

(1992) 02 AHC CK 0029

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18991 of 1988

Sarnam Singh

APPELLANT

Vs

President, Konch Sahkari Kraya Vikraya Samiti Ltd. and
Others

RESPONDENT

Date of Decision : 11-02-1992

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226

Citation : (1992) 2 AWC 622 : (1992) 1 UPLBEC 464

Hon'ble Judges : S.N. Sahay, J;A.N. Varma, J

Bench : Division Bench

Advocate : H.S. Nigam, for the Appellant;

Final Decision : Allowed

Judgement

S.N. Sahay, J.—This is a petition under Article 226 of the Constitution for a writ of certiorari to quash an order of dismissal contained in Annexure-14 to the writ petition.

2. The facts giving rise to the writ petition may be briefly stated as follows. The Petitioner Sarnam Singh was appointed as Secretary of the Konch Sahkari Kraya Vikraya Samiti Ltd. Konch District Jalaun. He was placed under suspension by order dated June, 24, 1987 passed by the Administrator of the said Samiti and disciplinary proceedings were initiated against the Petitioner. He was served with the charge sheet dated June 29, 1987. He submitted reply to the said chargesheet on July 1, 1987 and the Additional District Co-operative officer was appointed as Enquiry Officer. The Petitioner tiled writ petition no 13642 of 1987 challenging the suspension order passed against him. The writ petition was finally disposed of on August 25, 1987 with the direction that the enquiry proceedings shall be completed within a period of two months. Before the enquiry could proceed, the Petitioner was served with an additional chargesheet dated December 8, 1987 The reply to the additional charge sheet was submitted by him on January 9, 1988. As there was no progress in the enquiry, the

Petitioner filed another writ petition bearing No. 4692 of 1988. This writ petition was disposed of by order dated February 26, 1988. It was observed that the enquiry proceedings shall be concluded at an early date preferably within a period of six months. In the meantime the Board of Directors of the aforesaid Samiti in its meeting held February 18, 1988 appointed a Sub-Committee of five persons to hold enquiry into the charges levelled against the Petitioner. As the enquiry proceedings were not completed, the Petitioner filed yet another writ petition No. 7623 of 1988 which was decided on April 21, 1988. It was directed that the Petitioner may make a proper representation to the authority concerned annexing thereto a copy of the order dated August 25, 1987 as well as a certified copy of the order dated April 21, 1988. It was further directed that the Petitioner shall state in the representation that he is prepared to extend full co-operation and also stress therein that the enquiry should be completed within a period of two months from the date of receipt of the representation alongwith the certified copy of the order of the Court.

3. In the meantime the Sub-Committee appointed by the Board of Directors held its meeting on April 3, 1988 and considered the charge-sheets served upon the Petitioner and the reply submitted by him. The Sub-Committee found that the charges were established against the Petitioner.

4. After that the matter was considered by the Board of Directors in its meeting dated April 9, 1988. It was decided that a show cause notice may be issued to the Petitioner. In pursuance of this decision, a notice dated May 22, 1988 was issued calling upon the Petitioner to show cause why his services should not be terminated. The Petitioner was required to submit reply by June 10, 1988. The Petitioner submitted his reply dated June 25, 1988, in which he stated that without inspecting the relevant records, he was unable to give any reply to the charges framed against him. He requested that he may be permitted to inspect the records and to submit a detailed reply to the charges and the enquiry may be held thereafter in a proper manner. The Board of Directors again considered the matter in their meeting dated June, 28, 1988. They came to the conclusion that the Petitioner was guilty of misappropriation of money and stock belonging to the Samiti and that on account of dereliction of duty committed by the Petitioner, a financial loss of Rs. 4. 27 lakh had been caused to the Samiti on account of fire that had broken out in the Dal Mill. In view of these findings, the impugned order of dismissal dated June, 28, 1988 was passed against the Petitioner.

5. The writ petition was allowed by us on January 4, 1989 when it came up before us for hearing. We took the view that the impugned order is void because the prior concurrence of the U.P. Co-operative Societies Institutional Services Board had not been obtained and the order has been passed in breach of the mandatory provisions of Regulation 87 of the U.P. Co-operative Societies Employees' Service Regulations, 1975. The Respondents filed an application for review. After hearing the learned Counsel for the parties we allowed the review application on August 13, 1991 and recalled the order dated January 4, 1989. We

found that the provisions of the abovementioned regulations were not attracted in view of the fact that the relevant notification dated February 7, 1983 was not applicable to the Samiti in question. It was accordingly held that the Samiti did not come under the purview of the Board and the terms and conditions of the employment of the Petitioner were not governed by the regulations mentioned above. It is in this manner that the writ petition has again come up for hearing before us.

