



A.F.R.

Court No. - 21

Case :- WRIT - C No. - 48177 of 2011

Petitioner :- Sursari Prasad Mishra And Others

Respondent :- State Of U.P. And Others

Petitioner Counsel :- Ajit Kumar Singh, Ashok Khare

Respondent Counsel :- C.S.C., Sujeet Kumar Rai

Hon'ble Ashok Bhushan, J.

Hon'ble Mrs. Sunita Agarwal, J.

(Delivered by Hon'ble Ashok Bhushan, J)

Heard Shri Ajit Kumar Singh, learned counsel for the petitioners, Shri Sujeet Kumar Rai, learned counsel appearing for the respondent nos. 5 and 6 and the learned Standing Counsel.

Counter and rejoinder affidavits having been exchanged; with the consent of the parties this writ petition is finally decided.

Brief facts which emerge from the pleadings of the parties are: The petitioners were elected as members of Committee of Management, District Co-operative Bank Ltd. Gorakhpur on 05/10/2009. The petitioner No.1 was elected from the professional banking constituency from Sahkari Sangh Bhaisapur, Block Khajani, District Gorakhpur. The petitioner 2, was elected as a Delegate of the general body of the society i.e. Bank from the Sadhan Sahkari Samiti Ltd Kajakpur, Block Khorabar, District Gorakhpur. The petitioner no.3 was elected as Member of the Committee of Management from Sadhan Sahkari Samiti Ltd, Mangalpur Block Partawal District Maharajganj. Petitioner no. 3 and two others gave a requisition for calling a meeting

of the Committee of Management of the Bank for passing the budget/supplementary budget of the year 2011-2012. The Secretary of the Bank convened a meeting of the members of the Committee of Management on 02/8/2011 for passing of the budget/supplementary budget for the year 2011-2012. A letter dated 28/7/2011 was written by the Additional Director, Banking to the Joint Director Co-operative Societies, U.P. Gorakhpur referring to a letter written by the Chairman of the Bank requesting that Directors namely; Shri Balram, Smt. Gayatri Devi, Shri Satish Pandey and Shri Sursari Prasad Mishra be declared disqualified due to the various reasons and the power under Section 38 of The Uttar Pradesh Co-operative Societies Act, 1965 (hereinafter called the "Act, 1965") vests with the Registrar, hence appropriate steps be taken in this regard. The Joint Registrar, Co-operative Societies, Gorakhpur Division, Gorakhpur wrote a letter dated 29/7/2011 to the Secretary/General Manager of the Bank for calling a meeting and to take appropriate action. The Secretary/General Manager of the Bank issued a notice dated 30/7/2011, by which the requisition meeting which was earlier fixed was suspended and the meeting was convened on 02/8/2011 for considering the disqualification of the members as per Rule 454 of the Uttar Pradesh Co-operative Societies Rules, 1968 (hereinafter called the "Rules, 1968"). The meeting of the Committee of Management was held on 02/8/2011 in which all the Directors including the Chairman were present. The disqualification of four Directors including the petitioners was considered by the Committee of Management and a decision was taken that none of the members of the Committee of Management including the petitioners have earned any disqualification under Rule 453 of the 1968 Rules, and they are not disqualified. The Secretary/General Manager of the Bank wrote a letter to the Joint Registrar, U.P. Co-operative Societies

on 03/8/2011, forwarding the proceedings dated 02/8/2011 of the Committee of Management of the Bank. The Secretary/General Manager of the Bank informed the Joint Registrar U.P. Co-operative Societies that the members of the Committee of Management by majority of 9 against 5 held that the members are not disqualified. The Joint Registrar, thereafter issued a notice dated 12/8/2011, to all the petitioners asking them to show cause as to why they be not declared disqualified as per Section 29-A(3) of the Act, 1965.

