

Veerpal Singh vs Deputy Registrar, Co-Operative ... on 23 January, 1973

Equivalent citations: 1973 AIR 1052, 1973 SCR (3) 430, AIR 1973 SUPREME COURT 1052, 1973 (1) SCC 593, 1973 (1) SCWR 499, 1973 3 SCR 430

Author: A.N. Ray

Bench: A.N. Ray, S.M. Sikri, D.G. Palekar, M. Hameedullah Beg, S.N. Dwivedi

PETITIONER:

VEERPAL SINGH

Vs.

RESPONDENT:

DEPUTY REGISTRAR, CO-OPERATIVE SOCIETIES, MEERUT & ORS.

DATE OF JUDGMENT 23/01/1973

BENCH:

RAY, A.N.

BENCH:

RAY, A.N.

SIKRI, S.M. (CJ)

PALEKAR, D.G.

BEG, M. HAMEEDULLAH

DWIVEDI, S.N.

CITATION:

1973 AIR 1052

1973 SCR (3) 430

1973 SCC (1) 593

ACT:

Uttar Pradesh Co-operative Societies Act, 1965, Ss. 38 and 128-Deputy Registrar passing orders for removal of members of Board of Directors of Dist. Cooperative Societies Federation Bulandshahr on the ground that the Unions represented by them were in default within the meaning of bye-law No. 1 (Ta) of the Federation-Deputy Registrar further ordering annulment of resolutions Committee of management on the ground that the proceedings were not in compliance with bye-laws No. 10(cha) and No. 11-Legality of Deputy Registrar's orders.

HEADNOTE:

The petitioner was a delegate from the Co-operative Federation of Unchagaon to the Bulandshahr District Cooperative Federation. In the present writ petition under Art. 32 of the Constitution he challenged the orders of the Deputy Registrar Cooperative Societies (i) removing him and two other delegates from the membership 'of the Board of Directors of the Federation in exercise of powers under s. 38 of the U.P. Cooperatives Societies Act 1965 on the ground that their Unions were defaulters in respect of their dues to the Federation thus attracting bye-law No. 1(Ta) of the Federation; (ii) annulling in exercise of powers under s. 128 of the Act. The resolutions of the Committee of Management dated 15th March 1972 in favour of the petitioner and the other two other delegates on the ground that the minutes of the meeting in which the resolutions were passed were not recorded by the Secretary and the proceedings were thus in violation of bye-laws No. 10 (cha) and No. 11. Allowing the petition,

HELD:(1) The Deputy Registrar could not rely on bye-law NO. 1 (Ta) to justify the removal of the petitioner and the two other delegates from the membership of the Board of Directors. The Federation was not a credit society. The Federation did not have any loan transaction with the co-operative unions. The co-operative unions did not have any loan transactions with the petitioner. The dues of the co-operative unions were in respect of supplies of goods by the Federation to the Co-operative unions. These were commercial transactions. These were commercial debts. Price of goods supplied if outstanding does not constitute loan within the meaning of the bye-law. The impugned order was entirely on an illegal basis and wrong interpretation of the bye-law. The order was bad. [435F-H; 436A-B]

(2)The meeting of the Federation on 15th March, 1971 was properly conducted." The Chairman rightly appointed an elected Director to record the minutes of the meeting in view of the willful absence of the Secretary. Section 188 of the Act also protects the proceedings of the meeting. The Deputy Registrar acted illegally in annulling the resolutions of the Federation held on 15th March 1971. [436G-H]

431

JUDGMENT:

ORIGINAL JURISDICTION : Writ Petition No. 214 of 1972. (Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights).

A.P. Singh Chauhan and N. N. Sharma, for the, petitioner. A. K. Sen and O. P. Rana, for the respondent.

The Judgment of the Court was delivered by RAY, J. The petitioner in this writ petition under Article 32 of the Constitution asks for quashing of orders of the respondent Deputy Registrar, Co-operative Societies, Meerut dated 2 May, 1972.

By the said order dated 2 May, 1972 the respondent Deputy Registrar removed Rajendra Singh, Yograj Singh and the petitioner Veerpal Singh from the Board of Directors of the District Co-operative Federation, Bulandshahr referred to as the Bulandshahr Federation and declared them to be disqualified to the office of the Directors of the Bulandshahr Federation for a period of three years from the date of the order.

