

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 11.12.2023

Pronounced on: 22.12.2023

OWP No.1804/2018

JAVAID AHMAD CHAPOO

...Petitioner(s)

Through: - MS. Mehreen Altaf, Advocate.

Vs.

STATE OF J&K AND OTHERS

...Respondent(s)

Through: - Mr. Faheem Nisar Shah, GA.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) The petitioner has challenged order No.DCP/Legal/18/297-98 dated 25th May, 2018, passed by respondent No.2, to the extent it directs Registrar, Cooperative Societies/respondent No.5 herein, to initiate process for dissolution of Valley Kissan Agriculture & Horticulture Cooperative Marketing and Supply Limited, Shopian. Challenge has also been thrown to order dated 01.08.2018 issued by respondent No.4, whereby fertilizer license issued in favour of the aforesaid Self Reliant Cooperative Society has been cancelled. The petitioner has further sought a direction upon the respondents to issue the fertilizer license in favour of the Self-Reliant Cooperative Society through its Chairman, the petitioner herein.

2) The facts emerging from the pleadings of the parties are that Valley Kissan Agriculture & Horticulture Cooperative Marketing and Supply Limited (hereinafter referred to as “the Society”) through one Shri Talha Yousuf, claiming himself to be the Chairman of the Society, filed a writ petition bearing OWP No.1086/2013 before this Court in which the petitioner herein was impleaded as respondent No.5. The subject matter in the said writ petition was pertaining to management and conduct of business of the Society as both the petitioner herein as also Shri Talha Yousuf, the petitioner in OWP No.1086/2013, claimed themselves to be the duly elected members of the Board of Directors of the Society. The writ petition, with the consent of the parties, was disposed of in terms of order dated 07.05.2015 and the Deputy Commissioner, Shopian, was directed to resolve the dispute that had arisen between the petitioner herein and Shri Talha Yousuf in respect of membership and conduct of elections. The operative portion of the aforesaid order is reproduced as under:

“The Deputy Commissioner, Shopian, is directed to consider and take decision on the claim of the petitioner and respondent No.5 in respect of Membership and conducting of Elections of Valley Kissan Agriculture & Horticulture Cooperative Marketing and Supply

Limited, Shopian (Central Level Co-operative).

Provisional Fertilizer license for wholesale of Fertilizers issued in pursuance of Court order dated 08th August, 2013 passed in this petition shall remain in force till the Deputy Commissioner, Shopian, returns its finding. The licensing authority shall thereafter issue Fertilizer license in accordance with Fertilizer Control Order, 1985 to the eligible authority/person.

The Deputy Commissioner, Shopian to take decision and return its finding within six weeks from the date copy of this order is served."

3) It seems that the Deputy Commissioner, Shopian, could not resolve the dispute between the parties within the time stipulated by order dated 07.05.2015 which prompted Shri Talha Yousuf to file another writ petition bearing OWP No.1271/2017 before this Court. The said writ petition was decided by this Court in terms of order dated 30.08.2017. The operative portion thereof is reproduced as under:

"It is true that the Deputy Commissioner, Shopian, has not resolved the controversy raised by the parties to the petition within the period provided by the Court. He has failed to comply the order cited above despite repeated reminders leaving the parties at lurch. The annexures particularly the ones, marked as Annexure 'A1' and Annexure 'A2' attached to the petition of the petitioner are a sequel to the fact that the Deputy Commissioner, Shopian, has forwarded the matter to the Addl. Deputy Commissioner, Shopian, who in turn passed some orders in it and directed the parties to appear before him so that they are heard in the matter. This

infraction is against the canons of the law as it does not keep pace with the directions extended by the Court by which he (the Deputy Commissioner) had to conduct the matter himself. The Court had not ordered him to transfer the matter to any other officer and in doing so he has circumvented the process of law. Therefore, the contention of the petitioner that the mode and manner in which the Deputy Commissioner, Shopian, conducted himself is uncalled for has all the force in it. It reflects a sad and sordid state of affairs and the contention of the petitioner on that count, appears to be a genuine and reasonable. However, the reliefs sought by the petitioner cannot be granted to him on the face of the order of this court passed in the earlier petition that directed consideration of the matter by the Deputy Commissioner himself within a particular time frame. Although the Consideration order has not seen the light of the day so far, yet the same has to be passed efficaciously. Therefore, instead of the Deputy Commissioner, Shopian, the Deputy Commissioner, Pulwama, is directed to consider the matter and take a decision on the claim of the petitioner and the respondent No. 6 in respect of the membership and conducting of Elections of Valley Kissan Agriculture and Horticulture Co-operative Marketing and Supply Limited Shopian (Central Level Co-operative) on the same terms and conditions as stipulated in the order dated 07.05.2015 of this Court. The officer shall decide the matter and return his findings within a period of eight weeks from the date a copy of the order is served upon him. The entire proceedings of the matter shall with utmost dispatch be transferred to the Deputy Commissioner, Pulwama, by the Deputy Commissioner, Shopian."