In the notice dated 12/8/2011, with regard to petitioner no.1 it was alleged that he was elected as member of Committee of Management as Professional Director having experience in Banking on the basis of an affidavit filed he had experience of working as Chairman of the Co-operative Bank for more than 5 years, hence he is entitled to be elected from Professional Banking Constituency. The notice further alleged that according to the letter dated 01/10/2010, the petitioner was not eligible as Professional Director, hence he has earned disqualification as per Rule 453 (1) (o) of the Rules, 1968. With regard to petitioner no.2, in the notice dated 12/8/2011, it was stated that he was a delegate from Sadhan Sahkari Ltd from Kajakpur Block Khoravar which was eligible to participate in the election at the time of election. It was alleged that according to the statement for the year 2010-2011, the Society is defaulter of 1.52 lacs, hence the petitioner is ineligible according to Section 29A(3) (ii) of the 1965 Act. Similarly, with regard to petitioner no.3, it was alleged that she was a delegate from Sadhan Sahkari Samiti Ltd, Mangalpur Block Partawal which was eligible to participate in the election at the time of election. However, as per the demand for the year 2009-2010, the arrears against the society is 23.25 lacs on 30/6/2011, hence the petitioner no.3 has become ineligible as per Section 29A (3) (ii) of the 1965, Act.

Petitioners have filed the present writ petition challenging the aforesaid notices dated 12/8/2011, praying for following reliefs:

“(a) Issue a writ, order or direction in the nature of certiorari quashing the impugned notices dated 12.08.2011 (Annexure No.12,13 & 14 to the writ petition) issued by the Joint Registrar, Cooperative Societies, U.P. Gorakhpur Division Gorakhpur against the petitioners as well as entire/further proceeding initiated pursuant thereto.

(b) Issue a writ, order or direction in the nature of certiorari quashing the order dated 28.07.2011 (Annexure No. 7 to the writ petition) issued by the Additional Registrar (Banking), Co-operative Societies, U.P. Lucknow.

(c) Issue any other suitable writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(d) Award cost of the petition in favour of the petitioners.”

Learned counsel for the petitioners challenging the notices dated 12/8/2011, issued by the Joint Registrar, Co-operative Societies, Gorakhpur asking the petitioners to show cause as to why they be not removed from the membership of the Committee of the Management contended that the impugned notices do not mention any facts on the basis of which the petitioners could be said to have acquired any disqualification under Rule 453 of the 1968 Rules, hence the notices being without jurisdiction the same are liable to be quashed by this

Court. It is submitted by the learned counsel for the petitioners that the petitioner nos. 2 and 3 being only delegates from the Primary Agricultural Credit Co-operative Society, they cannot be said to be disqualified merely because the Society from which they are delegate is in default. It is submitted that the petitioners are not defaulters of the Primary Agricultural Credit Co-operative Society. It is further submitted that the petitioner nos. 2 and 3 are not the office bearers of the Primary Agricultural Credit Co-operative Society, hence they cannot be said to be disqualified. With regard to petitioner no.1, it is contended that the petitioner being fully eligible to be elected as a Professional Director was elected, on the basis of a subsequent letter dated 01/10/2010 as referred to in the notice impugned dated 12/8/2011, petitioner no.1 cannot be held to be disqualified. He submits that the allegations made in the impugned notices do not constitute any disqualification against the petitioner, hence the Joint Registrar committed illegality by issuing notice under Section 38 (2) of the Act, 1965.

Learned counsel for the petitioners further submitted that in pursuance of the letter dated 29/7/2011, issued by the Joint Registrar, Co-operative Societies directing the Secretary/General Manager of the Bank to convene a meeting for considering the disqualification of the Directors, the Committee of Management having already taken a decision in its meeting dated 02/8/2011 holding that none of the Directors are disqualified, there is no jurisdiction in the Joint Registrar to further proceed under Section 38 (2) of the Act, 1965. It is submitted that the Joint Registrar, can proceed only when the Society has failed to take any action, and in the present case when the Society has already considered the issue and taken a decision on 02/8/2011,

that none of the Directors as alleged are disqualified, there was no jurisdiction in the Joint Registrar to proceed further under Section 38 (2) of the Act, 1965.

