courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.

Website: www.courtkutchehry.com

Printed For:

Date: 20/10/2025

J.S. Ahlawat Vs Special Secretary to Government of Haryana and Others

None

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 18, 2008

Acts Referred:
Constitution of India, 1950 â€" Article 226, 227

Citation: (2008) 152 PLR 97 : (2008) 4 RCR(Civil) 649

Hon'ble Judges: Satish Kumar Mittal, J; Daya Chaudhary, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.
The petitioner has filed this petition under Articles 226/227 of the Constitution of India for quashing the order

dated 11.4.2008, passed by the Assistant Registrar, Co-operative Societies, Gurgaon, whereby a show cause notice was given and further in

exercise of the power under Sub-section (2) of Section 34 of the Haryana Co-operative Societies Act, 1984 (hereinafter referred to as "the Act"),

the Managing Committee of the Engineers Co-operative Group Housing Society Ltd., Gurgaon (hereinafter referred to as "the Housing Society")

has been placed under suspension, and for smooth running of the society, the Board of Administrator has been appointed u/s 33(1) of the Act, for

six months.

2. In this case, a complaint was received by the Assistant Registrar, Co-operative Societies from certain members of the Housing Society. On the

said complaint, notices were issued to the complainant as well as the Housing Society. In spite of the notice, neither any representative of the

Housing Society came present nor record of the Housing Society was produced. Again, a notice was issued to the petitioner, who is the President

of the Housing Society, to produce the entire record, but on that also, no record was produced before the Assistant Registrar for his inspection. In

light of all these facts, the Assistant Registrar issued notice under Sub-section (1) of Section 34 of the Act to show cause as to why the Managing

Committee of the Housing Society be not removed, as the Managing Committee was persistently making defaults in the performance of duties

imposed on it by the Act. While proceeding to take action under Sub-section (1), the Assistant Registrar also passed the order of suspension of

the Managing Committee, after framing opinion that in the interest of the Society, the Managing Committee is to be suspended. The petitioner, who

is the President of the Managing Committee of the Housing Society, has filed the instant petition.

3. Learned Counsel for the petitioner submits that the Assistant Registrar can suspend the Managing Committee only after giving a show cause

notice and after receiving reply thereof, and hearing the petitioner. Therefore, in the instant case, he has acted without jurisdiction, while straight

way suspending the Managing Committee without waiting for reply to the show cause notice issued under Sub-section (1) of Section 34 of the

Act. In support of his contention, learned Counsel has relied upon decisions of this Court in Shri. S.R. Goyal and Others Vs. Shri Mehtab Singh,

Deputy Registrar, Cooperative Societies and Others, and Bharat Singh Vs. The Deputy Registrar, Cooperative Societies, .

4. After hearing counsel for the petitioner and going through the impugned order, we do not find any force in the contention of learned Counsel for

the petitioner. Section 34 of the Act provides for removal of Committee and this provision reads as under:

34. Removal of Committee.- (1) If in the opinion of the Registrar, a committee persistently makes default or is negligent in the performance of

duties imposed on it by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interest of the society or its members,

the Registrar may after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee, and order

fresh election of the committee or appoint administrators in accordance with the provisions of Section 33.

Provided that the appointment of administrators shall be for a period of one year which may be extended, from time to time, up to three years.

(2) Where the Registrar, while proceeding to take action under Sub-section (1), is of the opinion that suspension of the committee during the

period of proceedings is necessary in the interest of the co-operative society, he may suspend the committee and make such arrangement as he

thinks proper for the management of the affairs of the society till proceedings are completed.

Provided that if the committee so suspended is not removed, it shall be re-instated and the period of suspension shall count towards its tenure.

Provided further that the period of suspension shall not exceed six months.

(3) The administrators appointed under Sub-section (1) shall arrange, for the election of a committee in accordance with the bye-laws of the

society failing which the Registrar shall arrange to hold the election.

(4) Before taking any action under Sub-section (1) in respect of a co-operative society, the Registrar shall consult the financing institution to which

it is indebted.

Section 35 of the Act provides for similar provisions for removal of Committee Members.

