

(2017) 10 CHH CK 0001
In the Chhattisgarh High Court
Case No : 201 of 2017

Uttara Patel & Ors

APPELLANT

Vs

State of Chhattisgarh & Ors

RESPONDENT

Date of Decision : 03-10-2017

Acts Referred:

Constitution of India, Article 227 -
Power of superintendence over all courts by the High Court
Chhattisgarh Co-operative Societies Act, 1960, Section 53(1), Section 53(2), Section 53(10), Section 53(12), Section 53(1)(a)

Citation : (2017) 10 CHH CK 0001

Hon'ble Judges : Sanjay K. Agrawal

Bench : Single Bench

Advocate : M.D. Sharma, Arun Sao, Dashrath Prajapati

Judgement

1. Petitioner No.1 was elected as President and petitioners No.2 and 3 were elected as Vice Presidents of Prathmik Krishi Seva Sahkari Samiti Maryadit, Navrangpur (for short, "the Cooperative Society") under the provisions of the Chhattisgarh Cooperative Societies Act, 1960 (for short, "the Act") and other petitioners were elected as members of the said Society for a term of five years commencing from 27-5-2012 to 26-5-2017. They were issued show cause notice dated 20-5-2014 for their super-session under Section 53 (1) (a) of the Act and ultimately, the order of suspension of the Board of Directors of the said Cooperative Society was passed on 26-5- 2014 and the order superseding the petitioners i.e. the Board of Directors of the Cooperative Society, was passed on 6-8-2014 against which they have preferred appeal before the Registrar, Cooperative Societies which was dismissed and against the dismissal of appeal, they preferred further appeal before the Chhattisgarh State Cooperative Tribunal, Bilaspur which has also suffered the same fate leading to filing of this writ petition under Article 227 of the Constitution of India questioning the supersession and appellate orders as bad and unsustainable in law.

2. Return has been filed on behalf of the State/respondents No.1, 3 and 4 opposing the writ petition stating inter alia that the writ petition suffers from delay and laches and new election has already been held and thus, the petition has become infructuous and on merit also, the orders passed are strictly in accordance with law.

3. No return has been filed by respondent No.5 though served and is represented.

4. Mr. M.D. Sharma, learned counsel for the petitioners, would vehemently submit that the petitioners are elected office bearers of the said Cooperative Society for a term of five years up to 26-5- 2017 which expired during the pendency of the writ petition and against the petitioners stringent action of superseding their Society has been taken by the Deputy Registrar, Cooperative Societies, on the basis of power conferred under Section 53 (1) (a) of the Act, but the mandatory provision contained in the Act for superseding the Cooperative Society, contained in Section 53 (2) of the Act, has not been complied with before superseding the petitioner's Cooperative Society, as before passing order under Section 53 (1) (a) of the Act, no list of allegations, no documents and no list of witnesses in support of charges levelled against has been provided and the Society has not been given a reasonable opportunity of showing cause against the proposed order and no opportunity of submitting representation has been given and, therefore, the orders impugned deserve to be set aside. He would further submit that except petitioners No.1 and 5, others have not been served with notice from the Deputy Registrar, Cooperative Societies, before superseding the said Society, only show cause notice has been given and nothing thereafter has been done, and no enquiry has been held to prove the charges against the petitioners as such, the impugned order deserves to be set aside on this short ground alone.

5. Mr. Arun Sao, learned Deputy Advocate General appearing on behalf of the State and its authorities would support the impugned order and submit that detailed show cause notices were served containing the allegations, effect of documents and on the basis of preliminary enquiry, show cause notice was served and, therefore, the impugned order is supportable in law and the writ petition deserves to be dismissed.

6. Mr. Dashrath Prajapati, learned counsel appearing for respondent No.5, would support the impugned order.

7. I have heard learned counsel for the parties and considered their rival submissions and also gone through the records with utmost circumspection.

8. It is not in dispute that petitioner No.1 was elected President of Prathmik Krishi Seva Sahkari Samiti Maryadit, Navrangpur and assumed the office on 27-5-2012, and his tenure was up to 26-5- 2017. Likewise, petitioners No.2 and 3 were Vice Presidents of the said Cooperative Society and remaining petitioners were members of the Cooperative Society who have been superseded. Upon a preliminary enquiry, show cause notice dated 20-5-2014 was issued under

Section 53 (2) of the Act to the petitioners (President, Vice Presidents and other members of the Cooperative Society). It is disputed by the petitioners that except petitioners No.1 and 5, notices have not been served to the other petitioners. Thereafter, after super-session of the petitioners dated 26-5-2014, final order of suspension dated 6-8-2014 has been passed.