6. The learned Counsel of the Petitioner has urged that the impugned order is void and illegal as it has been passed in violation of the principles of natural justice. In this connection it has been submitted that the enquiry was not conducted by the Enquiry Officer and the Petitioner was not given any opportunity to inspect the records on the basis of which charges were framed against him. It is also submitted that copies of documents were not supplied to the Petitioner and the explanations to the chargesheets given by the Petitioner have not been considered before passing the impugned order. On the other hand, the learned Counsel for the Respondents has submitted that the services of the Petitioner have been rightly terminated after applying the principles of natural justice and considering the case of the Petitioner on merits and there is no illegality of any kind in the order of dismissal passed against him.

7. It has been noticed that initially the Additional District Cooperative Officer was appointed as Enquiry Officer. The appointment of the Enquiry Officer was made by the District Assistant Registrar Co-operative Societies Jalaun, Respondent No. 2 by order dated July 10, 1987. a copy of which has been filed as Annexure-15 to the writ petition. There is nothing to show that the appointment of the Addl. District Co-operative Officer as Enquiry Officer was subsequently revoked by a competent authority. However, it may be assumed for the sake of argument that the said appointment was impliedly revoked by the resolution of the Board of Directors dated February 18, 1988 by means of which the Sub-Committee was appointed to enquire into the charges framed against the Petitioner. It appears from a perusal of the said resolution (Annexure-C-A-3) that five persons, namely, Sarva/Sri Girendra Singh, Chatur Singh, Pradeep, Kumar Shukla, Man Singh and Vigyan Visharad Sirothia were nominated as the members of the Sub-Committee. But it will appear from Annexure-C~A-6 that in the meeting of the Sub-Committee, which was held on April 3, 1988, three outsiders, namely, Sarva/Sri Nathu Ram, Dhan Singh and K.N. Paliwal ADCO were also present. Sarva/Sri Nathu Ram and Dhan Singh were special invitites. It was in the meeting of April, 3, 1988 that the Sub-Committee considered the charges against the Petitioner and recorded its findings that the charges were established. Therefore, there can be no escape from the conclusion that the findings of the Sub-Committee were vitiated on account of the fact that outsiders have participated and the enquiry was not conducted by a properly constituted Enquiry Officer or Enquiry Committee.

8. A part from this, it will also appear from a perusal of the material on record

that the Petitioner had moved the authorities a number of times for the inspections of records. There is nothing to indicate that any reasonable opportunity was given to the Petitioner to inspect the records. It is, no doubt, mentioned in the minutes of the Subcommittee dated April 3, 1988 (Annexure-C-A-6) that the Petitioner was present in the meeting and had also inspected the records. This fact has been refuted by the Petitioner in the rejoinder affidavit filed by him in this case. In any case, it cannot be said on the basis of the above mentioned fact recorded in the minutes of the Sub-Committee, that the Petitioner had any reasonable opportunity to inspect the records for making out his defence. The charges levelled against the Petitioner and the reply thereto submitted by him were considered by the Sub-Committee in the meeting of April 3, 1988 and the findings were also recorded by the said Committee in the same meeting. Even if therefore it is assumed that the Petitioner had seen the records, it will have no effect. The same is the case when the matter was considered by the Board of Directors on June 26, 1988 the date on which the impugned order was passed against the Petitioner: The charges framed against the Petitioner are of such nature that no enquiry could have been held in a just and fair manner without taking evidence in support of the charges and giving due opportunity to the Petitioner not only to cross-examine the witnesses but also to lead evidence in rebuttal and to substantiate his defence. We are, therefore, satisfied after a perusal of the minutes of the Subcommittee dated April 3, 1988, (Annexure-C-A-6) and June 28, 1988 (Annexure-C-A-9) and the impugned order (Annexure-14) that the principles of natural justice have not been observed and the impugned order has been passed without holding proper enquiry into charges and without affording a real and substantial opportunity to the Petitioner to show cause against the same.

9. It will follow that the impugned order suffers from arbitrariness and on this ground alone, it is liable to be quashed.

10. We may, however, observe that the learned Counsel for the Petitioner has also contended that the impugned order has not been passed by the appointing authority of the Petitioner and is without jurisdiction. According to him, the Petitioner is a member of the U.P. Co-operative Stores Centralized Service, constituted under the U.P. Co-operative Consumers' Stores Centralized Service Rules, 1979. It is stated that the appointing authority of the Petitioner is the Administrative Committee constituted under Rule 5 (b) of the said rules and the impugned order which has been passed by the president of the same is without jurisdiction. For the applicability of the said rules it must be shown that the Petitioner was employed as Secretary of Store" as defined in Rule 2 (j) Rule 2 (j) provides that "Store mean a whole sale Consumers" Store as defined in Rule 2 (z) (ff) of the Uttar Pradesh Co-operative Societies Rules, 1968 and shall include certain other Societies specified there in. From a perusal of the provisions of the said Rule 2 (z) (ff) it will appear that wholesale Consumers Store means a centralized society, the primary object where of is to obtain and sell such goods as are generally required for use by its member or by the members of the

societies affiliated to said Society.