5. A reading of the aforesaid provisions shows that the Registrar is empowered to remove the Managing Committee who is guilty of persistent

default or is negligent in the performance of duties imposed on it by the Act or the Rules. Sub-section (2) further empowers the Registrar to

suspend the Committee, while proceeding to take action under Sub-section (1), during the period of those proceedings, if in his opinion it is

necessary to do so in the interest of the co-operative society and he may make such arrangement as he thinks proper for the management of the

affairs of the society till the proceedings are completed. The provision to this sub-section further provides that if the committee so suspended is not

removed, it shall be reinstated and the period of suspension shall count towards its tenure. The second provision further provides that the period of

suspension shall not exceed six months. From the reading of the aforesaid provisions, it cannot be inferred that it is imperative for the Registrar to

issue show cause notice and provide an opportunity of hearing, before passing order of suspension under Sub-section (2) of Section 34 of the Act.

A show cause notice and opportunity of hearing is required only before passing order of removal of the committee. Sub-section (2) clearly

empowers the Registrar to suspend the committee, while proceeding to take action under subsection (1), if he is of the opinion that, during the

period of proceedings, it is necessary in the interest of the co-operative society.

6. The aforesaid decisions of this Court, relied upon by learned Counsel for the petitioner, do not support the case of the petitioner. In S.R.

Goyal''s case (supra), it was held as under:

A plain reading of Sub-section (2) of Section 34 of the Act makes it clear that powers u/s 34(2) to suspend the Managing Committee of the

Society can be exercised by the Registrar only during the pendency of the proceedings under Sub-section (1) of Section 34. Registrar can suspend

the Committee during the period of proceedings only if he. forms an opinion that it is necessary so to do in the interest of the Co-operative Society.

Pendency of proceedings under Sub-section (1) of Section Ã¯Â¿Â½ 34, is a condition precedent for invoking the powers to suspend the committee, if

no proceedings are pending for removal of the committee u/s 34(1) then orders suspending the committee cannot be passed because the order of

suspension can be operative only during the period of proceedings. In the absence of pendency of any proceedings, the question of suspension of

the committee thus cannot arise. It is an admitted case before us that no proceedings u/s 34(1) of the Act for removal of the committee have either

been initiated or pending.'''' This judgment is not applicable to the facts and circumstances of this case, because in the instant case, undisputedly, the

proceedings for removal have been initiated under Sub-section (1) of Section 34 of the Act and when the order of suspension was passed in

exercise of power under Sub-section (2), the proceedings were pending.

7. Similarly, in Bharat Singh''s case (supra), this Court held as under:

4. A conjoint reading of the above quoted provisions of the Act shows that the Registrar is empowered to remove any member of the Committee

who is guilty of persistent default or is negligent in the performance of duties imposed on him by Act or the rules or bye-laws or is guilty of

committing any act prejudicial to the interest of the society or its members. However, what is imperative for the Registrar before he passes an

order u/s 35(1) of the Act is that he must give such member an opportunity to submit his objection to the proposed action and then to pass a

reasoned order for removing such member from the office. The language used in Section 35(1) clearly shows that the Legislature has thought it

proper to engraft the basic principles of natural justice in the statute itself. It can, thus, be said that before the Registrar passes an order, he is

required to give Show Cause Notice to the member concerned, consider his representation and then pass appropriate order. Issuance of Show

Cause Notice u/s 35(1) can appropriately be equated with initiation of enquiry. Logically it has to be held that till a Show Cause Notice is issued

with the proposal to take action against the erring member u/s 35(1), the proceedings cannot be treated as having been initiated.

5. Section 35(2) of the Act empowers the Registrar to suspend such member during the period of proceedings, if the Registrar considers it

necessary to do so in the interest of the co-operative society. The expression ""during the period of proceedings'' contemplates the pendency of

proceedings as a condition-precedent for taking action u/s 35(2) and if the proceedings have not been initiated u/s 35(1), the same can not be

treated as pending. In that situation, the Registrar is not empowered to place a member under suspension.

6. A look at the impugned order shows that the Registrar has suspended the petitioner even without issuing a notice u/s 35(1). Therefore, it has to

be held that the Registrar has exercised the power of suspending the petitioner in contravention of the provisions of Section 35(2) of the Act.

8. This judgment is also not applicable to the facts and circumstances of this case, because in that case, it was held the pendency of proceedings

for removal is a condition precedent for taking action u/s 35(2) of the Act and if proceedings have not been initiated u/s 35(1), the same cannot be

treated as pending.

9. In the instant case, since the proceedings for removal of the managing Committee were initiated u/s 34(1) of the Act, therefore, the Registrar

was within his power to suspend the Managing Committee in the interest of the society

10. In view of the above, there is no merit in the instant writ petition and the same is, hereby dismissed.