

(1956) 10 AHC CK 0014

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 504 of 1956

Sri Mukat Lal and Others

APPELLANT

Vs

The Sahkari Samiti Ltd. and Others

RESPONDENT

Date of Decision : 24-10-1956

Acts Referred:

Citation : (1957) 27 AWR 204

Hon'ble Judges : V.D. Bhargava, J

Bench : Single Bench

Advocate : Brij Lal Gupta, for the Appellant; N.S. Singhal and S.C., for the Respondent

Judgement

V.D. Bhargava, J.—This is an application on behalf of 28 persons who are members of Sahkari Gram Samiti Limited, Muradnagar, district Meerut. The Society was started for the purpose of running a brick kiln and the prescribed capital of the Society was Rs. 2720. So far as the authorised capital of the Society is concerned it is not known nor the counsel for the parties are able to tell what was the authorised capital of the Society. The allegation was that applicant No. 1 was the Sarpanch of the Society and according to the affidavit filed, the affairs of the Society were going on well. According to the applicants there was a general meeting on 3-8-1955 after giving due notice by beat of drum and circulating the agenda and in that meeting out of 46 members 26 members were present who elected office bearers and other necessary business, which is done in the annual general meeting, was done and the applicant No. 1 was re-elected Sarpanch for the next year also. After this election the Society worked well till the middle of December 1955. On 16-12-1955 a complaint was lodged to the Assistant Registrar about the working of the Society and the allegations were made in that complaint against the applicant No. 1, Thereafter on 18-12-1955 at about 1 p.m. the applicant No. 1 Mukat Lal was summoned with the books of the Society by the Assistant District Cooperative Officer who had come to Muradnagar at the brick kiln of the Society. On reaching there he found that the

Assistant District Cooperative Officer and certain other persons who have made the complaint were present including one Sri Murlidhar who had been the Secretary of the Society for some time and who, according to the applicant, had not been elected in the general meeting called on 3-8-1955. The Proceeding Books were taken from the applicant No. 1 and the Assistant District Cooperative Officer then and there called a general meeting of the share-holders and decided to elect another Panchayat and to hold another general meeting on the next day. It is alleged that no notice of this meeting was ever circulated to the members of the Society in general or any agenda was circulated according to the usual practice of the Society. The applicants later on came to know that it was the Assistant District Cooperative Officer who had asked these persons to be present on 18-12-1955 and he had only informed those members that the meeting would be held on the next day. There was a co-called meeting held on 19-12-1955. In that meeting, inter alia, new office bearers and the executive committee was elected and as many as 52 new members were enrolled. It was alleged that according to the rules new members could be elected if they have been recommended by the members of the Panchayat (Executive Committee) and approved by the general meeting. The complaint of the applicants is that these new members have been admitted without having been recommended by the Panchayat and without any notice being given of the meeting and of the agenda that these members will be elected in that meeting and therefore their election as members was invalid. Since these new members had participated in the meeting of 19-12-1955 that meeting would also be invalid. It was said that all these proceedings by the Assistant District Cooperative Officer were contrary to Rule 31 of the Rules framed under the Cooperative Societies Act. The applicant No. 1 had submitted an application before the Assistant Registrar Cooperative Society for arbitration challenging the validity of the proceedings of the so-called meeting but that application was rejected and thereafter there was a revision to the Deputy Registrar who also dismissed the revision. Aggrieved by that decision and aggrieved by the actions of the Assistant District Cooperative Officer the applicants have come to this Court.

