

Devi Chand Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Mar-02-1995

Reported in : 1995(1)WLN346

Judge : P.P. Naolekar and; R.R. Yadav, JJ.

Appeal No. : D.B. Civil Special Appeal No. 161 of 1995

Appellant : Devi Chand

Respondent : State of Rajasthan and ors.

Disposition : Appeal allowed

Judgement :

P.P. Naolekar, J.

1. This special appeal is preferred against the order of a learned single Judge dated 7.2.95. The admitted facts emerged in the case which are necessary for deciding the questions involved in this appeal are, that the appellant is a member of respondent No. 2 The Jodhpur Nagrik Sahakari Bank Ltd., Jodhpur (for short 'the Bank'). The election programme was published by notification dated 10.11.94 in Rajasthan Patrika dated 11.10.94 for election to the posts of members of the Board of Directors. The appellant filed his nomination paper and his nomination paper was rejected on 18.11.94. It is complained that the copy has not been given

of the order of rejection. The rejection was on the ground that M/s. S.V. Construction, which is a partnership firm, given loan facilities in the form and shape of cash credit. The cash credit facility was not renewed by the Bank after the expiry of the period of one year. The firm's limit was cancelled on 7.6.94. Shri Devi Chand Bafna, the appellant was the surety for the cash credit limit. On 12.7.94 a notice of demand was made on the surety, the appellant, and thereafter a final award in terms of Section 117 of the Rajasthan Co-operative Societies Act, 19165 (for short 'the Act'), was passed against both. The nomination of the appellant was rejected on the ground that he is a surety of the defaulter firm M/s. S.V. Construction. After the rejection of the nomination paper, the appellant filed a writ petition in the High Court which was registered as S.B. Civil Writ Petition No. 5394 of 1994, Devi Chand v. State of Rajasthan & Others.

2. On 25.11.94 an interim order was passed and the petitioner/ appellant was permitted to contest and participate in the election subject to the result of the writ petition. It was further directed that the result of the election shall not be declared till further orders. Subsequently, the ex-parte stay order was confirmed by order dated 7.2.94 and it was directed that the matter be listed for final disposal at the admission stage.

3. The learned Single Judge on consideration of and on a combined reading of Section 34 of the Act and bye laws 13,14, 31 and 32 and rule 25 of the Rajasthan Co-operative Societies Rules, 1966 (for short the Rules'), held that the bye laws and the rules have a statutory force and the petitioner has been debarred from contesting the election to the membership of Board of Directors in view of Section 34 of the Act. The learned single Judge has also held that if the surety defaulter is permitted to contest election, it will create an anomalous position inasmuch as under bye law 34(i), a defaulter surety cannot remain a Director and, therefore, the disqualification of defaulter is also applicable to as surety defaulter on the principle that once the liability of principal debtor arises, the surety's liability is co-extensive.

4. With great respect to the learned Single Judge, we find ourselves unable to subscribe with the view taken by him for the reasons hereinafter referred.

5. It is contended by the counsel for the appellant that the rejection of the nomination paper is devoid of authority and contrary to the provisions of the Act and the Rules, the bye laws framed thereunder. A surety defaulter is not debarred from contesting election of Board of Directors. On the other hand, it is contended by the counsel appearing the respondents No. 1 to 3 that on combined reading of the provisions of the Act, bye laws and Rules, the intention of the legislature is to debar the defaulter surety from contesting the election of the Board of Directors.

6. For the better understanding of the respective contentions and as they have also been relied by the learned Single Judge, it will be appropriate to refer to Section 34 of the Act, bye laws 13,14, 31 and 32 and rule 25 of the Rules. They are as under:

34. Disqualification of membership etc. of committees:

(1)...

(2)...

(3)...

(4) No person shall be eligible for being 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 bye laws, 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.

14. Resignation, Cessation and Expulsion of member:

(i)...

(ii)...

Membership will cease:

a)...

b)...

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

(iii) A share holder 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 the bank has completed its 2 years working. To newly organised banks this clause will not be applicable.

32. Vacation of Officer 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.

Rule 25. Restrictions on 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.

7. Section 34 of the Act prescribes disqualifications for membership of Board of Directors. Under Sub section (4) of Section 34, no person shall be eligible to be 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 the loan taken by him, for a period specified in the bye laws of the society or in any case for a period exceeding three months and such a member shall cease to hold office as soon as he has incurred the disqualification mentioned in this sub section. Sub-section (4) is in two pails. The

first part refers to eligibility of being elected or appointed as a member of the committee and the second part is with regard to the person already elected as a member and incurred disqualification. The words 'No person shall be eligible for being 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' are significant and refer to default of a person, who has taken the loan. There is no reference of the surety of that person. Bye law 31 is another provision, which prescribes eligibility for election to a post of Director. A share holder member shall not be eligible to be elected as a Director of the Bank having standing of two years, unless he has a Bank account of minimum of Rs. 500/-continuously for two years in the Bank. These are two provisions which prescribe the eligibility of a member for election to the post of Director Bye law 32 is in regard to the vacation of the office by a Director and under that, a Director is 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. This provision shall apply only after a person becomes a Director because it speaks of the vacation of the office of Director. A disqualification to remain a Director is applied both to a borrower as well as to his surety.