4) From a reading of the afore-quoted directions of this Court, it is clear that instead of Deputy Commissioner, Shopian, Deputy Commissioner, Pulwama, was directed

to consider the matter and take a decision on the claim of the petitioner herein and Shri Talha Yousuf in respect of membership and conduct of elections of the Society on the same terms and conditions as stipulated in order dated 07.05.2015 passed in OWP No.1086/2013.

5) However, even the aforesaid order dated 30.08.2017 was not implemented by the Deputy Commissioner, Pulwama, within the stipulated time, which resulted in filing of another writ petition bearing OWP No.600/2018. The aforesaid writ petition was disposed of in terms of order dated 16th April, 2018, whereby Deputy Commissioner, Pulwama, respondent No.2 herein, was directed to comply with order dated 30.08.2017 passed in OWP No.1271/2018 within a further period of two weeks.

6) In the backdrop of aforesaid Court orders, respondent No.2-Deputy Commissioner, Pulwama, ultimately passed impugned order dated 25th May, 2018, after hearing the parties and after summoning the relevant record from the concerned authorities. Vide the impugned order, respondent No.2 has concluded that in the absence of authentic records of the Membership and Elections, credibility of the Society is dubious and, in these circumstances, it would be expedient to initiate the

process of dissolution of the Society by the Registrar Cooperatives in terms of Sections 52 and 53 of the J&K Self-Reliant Cooperative Act, 1999(hereinafter referred to as “the Act”). A further recommendation has been made that fertilizer license issued in favour of the Society is not valid and the Registrar Cooperatives J&K and Director, Agriculture, Kashmir, have been directed to take note of the same and make necessary cancellations/corrections in this regard. It seems that pursuant to the aforesaid order of the Deputy Commissioner, Pulwama, respondent No.4 has cancelled the fertilizer license issued in favour of the Society.

7) The petitioner has challenged the aforesaid actions of the respondents on the grounds that though respondent No.2 in its impugned order has clearly observed that election of the petitioner as Chairman in the year 2011 is valid and election of Shri Talha Yousuf as Chairman in the year 2012 is invalid, yet in spite of this, recommendation for dissolution of the Society has been made which is untenable. It has been further contended that the observation of respondent No.2 that the Society is dubious and that the same is required to be dissolved, was beyond the jurisdiction and

competence of the said respondent because in terms of the orders of this Court, respondent No.2 was not authorized to go into this aspect of the matter. It has also been contended that respondent No.2 could not have made a recommendation for cancellation of fertilizer license granted in favour of the Society and, as such, action of the said respondent is illegal and arbitrary.

8) Respondent No.5, Registrar Cooperative Societies, J&K, has filed his reply, in which it has been submitted that Valley Kissan Agriculture & Horticulture Cooperative Marketing and Supply Limited, Shopian, was registered as a secondary level self-reliant cooperative under Jammu and Kashmir Self Reliant Cooperative Act, 1999, vide No.RCS/J&K/1468 dated 26.11.2007 having primary cooperatives, namely, Sheen Primary Marketing Ltd. Shopian and the Valley Kissan Agriculture and Horticulture Cooperative, Shopian, as its members. It has been submitted that the power to control the functioning of Self-Reliant cooperative is with its Board of Directors and not with the Registrar and that a self-reliant cooperative has only to submit annual returns to the Registrar and in the instant case, these annual returns were not submitted by the Society. It has been submitted that in the instant case, the Society has not observed the

procedures regarding election and membership and has not maintained the requisite documents and books in a proper manner.

9) It is also alleged that the Board/Management of the Society has misled the Cooperative Department by not producing consistent records. It has been submitted that Deputy Registrar of the Cooperatives, Shopian, had received a letter in the year 2011 from the petitioner requesting therein to make available services of an expert for conducting elections to the Board and, accordingly, services of an official were made available for the said purpose. It has been submitted that the election of the petitioner in the year 2011 has been fraudulently held and this was communicated to the Department by one Mohammad Yousuf Zargar and his son Talha Yousuf Zargar. According to the reply filed by the Registrar, both the elections i.e. Election of 2011 and election of 2012 are nullity in the eyes of law and suffering from legal infirmities. It has been contended that respondent No.5-Registrar has power to dissolve a Cooperative Society in terms of Section 52 of the Act and in the instant case, since the Society has not adhered to the procedures established under law, it warrants dissolution.

