
(2009) 09 AHC CK 0150
In the Allahabad High Court

Amit Kumar Shukla

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 09 AHC CK 0150

Hon'ble Judges : Sunil Ambwani, J;Ran Vijai Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Sunil Ambwani and Ran Vijai Singh, JJ.—Connect with Writ Petition No. 40363 of 2009, Writ Petition No. 44899 of 2009 decided on 26.8.2009 as well as Writ Petition No. 46545 of 2009.

2. Shri H.R. Misra, Sr. Advocate assisted by Shri K.M. Misra appears for the petitioner. Shri S.G. Hasnain, AAG assisted by learned Standing Counsel appears for the State respondents. Shri P.S. Baghel, Sr. Advocate has entered appearance on behalf of the Allahabad District Cooperative Bank Ltd.-respondent No. 5.

3. The petitioner has approached this Court for a writ of mandamus directing the respondents not to permit the members enrolled by the Administrator of the Allahabad District Cooperative Bank Ltd., Allahabad-respondent No. 4 to participate in any manner in the forthcoming elections of the bank, as their membership is illegal and void. He has relied upon the judgments in K. Shantharaj and another Vs. M.L. Nagaraja and others, and Jt. Registrar of Co-op. Societies Vs. T.A. Kuttappan and Others,

4. In writ petition No. 46545 of 2009 we had noticed the Supreme Court decisions in K. Shantharaj and Anr. (Supra) and Joint Director of Cooperative Societies, Kerala (Supra) and prima facie found after noticing the provisions of the U.P. Cooperative Societies Act, 1965, that the Administrator of the Cooperative Society has not been given powers to enroll new members and thus

we had restrained the new members enrolled by the Administrator after the supersession of the society to exercise rights in the elections.

5. Shri H.R. Misra appearing for the petitioner submits that the Division Bench of this Court at Lucknow in Writ Petition No. 7679 (MB) of 2009 Vijay Shanker Rai v. State of U.P. and Ors. considered the same question in respect of elections of the Zila Sahkari Sangh Ltd. and has arrived at the same opinion by a detailed judgment. The writ petition was finally allowed with directions to the effect that the members enrolled by the Administrator/ Committee of Administrators in the Cooperative Societies cannot be taken or treated as validly enrolled members of the society nor they would get any right for participate or vote in the elections of the Committee of Management of society. In the judgment delivered on September 2nd, 2009 the provisions of the U.P. Cooperative Societies Act, 1965 were considered and it was held that the words "incorporated" and the phraseology in Sub-section (7) of Section 29 leaves no ambiguity that the Administrator or Committee of Administrators has to get committee of management reconstituted within shortest possible time. The Administrator or Committee of Administrators do not have any authority to enroll new members altering the composition of the society.

6. Shri S.G. Hasnain, AAG states that the judgment of Lucknow Bench is per incuriam in as much as the Division Bench has not considered the U.P. Cooperative Societies (Amendment) Act, 2000 (U.P. Act No. 14 of 2000) by which the actions of the Administrator or Committee of Administrator were validated. Section 3 of the Amendment Act provides to validate any action taken by such Administrator or Committee of Administrators on or after such commencement i.e. 16.4.2000 to be valid as if before the Act as amended by the Amendment Act was enforced at all material times.

7. We do not find the argument to be tenable. The object and purpose of U.P. Act No. 14 of 2000 was to provide for extension of terms of Administrator or Committee of Administrator for a period of six months; the extension of the period from 18 months to two years for reconstitution of the Committee of Management and for powers exercised, functions performed and duties discharged by the Administrator or Committee of Administrators appointed u/s 29 of the Act on or after January 1st, 2000. The object of U.P. Act No. 14 of 2000 was thus limited to extend the term of the Administrator or Committee of Administrators for six months beginning from April 16th, 2000 and to validate functions and duties on or after January 1st, 2000. The Amendment Act has served its purpose by validating the actions by the Administrator. The object and purpose of the U.P. Act No. 14 of 2000 was limited and that after having achieved the purpose the validating act cannot be used for reference or for validation of future acts.

8. Shri P.S. Baghel appearing for the bank submits that the total membership of Primary Cooperative Societies of Allahabad District Bank Ltd. is approximately 500 societies and that the total voters are about 2000. The list of delegates of

the last election of 2005 has been relied upon by him to demonstrate this figure. The Administrator has in normal and routine business of the bank enrolled about 50 salary earners cooperative societies to provide them cash credit limit of Rs. 12 crores. The societies have also given Rs. 41.48 lacs share money to the bank and that their voters are only 10% of total members. They would not materially affect the elections. He submits that in this case all these members were enrolled prior to the notification of the elections. He further relies upon *Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others*, in which the Supreme Court held that the preparation of electoral roll for electing members of the managing committee is an interim stage in the process of election and that High Court should not interfere with the preparation of electoral rolls in a petition under Article 226 of the Constitution of India and decline to interfere in the matter leaving the parties to get the matter adjudicated by the Tribunal by filing an election petition after declaration of the result of the election. In the present case he has also relied upon the Division Bench judgment of this Court in Writ Petition No. 7730 (MB) of 2009 *Committee of Management v. State of U.P.* in which by judgment and order dated 11.8.2009 the Court had refused to interfere with the elections in a matter, where the Administrator had enrolled the new members.

9. We have passed orders in a similar Writ Petition No. 46545 of 2009 relying upon the Supreme Court judgment in *K. Shantharaj and Anr. (Supra)* and *Joint Registrar of Cooperative Societies, Kerala (Supra)* and have restrained the members enrolled by the Administrator at the supersession of the society to take part in the elections.

10. The question whether Administrator or Committee of Administrator can enroll new members of the cooperative society is no longer res-integra. The Supreme Court in *K. Shantharaj (Supra)* and *Joint Registrar of Cooperative Societies (Supra)* has held that the Administrator does not have power to enroll the new members. The language of provisions of the Kerala Act and U.P. Act is almost the same and has been considered in detail in *Vijay Shanker's* case by the Division Bench of this Court in allowing writ petition for the same relief.

11. In the facts and circumstances of the case, we find that it would not be appropriate to leave the matter of the rights of the newly enrolled members of the Administrator or Committee of Administrators to be decided in an election petition. The change of composition of the society, where members were enrolled before or after the notification of the elections will make all the difference in the elections. The orders passed by us would only restrain the members enrolled by the Administrator/ Committee of Administrators to take part in election of the society. If the societies have elected the delegate, they can be easily identified and restrained from participating in the next stage of the elections of the Committee of Management of the society.

12. List this writ petition after exchange of affidavits along with other connected matters on 13th October, 2009.

13. In the meantime, we direct that any member or the delegates of such members enrolled by the Administrator or Committee of Administrators after the supersession of the society will not be allowed to participate in the elections to be held or to be notified on adjourned dates.