

(2016) 11 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 14258 of 2015

Anand Singh

APPELLANT

Vs

Registrar, Co-operative Societies, Rajasthan Jaipur

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Citation : (2016) 4 WLN 491

Hon'ble Judges : Mr. Mohammad Rafiq, J.

Bench : Single Bench

Advocate : Shri A.K. Bhandari, Senior Counsel assisted by Shri Vaibhav Bhargava and Shri A.K. Pareek, Advocates, for the Respondent; Shri Surendra Thanua, Election Officer, present in person, for the Respondent; Shri G.P. Sharma, Advocate, for the Petitioner; Shri D

Final Decision : Disposed Off

Judgement

1. This writ petition has been filed by petitioner-Anand Singh inter alia with the prayer that the order dated 2.9.2015 passed by the Registrar, Cooperative Societies, Rajasthan, Jaipur (for short-"the Registrar") be quashed and set aside. The Registrar by the aforesaid order has set aside the election to the Managing Committee of the SPR Saharia Education Society, Kaladera, Jaipur held on 10.6.2016.

2. SPR Saharia Education Society, Kaladera, Jaipur is a registered society under the provisions of Registration of Societies Act, 1860. It has its memorandum and rules & regulations. According to clause 9 of the constitution and article of association, Shri Kedar Nath Saharia and Smt. Kishori Devi Saharia being patron members, are respectively lifelong President and Vice lifelong Vice-President of the governing council of the society. Subsequently, by way of amendment clause 15A(1) was incorporated therein, which provided that the management of the affairs of the society shall be vested in the Managing Committee consisting of not less than 11 and not more than 18 members including office member. The President, Vice-President, Secretary, Assistant Secretary and Treasurer and

Auditor shall be the ex-officio member of the committee. The allegation of the petitioner has been that despite incorporation of the said Rules by the Managing Committee, election of the Committee was not held in accordance with law. Those in-charge or the member of the society were involved in misuse of funds. There were several complaints with regard to irregularities in the conduct of the activities and embezzlement of the funds. The Education Department of the State Government, therefore, dissolved the managing committee and appointed administrator. However, the former office bearers of the society continue to manage its affairs and abuse the powers and misuse the funds of the society.

3. The Government by order dated 3.7.2009 dissolved the Management Committee and appointed SDM-Chomu as Administrator. The term of the Administrator was extended upto 3.10.2011 by order dated 21.7.2011 passed by the Deputy Secretary, Government, Education Department. The Administrator was directed to conduct the election of the Management Committee. The new Management Committee was thus constituted on 1.3.2011 by way of elections. The Administrator handed over charge to the newly elected Management Committee on 1.3.2011. In those circumstances, the lifelong President of the Society Shri Kedarnath Saharia, his wife Smt. Kishori Devi Saharia and Smt. Vijanti Pungalia filed a writ petition no. 15045/2013 before this Court. Therein, it was alleged that the elections to the management committee were last held on 28.1.2005, which was not fair and proper. Even then the same management committee has been shown to have been elected again on the allegations of mismanagement, irregularities and embezzlement of sum of Rs.55 lacs against such committee. It was contended that in future, petitioners should be associated with the election and enquiry be made against members of management committee for embezzlement of the money.

4. This Court disposed off the aforementioned writ petition requiring the petitioners to approach the Registrar, Societies, Jaipur whenever the elections next take place, who shall ensure free and fair elections to be conducted. Petitioners were also required to invite attention of the said Registrar towards the alleged irregularities/illegalities committed by the management committee and embezzlement of the money. Petitioners on the basis of aforesaid judgement filed an application before the Registrar Cooperative Societies to conduct fresh elections on 18.6.2014. The Registrar directed them to submit application before the Registrar, Registration of Societies, who has power to deal with the matter. In these circumstances, they filed another application before the Registrar, Registration of the Societies on 5.1.2015. The Registrar by his order dated 22.5.2015, appointed Shri Surendra Kumar as Election Officer. The Election Officer published the program of election. The Registrar also published the program of election, last date of withdrawn of nomination and publication of the list of candidates was fixed on 10.6.2015 and election was to be held on 12.6.2015. The Election Officer declared the result of the election on 10.6.2015 itself. One C.P. Sharma claiming himself to be Chairman of the Society made a complaint to the Registrar, Cooperative Society, Jaipur that the election of the

society was conducted even though no meeting of its general body was convened by the Management Committee as per the constitution of the society so as to hold the elections. The order of the High Court has been misconstrued and the Registrar, therefore, set aside the elections.

