
(1995) 09 AHC CK 0132
In the Allahabad High Court
Case No : C.M.W.P. No. 8374 of 1995

Vipin Kumar

APPELLANT

Vs

Secretary, Sahkari Sadhan Samiti Ltd. and Others

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Road Transport Corporations Act, 1950 — Section 34(1), 41

Citation : (1995) 3 UPLBEC 1856

Hon'ble Judges : Sudhir Narain, J

Bench : Single Bench

Advocate : K. Ajit, for the Appellant;

Final Decision : Dismissed

Judgement

Sudhir Narain, J.—This writ petition is directed against the order of termination dated 11.3.1995, passed by Secretary, Sahkari Sadhan Samiti Ltd., Bhalsroli, Mainpuri, Respondent No. 1.

2. Briefly stated, the facts are that Sadhan . Sahkari Samiti Ltd., Bhaisroli, Mainpuri (hereinafter referred to as the Samiti) is a primary society. The Petitioner was appointed as Accountant of the Samiti by a resolution passed on 1.9.1988 by the Committee of Management of the Samiti. The resolution indicates that the Petitioner was appointed as Accountant/Salesman on temporary basis. The papers regarding appointment of the Petitioner were sent to the Assistant Registrar, Co-operative Societies, Mainpuri for approval. He granted approval on 26.12.1990. The Secretary of the Samiti wrote a letter to the Petitioner asking him to deposit Rs. 15,636 which was alleged to have been illegally withdrawn by him with a warning that if the amount is not paid, his services may be terminated. The Petitioner is alleged to have submitted a reply denying that he had illegally withdrawn any amount. On 11th March 1995, the Petitioner was Informed by the Secretary and the President of the Samiti that jinn accordance with the resolution of the Board of Directors in its meeting dated 11.3.1995, the services of the Petitioner as Accountant are terminated with

effect from the same date and a month's salary was paid in advance. The learned Counsel for the Petitioner, Shri K. Ajit has challenged the order of termination on the following grounds:

(i) The service of the Petitioner could not have been terminated without obtaining prior approval from the District Assistant Registrar, Co operative Societies, Mainpuri, as provided in the circular issued by the Registrar on 8.2.1991.

(ii) The order of termination was passed by way of punishment and the Petitioner should have been afforded an opportunity of hearing and regular inquiry should have been conducted against the charges leveled against him.

(iii) The order of termination is mala fide.

3. Sri K.M. Mishra, learned Counsel for the Respondent submitted that the Society is a primary society and there is no statutory rule relating to the service conditions of Accountant/Salesman. The Registrar/Assistant Registrar had no power to issue any circular requiring any primary society to seek approval of an appointment or termination of service of an Accountant. The Petitioner was appointed on temporary basis and it was open to the Board of the Samiti to consider the conduct of the Petitioner and to take decision for his termination of service. It was denied that the resolution passed by the Samiti was mala fide.

4. It is necessary to examine as to whether the circular issued by (he Registrar dated February 8, 1991, issued to all the District Assistant Registrars of the Co-operative Societies that all the appointments to any post by a primary society shall be made after obtaining approval of the District Assistant Registrar and similarly the services of the employees shall be terminated after obtaining his prior approval, has any statutory force and in case it is administrative order, whether it can be covered by any of the provisions of U. P. Co-operative Societies Act, 1965 (hereinafter referred to as the Act"). An authority can exercise the power which is conferred on it under law. Learned Counsel for the Petitioner has placed reliance upon Sections 121 and 122 of the Act which read as under:

121. Power of Registrar to determine terms of employment of Society. (1) The Registrar may, from time to time, frame regulation to regulate the emoluments and other conditions of service including the disciplinary control of employees in a co-operative society or a class of operative societies and any society to which such terms are applicable, shall comply with those regulations and with any orders of the Registrar, issued to secure such compliance.

122. Authority to control employees of co-operative societies: (1) The State Government may constitute any authority or authorities, in such manner as may be prescribed, for the recruitment, training and disciplinary control of the employees of co-operative societies, or a class of co-operative societies, and may require such authority or authorities to frame regulations " regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees and, subject to the provisions contained in Section 70,

settlement old disputes between an employee of a co-operative society and the society.

(2) The regulations framed under Sub-section (1) shall be subject to the approval of the State Government and shall after such approval, be published in the Gazette, then take effect from the date of such publication and shall supersede any regulations made u/s 121.

5. Section 121 of the Act confers the power on the Registrar to frame regulation to regulate the emoluments and other conditions of service including the disciplinary control of employees in co-operative societies or class of cooperative societies. Sub-section (2) provides that the regulations framed under Sub-section (1) shall be published in the Gazette and take effect from the date of such publication. The power to issue an administrative order or circular is not contemplated u/s 121 of the Act. Section 121 contemplates that the Registrar may, from time to time, frame regulations and the society to which such terms are applicable shall comply with those Regulations, The Registrar can pass an administrative order to secure compliance of such Regulations. The words "any society to which such terms are applicable shall comply with those Regulations and with any orders of Registrar issued to secure such compliance", only relate to such orders of the Registrar which refer to the compliance of the Regulations. Power has been given to the Registrar to frame Regulations regarding the service conditions of the employees In a co-operative society. In case any Regulation is framed, it has to be published in the Gazette. The societies which are to be governed by the Regulations will have the knowledge regarding the Regulations and it will have the uniformity. A Division Bench of this Court in *Surendra Pratap Singh v. Registrar*."Co-operative Societies and Ors. 1986 AU 70, held that a circular issued by the Registrar is not covered u/s 121 of the Act. The circular issued by the Registrar cannot be treated as statutory.

