

Devi Chand Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Feb-07-1995

Reported in : 1996(1)WLC144; 1995(1)WLN271

Judge : N.K. Jain, J.

Appeal No. : S.B. Civil Writ Petition No. 5394 of 1994

Appellant : Devi Chand

Respondent : State of Rajasthan and ors.

Advocate for Pet/Ap. : Mr. Joshi

Disposition : Petition dismissed

Judgement :

N.K. Jain, J.

1. By this writ petition, the petitioner seeks to quash the order passed by the respondent No. 3 Election Officer rejecting the nomination paper of the petitioner. It has been prayed that the petitioner's nomination paper may be declared as legal one and valid.

2. Briefly stated the facts of the case as alleged by the petitioner are that he is the member of the respondent No. 2 Jodhpur Nagrik Sahakari Bank Ltd., Jodhpur

(hereinafter referred to as the Bank) and also remained the Director of the respondent Bank. It is alleged that he filed two nomination paper for the post of member of Board of Directors on 17.11.1994 and 18.11.1994 in pursuance of the election programme issued by Notification dt. 10.11.1994 published in Rajasthan Patrika dt. 11.10.1994 (Anx.1). It is also alleged that his nomination paper was rejected in the scrutiny and the order of rejection was also not supplied. On enquiry he was informed that since he stands as a guarantor for M/s. S.V. Construction and certain dues are still lying with the Bank. Being aggrieved with the rejection of his nomination paper, the petitioner has filed this writ petition.

3. This writ petition has been filed on 21.11.1994. This Court on 25.11.1994 while issuing notice ordered that the petitioner would be permitted to contest and participate in the election subject to the result of the writ petition. The result be not declared till further orders.

4. In pursuance of the notice, the respondent No. 1 has filed reply on 3.12.1994 alongwith documents Anx. R/1 to 3 and respondent No. 2 filed reply on 25.11,1994 with documents Anx. R/2-1 to 4. Rejoinder to the reply has been filed by the petitioner on 9.1.1995. As agreed by the learned Counsel for the parties, the matter is heard finally.

5. Mr. Sangeet Lodha, learned Counsel for the non-petitioner No. 1 has raised a preliminary objection about the maintainability of the writ petition on the ground that the dispute raised by the petitioner is an election dispute which can only be adjudicated upon by the Registrar, Cooperative Societies in exercise of the power conferred by Section 75 of the Rajasthan Cooperative Societies Act, 1965 (hereinafter referred to as the Act of 1965). He has also submitted that the petitioner is not entitled to seek any relief under Article 226 of the Constitution for not filing the impugned order and also on account to conduct of the petitioner. He has relied on Babulni v. State 1994(2) WLC-8 & Surinder Singh V Centred Government and Ors. : [1986]3SCR946 , and Sumermal v. State 1977 WLN-154.

6. Mr. Singhvi, learned Counsel for the non-petitioner No. 2 while adopting the arguments of Mr. Lodha has submitted that the petitioner has deliberately made a misstaterment on oath and has concealed material facts. He has submitted that the

petitioner cannot maintain this writ petition as the order impugned has not been filed. He has also submitted that the petitioner has made a vague statement in the writ petition about the rejection of his nomination paper that because he was a guarantor of M/s. S.V. Construction and same was a defaulter, therefore, his form was rejected whereas the fact is that one of the candidate Mr. Amar Chand Purohit who is also a member of the Bank raised an objection Anx. R 1/1 before the Election Officer to the effect that the petitioner is a defaulter under bye-laws, so his nomination form deserves to be rejected. He has further submitted that the cash credit limit of M/s. S.V. Construction was given for one year and not renewed thereafter and the same was cancelled on 7.6.1994 wherein Mrs. Devi Chand Bafna is also a partner and the petitioner Devi Chand stood surety. Mr. Singhvi has also submitted that a notice in terms of Section 117 of the Act of 1965 was also issued to the surety petitioner and the final order was further issued on 17.9.1994, therefore, the nomination paper of the petitioner who was a surety of defaulter has been rightly rejected. He has further submitted that the election process has already started, so this Court cannot invoke extra ordinary jurisdiction. He has lastly submitted that reference to Section 34 of the Act of 1965 is inappropriate and referred to Bye-law No. 32 and other provisions.

7. Mr. Joshi, learned Counsel for the petitioner has contended that the rejection of nomination paper is perse illegal as the petitioner is not a defaulter and this dispute does not come within the purview of Section 75 of the Act of 1965. He has also contended that in view of Section 34 of the Act of 1965, the nomination paper of the petitioner cannot be rejected and in the absence of categorisation of surety as defaulter in the Act, the petitioner can contest the election and, therefore, the Election Officer has Illegally and arbitrarily rejected the nomination paper of the petitioner.

8. I have heard learned Counsel for the parties parties and perused the material on record as well as the relevant provisions of law.

9. To appreciate the contentions advanced before me, it would be just and proper to read Section 34 of the Act of 1965, Bye-laws No. 13, 14, 31, 32 and Rule 25 of the Rajasthan Cooperative Societies Rules, 1966 (hereinafter referred to as the

Rules of 1966), which run as under:

34. Disqualification of membership etc. of Committees:

(1)...

(2)...

(3)...

(4) No person shall be eligible for being election or appointed as a member of a committee if he is in default to the society or to any other society, in respect of any loans taken by him for such period as is specified in the byelaws of the society concerned or in any case for a period exceeding three months and such a member as aforesaid shall cease to hold office as soon as he has incurred the disqualification mentioned in this sub-section.

Byelaw 13. Transfer of shares.

