laws No. 35 of the society, the remaining members of the Committee of Management were empowered to co-opt the members from the general body. This was never done.

12. Apart from the above, there was no effort made by the Registrar to call for a meeting of the general body, which is again a mandatory requirement under

Section 35 of the Uttaranchal Co-operative Societies Act. Coupled with all these anomalies the fact that there was apparently a tearing haste shown by the Registrar which was not at all required. More particularly, now there is an evidence to this effect that there was a clear direction of the concerned Cabinet Minister which were to appoint certain persons in the Committee of Management, two of which are the ones who have already resigned from the Committee of Management. There is mala fide and arbitrariness, which runs through these entire gamut of events.

13. A Cooperative Society has now attained a Constitutional status inasmuch as after the 97th amendment, Part IXB of the Constitution of India have been inserted. Article 243ZJ of the Constitution of India clearly mandates that the term of a Society shall not be less than five years, etc.

14. As far as the alternative remedy is concerned, there was another argument of learned counsel for respondent no. 4 that the petitioner has an alternative remedy. The reference is made of two judgments namely Commissioner of Income Tax and others v. Chhabil Dass Agarwal, reported in 2014(1) SCC 603 and State of U.P., v. Mohammad Nooh reported in AIR 1958 SC 86.

15. This argument of the respondent no. 4, however, cannot be sustained on ground, though normally alternative remedy bars entertaining the writ petition under Article 226 of the Constitution of India, but it has certain well established exceptions i.e. where the order itself is in violation of statute or there has been a clear violation of principle of natural justice and fair play. There is not only a clear violation of statute but a gross violation of principles of natural justice and fair play.

16. In view of the aforesaid, the orders dated 19.05.2016 and 20.05.2016 cannot be sustained and are hereby quashed. Writ petition is allowed.

17. It is, however, made clear that in order to meet a quorum, the remaining members i.e., other than the two who had resigned on 18.05.2016 shall meet immediately within a period of three weeks from the date of production of certified copy of this order after calling for a general body meeting and co-opt member in accordance with law for smooth functioning of the Committee.