
(2002) 04 MP CK 0048

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 79 of 2002

Akbar Mohd. Khan and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 24-04-2002

Acts Referred:

Citation : (2003) ILR (MP) 516 : (2002) 4 MPHT 64 : (2002) 4 MPLJ 606

Hon'ble Judges : Bhawani Singh, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : Anil Khare, for the Appellant; P.D. Gupta, Dy. A.G., Satish Chandra Sharma and Abhijit Bhounmik, for the Respondent

Final Decision : Dismissed

Judgement

Bhawani Singh, C.J.

This appeal is directed against order dated 4-2-2002 passed by Single Judge in W.P. No. 534 of 2002 Akbar Mohd. Khan and Another Vs. State of M.P. and Others,

Statutory tenure of Board of Directors of M.P. State Co-operative Marketing Federation Limited (MARKFED) u/s 49 (7-A) of M.P. Co-operative Societies Act, 1960 is five years. This way, it was to end on 3-1-2002. State Government extended the period with respect to all the societies by twelve months under sub-section (7-AA) of Section 49 of the Act of 1960 from the date of expiry of the usual term by notification dated October 28, 2000.

Pursuant to document Annexure A-13, steps for holding election were initiated. Accordingly, election programme was notified on 17-1-2001. It mentions number of steps to be taken on respective dates and ultimately election on 4-2-2002 and declaration of result the same day. It is stated that as many as 32 Directors were elected unopposed.

Grievance of appellants is that election has to take place within last 90 days of

the extended term. Holding of election virtually at the commencement of the extended term amounts to cutting short the period for which the Society's Directors are to remain in office. The election could be held in the month of October, November and December, 2002. The plea is sought to be sustained on the basis of Apex Court decision in *Rajendra Prasad Yadav and Others Vs. State of M.P. and Others*, , Paragraphs 18 and 19 of which observe that:--

"18. A conjoint reading of the above referred provisions would manifest the legislative intention that it shall be obligatory on the outgoing Committee of the Society to hold elections prior to the expiry of the term under Sub-section (7-A) or before the expiry of the extended time under Sub-section (7-AA). The outgoing committee shall apply to the Registrar to hold elections within a reasonable time "which shall not be in any case less than ninety days before the expiry of the term of the Committee". Thus, it could be seen that it is the duty of the outgoing Managing Committee of the Society to have its elections held prior to the expiration of the term of the Committee not less than ninety days before expiry of the term of the Committee.

Under the first proviso, if the outgoing committee had resolved and requested the Registrar to hold elections and the Registrar had failed to conduct elections on its request, there is a legislative injunction issued against the Registrar that "he shall not assume charge of the Committee and the members of the Committee shall continue to hold the office". Under the second proviso, if the Registrar fails to conduct elections of the Committee within ninety days from the date of the expiry of the term of the Committee, the Committee of the Society shall appoint Returning Officer who shall conduct the election of the Committee within 180 days from the date of expiry of the term. The combined operation of Sub-section (8) (i) and the second proviso is that though the members of the Committee are entitled, by operation of the first proviso, to continue to hold the office, it is equally obligatory on the part of the Committee that, if the Registrar fails to conduct elections as envisaged hereinbefore, the Returning Officer should be appointed whose duty shall be to conduct elections of the committee within 180 days before the date of the expiry of the term. By operation of Sub-section (8) (ii) if the members of the Committee having continued to hold the office by operation of the first proviso to Sub-section (8) (i), fails to appoint a Returning Officer under the second proviso and, if the Committee thereby, commits default to hold elections and does not hand over the charge, on expiry of the term under Sub-section (7-A) or extended term under Sub-section (7-AA) to the Registrar or any officer authorised by him on his behalf, they all shall be deemed to have vacated their seats and the Registrar shall assume charge and hold elections as early as possible. Thus, the combined reading of the sections envisages that elections to the Managing Committee shall be held by the Registrar, at the request by the Committee, before expiry of the term of the outgoing Committee within the time Schedule prescribed therein. If the Registrar fails to perform the said duty, the Managing Committee, while remaining in office, is enjoined to have the elections conducted within 180 days or at least not less than 90 days before

the expiry of the term of the Managing Committee. But if the committee commits default in conducting the elections, the members of the Committee are deemed to have vacated their seats. Thereby by statutory operation, no Managing Committee remains in office. The Registrar, therefore, should assume charge of the Society. On assumption thereof, while conducting the business of the Society simultaneously he should hold elections as expeditiously as possible so that the Managing Committee elected on democratic principle immediately assumes office and conducts the business of the Society in the manner laid down under the Act, Rules and the bye-laws of the Society and realises the collective aspiration of the members of the Society."

We are not satisfied with this contention. There is no dispute about statutory period being five years which was coming to an end on January 3, 2002. On this basis, elections were to take place ninety days before the expiry of this period. Notification dated October 28, 2000 is issued consequent to the enactment of M.P. State Re-organisation Act, 2000 and formation of new State of Chhattisgarh from November 1, 2000, object being that due to the formation of new States of Madhya Pradesh and Chhattisgarh, the same society existed in both States, some time should be provided for adjustment/allocation of staff and assets. But in absence of any prohibition against holding election during the statutory period, or prior to extended period, no illegality is committed. Apex Court decision in Rajendra Prasad Yadav's case (supra) does not help the appellants. Rather this decision lays down that election should take place as per statutory requirement to be held by the Registrar, Co-operative Societies or the Society failing which consequence stipulated in legislation would follow. It does not say against holding of elections prior to last ninety days. Holding of elections to a democratic institution on time is a mandatory requirement, otherwise, the institution would lose democratic flavour and lose the credibility amongst the customers taking that holders of offices intend to stick to office for selfish ends. Going to election before expiry of term is a better option and more democratic than to stick to office and wait for the expiry of the term. There is no illegality in holding elections prior to expiry of the extended term. With this conclusion, we do not propose to enquire into the contention of the respondents that extension of period does not apply to the Society, being an agriculture based society, evident from its bye-laws since the appellants did not question this status nor any other point was urged.

Consequently, we find no merit in this appeal and the same is dismissed.