

(1996) 01 AHC CK 0019
In the Allahabad High Court
Case No : C.M.W.P. No. 32784 of 1995

Abhai Kumar

APPELLANT

Vs

Co-operative Tribunal and Others

RESPONDENT

Date of Decision : 18-01-1996

Acts Referred:

Representation of the People Act, 1950 — Section 23(3)

Representation of the People Act, 1951 — Section 100

Uttar Pradesh Co-operative Societies Act, 1965 — Section 3(1), 70, 70(1), 70(2)

Citation : (1996) 2 UPLBEC 1225

Hon'ble Judges : D.K. Seth, J

Bench : Single Bench

Advocate : A. Kumar, for the Appellant;

Judgement

D.K. Seth, J.—The nomination of Respondent No. 2, a delegate, was cancelled by the Election Officer while holding the election of the Committee of Management of the Apex Body, namely, U.P. Co-operative Federation Limited (hereinafter referred to as "PCF"). Upon such cancellation of the nomination of Respondent No. 2, the Petitioner, another delegate, was elected as member of the PCF. The Respondent No. 2 raised a dispute u/s 70 of the U.P. Cooperative Societies Act (hereinafter referred to as "the Act"), challenging the said election on the ground of rejection of his nomination. The Additional Registrar (Law), being the Arbitrator, by an order dated 19th August, 1995 (Annexure 4), allowed the said petition and held that cancellation of the nomination was bad and, therefore, he set aside the election of the Petitioner. Against the said award, the Petitioner preferred an appeal before the Tribunal. The Tribunal, by order dated 3rd November, 1995 (Annexures "10" and "11"), dismissed the appeal. It is against this order the present writ petition has been filed. The Tribunal consisted of three members. One of them passed order in favour of the Petitioner while the two others had held against him.

2. Mr. A. Kumar first assailed the order of the Arbitrator on the ground that it was

passed ex parte. Mr. K.N. Tripathi appearing for the Respondent drew my attention to internal page 7 of the Order dated 3rd November, 1995 passed by majority and pointed out that the said dispute case was adjourned on several dates and no written statement was filed and the last application for adjournment was rejected on 24th July, 1995 for seeking adjournment of hearing fixed on 3rd August, 1995. Since the Petitioner did not appear on 3rd August, 1995, therefore, the matter was heard ex parte. In view of the facts stated in the relevant paragraph at page 7 of the said order (Annexure 10), the contention of Mr. Kumar ventilating the grievance of the Petitioner about the ex parte hearing cannot be accepted. However, Mr. Kumar has very fairly conceded that he would not be disputing the facts since this matter involves pure questions of law.

3. It is contended by Mr. Kumar that the nomination of Respondent No. 2 was rejected by the Election Officer on the basis of a report whereupon it was pointed out that there was no election of Respondent No. 2 as delegate as disclosed by him inasmuch as according to the report, no election had taken place on the said date. According to Mr. Kumar, the Respondent No. 2, by reason of the bye-laws is not eligible to become a member of the Apex Body and, therefore, cannot claim himself to be a delegate. He further contends that the eligibility of Respondent No. 2 could be challenged only by means of an election dispute only after the result of the election is declared. He further contends that even if it is held that the Election Officer could not have rejected the nomination, even then, the validity of nomination of Respondent No. 2 could be gone into by the Arbitrator. He further contends that Jurisdiction relating to election dispute contemplated under Rule 444C of the U.P. Co-operative Societies Rules, 1968 is wider than Section 100 of the Representation of Peoples Act, 1951. Inasmuch as the electoral roll is prepared under the Representation of Peoples Act, 1950, while the election process is conducted under the Representation of Peoples Act, 1951 whereby the preparation of electoral roll and the election has been divided in two separate compartments whereas the election under the present Act and the Rules are processed under the provisions of one and the same Act and the Rules. Therefore, according to him, by reason of Sub-clause (iii) of Clause (b) of Sub-rule (1) of Rule 444C, the question relating to the inclusion of the name of Respondent No. 2 as delegate in the electoral roll/college can also be looked into and decided. According to him, the majority judgment holding that the inclusion of the name of Respondent No. 2 in the electoral college on the basis of his election as delegate is final and cannot be gone into is perverse. He relies on the provisions of Rule 441(3) and points out that even in the case of election of members of the Apex Body, a provisional voters' list is to be displayed and objections are to be invited and disposed of and thereafter final voters' list is to be displayed. According to him, the scope of inviting objections and disposal would become meaningless if no question with regard thereto could be raised. Thus he contends that the majority judgment is liable to be set aside. He alternatively argues that assuming but not admitting, even if the election is held to be invalid and fresh election is ordered, in that event, the whole process of

fresh election is to be undergone. It cannot proceed on the basis of the nomination already filed precluding all other persons if they so liked from contesting such an election. He draws my attention to the notice of election published subsequent to the writ petition and translates the relevant portion and contends that fresh election has been sought to be proceeded with from the stage of scrutiny of nomination. According to him, in such event, after lapse of a long time, there might be change in the electoral college which ought to have been taken into account and, therefore, the whole election process should be undergone.