10) Respondent No.4-Joint Director Agriculture Extension, Kashmir, has also filed his reply to the writ petition wherein it has been submitted that as per the records, initially an *ad hoc* Board of Directors for running the affairs of the Cooperative was constituted and the petitioner herein was elected as its Chairman whereas Shri Mohammad Yousuf Zargar was elected as its Secretary and, accordingly, a wholesale fertilizer license dated 13.01.2010 was issued by the Joint Director, Agriculture Extension, Kashmir in favour of the Society with its validity upto 31.12.2012. It has been submitted that as per communication dated 02.06.2012, the Deputy Registrar Cooperative, Shopian, authenticated the holding of election of the Society with Mr. Talha Yousuf Zargar having been elected as its new Chairman. Both petitioner and Talha Yousuf Zargar filed writ petitions before the Court seeking directions for renewal of the certificate of registration in their favour and they also applied for renewal of fertilizer license separately. It has been submitted that vide order 03.04.2013 passed in OWP No.376/2013, a direction was issued to the accord consideration to the claim of the petitioner regarding renewal of license and, accordingly, vide order No.144/Dev of 2013 dated 08.05.2013 issued by

respondent No.3, the fertilizer license was cancelled and the Society was directed to obtain a fresh wholesale fertilizer license in its favour.

11) Pursuant to direction dated 20.05.2013 passed in OWP No.613/2013, respondent No.4 processed the case for fresh wholesale fertilizer license in favour of the Society. Ultimately, respondent No.4 issued license bearing registration No.186 of 2013 dated 29.08.2013 in favour of the petitioner for a period of six months upto 28.02.2014 but in the meantime order dated 07.05.2015 came to be passed by this Court in OWP No.1086/2013 whereby it was directed that fertilizer license issued shall remain in force till the Deputy Commissioner returns his finding and thereafter the Licensing Authority shall issue the fertilizer license in accordance with Fertilizer Control Order 1985 to the eligible authority/person. It has been further contended that the Deputy Commissioner, Pulwama, has now decided the matter and returned its findings, according to which the fertilizer license was issued in favour of the petitioner on the basis of fake and forged documents and respondent No.4 herein was directed to take note of the same. This has prompted respondent No.4 to issue impugned order dated

01.08.2018, whereby fertilizer license issued in favour of the Society has been cancelled.

12) I have heard learned counsel for the parties and perused record of the case.

13) The grievance of the petitioner is that his election as Chairman of the Society that was held in the year 2011 has been found to be valid by the Deputy Commissioner while holding enquiry pursuant to the orders of this Court but in spite of this, the Deputy Commissioner has recommended dissolution of the Society and cancellation of fertilizer license granted in favour of the petitioner. Another contention raised by the petitioner is that respondent No.2-Deputy Commissioner, Pulwama, was not having the mandate and authority to go into the issue relating to authenticity of the Society and to recommend its dissolution and cancellation of fertilizer license.

14) In order to test the merits of the submissions made by learned counsel for the petitioner, it would be apt to refer to the orders dated 07.0.2015 and 30.08.2017 passed by this Court in two writ petitions filed by Talha Yousuf in which the petitioner was also a party. In order dated 07.05.2015, it has been noted by this Court that the

dispute between the parties is with respect to the management and conduct of business of the Society and both the parties claimed to be duly elected members of the Board of Directors. It has also been noted in the said order that the dispute relating to membership and conduct of elections is required to be resolved by the Deputy Commissioner, Shopian. Vide order dated 30.08.2017 passed in OWP No.1271/2017, instead of Deputy Commissioner, Shopian, Deputy Commissioner, Pulwama–respondent No.2 herein was directed to consider the matter on the same terms as stipulated in order dated 07.0.2015. Thus, it is clear that the mandate of respondent No.2-Deputy Commissioner, Pulwama, was to go into the aspects relating to membership and election of the Society. It was also within the jurisdiction of Deputy Commissioner, Pulwama, to go into the question as to whose claim amongst the petitioner and Shri Talha Yousuf as regards membership of the Board of Directors of the Society is tenable.