Shri Sujeet Kumar, learned counsel appearing for the respondent Bank refuting the submission of the learned counsel for the petitioners contended that the proceedings were initiated on the basis of the letter dated 28/7/2011 written by Additional Registrar (Banking) and the letter dated 29/7/2011 of the Joint Registrar Co-operative Societies Gorakhpur Division, Gorakhpur. He submits that the Joint Registrar has rightly proceeded under Section 38 (2) of the Act, 1965 since the Committee of Management has failed to remove the unqualified Directors from the Committee of Management.

We have considered the submissions of the learned counsel for the parties and have perused the record.

Section 29 (8) of the Act, 1965 as inserted by U.P. Act. No.47 of 2007, provides that there shall be at last three professionals with full voting rights on the committee of management having special knowledge or experience in the field of accounting, law, banking, management, agriculture or rural economy as stipulated by the Reserve Bank of India. Section 29 (8) is quoted below:

“29.Committee of Management.

- (1).....
- (2).....
- (3).....
- (4).....
- (5).....

(6).....

(7).....

(8) Notwithstanding anything to the contrary contained in any other provision of this Act, there shall be at last three professionals with full voting rights on the committee of Uttar Pradesh Co-operative Bank or a Central Co-operative Bank having special knowledge or experience in the field of accounting, law, banking, management, agriculture or rural economy as stipulated by the Reserve Bank of India. In case such professionals do not get elected, they shall be co-opted by the Committee of Management of the Bank as aforesaid.”

Section 29-A of the Act, 1965 contains a special provision for Primary Agricultural Co-operative Credit Societies, Central Co-operative Banks and Apex Bank. Section 29-A (3) which is relevant in the present case is as follows:

“29-A. Special provision for Primary Agricultural Co-operative Credit Societies, Central Co-operative Banks and Apex Bank.- Notwithstanding anything to the contrary in any other provision of this Act, rules and bye-laws of the society, the Committee of Management of a Primary Agricultural Co-operative Credit Society or a Central Co-operative Banks or an apex bank shall exercise such powers and perform such duties as may be necessary and expedient for the purpose of carrying out its functions under this Act which shall include,-

(1).....

(2).....

(3) (i) A member of the Committee of Management shall be disqualified for continuing in the Committee if he is representing a non-credit society on the board of a Central Co-operative Bank or apex bank, and the society has committed a default for a period exceeding 90 days.

(ii) A person who is a defaulting member or office-bearer of a defaulting Primary Agricultural Co-operative Credit Society shall not be eligible to be elected to the board of the society or the bank as the case may be, or continue on the Board for more than one year unless the default is cleared.”

Rule 453 sub-rule 1 of the 1968 Rules provides that no person shall be eligible to be or to continue as a member of the Committee of Management of any Co-operative Society, if he is disqualified. Rule 453 sub-clause 1 (o) of the 1968 Rules, which is relevant in the present case is quoted below:

“453 (1). No person shall be eligible to be or to continue as a member of the Committee of Management of any Co-operative Society, if-

- (a).....
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....
- (g).....

- (h).....
- (i).....
- (j).....
- (k).....
- (l).....
- (m).....
- (n).....

(o) he is otherwise disqualified under any of the provisions of the Act or the rules or bye-laws of the society”.

Section 38 of the Act, 1965 which contains a provision for removal of an Officer of a Co-operative Society provides as follows:

“38. Removal of an officer of a co-operative society.-(1) If in the opinion of the Registrar, any officer of a co-operative society has contravened or omitted to comply with, any provisions of this Act, the rules or the bye-laws of the society, or has forfeited his right to hold office, the Registrar may, without prejudice to any other action that may or can be taken against him, call upon the society to remove, within a specified period, such officer from the office held by him and where necessary also to disqualify him from holding any office under that society for a period not exceeding three years, whereupon the society shall, after affording opportunity of being heard to the officer concerned, pass such orders as it may deem fit.

