

PETITIONER:
VEERPAL SINGH

Vs.

RESPONDENT:
REGISTRAR, COOPERATIVE SOCIETIES, U.P. & ORS.

DATE OF JUDGMENT 22/01/1973

BENCH:
RAY, A.N.
BENCH:
RAY, A.N.
SIKRI, S.M. (CJ)
PALEKAR, D.G.
BEG, M. HAMEEDULLAH
DWIVEDI, S.N.

CITATION:
1973 AIR 1249 1973 SCR (3) 418
1973 SCC (1) 456

ACT:
Cooperative Societies Act s. 35-Registrar's powers in regard to suspension of President and Committees of management of Cooperative Society and appointment of administration-Conditions for exercise of power under s. 35(2).

HEADNOTE:

The Deputy Registrar Cooperative Societies, Meerut, by order dated 14 July, 1971 suspended the President and the Committee of management of Jabangirabad Cooperative Marketing Society Ltd., and further appointed an administrator to carry on the functions of the society. A writ petition was filed by Y and others in the High Court of Allahabad under Art. 226 of the Constitution challenging the aforesaid order of the Deputy Registrar. The petition was dismissed, whereupon an appeal was filed in this Court by special leave. V, who was the President of the Jahangirabad Cooperative Marketing Society also filed a writ petition in this Court challenging the Deputy Registrar's order dated 14 July, 1971. The questions that fell for consideration in the appeal and writ petition were : (1) whether the Deputy Registrar's order suspending the President and committee of management of the Society was valid; (ii) whether the Deputy Registrar could temporarily appoint an administrator.

HELD : (i) The provisions in s. 35(1) of the Cooperative Societies Act, 1965 indicate the circumstances under which the Registrar has power to supersede or suspend the committee of management and to appoint an administrator. Section 35(2) of the "Act confers power on the Registrar to suspend the committee of management during the period of proceedings for supersession. The Registrar has also power under section 35(2) of the Act to make arrangement as he thinks proper for the management of the society till the proceedings are completed. The power to suspend the committee of management during the period of proceedings is exercisable when proceedings for supersession have commenced. Section 35(1) of the Act shows that when the Registrar is of opinion that the committee of a Cooperative Society makes default or is negligent in the performance of

duties or is otherwise not functioning properly the Registrar may supersede the committee of management and has to give an opportunity to the society to be heard in that behalf. The Registrar has also to obtain the opinion of the general body of the society. Therefore the opinion of the Registrar is to be followed by some definite act which will commence the proceedings for supersession. The provisions in the Act indicate that some definite step like the issue of notice must be taken under the provisions of section 35(1) of the Act with a view to show that proceedings for supersession of the committee are set in motion. [422A-F] It is therefore manifest that power exercisable under s. 35(2) of the Act is confined to the time during the period of suspension proceedings. Unless the proceedings have started as indicated earlier the Registrar cannot call in aid the power exercisable under s. 35(2) of the Act. [422E-F]

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(ii) As no proceedings had been set in motion in accordance with the provisions of the statute, the interim suspension of the committee of management was bad. As appointment of administrator during the interim period is not ruled out of the provisions of s. 35(2) of the Act, but the prerequisite condition to the appointment of the interim administrator had not been fulfilled in the present case, because no proceeding for the supersession of the committee of management of the society had commenced. [422G-H; 423A-B]

(iii) The administrator appointed by the Registrar withdrew the delegation of the petitioner appellant V to the Uttar Pradesh Provincial Cooperative Federation. Since the appointment of the administrator was bad the withdrawal of the delegation of V by the administrator was also bad. [423C-D]

Accordingly the writ petition and the appeal must be allowed and the order of the Deputy Registrar dated 14 July, 1971 must be quashed. [423D]

JUDGMENT:

ORIGINAL/CIVIL APPELLATE JURISDICTION : Writ Petition No. 298 of 1971.

Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights and Civil Appeal No. 593 of 1972.

Appeal by a special leave from the judgment and order dated November 24, 1971 of the High Court of Allahabad in W.P. No. 6667/71.