15) The Deputy Commissioner, Pulwama, vide the impugned order has considered each and every aspect of the matter in detail in the light of the provisions contained in the Act. A perusal of the impugned order shows that the parties have been given ample

opportunities to produce their pleadings and documents including the rejoinder and after considering the same, respondent No.2 has also taken into account the record summoned by him from the Cooperative Department. After threadbare discussion of the contentions raised by the petitioner and Shri Talha Yousuf and the record procured from the Cooperative Department, respondent No.2 has concluded that both the elections i.e. elections held in the year 2011 and the elections held in the year 2012 are nullity in the eyes of law. It has been noted by respondent No.2 in his order that even though there is evidence to show that the elections were held on 18.07.2011 by the Returning Officer Fayaz Ahmad appointed by the Deputy Registrar Cooperative, Shopian but the election of 2012 was an outcome of fraud. Respondent No.2 has noted in his order that Registrar Cooperatives had ordered an enquiry into the matter regarding elections stated to have been held in the years 2011 and 2012 and it was reported that the elections of 2012 were duly held and a Managing Committee was constituted with Shri Talha Yousuf as its Chairman.

16) Thus, the Deputy Commissioner has noted clear contradictions in the stands taken by the Deputy Registrar Cooperatives, inasmuch as at one time it has

been stated that the elections of the year 2012 were fraud and that the elections of 2011 had taken place in which representative of the Cooperative Department was present but prior to that the Deputy Registrar Cooperatives, upon an enquiry, had concluded that the elections of 2012 were duly held and Shri Talha Yusuf was elected as Chairman. In the face of this contradiction which has come forth before respondent No.2 during the scrutiny of records of Registrar Cooperatives, he was absolutely justified in concluding that both the elections are outcome of fraud.

17) Apart from the above, respondent No.2 has in the impugned order noted that after the incorporation of the Society in the year 2008, the events have been manipulated and the provisions of the Act and the Articles of Association of the Society have not been adhered to, particularly those relating to regulation of membership and election of the Society. Respondent No.2, on the basis of the record available before him, has noted that even if it is assumed that the elections were held on 18.07.2011, the term of elected Board was to expire on 18.07.2014 and in terms of Section 34(3) of the Act, the Directors on the Board ceased to be the Directors when the election became due. This observation of

respondent No.2 is absolutely in accordance with law because Section 34 of the Act provides that in case elections are not conducted after the expiry of the term of Directors or Representatives, an *ad hoc* Board has to be appointed for the specific purpose of conducting elections and the term of such Board cannot exceed three months.

18) In the instant case, no elections have been conducted in accordance with the provisions contained in section 34 of the Act and the Articles of Association of the Society, which has resulted in grave violation of the provisions of the Act and the Articles of Association. In terms of Section 52 of the Act, the Registrar of the Cooperatives has power to dissolve a cooperative society and in terms of Section 53 of the Act, the Registrar can apply to the Court for dissolution of the Cooperative Society if the Society has not adhered to the provisions of the Act. It is in these circumstances that respondent No.2, having regard to the conclusions arrived at by him, recommended dissolution of the Cooperative Society in terms of Section 52 and 53 of the Act.

19) The contention of the petitioner that respondent No.2, while passing the impugned order, has travelled beyond his jurisdiction, is without any merit because,

while making the impugned order, respondent No.2 has only gone into the issue of membership of the petitioner and Talha Yusuf as also into the issue relating to conduct of elections. On both counts respondent No.2 has, on the basis of cogent material, come to the conclusion that membership of the petitioner and Talha Yousuf as the Board of Directors of the Society is doubtful. Respondent No.2 has also found that the elections of 2011 and 2012 are fraudulent and that no elections of the Society have been conducted for the last so many years as no records in this regard were found. These findings have not been challenged by the petitioner in this writ petition or in any other proceedings. Therefore, the Deputy Commissioner, on the basis of these findings, was well within his jurisdiction to make a recommendation to the Registrar to take further steps in accordance with law.

20) That takes us to the aspect relating to cancellation of Fertilizer license. The petitioner claims to be entitled to renewal of fertilizer license in his favour for the reason that his election as Chairman in the year 2011 has been found to be valid. As already noticed, respondent No.2 has, in the impugned order, clearly stated that the election of the petitioner as Chairman in the year 2011 is

doubtful and, in fact, election of the year 2011 is also fraudulent. This finding of respondent No.2 has not been called into question by the petitioner in this writ petition and even otherwise also, there is no perversity in the said finding so as to warrant interference from this Court in writ jurisdiction. Therefore, this finding would operate against the petitioner. Thus, he cannot claim any right for renewal of fertilizer license in his favour for the reason that his election as Chairman of the Society has been found to be dubious by respondent No.2. For this reason alone, the action of respondent No.4 in cancelling the fertilizer license granted in favour of the Society cannot be interfered with.

21) For the foregoing reasons, I do not find any merit in the writ petition. The same is dismissed accordingly. Interim direction, if any, shall stand vacated.

(Sanjay Dhar)
Judge

Srinagar
22.12.2023
“Bhat Altaf, PS”

Whether the order is reportable: **Yes**