[Provided that on the request of the Reserve Bank of India, the competent authority shall remove a Director

or the Secretary/Chief Executive Officer of a Central Co-operative Bank or the Uttar Pradesh Co-operative Bank, who do not fulfil the criteria stipulated by the Reserve Bank of India after giving him an opportunity of being heard.]

(2) On the failure of the society to take action under sub-section (1), the Registrar may, after affording opportunity of being heard to the officer and for reasons to be recorded and communicated to the person and the society concerned, remove or remove and disqualify for a period not exceeding three years, the officer from holding any office under that society.

(3) An officer removed under sub-section (1) or sub-section (2), shall, with effect from the date of communication of the order, cease to hold that office and, if disqualified, shall not be eligible to hold any office under that society for the period specified in the order.”

As noticed above, two submissions have been raised by the learned counsel for the petitioners challenging the notices dated 12/8/2011, issued by the Joint Registrar.

We, first take up the second submission raised by the learned counsel for the petitioners i.e. when the Committee of Management has already considered the issue and passed a resolution dated 02/8/2011, holding that none of the members of the Committee of Management are disqualified, there was no jurisdiction in the Joint Registrar to proceed under Section 38 (2) of the Act, 1965 and the Joint Registrar Co-operative Societies can proceed only under Section

38(2) of the Act, 1965 when the Society fails to take action under sub-section 1 of Section 38 of the Act,1965.

For appreciating the above submissions of the learned counsel for the petitioners the purpose and object of Section 38 has to be looked into.

Section 38 (1) of the Act,1965 empowers the Registrar to call upon the society to remove an officer of the Co-operative Societies and where necessary also to disqualify him when he is of the opinion that any officer of a Co-operative Society has contravened or omitted to comply with, any provisions of this Act, the rules or the bye-laws. Thus, when the society has been called upon to take action against an officer of the Society, the Registrar has formed an opinion that the officer has contravened or omitted to comply any provisions of the Act, Rules and bye-laws or has forfeited his right to hold office.

The key words in sub-section 2 of Section 38 of the Act,1965 are **“On the failure of the Society to take action under sub-section (1)”**. The submission of the petitioners is that when the society has considered the issue as directed by the Registrar, it shall be assumed that the society has taken an action, even though the society finds that the member is not disqualified. If we accept the submission of the learned counsel for the petitioners that in case the Committee of Management has considered the issue and has taken a decision that the member is not disqualified, the said decision is final and the Registrar cannot proceed further under Section 38 (2) of the Act, 1965, the above construction and the interpretation shall run counter to the very purpose and scheme of Section 38 of the Act, 1965 as, even if the

member has earned disqualification as mentioned in Rule 453 (1) of the 1968, Rules or has contravened any provisions of Act, Rules and bye-laws and the majority of members of the Committee of Management takes a decision otherwise, the statutory provision shall be defeated only by sheer majority of members of the committee of management and there shall be no authority to enforce the provisions of Rule 453 (1) of the 1968 Rules and other provisions of Act, Rules and bye-laws which shall frustrate the very purpose and object of the said provision.

The word "action" as occurring in sub-section 2 of Section 38 of the Act, 1965 has been used in reference to the action of the society to remove such officers from the office as held by him and where necessary also to disqualify him from holding any office.

The word "Action" has been defined in Concise Oxford English Dictionary, 11th Edition as "The process of doing something to achieve an aim". The word action as has been referred to in sub-section 2 of Section 38 of the Act, 1965 which is not a mere consideration by the society about the disqualification, rather action has been referred to as an act of removal or disqualification by the society. It is accepted rule of interpretation that the words used in a statute have to be interpreted in a manner so as to promote the purpose of that Section.

The Apex Court in **Bipinchandra Parshottamdas Patel (Vakil) Vs. State of Gujarat & Ors, (2003) 4 SCC 642**, has laid down in paragraph 52.