8. Rule 25 lays down restriction on defaulting member, against whom decree is passed Under Section 117 of the Act, if he had not cleared the decree thirty days prior to the date of election to vote in election meeting. So this rule prohibits member against whom a decree has been issued Under Section 117 to vote in the election meeting. Rule 25 nowhere prohibits a member to contest an election. In bye laws 13 and 14, we do not find anywhere any qualification or disqualification for contesting the election for membership to the Board of Directors.

9. The question which requires consideration is, whether we can read the words 'surety defaulter' in Section 34(4) of the Act taking the and of the provision of bye law 32 (i) and Rule 25 of the Rules or Section 34(4) has to be read as it is.

10. The golden rule of interpretation is when the words of a statute are plain or unambiguous, the courts are bound to give effect to that meaning irrespective of consequences. The results of the construction are not a matter for the courts if language is plain and admits only of one meaning. The addition of the word was

held to be permissible where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning. A departure from the rule of literal construction is permissible if it is legitimate to avoid any part of the statute becoming meaningless. (Reliance is placed on Justice G.P. Singh's Principles of Statutory Interpretation.).

11. Argument that the defaulter surety member although may become a member Director but as soon as he is elected and becomes a Director, he ceases to be a Director and, therefore, the surety member along with the defaulter member has to be read in Section 34(4), although appears attractive but on a deeper probe, is not in consonance with the law on the subject. It is not impossible, as it is just possible, that the defaulter member or the surety deposits the amount before the surety is elected as a Director or it may be a case where he has contested the election and lost it. In both those eventualities, bye law 32(i) shall not be attracted. We have already mentioned the field of operation of Section 34 and bye law 32. We are not called upon to decide the validity of bye law 32(i) in this petition but it is certain that if there is a conflict between a bye law and a statutory provision, the statutory provision shall prevail. In the Co-operative Central Bank Ltd. v. The Additional Industrial Tribunal, Andhra Pradesh : (1969)11LLJ698SC , it has been held as under:

The bye-laws that can be framed by a society under the Act are similar in nature to the articles of Association of a company incorporated under the Companies Act and such articles of Association have never been held to have the force of law. The bye-laws that are contemplated by the Act can be merely of those which govern the internal management, business or administration of a society. They may be binding between the persons affected by them, but they do not have the force of a statute.

Similar principle is reiterated in a subsequent decision of the Supreme Court reported in Bobaji Kondaji Garad v. Nasik Merchants Co-operative Bank Ltd., Nasik : [1984]1SCR767 wherein it is said by the Supreme Court that bye law of a co-operative society can at best have the status of an article of Association of a

company governed by the Companies Act, 1956. The bye laws of a co-operative society framed in pursuance of the provision of the relevant Act cannot be held to be a law or to have the force of law. Therefore, it is clear that the bye law does not have the force of law and the field of qualification for contesting the election is squarely covered Under Section 34(4) of the Act. Bye law 31 shall not apply as we have held the bye law to be Invalid in our decision rendered today in D.B. Civil Special Appeal No. 162 of 1995, Pukh Raj Mehta v. State of Rajasthan & Others. Rule 25 has no application at all as it is a restriction on a defaulter member to vote in a meeting fixed for any election at the most. But it does not debar the presence of a person in any other meeting and to vote. Under the bye laws of the Society, the co-opted Director has also no right to vote and still he is a member. Thus, the restriction on a defaulter member to vote against whom a decree has been issued Under Section 117, will not come in the way for eligibility to contest the election.

12. Once the right of election or to be elected is a right created by any statute, it cannot be permitted to be taken away or whittled lightly unless there are strong reasons and legal grounds to do so. In a democratic set up of this country, the right to vote and right to be elected, assumes great importance and the court's endeavor should be to protect that right. It is, therefore, necessary to construe a provision of statute giving right to vote and right to be elected strictly and not loosely. Bye law 32(i) and Rule 25 will not add or supplement the words 'defaulter surety' in Section 34(4) of the Act. Bye law 32(i) and Rule 25 are operated in a different sphere and in no way could control Sub-section (4) of Section 34, considering Section 34(4) of the Act in all its ramification, we are of the view that the defaulter surety has not been debarred from contesting the election for the membership to the Board of Directors.

13. The rejection of the nomination paper of the appellant on the ground that he was a defaulter surety against whom a decree Under Section 117 was passed, is not supported by any provision of law much less Section 34(4) of the Act.

14. For the reasons stated above, the order of the learned single Judge dated 7.2.95 is set aside. We have been informed that the appellant was permitted to contest the election. Under that circumstance, we direct that the counting of the

votes be done and the result be declared treating the appellant as a candidate in the election of the Board of Directors of the Jodhpur Nagrik Sahakari Bank Ltd., Jodhpur. The appeal is allowed with cost of Rs. 1000/-, which shall be paid by respondent No. 2.

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