4. Mr. K.N. Tripathi appearing with Mr. Krishna Murari, on the other hand, contends that since the election was set aside only on the ground that the nomination of Respondent No. 2 was rejected wrongly, therefore, the election that is to be held is the election which had been held without the Respondent No. 2. Therefore, fresh election is proceeding rightly at the stage of scrutiny of nomination. It cannot go beyond that. Secondly, he contends that there are three-tier system of election under the Act and each tier of election is independent and has to be questioned at every stage. The election in the lower tier cannot be questioned when questioning the election of a higher tier. According to his next contention, the Petitioner cannot have any locus standi to challenge the election of Respondent No. 2 as delegate of a particular Society with which the Petitioner has no connection. In the present case, no one from the Society of which the Respondent No. 2 is a delegate having challenged the election of delegate of Respondent No. 2, it is not open to be challenged by any one else who has no connection with the said Society.

5. Both Mr. Kumar and Mr. Tripathi had taken me through various provisions of the Act and the Rules in support of their respective contentions and had relied on a few decisions to which I shall refer shortly hereafter.

6. Rule 2(11) defines "Election" which runs as follows:

(11) "Election" means election of--

(i) delegates, or

(ii) members of the Committee of Management, or (iii) Chairman, Vice-Chairman of a co-operative society.

7. Mr. Tripathi relying on this definition contends that there are three kinds of election which are independent and complete and each has to be challenged at each stage. One cannot be challenged in a dispute arising out of the other.

8. He then refers to the definition of "delegate" as provided in Clause (ii) of Rule 2, namely, "delegate" means delegate of members or delegate of Society, as the case may be." Therefore, according to Mr. Tripathi, the election of delegate cannot be questioned in a dispute with regard to the election of members of the Committee of Management. Rule 2 (pp) defines "Voters List" in the following manner:

(pp) "Voters List" means--

(i) in the case of election of member of Committee of Management the list of delegates/members of general body, as the case may be;

(ii) in the case of election of Chairman, Vice-Chairman or Delegates of Society the list of elected, co-opted and nominated members of the Committee of Management other than those who are government servants;

(iii) in the case of election of Delegate of Member, the list of members of area or from where the delegate is to be elected to the general body of the concerned society.

9. According to Mr. Tripathi, if delegate is to be elected, in that event, it is the list of the members which is to be finalised and when it is the question of election of member of the Committee of Management of the Apex Federation it is the list of delegates. If a delegate is elected, the same can be challenged by the members of the concerned Society and not by others and, therefore, a delegate elected is to be Included in the list of delegates while holding election of members of Committee of Management. The election of delegates, therefore, cannot be subject-matter to be questioned by a person other than the members of the said Society.

10. In my view, though in principle the provisions of the Representation of Peoples Act, 1950 and Representation of Peoples Act, 1951 can be distinguished with those of the present Act, but the fact remains that the question of election of delegate cannot be subjected to scrutiny in the Voters List by any other person unless it is shown that someone else is claiming as delegate of the Society or person claiming to be the delegate Is not at all a delegate elected by the Society. Such question can be gone into only for the purpose of finding out that a rank outsider is not allowed to be included in Voters List as a delegate. But such decision cannot decide the question of validity of election of delegate as the main issue or acting as Election Tribunal for deciding the validity of election of delegate. While considering the question of nomination, the Election Officer cannot usurp the power of the Arbitrator which can be decided u/s 70 of the Act only when the conditions laid down in the said Act are fulfilled, namely, between the concerned parties. By no stretch of imagination, a person who is not a member with the concerned Society can be a party within the meaning of Section 70 to a dispute thereunder and such question cannot be decided by the Election Officer. Inasmuch as such a question would result into usurping the authority of the Arbitrator u/s 70 by the Election Officer though the parties had not come within the purview of the said section.

11. Section 70 of the said Act provides as follows:

70. Disputes which may be referred to arbitration.--

(1) Notwithstanding anything contained in any law for the time being in force, if any dispute relating to the constitution, management or the business of a

cooperative society other than a dispute regarding disciplinary action taken against a paid servant of a society arises--

(a) among members, past members and person claiming through members, past members and deceased members; or

(b) between a member, past member or any person claiming through a member, past member or deceased member, and the society, its committee of management or any officer, agent or employee of the society, including any past officer, agent or employee; or

(c) between the society or its committee and any past committee, any officer, agent or employee or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent, or deceased employee of the society; or

(d) between a co-operative society and any other co-operative society or societies;

such dispute shall be referred to the Registrar for action in accordance with the provisions of this Act and the rules and no court shall have jurisdiction to entertain any suit or other proceeding in respect of any such dispute:

Provided that a dispute relating to an election under the provisions of this Act or rules made thereunder shall not be referred to the Registrar until after the declaration of the result of such election.