Rajendra Singh, Yograj Singh and the petitioner Veerpal Singh were delegates from the Co-operative Unions of Jarcha, Raura and Unchagaon respectively to the Bulandshahr Federation.

The circumstances under which the aforesaid order came to be passed are these according to the Deputy Registrar. There was an inspection in the month of February, 1971 by the Deputy Registrar. Co-operative Societies, Uttar Pradesh about the constitution, working and financial condition of the Bulandshahr Federation. The Deputy Registrar found that the three, constituent members of the Federation, viz., Sehkari Sangh Raura, sehkari Sangh Jarcha and the Co-operative Union Inchagaon defaulters in respect of their dues to the Bulandshahr Federation. Therefore the delegates from these three constituent member at Raura, Jarcha and Unchagaon were not qualified to be elected as members of the Board of Directors of the Bulandshahr Federation. The annual general meeting of the Bulandshahr Federation in spite of such disqualification of those three delegates elected them as Directors of the Bulandshahr Federation. The Federation in accordance with their resolution dated 3 April 1971. stated that the three constituent members at Raura, Jarcha and Unchagaon were not defaulters. The Deputy Registrar stated that if a member union was a defaulter such member-union was disqualified and the disqualification attached to the delegates of such a union. The Deputy Registrar gave the Federation notice under section 38(2) of the Uttar Pradesh Co-operative Societies Act 1965 referred to as the Act to comply with the requirements in the inspection note.

The Federation did not comply with the requirements indicated in the report of the inspection note. The Deputy Registrar therefore passed the said order dated 2 May, 1972. It is necessary to refer to certain other events which took place prior to the passing of the said order. The Bulandshahr Federation held its annual general meeting on 20 March, 1970. At the annual general meeting the committee of management was elected. The petitioner was elected one of the Directors constituting the committee of management of the Bulandshahr Federation. In the month of April 1970 the petitioner was unanimously elected as Chairman of the Bulandshahr Federation.

After the Deputy Registrar Co-operative Societies sent a copy of the inspection report dated 10 February 1971 the committee, of management of the Bulandshahr Federation considered the inspection report at a meeting held on 3 April 1971. The Petitioner Veerpal Singh, Rajendra Singh and Yograj Singh did not participate at the meeting inasmuch as the inspection note related to their alleged disqualification. The committee of management of the Bulandshahr Federation recorded that Shri L. N. Batra, Sub-Divisional Magistrate, Khurja as a Scrutiny Officer in his judgment dated 5 March 1970 in connection with the nomination papers of Yograj Singh, Rajendra Singh stated that

they were not defaulters and they were competent for membership of the Board of Directors. The committee of management of the Bulandshahr Federation further resolved that none of the three persons namely, the petitioner, Yograj Singh and Rajendra Singh had personally taken any loan from the Bulandshahr Federation nor had the constituent members viz., the Unions at Jarcha, Raura and Unchagaon ever taken any loan from the Bulandshahr Federation. The Committee of Management therefore unanimously decided that the petitioner, Yograj Singh and Rajendra Singh were not disqualified to be members of the committee of management of the Bulandshahr Federation, The committee of management appointed a committee consisting of Yashpal Singh and Prahlad Swarup for making enquiry in respect of amounts outstanding against the Unions at Jarcha, Raura and Unchagaon as mentioned in the inspection note. The petitioner further alleges that on 10115 July, 1971 the Deputy Registrar, Co-operative Societies in collusion with the out going Deputy Registrar obtained an order removing the petitioner under section 38 of the Act from the directorship of the Federation and also disqualifying him for a period of three years from holding any office under the Federation. The circumstances under which the order dated 10115 July 1971 was passed were that the primary society at Unchagaon from which the petitioner was a delegate to the Bulandshahr Federation was in arrears and the primary society at Unchagaon was asked to comply with the requirements of the Act and remove the arrears. The Bulandshahr Federation was also asked to secure compliance by the primary society with the provisions of the Act. Neither the Bulandshahr Federation nor the primary society at Unchagaon wiped out the arrears. Therefore, according to the Deputy Registrar, the petitioner was disqualified to be a delegate from the, primary society at Unchagaon. Simultaneously with the removal of the petitioner from the committee of management of the Bulandshahr Federation, the Deputy Registrar passed similar orders for removal of Yograj from the Bulandshahr Federation. Rajendra Singh and Yograj Singh were delegates from the Co-operative Unions at Jarcha and Raura.

