

PETITIONER:
UTTAR PRADESH CO-OPERATIVE FEDERATION

Vs.

RESPONDENT:
THE STATE OF U.P. & ORS.

DATE OF JUDGMENT 19/01/1973

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

CITATION:
1973 AIR 1068 1973 SCR (3) 402
1973 SCC (1) 398

ACT:
U.P. Cooperative Societies Act, 1965 (Prior to amendment by U.P. Act No. 1 of 1972) & Rules-State Government power to nominate upto 2/3rds of total number of members of the committee of the management.
U.P. Cooperative Societies Rules 19618-Reduction of share capital unless a member is removed according to Rules share capital not affected.-Shares kept in security remained in specie-No reduction of share capital.

HEADNOTE:

The petitioner challenged the order passed by the U.P. State Government on 26-1-1971 nominating 2/3rds of the total number of members of the committee of the management of the petitioner purporting to act under section 34 of the U.P. Cooperative Societies Act, 1965. The subscribed paid up capital of the Federation on 30-6-1969 was Rs. 34.04 lakhs. of this, the State Government owned shares of the value of Rs. 20 lakhs. The percentage of the State Government in the share holding was 58.75%. The State Government's contention was that the membership of some co-operative bank had been terminated and, therefore the share capital was reduced by Rs. 53,000/-. The State Government also contended that another member, District Cooperative Federation, Saharanpur retired Rs. 50,000/- out of his share capital with the Federation. The State Government, therefore, claimed that its share holding had gone to 60% and, therefore, had a right under s. 34 to nominate its nominees to the committee of the management. The petitioner challenged the order on the ground that the condition precedent of the State Government holding 60% of the shares in the share capital of the Federation was not fulfilled. It also raised several other grounds including the constitutional validity of Sec. 34 of the Act.

Allowing the writ petition,

HELD : (i) The provisions of the Act and Rules indicate that the Co-operative banks did not cease to be the members, as there was no resolution removing the banks from membership. Rule 32 indicates that there is no reduction of share

capital and the shares of the banks were not transferred to any other person. The shares still stood in the name of the co-operative banks and the share capital was not reduced by Rs. 53,000/-. [408H; 409A-C]

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(ii) Saharanpur District Cooperative Federation was still a member, as it was not removed from membership. Its share money cannot be taken out of share capital fund and treated as security money. The shares were not kept in security. Even if the shares were in security, the shares remained in specie. The share capital of the petitioner was not reduced by Rs. 50,000/-. [409F-H; 410A-C]

(iii) As the shares in both the cases were still part of the share capital, the State Government was not justified to exercise right under section 34 of the Act. [410DL-F]

JUDGMENT:

ORIGINAL/CIVIL APPELLATE JURISDICTION : Writ Petition No. 243 of 1971 and Civil Appeal No. 592 of 1972.

Writ Petition No. 243 of 1971

Petition under Article 32 of the Constitution of India for the enforcement of fundamental rights and Civil Appeal No. 592 of 1972.

Appeal by a special leave from the judgment and order dated December 8, 1970 of the Allahabad High Court Civil Misc. Writ No. 4700.

A. K. Sen, A. P. Singh Chauhan, Y. C. Prashar and Dharam Pal Singh Chauhan, for the petitioner and appellant.

C. K. Daphtary, B. Sen and O. P. Rana, for respondents Nos. 1-4, 10-11 (in W.P. No. 243) and respondents Nos. 1 & 2 (in C.A. No. 592).

The Judgment of the Court was delivered by

RAY, J. The Civil Appeal is by special leave from the judgment dated 8 December, 1970 of the High Court at Allahabad dismissing the petition of the appellants. The appellants in the Allahabad High Court impeached the first order dated 19 September, 1970 passed under section 34 of the Uttar Pradesh Cooperative Societies Act, 1965 referred to as the Act nominating two-thirds of the total number of members of the committee of management of the Uttar Pradesh Co-operative Federation. The appellants are the Uttar Pradesh Co-operative Federation Ltd., Lucknow referred to as the Federation and Veerpal Singh who are both also the petitioners in the writ petition.

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This writ petition is directed against the second order of the Uttar Pradesh State Government dated 26 June, 1971 passed under section 34 of the Act nominating two-thirds of the total number of members of the committee of management of the Federation.

The question which falls for determination in the writ petition and the civil appeal is whether the State Government under section 34 of the Act could nominate two-thirds of the total number of members of the committee of management of the Federation.

The annual general meeting of the Federation was held on 30th March 1970. The committee of management of the Federation was elected at the annual general meeting. The appellant petitioner Veerpal Singh on 8 April 1970 was unanimously elected as Chairman of the Federation.