(2) For the purposes of Sub-section (1), the following shall be deemed to be included in dispute relating to the constitution, management or the business of a co-operative society, namely--

(a) claims for amounts due when a demand for payment is made and is either refused or not complied with whether such claims are admitted or not by the opposite party;

(b) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor of whether such debt or demand is admitted or not;

(c) a claim by a society for any loss caused to it by a member, officer, agent, or employee including past or deceased member, officer, agent, or employee, whether individually or collectively and whether such loss be admitted or not; and

(d) all matters relating to the objects of the society mentioned in the bye-laws as also those relating to the election of office-bearers.

(3) If any question arises whether a dispute referred to the Registrar under this section is a dispute relating to the constitution, management or the business of a co-operative society, the decision thereon of the Registrar shall be final and shall not be called in question in any court.

12. The said section lays down that dispute between the persons enumerated in Clauses (a) to (d) of Sub-section (1) are only comprehended. Unless the parties do come within the ambit of the persons mentioned in Clauses (a) to (d) of Sub-section (1), such a dispute cannot be raised. Here the Petitioner does not come within the purview of those persons so as to dispute the election of the Respondent No. 2 as delegate.

13. The election of the Respondent No. 2 as delegate being a distinctly separate election from the election of the members of the managing committee of the Apex Body, therefore, there are two different disputes which cannot be comprehended or combined together into one.

14. Then again Rule 229 in Chapter XVIII of the U.P. Co-operative Societies Rules, 1968 which deals with the mode of reference of disputes in Sub-rule (2) provides that:

(2) Where the dispute relates to the constitution of the Committee of Management or election or appointment of any office-bearer or a delegate of a co-operative society, reference shall--

(a) in the case of an apex co-operative society, be made to the Registrar appointed under Sub-section (1) of Section 3;

(b) in the case of a co-operative society other than an apex society, be made to the District Magistrate of the district to which the society belongs.

15. Rule 230(e) of the said Rules provides that:

230. On receipt of a reference under Rule 229--

(a)....

(b)....

(c)....

(d)....

(e) the District Magistrate may decide the dispute himself or appoint any one of the Sub-Divisional Magistrate under him to act as arbitrator or as President of board of arbitrators, as the case may be.

16. Therefore, the authorities to decide the respective dispute are distinct and separate. These provisions clearly express the Intention of the Legislature that each election as defined in Rule 2 (lee) Is distinct and separate and is to be challenged at its own stage in the manner prescribed, viz., the validity of election of Respondent No. 2 as delegate is to be referred and decided by the District Magistrate who may delegate the reference to Sub-Divisional Officer in terms of Rule 229(2) read with Rule 230(e) of the said Rules.

17. Therefore, in my view, the Petitioner is not entitled to challenge the election

of Respondent No. 2 as delegate of the concerned society in view of Section 70, Sub-section (1), Clauses (a) to (d) of the said Act. Then again the said question can also not be gone into in the present dispute u/s 70 relating to the election of the Managing Committee. Inasmuch as in that event, it will open up two distinct and separate elections into challenge in one proceeding when they are to be decided by separate authorities as provided in Rule 229(2) read with Rule 230(e) of the said Rules. Furthermore, the persons who would have been party to a dispute in the election of a delegate have not espoused the said cause and are not parties hereto. Therefore, I am of the opinion that the view taken in the majority judgment of the Tribunal that the inclusion of the name of the Respondent No. 2 in the list of delegates cannot be challenged in the present dispute is correct. Therefore, I am unable to find any fault with the conclusion arrived at in the majority judgment.

18. Therefore, the election has been rightly cancelled and fresh election has been rightly directed to be held. But the fact remains that in the meantime, a long time has passed and fresh election is to be held on the basis of the list of delegates in which some changes might have occurred which fact cannot be anticipated or presumed. That ought to have happened. Inasmuch as in the meantime, there might be certain changes in the list of delegates which requires ascertainment, namely, there might be cases of replacement of some delegates, retirement or death of some delegates or many other such situations might arise the candidates themselves may become disqualified or the like. The fresh election is to be held on the basis of the voters's list prevailing on the date of fresh election. Over and above, when election is held afresh, any other person may contest the same. Such right of other persons cannot be taken away. Had it been a case that the result of the election is altered, then the question would have been otherwise. Even then, the election held afresh is an election held on the date, it cannot relate back to the date of the election since cancelled.