6. Learned Counsel for the Petitioner has placed reliance upon *Udai Bir Singh Vs. The District Assistant Registrar, Co-operative Societies, Etah and Others*, wherein it was held that the administrative directions Issued by the U.P. Co-operative Institutional Service Board have binding efficacy before Regulations contemplated by Section 122(1) of the Act regarding recruitment, emoluments, terms and conditions of service, disciplinary control, etc., of servants of Co-operative Societies are framed. Sub-section (1) of Section 122 of the Act is in two parts. First part consists of conferring the power on the State Government to constitute an authority or authorities for the recruitment, training and disciplinary control of the employees of the Co-operative Societies or a class of Co-operative Societies and the second part consists of conferring power on such authority to frame Regulations regarding recruitment, emoluments, terms and conditions of service including disciplinary control of such employees. Once an authority has been constituted, it is vested with the administrative powers and such administrative power includes power to issue administrative directions. The power which is conferred by the second part of this Sub-section does not. In any

way, restrict the rights of the authority to exercise the administrative power. The exercise of the administrative power is not restricted till the Regulations are framed by such an authority. In case any Regulation is framed by an authority, the exercise of administrative powers shall be subject to such Regulations. The Court relied upon the decisions *T. Cajee Vs. U. Jormanik Siem and Another*, and *Mysore State Road Transport Corporation Vs. Gopinath Gundachar Char*, . In *T. Gajee's case (supra)*] interpreting paragraph 2(4) of Schedule VI of the Constitution of India, It was held that administration of autonomous districts shall vest in the District Council and the vesting of such power includes all the executive powers as are necessary to be exercised for the purposes of the administration of the district. In *Mysore State Road Transport Corporation case (supra)*, the Supreme Court "interpreting Section 34 of Road Transport Corporation Act 1950, which confers power on the State Government to give to the Corporation general instructions to be followed by the Corporation including such Instructions relating to the recruitment, conditions of service and training of his employees, etc., held that when the Corporation is created, it has power to make appointments of such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as It thinks fit until Regulations are framed u/s 41 of the Act or directions are received by the State Government under Sub-section (1) of Section 34 of the Act. The Supreme Court relied upon the principle laid down in *Dundee Harbour Trustees v. D. and J. Nicol*, 1915 AC 550, which is quoted below:

The answer to the question whether a Corporation created by a statute has a particular power depends exclusively on whether that power has been expressly given to it by the statute regulating it, or can be implied from the language used."

The question is simply one of construction of language and not of presumption. It is in this context that this Court in *Udaibir Singh's case (supra)* held that once the State Government constituted U.P. Co-operative Institutional Service Board, it impliedly conferred all the powers on it to Issue necessary directions relating to the recruitment, training and disciplinary control of the employees of the Cooperative Societies.

7. The Registrar is not appointed by the State Government u/s 121 of the Act. The powers of the Registrar have already been enumerated in the various provisions of the Act. Section 121 of the Act confers the power on the Registrar to frame Regulations. Section 121 does not contemplate conferment of administrative power on the Registrar as also the power to frame Regulations. The Registrar u/s 121 of the Act, is to exercise such power which is conferred upon him under the said provision and such power has to be exercised in the manner it is provided under the said provision, namely, to frame Regulation and thereafter such Regulations are to be published under Sub-section (2) of Section 121 of the Act.

8. The Privy Council adopted the well-recognized principle laid down in *Taylor v. Taylor* 1876 (1) CD 426 , that if a statute has conferred a power to do an act and

has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been described, vide AIR 1936 253 (Privy Council) and State of Uttar Pradesh Vs. Singhara Singh and Others, .

9. In Govtnd Lal Chhagga Lal Patel v. Agricultural Produce Market Committee and Ors. AIR 1976 SC 273 , the Supreme Court while interpreting Section 6(1) of Gujarat Agricultural Produce Markets Act, held that it was necessary that the notification under that section should have been published in Gujarati Newspaper and in absence of such publication, the notification was invalid. Similarly, in State of Orissa Vs. Sridhar Kumar Mallik and Others, , it was held that notification published u/s 417A(I) of Orissa Municipal Act was invalid, as it was not published in the language of residents of area concerned.

10. Section 121 of the U.P. Co-operative Societies Act, 1965 contemplates that if the Registrar has to frame Regulation or even has to issue a circular regarding the service conditions of employees of Co-operative Societies; it has to be published in the Gazette. In case it is not published in the Gazette, any circular issued or Regulations framed therein will have no statutory force.

11. As regards the contention of the Petitioner that the order of termination of the service of the Petitioner was, in fact, dismissal from service by way of punishment and the Board of Directors had no power to dismiss the Petitioner from service without affording an opportunity of hearing to him, the Petitioner can make representation to the Registrar u/s 128 of the Act birr annulment of the resolution. In case the Petitioner makes the representation, the Registrar shall decide it in accordance with the powers conferred on him u/s 128 of the Act.

12. In view of the conclusion arrived at, the writ petition is dismissed subject to the observation made above.

13. The parties shall bear their own costs.

14. It would be appropriate that the Registrar may exercise the power of framing the Regulation regarding the service conditions of the employees of the Primary Co-operative Societies within a reasonable time so that the employees who are appointed by the Co-operative Societies may not suffer any discrimination, hardship and other arbitrary actions of the Societies. A copy of this order be sent to the Chief Secretary, Government of Uttar Pradesh as also to the Registrar, Co-operative Societies.