" 52. If the words employed in a provision are capable of two meanings or casts doubts as to the

actual meaning, then they have to be interpreted in the light of the object of the legislation. Word-by-word interpretation is not a welcome method of interpretation. Words, vehicles of legislative intentions, take colour from the context in which it is used. Hence the interpretation of the words 'during trial' will have to promote the purpose of Section 40. As already pointed out, the object of this Section is to keep shady characters away from local bodies and to pave way for persons with high integrity and good moral conduct to hold public offices. This large interest could only be promoted if the word "trial" is given a broad meaning. This intention is vividly displayed by choosing the expression "under the provisions of any law for the time being in force" in part II of Section 40(1), which means the provision is designed to cover any "detention in prison" under provisions of any law. Only by this interpretation, the textual meaning of "during trial" matches the contextual spirit of Section 40 that aims to ensure the smooth functioning of the office and to keep confidence of people in the institution."

Again the Apex Court in **Nathi Devi Vs. Radha Devi Gupta (2005) 2 SCC 271**, laid down following in paragraphs 16 and 17.

"16. In *Nasiruddin Vs. Sita Ram Agarwal*, (2003) 2 SCC 577 this Court stated the law in the following terms : (SCC p.589, para 37)

"37. The court's jurisdiction to interpret a statute can be invoked when the same is

ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions should be mandatory in character."

17. Even if there exists some ambiguity in the language or the same is capable of two interpretations, it is trite the interpretation which serves the object and purport of the Act must be given effect to. In such a case the doctrine of purposive construction should be

adopted. (See Swedish Match AB vs. Securities & Exchange Board, India and another, (2004) 7 Scale 158.”

Thus, the submission of the learned counsel for the petitioners that since the Committee of Management by its resolution dated 02/8/2011, has held that the petitioners are not disqualified, there was no jurisdiction in the Joint Registrar to proceed further or to issue notice under Section 38 (2) of the Act, 1965, cannot be accepted. The notices dated 12/8/2011, thus cannot be said to be without jurisdiction on the above ground.

Now, the submission of the learned counsel for the petitioners challenging the notices dated 12/8/2011, on the ground that the facts mentioned in the notices impugned do not constitute any disqualification under Section 29-A (3) read with Rule 453 (1) (o) of the 1968 Rules has to be considered.

Shri Sujeet Kumar, learned counsel appearing for the respondents no.5 and 6 submits that since the notices had been issued by the Joint Registrar dated 12/8/2011, asking the petitioners to show cause as to why they be not declared disqualified, it is open for the petitioners to raise all their objections including the objection that facts stated in the impugned notices do not constitute any disqualification and since the question has not yet been finalised, it is not necessary for this Court to enter into the issues raised by the learned counsel for the petitioners in this writ petition. It is further submitted by the learned counsel for the respondents that the petitioners having still an opportunity before the Joint Registrar, Co-operative Societies, Gorakhpur to satisfy him that no disqualification has incurred, this Court may not entertain these issues

at this Stage. A perusal of the notices dated 12/8/2011, issued to the petitioners indicates that the petitioners were given opportunity to submit their reply regarding alleged disqualification as mentioned in the impugned notices. We are of the view that the petitioners may submit their reply before the Joint Registrar raising their objection regarding the notices dated 12/8/2011 and the Joint Registrar may consider the same and determine as to whether the petitioners have become disqualified as alleged in the notices dated 12/8/2011.

In view of the above, we do not think it an appropriate stage to enter into the issues as noted above. We, however observe that the Joint Registrar, shall consider the objections raised by the petitioners specially the grounds urged regarding they being not disqualified under Section 29-A (3) of the Act, 1965.

We provide that in case the petitioners have not yet filed their objections before the Joint Registrar, they may do so within two weeks from today which may be considered and appropriate decision may be taken by Joint Registrar in accordance with law. We may make it clear that till the petitioners are not held to be disqualified or removed validly they are entitled to function as Directors and discharge all the duties entrusted on them.

The writ petition is disposed of accordingly.

Order Date: 11/1/2012

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