19. If such a situation is conceived, in that event, it is necessary to go through the entire process for preparation of the voters list as contemplated in Rule 441(3). That apart, as soon an election is cancelled on any of the grounds and a fresh election is directed to be held, the provisions relating to holding of election right from Rule 439 to Rule 444C would be attracted. An election which is to be held is to be held according to the Rules for holding such election. Rule 453 read with Rules 86 and 87 provides condition for eligibility to continue as member of the Committee of Management. Therefore, a delegate may not remain eligible to be a member of a society so as to continue as delegate. His membership may be ceased on account of any disqualification. Therefore, the list is to be prepared afresh. The Act or the Rules nowhere provide for holding a truncated process of election. Election is the manifestation of democratic process. If truncated procedure is adopted democracy would be the first sufferer. Therefore, I am unable to persuade myself to accept such a situation.

20. Therefore, in my view, the direction in the majority judgment for initiating

the election process only at the stage of scrutiny is unwarranted. The part of the direction in the majority judgment is, therefore, modified to this extent that the election process should be initiated in accordance with Rule 441 right from the displaying of the provisional Voters List.

21. The contention of Mr. A. Kumar that the Society of Respondent No. 2 could not be a member of the Apex Society is not founded on any material produced before the Arbitrator and, therefore, cannot be accepted. The decisions cited by Ramji Prasad Singh Vs. Ram Bilas Jha and Others, , is distinguishable in the facts of the present case where on appreciation of evidence, it was found that electoral roll was amended after the expiry of the last date for filing nominations and hence the Inclusion of new names was in breach of the mandate contained in Section 23(3) of the Representation of Peoples Act, 1950. Therefore, the entries in the electoral roll cannot be said to be conclusive as was held in the context of the right to vote and it was not concerned with the question of nomination. Even then, here it is not a case of entries in the Voters List. It is a case of election of delegate which in effect is being sought to be challenged. It is not a simple entry of the name of voter. In the present case, it is only a person who is elected delegate is included in the list. Therefore, the decision goes to the root of his election as delegate. Therefore, this case stands in the facts and circumstances disclosed altogether on a different footing on which the ratio decided in the case of Ramji Prasad Singh (supra) cannot be attracted, particularly when such a question can only be raised except by the parties as mentioned in Sub-section (1), Clauses (a) to (d) of Section 70, within which the position does not fit in.

22. The decision in the case of The District Co-operative Bank Ltd. and Another Vs. Deputy Registrar, Co-operative Societies and Others, , cited by Mr. A. Kumar does not help him in the present dispute. The said decision holds that a delegate, if is disqualified under Rule 87 read with Rule 86, in that event, he has no right to continue. But in the present case, no such case has been made out by the Petitioner before the Arbitrator. The said decision may help Mr. Kumar in the contention that the election is to be started right from the very beginning. Inasmuch as the election is to be held on the basis of list of delegates. During the period lapsed, some of the delegates may cease and that to be a delegate on account of disqualification, and not for any other purpose. Such a question can be raised only when provisional Voters List is displayed, but once the Voters List is finalised after the objection, such question cannot be raised. The Election Officer cannot go beyond the finalisation of the Voters List. If such a situation is accepted, then there would be no finality in the finalisation of the Voters List. However, this decision supports my view that once the election is set aside. It has to be processed right from the beginning, namely, from displaying provisional. Voters List onwards. The view that each election is independent and separate and has to be challenged at each stage since the Act and the Rules permit three-tier election system finds support in an unreported judgment dated 10th of May, 1995 in Civil Misc. Writ Petition No. 1732 (m/B) of 1994 Shri Kant Mishra v. Election officer and Ors. It was held in the said decision relying on Sub-

section (2) of Section 70 that an election can be challenged within 45 days from the date of declaration of the result. Therefore, in the present case, the election of Respondent No. 2 as delegate could be challenged u/s 70 in between the parties mentioned therein within 45 days of such election in the manner prescribed in Rule 229(2) read with Rule 230(e) of the said Rules.

23. In this case, the orders passed by the Tribunal have been challenged. The notice of election has been issued pursuant to the said order during the pendency of the present writ petition. Therefore, the said declaration of election is hit by the principles of *lis pendens* and could very well be gone into by this Court. The principle of questioning such an election only after the declaration of result as provided in Sub-section (2) of Section 70 cannot be applied in the present case.

24. In that view of the matter, the notice declaring the election from the stage of scrutiny which has been brought on record by the supplementary affidavit is hereby set aside. The majority judgment passed by the Tribunal stands modified to the extent that the election should be held afresh right from the beginning in accordance with the directions contained in the Act and the Rules as early as possible and is affirmed, as modified above.

25. The above writ petition is thus disposed of. There will, however, be no order as to costs.