On 19 September, 1970 the State Government passed an order under section 34 of the Act and nominated two-thirds of the members of the committee of management of the Federation.

It may be stated here that under section 34 of the Act where the share capital subscribed to by the State Government is 60 per cent or more of the total share capital of the co-operative society the State Government shall have the right to nominate up to two-thirds of the total numbers of members of the committee of management. The State Government passed the order on that basis that it had share capital of more than 60 per cent in the Federation.

The Federation moved the Allahabad High Court against the said order of the State Government. The High Court stayed the operation of the said order nominating two-thirds of the members of the committee of management. The High Court dismissed the petition of the Federation on 8 December, 1970. On 18 December, 1970 the State Government cancelled the order dated 19 September, 1970.

The Additional Registrar, Co-operative Societies, Uttar Pradesh submitted an inspection report to the effect that the State Government had been misinformed about the share capital of the State Government in the Federation. The report stated that in fact the share capital of the State Government in the Federation was never 60 per cent. The report further stated that the matter should be thoroughly investigated and guilty persons should be punished.

The appellant petitioner Veerpal Singh wrote a letter on 12 June, 1971 to the Chief Minister of Uttar Pradesh and asked for immediate action pursuant to the report of the Additional Registrar of Co-operative Societies. In that letter Veerpal Singh stated that Om Prakash Tyagi, Deputy Registrar, Co-operative Societies had

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been working as Secretary of the Federation since 1970. Veerpal Singh also stated in the letter that on being elected Chairman he examined the accounts and found that Om Prakash Tyagi had been responsible for mal-practices.

On 26 June, 1971 the State Government passed the second order under section 34 of the Act nominating two-thirds of the total number of members of the committee of management of the Federation. After the State Government had passed the said order nominating two-thirds of the total number of members of the committee of management the elected members of the committee under rule 38 (b) of the by-laws of the Federation were moved by draw of lots to accommodate the nominated members. The appellant petitioner Veerpal Singh survived the process of draw by lots and retained his membership of the committee of management of the Federation. In the Allahabad High Court the appellants challenged the first order of the State Government dated 19 September, 1970 on inter alia the ground that the share holding of the State Government on facts and in law was not 60% and therefore the State Government was not competent to pass an order under section 34 of the Act. The Allahabad High Court held that if the appellants denied and disputed facts as to ownership by the State Government of 60 per cent or more of the Capital of the Federation the High Court could not normally decide controverted facts and the petition would fail. The High Court however held that the State Government was justified in taking the view that the share holding had crossed the mark of 60 per cent and therefore the order was valid.

The petitioners in the writ petition challenged the second order dated 26 June, 1971 passed by the State Government under section 34 of the Act nominating two-thirds of the total number of members of the committee of management. The contentions are four. First, that section 34 of the Act gives a naked power without any guidance as to when that

power is to be exercised and under what circumstances. Secondly, it is said that the naked power under section 34 infringes Article 14 of the Constitution by subjecting societies to directors of societies being picked and chosen by the Government without 'any principle being involved. Thirdly, it is said that the exercise of power was arbitrary and on extraneous grounds without any hearing being given. Fourthly, the condition precedent of the State Government holding 60 per cent of shares in the share capital of the Federation was not fulfilled.

It is not necessary to express any opinion on the first three contentions because in our opinion the fourth contention succeeds.

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The subscribed and paid up share capital of the Federation on 30 June, 1969 was Rs. 34.04 lakhs. Of this the State Government owned shares of the value of Rs. 20 lakhs. The percentage of the State Government in the share holding was 58.75 per cent. The State Government case was that in January, 1970 the Federation terminated the membership of the co-operative banks. The co-operative banks at that time held shares worth Rs. 53,000. Subsequently, an individual co-operative society brought shares worth Rs. 1,000 in the Federation. Thus, the total paid up share capital of the Federation came down to Rs. 33.52 lakhs, according to the version of the Government. The further Government case is that in the first week of September, 1970 the District Co-operative Federation, Saharanpur retired Rs. 50,000 out of its share capital of Rs. 1,51,000 in the Federation. The result, according to the Government, was that the total paid up share capital of the Federation was further reduced to Rs. 33.01 lakhs. On this basis the State Government contended that the share capital of the State Government worth Rs. 20 lakhs was more than 60 per cent. The State Government on this footing of ownership of 60 per cent or more of the share capital of the Federation passed order under section 34 of the Act and nominated two-thirds of the total number of members of the committee of management of the Federation.

