

Chetan Kumar and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Sep-15-1987

Reported in : 1988(1)WLN231

Judge : M.C. Jain and; S.M. Jain, JJ.

Appeal No. : D.B. Civil Writ Petition No. 2074 of 1986

Appellant : Chetan Kumar and ors.

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

M.C. Jain, J.

1. In this writ petition the petitioners seek to challenge the order of the Government Ex. P/3 dated September 3, 1986 whereby the Government accepted the appeal of the respondent Santosh Kumar and set aside the order of the Joint Registrar dated February 12, 1986 (Ex. P/2 and remanded the matter to the Joint Registrar with a direction to dispose of the matter after giving an opportunity to all the aggrieved persons in accordance with law.

2. Counsel for the petitioner submitted that the respondent Santosh Kumar has incurred disqualification on account of non-payment of dues to the Co-operative

Society mentioned in the order of Joint Registrar (Ex. P/2) and along with him seven other members were also disqualified, the names of whom are mentioned by the Joint Registrar in the said order. Considering them to be disqualified, the learned Joint Registrar proceeded to pass the order under Section 36 dissolving the Board of Directors of Sojat Kriya Vikriya Sahakari Samiti Ltd. The Manager of the Samiti had informed the respondent Santosh Kumar vide his letter dated October 9, 1985 (Ex.P/1) that he has defaulted in making payment of the amount of Rs. 3516. 30p. and as such he has incurred disqualification under Section 34(4) of the Co-operative Societies Act and under bye-law 11(5)(4) of the Society. Counsel for the petitioner urged that when the petitioner ceases to be the member, which is automatic on default, he is not entitled to any opportunity of hearing and so the order of the Government is bad.

3. We have considered the above submissions of the learned Counsel for the petitioner. It may be mentioned that under Section 34(8), when the question is about cessation of membership, it has to be decided by the Registrar. Before any member is declared to be disqualified or considered to be disqualified, in our opinion no such disqualification can be considered unless the member concerned is given an opportunity of being heard. The requirement of opportunity of being heard is implicit in the provision contained in Section 34(8) of the Act. The question of incurring of disqualification is a question of great significance and of serious consequences. Without giving an opportunity of hearing the member cannot be considered to have incurred disqualification. The respondent was the President of the said Society. If he is considered to be disqualified on account of non-payment of any dues, it would mean that he cannot continue in the office of Chairman. When such are the grave consequences, in our considered opinion, an opportunity of hearing must be afforded before any member is said to have incurred disqualification. Thus in our opinion, the contention advanced by the learned Counsel for the petitioner is devoid of any force and the respondent Santosh Kumar and for that matter the other seven members if they have not been afforded opportunity of being heard, they are entitled to an opportunity of hearing, and the Government was right and justified in setting aside the order of the Joint Registrar, as the order was passed without affording an opportunity of hearing to the respondent Santosh Kumar. It has to be found after notice to Shri Santosh

Kumar and others as to whether they have incurred disqualification and thereafter action can be taken under Section 36.

4. This writ petition, therefore, in our opinion has no force and is hereby dismissed. The matter has already been delayed. The Joint Registrar is directed to decide the matter in light of the above observations, as far as possible within a period of two months.

5. The parties shall bear their own costs.

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