9. In order to decide the dispute, it would be appropriate to notice Section 53 (1) (a) as well as Sections 53 (2) and 53 (12) of the Act. Sections 53(1), (2), (10) and (12) of the Act, baring the provisos appended thereto, state as under : -
"53. Supersession of committee.-(1) If, in the opinion of the Registrar, the committee of any society- (a) is negligent in the performance of the duties imposed on it by or under this Act or bye-laws of the society or by any lawful order passed by the Registrar or is unwilling to perform such duties; or

(b) commits acts which are prejudicial to the interest of the society or its members; or

(c) violates the provisions of this Act or the rules made thereunder or byelaws of the society or any order passed by the Registrar;

the Registrar may, by order in writing, remove the committee and appoint a person or persons to manage the affairs of the society for a specified period not exceeding two years in the first instance:

(2) No order under sub-section (1) shall be passed unless a list of allegations, documents and witnesses in support of charges leveled against it has been provided and the committee has been given a reasonable opportunity of showing cause against the proposed order and representation, if any, made by it, is considered.

(10) During the period between the issuance of notice and the passing of an order removing the committee, the committee may be required by the Registrar to function under the supervision, and with the approval of such authority as the Registrar may specify in this behalf and no order made or resolution passed or any other act performed by the committee, shall be effectual unless it is approved by such specified authority:

(12) When a committee of a society has been superseded under sub-section (1) any member of the committee, notwithstanding anything contained in this Act, rules made thereunder or byelaws of the society, shall not be eligible for contesting the election as a member of the committee nor he shall be eligible for co-option or nomination in that society for a period of seven years:"

10. Under Section 53 (1) (a) of the Act, if, in the opinion of the Registrar, the committee of any society is negligent in the performance of the duties imposed on it by or under this Act or byelaws of the society or by any lawful order passed by the Registrar or is unwilling to perform such duties, the Registrar may, by order in writing, remove the committee and appoint a person or persons to manage the affairs of the society for a specified period not exceeding two years

in the first instance. Order under Section 53 (1) (a) of the Act can be passed only subject to compliance of Section 53 (2) which provides that a list of allegations, documents and witnesses in support of charges levelled against have to be served to the committee and a reasonable opportunity of hearing showing cause against the proposed order has to be afforded and representation has to be called from the said committee and also a finding has to be recorded that the committee is negligent in the performance of the duties imposed on it or is unwilling to perform such duties. Under these circumstances only, the order superseding a Cooperative Society can be passed and the effect of it is, the member of the said committee shall not be eligible for contesting the election for a period of seven years.

11. The Supreme Court in the matter of Joint Registrar of Cooperative Societies, Madras and others v. P.S. Rajagopal Naidu, Govindarajulu and others, AIR 1970 SC 992 has held that the requisite opinion has to be formed honestly and after applying his mind by the Registrar to the relevant materials before him and observed as under: - "All that is required by Section 72 (1) (a) is that the Registrar should form an opinion that the Committee of any Registered Society is not functioning properly or has willfully disobeyed or failed to comply with any lawful order or direction issued by him. The requisite opinion has to be formed honestly and after applying his mind by the Registrar to the relevant materials before him. The only condition precedent for taking action under Section 72 (1) is that the Registrar must consult the financing bank to which the Society is indebted. So far as the question of the Society not functioning properly is concerned, that may depend on what the Registrar discovers after a proper audit, enquiry and inspection. But he can form that opinion even on material aliunde and the language of the section does not warrant by necessary implication the taking of the view that he is bound to form that opinion after following the entire procedure prescribed by the Sections 64 to 69. It may be that when the Registrar acts under the second limb of Section 72 (1) (a) and proposes to supersede the committee for willful disobedience or willful failure to comply with any lawful order or direction issued by the Registrar under the Act or the rule that the provisions contained in Sections 64, 65 and 66 may become relevant. But that does not and cannot mean that the Registrar must as a condition precedent give a direction under those sections for the defects or the irregularities to be remedied and should take action only under the second limb when there is a willful disobedience or willful failure to comply with those orders or directions. An action taken under section 72 without giving an opportunity to the member, officer or the society to rectify the defects found after an audit, inquiry or inspection held under Ss. 64, 65 and 66 would not constitute an exercise of power without jurisdiction."

12. Likewise, in the matter of State of M.P. and others v. Sanjay Nagayach and others, AIR 2013 SC 1921 the Supreme Court has issued general guidelines with respect to supersession of an elected managing Committee in paragraph 35 and held as under: - "35. Further, we are inclined to give the following general

directions in view of the mushrooming of cases in various Courts challenging orders of supersession of elected Committees:

(1) Supersession of an elected managing Committee/Board is an exception and be resorted to only in exceptional circumstances and normally elected body be allowed to complete the term for which it is elected.

(2) Elected Committee in office be not penalised for the shortcomings or illegalities committed by the previous Committee, unless there is any deliberate inaction in rectifying the illegalities committed by the previous committees.