Yograj Singh thereafter made ail application under Article 226 of the Constitution before the Allahabad High Court and impeached the order dated 10115 July, 1971 removing him from the. committee of management of the Bulandshahr Federation. The High Court at Allahabad by its judgment dated 21 February, 1972 quashed the order dated 10115 July, 1971 by which the Deputy Registrar had removed Yograj Singh from the committee of management. The High Court held that no individual notice had been given to Yograj Singh and further that the inspection note was not a notice, to the Society within the meaning of section 38 (1) of the Act. In view of the decision of the Allahabad High Court the com- mittee of management of the Bulandshahr Federation reinstated Yograj Singh, Rajendra Singh and the petitioner on 15 March, 1972.

On 20 March, 1972 the Deputy Registrar Cooperative Societies issued a notice to the Federation under section 128 of the Act to annul the resolution of the Federation dated 15 March, 1972 reinstating the petitioner, Yograj Singh and Rajendra Singh. The Deputy Registrar on the same day issued another notice to the Bulandshahr Federation under section 38(1) of the Act to show cause as to why action for removal of the petitioner and Yograj Singh and Rajendra Singh on the basis of the delinquency indicated in the inspection note dated 10 February, 1971 should not be taken. The petitioner on 24 March, 1972 and again on 29 April, 1972 sent two communications to the Deputy Registrar, Cooperative Societies. These two communications were in answer to the notice dated 20 March, 1972 to show cause as to why the resolution reinstating the petitioner, Yograj Singh and

Rajendra Singh should not be annulled and also as to why they should not be removed. In the notice dated 20 March 1972 for annulment of the proceedings of the committee of management of the Bulandshahr Federation the Deputy Registrar alleged that the proceedings of the committee were not in accordance with the provisions of bye-law No. 10(ch) and bye-law No. 11 of the registered bye laws of the Federation. Therefore, the Deputy Registrar gave notice under section 128 of the Act for annulment of the resolution. The petitioner in the answers dated 24 March, 1972 and 29 April, 1972 stated that there was no violation of bye-laws. The petitioner further stated that the Secretary Tara Chand Sharma willfully absented himself from the meeting and was therefore a disobedient Secretary who did not carry on the work under the supervision and guidance of the Chairman. The petitioner further stated that the procedure at the meeting held on 15 March, 1972 was lawful. The meeting was conducted by the acting Chairman Shri Ch. Shahmal Singh who was empowered under bye-law No. 10 to conduct the meeting. The proceedings of the meeting were recorded by an elected Director Shri Prahlad Swarup, Advocate who was duly appointed for that purpose Section 118 of the Act was relied on by the petitioner to contend that no act of a committee of management shall be deemed to be invalid by reason of any alleged defect in the appointment of an officer or on the ground that such officer was disqualified for such appointment or election. The petitioner alleged that the Bulandshahr Federation directed the Secretary Tara Chand Sharma on 10 April 1972 to summon the meeting of the committee of management of the Bulandshahr Federation to consider the pros and cons of the notice dated 20 March, 1972 issued by the Deputy Registrar. The petitioner further alleged that Tara Chand Sharma was acting under the directions of the Deputy Registrar, Cooperative Societies. Therefore, the petitioner alleged that the Deputy Registrar was not competent and justified to annul the resolution of the committee of management of the Bulandshahr Federation at the meeting held on 15 March, 1972 under section 128 of the Act.

With regard to the other notice dated 20 March 1972 under section 38 of the Act to show cause as to why the petitioner and the other two delegates from Jarcha and Raura should not be removed, the petitioner alleged that under section 27 of the Act the Registrar has power to remove or expel a person from its membership of the society (a) if the person has ceased to fulfil the qualifications required for membership or is disqualified to be a member under the Act, or (b) if the person was admitted to the membership of the society in contravention of the provisions of the Act or the rules or of the bye-laws of the society.

The petitioner also referred to Rule 453(1)(o) of the Uttar Pradesh Cooperative Societies Rules 1968 referred to as the Rules which provides that no person shall be eligible to be, or to continue as, a member of the committee of management of any cooperative society, if, -he is otherwise disqualified under any of the provisions of the Act or the rules or of the bye- laws of the society.

Bye-law No. 1 (Ta) of the Bye-laws of the Federation provides that no person shall be eligible to be or continue as a member of the committee of management if he, in respect of any loan or loans taken by him, is in default to the, Federation or to any other society or the society he represents is in default to the Federation for a period of at least six months.