2. Counter affidavits have been filed both on behalf of the Assistant Registrar and also on behalf of the Sahkari Samiti Limited, Muradnagar. The affidavit filed on behalf of the Assistant Registrar is of Purshotam Saran Singhal, an Assistant in the office of the Registrar Cooperative Society, Lucknow. Apparently he has no personal knowledge of any of the affairs. He was at Lucknow and all these proceedings had taken place at Muradnagar and possibly he could not have any personal knowledge of the allegations made in the counter affidavit. Most of the allegations have been verified to be true upon information received from the records of the case. No records have been produced before me to enable me to verify whether those allegations made in that affidavit are correct. He has in his affidavit said that the Assistant District Co-operative Officer asked the applicant No. 1 to take the opinion of all the members present about the necessity of a fresh election and to regularise the matter, and it was agreed that a fresh

election be held on 19-12-1955 and a fresh election of the office bearers was ordered. It was further stated that the applicant No. 1 had signed the proceedings of this meeting as a President. The so-called minute book of the meeting of the 18th December has been produced. It does not show that the Petitioner No. 1 had signed as a President nor does it show that the Additional District Cooperative Officer had asked the Petitioner No. 1 to take the opinion of the members and this allegation by the deponent cannot be said to be based on the record. In para. 10 of the counter affidavit he has said that proper notices and publicity for the meeting of 19-12-1955 was given. He has further deposed that there is nothing in the rules and regulations that any written agenda should be circulated. I am unable to understand how an Assistant in the office of the Registrar at Lucknow can depose about the fact of a practice being prevalent in the Cooperative Society at Muradnagar, nor any record has been produced by which publicity of notice could have been substantiated. It is nobody's case that a written notice had been issued and if any oral notice by beat of drum was announced there would be no record of it and that allegation by Purshotam Saran does not also seem to be justified. He has been made to swear all sorts of allegations whether they can be based on record or not and no reliance can be placed at all on that counter affidavit.

3. Counter affidavit on behalf of the Sahkari Samiti has been filed by one Kailash Chandra Sharma, who is, according to the new election, the Secretary of the Society. He has not controverted the fact that no notice was given for the meeting of 18-12-1955. His contention in the affidavit is that since the Petitioner No. 1 was present and since the number required for the quorum, i.e. 21 other members, were present, therefore, it was not necessary to issue any notice and the quorum being complete a general meeting of the Society could be held. He has however controverted the allegation about the non-issuing of the notice for 19-12-1955.

4. As regards the allegation about the meeting of 18-12-1955 it is not based on his personal knowledge, it has been based on the information that he had received from other members and, therefore, in a writ petition that allegation cannot be accepted. Any allegation which is not based on personal knowledge cannot be taken to be a part of the pleadings of a writ petition. He has in his counter affidavit alleged that there were serious allegations of embezzlement by the applicant No. 1 and the contention on behalf of the Society, through its Secretary, is that, in the circumstances of the case, the action of the officers of the Cooperative Society was justified.

5. So far as the allegations about the embezzlement or mismanagement of the Society are concerned, I express no opinion. It may be or may not be that the applicant No. 1 is responsible for them. This matter can only be gone into in proper proceedings. So far as the power of the Registrar is concerned in such cases, it is confined to Rule 31 of the Rules made in the Cooperative Societies Act which inter alia provides:

31(a)-Where the Registrar is satisfied that the members of the Committee of Management of a registered society have, in spite of protests from an officer of the Cooperative Department, the Financing Bank, if any, or members of the society, persisted in conducting its affairs in a manner prejudicial to its interest and likely to end in disaster, he may communicate in writing the grounds of his finding and give the Committee, reasonable time to show cause why it should not be stopped functioning further. In case the explanation is unsatisfactory he may suspend the Committee in whole or in part as a temporary measure and arrange for the work, until the next Annual General Meeting is held. The Registrar may himself assume all the powers and functions of the Committee or he may appoint an Administrator or an ad hoc Committee or both to manage on his behalf the affairs of the society during such periods. Such Administrator or ad hoc Committee will have all or any of the powers of the Committee of Management as the Registrar may direct.

Provided that in urgent cases where the Registrar is satisfied that the need for suspension is immediate, he may pass an order suspending the Committee in whole or in part as a temporary measure and may thereafter issue a notice to show cause why the Board of Management or the Executive Committee be not dissolved or altered in part or whole, and the order of temporary suspension will remain in force till the Committee has shown cause against the notice and a final order is passed by the Registrar in that respect.