(3) Elected Committee in Office be given sufficient time, say at least six months, to rectify the defects, if any, pointed out in the audit report with regard to incidents which originated when the previous committee was in office.

(4) Registrar/Joint Registrar are legally obliged to comply with all the statutory formalities, including consultation with the financing banks/Controlling Banks etc. Only after getting their view, an opinion be formed as to whether an elected Committee be ousted or not.

(5) Registrar/ Joint Registrar should always bear in mind the consequences of an order of supersession which has the effect of not only ousting the Board out of office, but also disqualify them for standing for election in the succeeding elections. Registrar/Joint Registrar therefore is duty bound to exercise his powers bona fide and not on the dictation or direction of those who are in power.

(6) Registrar/Joint Registrar shall not act under political pressure or influence and, if they do, be subjected to disciplinary proceedings and be also held personally liable for the cost of the legal proceedings.

(7) Public money not to be spent by the State Government or the Registrar for unnecessary litigation involving disputes between various factions in a cooperative society. Tax payers money is not expected to be spent for settling those disputes. If found necessary, the same be spent from the funds available with the concerned Bank."

13. Reverting back to the facts of the case after noticing the principles of law applicable for super-session of the Co-operative Society which has to be done in exceptional cases and in exceptional circumstances as held by the Supreme Court, it would appear that the Deputy Registrar, Cooperative Societies only issued showcause notice dated 20-5-2014 to the petitioners in violation of Section 53 (2) of the Act, no list of allegations were enclosed nor any document including the preliminary enquiry report was enclosed and even no list of witnesses in support of charges levelled has been provided to the petitioners along with the said show cause notice. No enquiry thereafter appears to have taken place to prove the charges against the petitioners, to show that the Committee headed by petitioner No.1 being President, petitioners No.2 and 3 being Vice Presidents and other petitioners being members are negligent in performance of the duties imposed on them by or under the Act or bye-laws of

the society or by any lawful order or unwilling to perform such duties. The contents of the show-cause notice have to be supported by a list of allegations, documents and witnesses in support of charges levelled against and it has to be proved in accordance with law in order to reach to a conclusion or to form an opinion by the Registrar or the Deputy Registrar, as the case may be, that the Society is negligent in the performance of the duties imposed on it by or under the Act or is unwilling to perform such duties which can only be done if the list of charges supported by documents and supported by list of witnesses are served and thereafter it is proved in accordance with law after giving an opportunity of showing cause against the proposed order to the Cooperative Society, which has not been done. Even only the office bearers namely President, Vice Presidents and members of the Cooperative Society are said to have been served notice, whereas notice ought to have been served to the committee of the said Society also which has also not been done.

14. The petitioners are admittedly elected office-bearers of the said Society and the consequence of their losing the office by way of super-session is statutorily provided in the shape of Section 53 (12) of the Act in the shape of society. They will have to be unseated once they are superseded and they are automatically further disqualified for a period of seven years from contesting election and even for nomination they are disqualified. The provisions of disqualification have to be construed strictly, as the member of the said Society itself will be the sufferer on account of disqualification, if any, suffered by the office-bearers of a committee.

15. The Supreme Court in Sanjay Nagayach's case (supra) has clearly held that the provision of super-session has to be resorted to only in exceptional cases, as super-session of an elected Managing Committee/Board is an exception and it is not a rule and the elected Committee in office be given sufficient time, at least six months, to rectify the defects, if any, pointed out in the audit report with regard to incidents which originated when the previous committee was in office. Nothing in this sort has been done by the Deputy Registrar, Cooperative Societies, while superseding the committee headed by petitioner No.1 and other petitioners holding other posts of the said Committee.

16. In the considered opinion of this Court, the order passed by the Deputy Registrar, Cooperative Societies, Mahasamund, affirmed by the Registrar, Cooperative Societies, Raipur and further affirmed by the Chhattisgarh State Cooperative Tribunal, Bilaspur is contrary to Section 53 (2) of the Act and in teeth of the decision rendered by the Supreme Court in Sanjay Nagayach's case (supra). Therefore, the order passed by the Deputy Registrar dated 6-8-2014 (Annexure P-3) superseding the petitioner's Cooperative Society under Section 53 (1) (a) of the Act and the order dated 20-3-2015 (Annexure P-2) affirming the said order by the Registrar, Cooperative Societies, and also the order dated 29- 6-2016 (Annexure P-1) further affirming the order of the Registrar, deserve to be and are hereby quashed. Since the petitioners' term has already expired on 26-5-2017 and in the meanwhile, election has also been held, the effect of

quashment of the aforesaid orders would be that the disqualification, if any, of the petitioners will stand wiped out.

17. The writ petition is allowed to the extent sketched herein-above leaving the parties to bear their own cost(s).