11. The learned Counsel for the Respondents has contended that the samiti in Question is not a centralized society but is a marketing society as defined in Rule 2 (t) of the U.P. Co-operative Societies Rules 1968. According to Rule 2 (t) "Marketing Society" means a primary society, the area of operation where of is only a part of one district or a part of more than one district and the primary object where of is to arrange for the marketing of the agricultural produce of its ordinary members. It is submitted that the Samiti is a primary society within the meaning of Section 2(q-1) of the U.P. Co-operative Societies Act, 1965 and is covered by Clause (i) of the proviso to Section 2(q-1).

12. We are not inclined to accept the contention that the Samiti is a primary society, for two reasons. In the first case the bye-laws of the Samiti which have been produced by the parties for perusal at the hearing of the writ petition do not indicate that the primary object of the Samiti is only to arrange for the marketing of the agricultural produce of its ordinary members. There are several other primary objects specified in the bye-laws. Secondly, the expression "co-operative marketing society" used in Clause (i) of the proviso to Section 2(q-1) of the Act has not been defined and its meaning cannot be controlled by Rule 2 (t) of the above mentioned rules. In the case of a marketing society, it must be shown first of all that the conditions laid down in Section 2(q-1) of the Act for regarding it as a primary society has been satisfied and then only in the sequence of things of the provisions of Rule 2 (t) of the above mentioned rules will be relevant. However, we do not think it necessary to go further into the question whether the Samiti is a "wholesale Consumer Store" as defined in Rule 2 (z) (ff) referred to above and whether the Petitioner is governed by the provisions of U.P. Co-operative Consumer's Stores Centralized Service Rules, 1979 or not. In our opinion this writ petition can be finally disposed of on the conclusions as to breach of principles of natural justice arrived at above. It has not been shown to us that the rules of natural justice have been excluded by the bye-laws of the Samiti or any special procedure has been prescribed. There can be no doubt that in the absence of any special procedure prescribed by the bye laws or the statutory provisions governing the disciplinary proceedings held against an employee of a Co-operative Society, the principles of natural justice must be observed in order to ensure just and fair treatment to the employees and do away with arbitrariness as envisaged by Article 14 of the Constitution.

13. Section 31(1) of the U.P. Co-operative Societies Act, 1965 provides that except in the case of an apex society, there shall be a Secretary of every Co-operative Society to be appointed and removable by the Society subject to the provisions of the Rules and Regulations framed u/s 121 and 122. It further provides that emoluments and other conditions of service of the Secretary shall be such as may be prescribed in the bye-laws of the Society made in conformity with the Rules and Regulations made in this behalf, Sub-section (2) of Section 31 lays down that the Secretary shall be the Chief Executive Officer of the Society

and subject to such control and supervision of the Chairman and the Committee of Management as may be provided in the rules or the bye-laws of the Society, shall perform the several functions and duties specified in that sub-section. Sub-section (4) provides that after a Co-operative Society has been registered and till such time as its Secretary is appointed under Sub-section (1) or for six months, whichever ever is earlier, the functions and duties of the Secretary shall be performed by such member of the Society as may be provided in the rules and the bye-laws of the Society. Chapter X of the U.P. Co-operative Societies Rules, 1968 deals with Secretary of a Co-operative Society. Rule 124(1) restricts the power of a Co-operative Society in the matter of appointment of Secretary by providing that no Co-operative Society shall appoint any person as its Secretary who does not possess the qualifications laid down u/s 120 or who fails to furnish the security as may, if any, be required under that Section or who is a near relation of a member of the Committee of Management of the Society. Every such appointment shall be subject to the Regulations framed u/s 121 or 122. In case the conditions laid down in Sub-rule (2) of rule 121 exist, the appointment of the Secretary shall be made subject to the prior approval of the Registrar as provided in Rule 125. The procedure to be followed in submitting a proposal to the Registrar and in according approval to the appointment of Secretary by the Registrar is prescribed in detail in Rule 125. Before according the approval, the entire records relating to the selection are submitted to the Registrar and the reasons for selecting a particular candidate are also to be communicated by the Co-operative Society. The Registrar may either approve the proposed appointment or may disapprove it or raise objections in respect of the suitability of the candidate or may require the Society to notify the vacancy again. Rule 129 provides that the Secretary of a Co-operative Society shall not be a member of the Committee of Management of the Society and shall have no right to vote even if he is a member of any Committee or sub committee constituted under the Rules or bye-laws of the Society. Rule 130 casts a special kind of responsibility on the Secretary of the Co-operative Society. Where he is of the opinion that a resolution passed by the Committee of Management or the general-body of the Society or any order passed by an officer of a Co-operative Society is not covered by the objects of the Society or is in contravention of the provision of the Act, the Rules or the Bye-laws of the Society, the Secretary shall forthwith move the Chairman to refer the matter to the Registrar for his decision and in case of failure of the Chairman to take action within three days of the receipt of the Secretary's request, to make the reference to the Registrar himself and pending reference to and receipt of the decision of the Registrar withhold the implementation of the resolution or the order, as the case may be, where the Secretary is satisfied, for reasons to be recorded, that such a course is necessary in the interest of the Society. The Registrar shall there upon examine the matter and take appropriate decision.