A. K. Sen, A. P. Singh Chauhan, V. C. Prashar and Dharmpal Singh Chauhan, for the petitioner and appellant.

C. K. Daphtary, B. Sen and O. P. Rana, for the respondents Nos. 1-3 (in writ petition and Appeals).

The Judgment of the Court was delivered by

RAY, J. The petitioner in this writ petition impeaches the order dated 14 July, 1971 passed by the Deputy Registrar, Cooperative Societies, Meerut, by that order the Deputy Registrar, Cooperative Societies suspended the President and the committee of management of Jahangirabad Cooperative Marketing Society Ltd., Jahangirabad. The petitioner Veerpal Singh was the President of the Jahangirabad Cooperative Marketing Society. By that order the Deputy Registrar further appointed Ghanshyam Murari Sharma, Additional District Cooperative Officer, Bulandshahr as Administrator to carry on the functions of the society.

The appeal is from the order dated 29 November, 1971 of the

Allahabad High Court dismissing in limine the petition under Article 226 of the Constitution. In that petition the appellant Yograj Singh and others challenged the aforesaid order dated 14 July, 1971 suspending the President and the committee of management of Jahangirabad Cooperative Marketing Society.

Two questions fall for determination in the writ petition and the appeal. First, whether the Deputy Registrar under the Cooperative

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Societies Act, 1965 referred to as the Act could suspend the President and the committee of management of Jahangirabad Cooperative Marketing Society. Secondly, whether the Deputy Registrar could temporarily appoint an administrator.

Counsel on behalf of the petitioner raised three contentions for impeaching the order of suspension. First, it was said that the order of suspension is void because it is made mala fide and exercised for the collateral purpose of withdrawing the petitioner from the committee of management to which he, was elected and in which he continued his office. Secondly, it was said that the order of suspension is bad because there were no supersession proceedings as contemplated in section 35 of the Act. The Registrar did not give an opportunity to the Society and did not hear the Society. The Registrar did not obtain the opinion of the general body of the society as to the suspension of the committee. Thirdly, it was said that the suspension order could not have the effect of appointment of an administrator under section 35 of the Act.

In the month of April 1969 there was an inspection of the Jahangirabad Cooperative Marketing Society (hereinafter referred to as the Society). That inspection note has, however, not been disclosed. In the month of October, 1969 the petitioner was reelected as a Director of the management of the society. Again, in the month of October, 1969 the petitioner was appointed as a delegate by the committee of management of the Society to the Provincial Cooperative Federation. Subsequently, the general body of the Provincial Cooperative Federation elected the petitioner to the committee of management of the Federation. In the month of April 1970, the petitioner was also elected Chairman of the Provincial Cooperative Federation.

In the month of September 1979 at the instance and under the direction of the Deputy Registrar who had been a former Secretary of the Federation and of Shri Yadav the then Minister of Cooperative Society, the Uttar Pradesh Government nominated 10 members and a Chairman of the Federation. The petitioner who was the then Chairman, was however omitted from the list of the U.P. Government. In the month of December, 1970 the new Ministry of the U.P. Government revoked the previous order of Government made in the month of September, 1970.

In the month of June, 1971 there was again a new Ministry in which Shri Yadav again became the Minister of Cooperative Society. The Government then nominated 10 members in the committee of management of the Federation under section 34(1) of the Act and appointed the Additional Registrar of Cooperative Society as the President.

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In the month of June, 1971 a lot was drawn to find out which of the Directors of the Provincial Cooperative Federation were to, vacate the office in order to make room for the nominees of the Government. The petitioner survived his office in the lot.

The petitioner made an application for amendment of the

petition. In that application for amendment, allegations were made, that Shri Yadav and Tyagi both contrived to suspend the committee of management of the Federation. It was also alleged that the withdrawal of the delegation of the petitioner to the Provincial Cooperative Federation was ante dated. The order of withdrawal was dated 15 July, 1971. The letter dated 15 July, 1971 is said to have been sent by the administrator of the Society withdrawing the delegation of the petitioner to the U.P. Provincial Cooperative, Federation. The Petitioner denies that alleged fact. In the prayer of the petition for amendment the petitioner asked for quashing the order dated 15 July, 1971. In view of the fact that the petitioner did not allege facts to raise any plea of mala fide acts on the part of the respondents this. Court did not allow any amendment of the petition.