The petitioners as well as the appellants on the other hand contended that neither the shares owned by the co-operative banks to the extent of Rs. 53,000 nor the shares worth Rs. 50,000 owned by the District Co-operative Federation, Saharanpur could be said by the Government to be reduced from the total share capital to allow the State Government to take the plea that the State Government owned 60 per cent or more of the total share capital in the Federation. It is further contended by the petitioners as well as the appellants that on 26 June, 1971 the total share capital of the Federation was Rs. 40,17,000. According to them, this share capital included the share holdings of the cooperative banks at Rs. 53,000 and the further share holdings of Rs. 50,000 belonging to the Saharanpur Federation. The petitioners therefore contended that the share capital of the State Government at Rs. 20 lakhs was not more than 49.81 per cent at the relevant date on 26 June, 1971.

Two questions arise. First, whether it could be said that the share holding of the co-operative banks at Rs. 53,000 was reduced from the share capital on the relevant dates in September, 1970 or in the month of June, 1971. Second, whether the sum of Rs. 50,000 out of share capital held by the District Co-operative, Federation, Saharanpur in the share capital of the Federation had been retired with the result of reduction of the share capital of the Federation.

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Under section 34 of the Act where the share capital subscribed by the State Government is 60 per cent or more of ;the total share capital of a co-operative society the State Government shall have the right to nominate up to two-thirds of the total number of members of the committee of management. Under section 34 of the Act the State Government in such a case has also the power to nominate a Government servant or a non-official as a Chairman of the committee. This power of nominating a Chairman is notwithstanding the provisions contended in section 30 of the Act. Section 30 of the Act speaks of Chairman, Vice-Chairman of the society elected, nominated or appointed in accordance with the provisions of the Act, rules and bye-laws. Section 34 further provides that the State Government may exercise right mentioned ,therein during the period of five years from the time the share of the State Government in the share capital of the Federation becomes 60 per cent or more or until such share in the capital goes down to less than 50 per cent whichever is earlier.

It may be noticed here that section 34 of the Act has been amended by Uttar Pradesh Act 1 of 1972. The rights of the parties in the present appeal as well as the petition are governed by section 34 of the Act as it stood prior to the amendment.

In view of the fact that the first order of the State Government dated 19 September, 1970 which was challenged in the Allahabad High Court was cancelled by the State Government in the month of December, 1970 only the validity of the second order dated 26 June, 1971 requires consideration.

The case of the Government is that under the Act a co-operative bank cannot be a member of a co-operative society. Prior to the Act co-operative banks could be share-holders of a co-operative society. It is said on behalf of the Government ,that the Federation modified its bye-laws and made them consistent with the Act by deleting the co-operative bank from the category of persons who. could become members of the Federation. On 30 June, 1970 it is said that Rs. 53,000 being the share money of the cooperative bank was transferred from the share capital account into the suspense account in the books of the Federation. Therefore, the case of the Government is that the share capital of ,the Federation stood reduced by Rs. 53,000 on 30 June, 1970.

It appears that prior to the coming into force of the Act the District Co-operative Banks were members of the Federation. After the Act came into force the bye-laws of the Federation were amended. Under bye-law 5 of the Federation the membership was limited to two classes, viz., the District Co-operative Federation' and the Marketing Societies. The District Co-operative Banks therefore were not eligible to be members under the amended

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bye-laws. The question therefore arises as to what would happen to the shares of the co-operative banks who had become members prior to the coming into force of the Act.

Section 17 of the Act speaks of persons who may be members of a co-operative society. Such persons are an individual, any other co-operative society, the State Government, the Central Government, the State Warehousing Corporation and a body corporate not covered by any other clause and approved by the Registrar. It is also enacted that a joint stock company or an individual shall not be admitted as an ordinary member. Section 22 of the Act contemplates restrictions on individuals in regard to holding of shares.

Section 23 of the Act speaks of restrictions on transfer of shares or of interest. Section 24 of the Act deals with transfer of interest on death of a member. Section 27 of the Act speaks of removal or expulsion of a member by the Registrar of the Society.

Rule 56 of the Uttar Pradesh Co-operative Societies Rules, 1968 referred to as the Rules broadly deals with removal of members from membership of the society and expulsion of a member from the membership of the society. Rule 56 (a) (i) states that a person may be removed from membership if he has ceased to fulfil the qualifications laid down under the Act, rules and bye-laws of the society or (iv) his membership of the society is inconsistent with the provisions of rule 8 (b). Rule 57 states that a person sought to be removed or expelled under Rule 56 shall be called upon by the committee of management to show cause why he should not be removed or expelled. Rule 58 states that the committee of management may by a resolution passed in (the meeting remove or expel a member, Rule 59 states that no resolution for removal or expulsion shall be effective unless it is carried by a majority of two-thirds of the members present and voting. Rule 63 states that a member of the co-operative society shall cease to be a member inter alia on his removal or expulsion from society or retirement, transfer or forfeiture of all the shares held by him.