The allegations made by the Deputy Registrar were that the Sehkari Sanghs of Jarcha, Raura and Unchagaon were defaulters to the Federation for the sums of Rs. 4443.04, Rs. 877.43 and Rs. 515.35

respectively for a period exceeding six months as indicated in the inspection report dated 10 February, 1971.

The first question which arises for consideration is whether the petitioner was a defaulter within the meaning of the Act or the bye-laws as alleged in the impeached order. The Secretary of the Federation wrote a letter dated 22 July, 1971 to the Assistant Registrar, Cooperative Societies and stated that the three co-operative Unions at Jarcha, Raura and Unchagaon owed money to the Federation in respect of supplies of fertilisers by the Federation to those three Unions. The Secretary of the Federation also gave a certificate that none of the three cooperative Unions at Jarcha, Raura and Unchagaon ever took any loan from the Federation. The petitioner and the other-two persons who were delegates from the three cooperative Unions did not owe any money whatever to the Cooperative Unions or to the Federation.

The Federation is a District Cooperative Federation within the meaning of rule 2(o). That rule states that a District Cooperative Federation means a Central society which inter alia is not a credit society. A credit society is defined in rule 2(h) to mean a society which has as its primary object the raising of funds to be lent to its members. Rule 453 in sub-section (1) clause (o) states that if a person is disqualified under the provisions of the Act or the rules or of the bye-laws of the society he shall not be eligible to be, or to continue as, a member of the committee of management. The Deputy Registrar relied on bye-law No. 1 (Ta) of the Federation which renders a person to be ineligible to to, or to continue as a member of the committee of management if lie is in default to the Federation or to any other society. That bye-law further provides that if the society he represents is in default lie be ineligible. The Federation is not a credit society. The Federation does not-have any loan transactions with the Cooperative Unions. The Cooperative Unions did not have any loan transactions with the petitioner. The dues of the Cooperative Unions are in respect of supplies of goods by the Federation to the Cooperative Unions. These are commercial transactions. These are commercial debts. Price of goods supplied, if outstanding, does not constitute a loan within the meaning of the bye-law. The impugned order proceeded entirely on an illegal basis and wrong interpretation of the bye-law. The order is bad.

The other question which arises for consideration is whether the Registrar has power under section 128 of the Act to annul the resolutions of the society. The Registrar proceeded on the) footing that the minutes of the meeting of the Federation held on 15 March, 1971 were not correctly recorded. The Deputy Registrar alleged that the Federation did not comply with the provisions of bye-law No. IO (Cha) read with bye-law No. 1 1 of the Federation in regard to the conduct of the meeting. Bye-law No. 1 1 deals with recording the proceedings of the meeting. That bye-law states that the minutes shall be recorded in the book to be kept for the purpose and the minutes shall be signed by the person presiding at the meeting as well as by the Secretary of the Federation. Bye-law No. IO (Cha) states that the Secretary shall, be the Chief Executive officer of the Federation and subject to control and supervision of the Chairman and the committee of management as provided in the rules or the bye-law. It is also stated in bye-law No. 1 0 (cha) that the Secretary shall inter alia sign and authenticate all documents in and on behalf of the Federation and is responsible for the, proper maintenance of various books and records of the Federation. The facts with regard to the meeting of the Federation held on 15 March, 1971 are that the Secretary wilfully absented himself at the

meeting. The Federation therefore contended that the Secretary disobeyed the instructions. The Chairman under bye-law No. 10 is responsible for the control, supervision and efficient administration of the Federation. The Chairman appointed an elected Director Shri Prahlad Swarup, Advocate for the purpose of recording the minutes. Under section 118 of the Act no act of a cooperative society or any committee of management shall be deemed to be invalid by reason of the existence of any defect in the constitution inter alia of committee or in the appointment of an officer of a cooperative society or on the ground that such officer was disqualified for such appointment. The meeting of the Federation on 15 March, 1971 was properly conducted. The Chairman rightly appointed an elected Director to record the minutes in view of the wilful absence of the Secretary. Section 188 of the Act also protects the proceedings of the meeting. The Deputy Registrar acted illegally in annulling the resolutions of the Federation held on 15 March, 1971.

For these reasons the two orders of the Deputy Registrar dated 2 May, 1972 which are impeached the petitioner are set aside and quashed.

Petitioner will be entitled to costs to be paid by the respondent & The order dt. 12th October 1972 for payment of costs as Rs. 300 is cancel led.

G.C.