14. It will be seen that the appointment of Secretary is made in exercise of statutory power of a mandatory nature conferred on the Co-operative Society by

Section 31. The Secretary has to perform statutory duties and is also enjoined upon to oversee the activities of the Co-operative Society and its officers for the sake of protecting the interest of the Society. The power to remove the Secretary is also statutory in nature which has been conferred by Section 31 itself. The Co-operative Society is not free to appoint any person as its Secretary, nor it can interfere with the performance of its statutory duties and functions. The exercise of power of removal which is inherent in the power of appointment, but expressly conferred by Section 31 is subject to the provisions of the Rules and Regulations framed u/s 121 and 122. In the absence of such Rules and Regulations, the conditions of service of the Secretary may be prescribed in the bye-laws of the Society. But, if, there are no such bye-laws also then power of removal is to be exercised by the Co-operative Society in accordance with the principles of natural justice, otherwise the fear of removal will always hang as Damocles' sword on the head of the Secretary and it will be open to the Co-operative Society to take any arbitrary action against the Secretary, if he does not perform his functions and duties in conformity with the wishes of the members of the Society or if any action of the Secretary in interfering with the decision of the Society is found to be unpalatable to the members. The Rules Regulations and bye-laws are obviously intended to make provision with regard to the manner in which the power of removal is to be exercised by the Co-operative Society in respect of a Secretary. But where these rules do not exist or are silent, the matter is to be considered in accordance with the general law. Since it has not been shown to us that the principles of natural justice were observed by the Co-operative Society in the matter of removal of the Petitioner, the impugned order cannot be allowed to stand.

15. The learned Counsel for the Respondents, however, contended that the writ petition is not maintainable because a Co-operative Society is neither "State" within the meaning of Article 12 of the Constitution nor the bye-laws of the society have the force of law. In support of this contention he has relied upon *Radha Charan Sharma v. Uttar Pradesh Co-operative Federation* 1982 UP LBEC 89, *Sri Konaseema Co-operative Central Bank Ltd. v. N. Seetharama Raju* AIR 1990 AP 171 . We, however, find that it has been held by the Supreme Court in *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , that under Article 226 of the Constitution. Writs can be issued to any person or any authority. It can be issued for the enforcement of any of the fundamental rights or for any other purpose The term "Authority" used in Article 226 in the context must receive a liberal meaning unlike the term in Article 12. Article 226 confers power on the High Courts to issue writs for the enforcement of the fundamental rights as well as non-fundamental rights. The words "any person or authority" used in Article 226 are, therefore, not to be confined only to statutory authorities and instrumentalities of the State They may cover any other person or body performing public duty. The form of the body is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged

in the light of the positive obligation owed by the person or authority to the affected party, no matter by what means the duty is imposed.

16. In the instant case, the bye-laws of the Society will clearly indicate that the Society has to perform public duty. Clause 4 of the bye-laws indicates that there are at least three kinds of functions which may be regarded as functions of a public nature. The primary objects of the Society are inter alia to organise the production work of the producers in the area of operation of the Society on co-operative principles and to develop the same, and to mobilise resources and cause technical knowledge to be made available for the same, to make arrangement for the storage and processing of the agricultural produce and to cause warehouses to be constructed or taken on lease and above all to make arrangement for the distribution of the primary necessities of life, such as cloth, house building material, sugar, kerosene oil etc. The functions of the Society which are confined to the members only are specified in other sub-clauses of clause 4. Thus it is evident from the nature of duties imposed on the Society and the positive obligation owed by it to people generally that the Samiti is performing public duties. Apart from this, it has been noticed above that power of the Society with respect to the appointment and removal of the Secretary is statutory in nature because of the intervention of Section 31, and the provisions of that section must be complied with in the matter of assumption and exercise of the above power. The enforcement of statutory duty is sought in the writ petition. We are, therefore, of the opinion that in the circumstances of this case and the admitted position regarding the requirement to observe the principles of natural justice, there is no force in the contention that the writ petition is not maintainable.

17. For the reasons given above, we allow the writ petition and hereby quash the order dated June 28, 1988 contained in Annexure 14 to the writ petition. However, it will be open to the Samiti in question to take fresh action and complete the enquiry proceeding against the Petitioner in accordance with law. No order as to costs.