The power of suspension of the committee of management is, to be found in section 35(2) of the Act.

Section 35(2) of the Act is as follows

"Where the Registrar, while proceeding to take, action under sub-section (1) is of opinion that suspension, of the committee of management during the period of proceedings is necessary in the interest of the society, he, may suspend the committee of management which shall thereupon cease to function, and make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed :

Provided that if the committee of management so suspended is not superseded it shall be reinstated and the period during which it has remained suspended shall count towards its term".

The Registrar has power under section 35(1) of the Act to, supersede the committee of management. The circumstances, under which he can exercise his powers are when in the opinion of the Registrar the society makes default or is negligent in the performance of duties imposed on it by the Act or the rules or the bye-laws of the society or commits any act which is prejudicial to the interest of the society or its members, or, is otherwise not functioning properly, the Registrar after affording the committee of management a reasonable opportunity of being heard and obtaining the opinion of the general body of the society in a general meet-

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ing called for the purpose in the manner prescribed may, by order in writing, supersede the committee of management. These provisions indicate the circumstances under which the Registrar has power to supersede or suspend the committee of management and, to appoint an administrator. Section 35(2) of the Act confers power on the Registrar to suspend the committee of management during the period of proceedings for supersession. The Registrar has also power under section 35(2) of the Act to make arrangement, as he thinks proper for the management of the society till the proceedings are completed. The power to suspend the committee of management during the period of proceedings is exercisable when proceedings for supersession have commenced. Section 35(1) of the Act shows that when the Registrar is of opinion that the committee of a cooperative society makes default or is negligent in the performance of duties or is otherwise not functioning properly the Registrar may supersede the committee of management and has to give an opportunity to

the society to be heard in that behalf. The Registrar has also to obtain the opinion of the ,general body of the society. Therefore, the opinion of the Registrar is to be followed by some definite act which will commence the proceedings for supersession. The provisions in the Act indicate that some definite step like the issue of, a notice must be taken under the provisions of section 35(1) of the Act with a view to show that proceedings for supersession of the committee are set in motion.

It is therefore manifest that power exercisable under section 35 (2) of the Act is confined to the time during the period of supersession proceedings. Unless the proceedings have started as indicated earlier the Registrar cannot call in aid the power exercisable under section 35 (2) of the Act.

The second question which, has to be decided is whether, the Registrar could appoint an administrator in the present case. The Registrar could not appoint an administrator. The reasons are these. The proceedings for supersession of the committee of management have not commenced. The proceedings can commence only when the necessary step to commence it is taken. The interim suspension of the committee of management under section 35(2) of the Act is when in the opinion of the Registrar the suspension of the committee of management during the period ,of proceedings is necessary in the interest of the society. As no proceedings have been set in motion in accordance with the provisions of the statute, the interim suspension of the committee of management is bad. An appointment of administrator is specifically dealt with in sub-sections 3, 4, 5 and 6 of section 35 of the Act. The appointment of administrator is normally after the Supersession of the committee of management. It is true that there is no specific provision for an appointment of administrator during

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the interim period. But section 35(2) of the Act states that the Registrar may make such arrangement as he thinks proper for the management of the affairs of the society till the proceedings are completed. An appointment of administrator during the interim period is therefore not ruled out of the provisions of section 35(2) of the Act, but the prerequisite condition to the appointment of the interim administrator has not been fulfilled in the present case, because no proceedings for the supersession of the committee of management of the society have commenced.

The administrator appointed by the Registrar withdrew the delegation of the petitioner appellant Veerpal Singh to the Uttar Pradesh Provincial Cooperative Federation. Under Rule 86 of the Uttar Pradesh Cooperative Societies Rules 1968 a person who is a delegate of a cooperative society shall cease to be such delegate if he is withdrawn by the committee, administrator or administrators appointed by the Registrar under section 35 of the Act. In the present case the appointment of the administrator is bad as indicated earlier. The act of the Registrar in withdrawing the delegation of Veerpal Singh is also bad because of his infirmity to act as an administrator.

For these reasons, the order dated 14 July, 1971 is set aside and quashed. The petition succeeds. The appeal is also allowed.

Parties will pay and bear their own costs.

G.C.

Appeal allowed.

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JUDIS