The provisions in the Act and the Rules indicate that the removal can only be under a resolution. There is no provision for automatic cessation of membership. In the absence of a resolution there is no valid removal of co-operative bank from membership.

In the case of removal of a member the shares of such a member may under section 23(3) of the Act be transferred to or acquired or retained by a member. Chapter VI of the Rules consisting of Rules 65 to 82 deals with shares. Rule 82 states that where a member of a co-operative society ceases to be such a member the value of his share or interest in the share capital of

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the society to be paid to him or his nominee shall be equal to the actual amount paid by the member to the society. These provisions indicate that there is no reduction of the share capital. There was no removal of co-operative banks from the membership of the Federation. There was no resolution to that effect. The shares owned by the co-operative banks are still in existence. These shares have not been yet transferred to any one. The shares have not been transferred to, acquired or retained by any person. The shares still stand in the name of the co-operative banks. The share capital is not reduced. It is therefore not valid on the part of the State Government to reduce the shares worth Rs. 53,000 owned by the co-operative banks, and not to take the same into consideration in calculating the total share capital.

The other plea of the State Government is that shares worth Rs. 50,000 belonging to, the Saharanpur District Co-operative Federation were retired with the result that there was reduction of total share capital by a sum of Rs. 50,060. Retirement of shares is dealt with by rule 66 of the Rules. It is stated in the rule that under section 23(3) of the Act a co-operative society may retire the shares of a member in the instances mentioned therein. The fourth instance in rule 66 is that if a member of a co-operative society has ceased to be a shareholder on account of adjustment of his membership to any other class under rule 44(c) or if he has

been removed from membership under rule 56(a), his shares may be retired. Again under Rule 70 a Central Co-operative Society may reduce the share capital according to a scheme approved by the Registrar. Such a scheme may provide for (i) extinguishing or reducing the liability on any of its shares in respect of share capital not paid up, or (ii) cancelling any paid up share capital or (iii) paying back any paid up share capital which is in excess of the needs of the central society.

The Saharanpur District Co-operative Federation never ceased to be a member. There has been no removal or expulsion. If the Saharanpur District Co-operative Federation is still a member its share money cannot be taken out of share capital fund and treated as security money. Retirement of share money under Rule 66 is in four cases. First, if a member at the time of his admission to membership enters into share participation agreement between the society and the member his share may be retired, Secondly, the shares of a member in a salary earning co-operative society in the event of transfer of such member from the area of operation of the society or cessation of his service by virtue of which he held membership of the society may be retired. Thirdly, the shares of a member of a cooperative society organised in educational institutions if the member ceases to be a student or a member of the staff of the institution by the virtue of which he

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was holding membership of the society may be retired. None of these three contingencies of retirement of shares applies to the case of the Saharanpur District Co-operative Federation. The fourth instance mentioned in rule 66 is the retirement of a member who has been removed from membership or has ceased to be a shareholder on account of adjustment of membership under rule 44 (c). The District Co-operative Federation, Saharanpur does not fall in this class also.

The amount of Rs. 50,000 representing the shares of the District Co-operative Federation, Saharanpur was said by the State Government to be kept in security. if the shares were in security the shares remained in specie. , It could not be said that the shares were converted by sale into money. Rule 75 forbids by pothecation of shares as security for any loan. It is therefore not open to the State Government to contend that the shares worth Rs. 50,000 belonging to the District Co-operative Federation, Saharanpur were taken off the share capital of the Federation.

The condition precedent to the exercise of rights of the State Government under section 34 is that the State Government owns 60 per cent or more of the share capital of the Federation. The entire basis of exercise of 'right of the Government was that shares worth Rs. 53,000 owned by the Co-operative banks and shares worth Rs. 50,000 owned by the District Co-operative Federation. Saharanpur were no longer part of the share capital. There is no foundation for the State Government to take up that plea. The shares in both the cases are still part of the share capital. The result is that it could not be said that the State Government was justified to exercise right under section 34 of the Act.

For the foregoing reasons the petition succeeds. The order of the State Government dated 26 June, 1971 is quashed.

The appeal is also allowed and the judgment of the High Court is set aside for the reasons indicated hereinbefore.

Each party will pay and bear its own costs.

S.B.W.

Appeal allowed.

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JUDIS