6. In case the Registrar was satisfied by the complaint received from some of the members that there had been mis-management he could take action in this connection and it is the Registrar only who has such a power and not an Assistant Registrar. No complaint is alleged to have been made to the Registrar at all in this case and secondly the Registrar can take only action after protests have been lodged by the officer of a cooperative department, the financing bank or the members of the society. In this case no protests are alleged much less proved to have been made before this action was taken and the Registrar also cannot take charge or act under this section without giving the Committee reasonable time to show cause why it should not be stopped from functioning further. It is true that under the proviso the Registrar is permitted in certain cases when he is satisfied that the need for the suspension of the Committee is immediate he may pass order of suspension and thereafter notice may be issued to show cause why the "Committee should not be dissolved. Even in this latter case a notice has to be given. In this particular case the Registrar or the Deputy Registrar has not come in the picture at all. All the actions had been taken by the Assistant Registrar who under the Rules had no power to act in the manner in which he has acted. It is true that under Rule 24 of the Bye Laws Registrar or any officer of the cooperative department or of central society can ask for an Annual General Meeting but he has no right till an Annual General Meeting is held and decided the matter to do anything. In this case the Assistant District Cooperative Officer could have asked the Secretary to convene another General Meeting by giving proper notice and issuing proper agenda.

7. The contention of the learned Counsel for the Sahkari Samiti that no notice was necessary for the 18th of December and when there were members present, which could form a quorum, a meeting could be held, has no force. A meeting may be held with a minimum number of persons, who would form the quorum but the notice of the meeting and of agenda is essential to all the members before the meeting can be called a regular and a valid meeting.

8. As regards the meeting of the 19th Dec, it is clear from the affidavits filed and from the facts that there was hardly any time left and that no proper notice was given of the meeting of the 19th Dec. It is true that the Rules do not prescribe any time for calling an Annual General Meeting but if there is no provision for any time at least a reasonable time must be given before which the meeting can be held and, in any event, the agenda of the meeting should have been circulated. Rule 25 of the (rules framed under the?) Cooperative Societies Act has prescribed as to what would be done at the Annual General Meeting and in that rule it is nowhere mentioned that fresh members will be elected at that meeting. But at this Annual General Meeting fresh members were elected without giving any notice of the same. If any of those items were taken up which under Rule 25 are required to be taken up in the Annual General Meeting then possibly it may be said that no agenda was necessary, but, if any item over and above those, was to be taken up, certainly a notice was required to be given to the members.

9. The new members were also enrolled without the recommendation of the Panchayat, which is also contrary to bye law 5 of the Society. Before a member could be elected by the General Body his name should have been recommended by the majority of the members of the Panchayat. It is further not clear whether these members could be enrolled because it may be that by enrollment of these members the authorised capital of the society may exceed. As it is not known as to what the authorised capital of the society was, it is not possible to express any opinion on this matter. It was further said that these members had not signed any agreement as required under bye law 5. On the contrary a counter affidavit has been filed to show that an agreement had been signed. I do not express any opinion as it is not necessary whether that agreement was signed or not.

10. The action of the Assistant District Cooperative Officer in convening meetings of 18-12-1955 and 19-12-1955 without giving any notice to the members and enrolling new members without the recommendation of the Panchayat is wholly illegal and unjustified. In the circumstances of the case, I quash the proceedings of the meetings of 18-12-1955 and 19-12-1955 and subsequent order and direct the opposite parties to act according to law.

11. It is contended on behalf of the Society that at present the Assistant Registrar, Cooperative Society, opposite party No. 3 has taken charge of the management of the society in consequence of the order of this Court. It will be open to the Registrar to take such actions under Rule 31 as he deems fit if the conditions of Rule 31 are satisfied or he might take action under any other provision of the Cooperative Societies Act or Rule under which he may be

empowered. In the circumstances of the case I make no order as to costs.