14. Resignation, Cessation and Expulsion of member:

(i)...

(ii) Member ship will cease:

a)...

b)...

c) On breach of any conditions prescribed under byelaw 9.

(iii) A shareholder member may be expelled as provided in Section 9 of the Cooperative Societies Act and Rules made thereunder. Shares held by an expelled member are liable to be forfeited. Transfer of shares may be declined to a shareholder member.

a) If the member is indebted or is liable as surety to another member who is indebted to the Bank.

31. Eligibility for Election as Director: A shareholder member shall not be eligible to be elected as director unless he is a shareholder member of the bank for at least two continuous years prior to the date of election and should have maintained a deposit account with the bank for a continuous period of 2 years with a credit balance of not less than Rs. 500/-. Subject to a bank has completed has completed its 2 year working. To newly organised banks this clause will not be applicable.

32. Vacation of Office by a Director: A director shall be deemed to have vacated his office before the expiry of his term if:

i) He becomes a defaulter either as a borrower or as a surety..

34. Meeting of the Board of Directors and Notice of the Meeting: The Board shall meet as often as is necessary to transact business, but Is shall meet at least once a month, Notice of a meeting of the Board of Directors together with the Agenda of the meeting and detailed notes thereon shall be sent to all the directors at least eight days prior to the date of the meeting.

Rule 25 Restrictions of defaulting Member to vote at the election-No member shall be eligible to vote at the meeting fixed for any election if on the date thirty days prior to the date of such meeting, he is a defaulter against whom decree has been issued under section 117.

10. According to Section 34 of the Act of 1965 a member cannot be disqualified from the committees if he is a surety. Bye law No. 14 deals with resignation ceassation and expulsion of member and sub clause (iii) (a) provides that if the member is indebted or is liable as surety to another member who is indebted. Byelaw No. 31 deals eligibility for election as Director and Byelaw No. 32 deals with Vacation of office by a Director. Byelaw No. 32 clearly provides that a director shall be deemed to have vacated his office before the expiry of his term if he becomes a defaulter either as a borrower or as a surety. Admittedly, on the date of filing of nomination paper, the petitioner was defaulter in view of Bye law Mo. 32 and not qualified. For the alleged default a notice was also issued to the petitioner directing him to make payment of the outstanding demand due to the society and

even final order was also passed against M/s. S.V. Construction Co. after issuing a notice. In view of the restriction under Rule 25 the petitioner cannot cast vote. Therefore, if all these provisions viz. Byelaws No. 31 & 32 alongwith Rule 25 as also Section 34 of the Act of 1965, are read together harmoniously to find out the will of the legislature, in my opinion, the only reasonable interpretation to gather the intention of the legislature would be to bring those persons as members of the Board of Directors who are qualified. Therefore, keeping in view said provisions, I am of the view that the Election Officer has rightly rejected petitioner's nomination paper. In the instant case undisputedly the petitioner was surety to a defaulter and even if ignoring this fact he is allowed to contest the election and he wins the election he will not be entitled to hold the office of Director in view of Byelaw No. 32 since, the words used in the Byelaw No. 32 are 'Director shall be deemed to have vacated his office before the expiry of his term, if he becomes a defaulter, either as a borrower or as a surety.' Therefore, if the suggestion of Mr. Joshi that in the absence of any specific provision in the Act categorising the surety as a 'defaulter' the petitioner has a right to contest the election is accepted it will lead to absurdity since as soon as he is elected as Director he will have to vacate the office. That apart as already stated notice has been issued and final decree has also been passed and in view Rule 25 of the rules of 1966 which provides that such persons are ceased to have a voting right of election, so the question to contest the election, does not arise.

11. The argument of Mr. Joshi that rules and byelaws cannot override 'the Act' and they can only supplement cannot be disputed but such is not the position in this case as by the Act itself the byelaws have been made applicable to the extent that anything disqualified in the byelaws are to be read for the Act also in view of Section 34. and further the byelaws and rules framed in the present case have statutory force, so they are required to be considered and cannot be discarded. Therefore, the contention of Mr. Joshi that the nomination paper could not be rejected as per Section 34 of the Act of 1965 has no substance as stated, the byelaws having statutory force framed Under Section 14(2) of the Act of 1965 and further in sub-Section (4) of Section 34 of the Act of 1965 the words used are 'No person shall be eligible for elected or appointed as a member of a committee if he is in default to the society or to any other society, in respect of any loan or loans

taken by him for such period as is specified in the byelaws of the society concerned, which has not been controverted by the counsel for the petitioner.

12. Apart from that under Rule 32(6)(b) of the Rules of 1966 the Election Officer is under an obligation to decide all the objections which may be made at the time of scrutiny and may either on such objections or on his own motion after such inquiry, if any, as he thinks necessary, reject any such nomination form for valid reasons. In the case in hand one of the candidates for the election of the Board of Directors Mr. Amar Chand Purohit raised an objection Anx. R/3 4 before the Election Officer pointing out that the petitioner stand surety for S.V. Construction, who has not made payment of the debt of the respondent Bank and a notice Under Section 117 and a demand note/final order has already been issued by the respondent Bank to the surety for payment of the debt outstanding against the Company M/s. S.V. Constructions. The Election Officer after considering the record of the Bank rejected the nomination, for which he was fully competent in view Rule 32 (6)(b).

13. No other point was argued before me.

14. In view of the above discussion, it cannot be said that any illegality has been committed while rejecting the nomination paper and no relief can be granted. Since matter is heard on merits, it is not necessary to reject the case on preliminary objection of alternative remedy.

15. Accordingly, the writ petition has no force and the same is hereby dismissed.