5. Shri G.P. Sharma, learned counsel for the petitioner has argued that the election to the society was held under the orders of the Registrar, Registration of Societies in compliance of the order of this Court. The Registrar, Cooperative Societies has no competence to set aside such elections. The impugned order has been passed by extraneous considerations. The reply to the notice submitted by the petitioner has not been considered at all. The Election Officer appointed by the Registrar, Registrar of Societies by order dated 22.5.2015 had conducted the election in a lawful manner. The result of the election was declared on 10.6.2016. Petitioner was elected as Secretary of the society and other candidates were also declared to be office bearers. The elected office bearers of the society held their first meeting on 1.6.2015 and passed resolution in furtherance of the declaration of the election results. The elected Management Committee informed the Registrar, Registration of Societies about their election and requested for approval vide resolution passed on 5.6.2015. The Registrar, Registration of Societies approved the election and issued certificate under Section 19 of the Rajasthan Societies Registration Act, 1958 vide certificate dated 27.7.2015. The Registrar, Registration of Societies thereafter had no competence to set aside the election particularly when the elected Management Committee has started functioning and discharging day to day functioning. In fact, a former office bearer of the society tried to create obstruction and nuisance in execution and discharge of day to day functioning of the managing committee. The present President of the society Mr. Mahesh Agarwal filed a civil suit for injunction, which is pending before the civil court. Even if the civil suit was pending, the Registrar, Cooperative Societies served a notice on the petitioner on 21.8.2015 requiring the petitioner to remain present with documents relating to the election of the aforesaid educational society on 2.9.2015 at 10.30 AM. Petitioner immediately submitted reply to the notice on the same day and also appeared before the Registrar on 2.9.2015. The Registrar without considering any of the arguments of the petitioner, however, set aside the election. It is argued that the order of Registrar is wholly illegal and liable to be set aside. It is also argued that if anyone has any objection or grievance with regard to election, the only remedy available for him is to file a civil suit challenging the validity of election. The election once held cannot be annulled in a short circuit manner.

6. Shri A.K. Bhandari, learned senior counsel for the respondents has opposed the writ petition and argued that the SPR Saharia Education Society, Kaladera has been running educational institutions in the State of Rajasthan and one of which is SPR Saharia Senior Secondary School, Kaladera. The said institute is recognised under section 2 of the Rajasthan Non-Government Educational Institution Act, 1989 and was getting grant-in-aid at the relevant time. It is therefore governed by the Act and the Rules framed thereunder. The said society

has its article of association and memorandum. The election held on 10.6.2015 was wholly illegal and without jurisdiction. The election was held on the assumption that this Court has given directions to hold the elections, whereas this Court merely required the Registrar, Registration of Societies to ensure free and fair election. The Registrar could not usurp the authority by directing fresh election held under his supervision through the election officer appointed by him. According to the judgement of this Court whenever the elections were to be held the Registrar was to ensure that elections take place in a free and fair manner. The Registrar could have at the best ask to the Management Committee to convene the meeting of the general body for the purpose of elections, but he could not have directed holding the elections on the application of two persons. Learned counsel referred to Article 7 of the Article of Association, which provides for governing council and article 8, which provides that governing council shall meet at least one every calendar year to transact various business in Article 1, which includes "to elect and/or appoint Management Committee of the Society". Article 9 provides for various members of governing council. Article 11 provides for elections of President and Vice President by the governing council. Article 14 provides for the members of the Management Committee. It is thus clear from the article of association that only governing council can conduct the elections and the President and Vice President can also be elected by the governing council. The elections of the members are to be conducted in accordance with Article 14. In the election in dispute, the article of association has been given a complete go by and illegal elections have been held under the provisions of the article of association.

7. Shri A.K. Bhandari, learned senior counsel also argued that since the SPR Saharia Education Society, Kaladera is recognised and provisions of Rajasthan Non-Government Educational Institution Act, 1989 and Rules framed thereunder are applicable to it. Section 9 of the Act provides for constitution of the Management Committee. Rule 2(q) defines the management of the Management Committee. Rule 23 provides for the procedure for appointment of Management Committee. Rule 23(2) provides that the Management Committee shall adopt the procedure even in the said Rules for conducting elections. According to Rule 13(2) (a), an election officer is to be appointed by Management Committee. The Election Officer shall issue a notice of elections to all the members of the electoral collect at least one month before the date fixed for elections. Rule 23(3) provides that after its constitution, the elected and nominated members of the Management Committee shall elect its Chairman, Secretary and Treasurer. In the present case, the provisions of the Act and the Rules have been completely overlooked and the Registrar has appointed the Election Officer, which could have been appointed only by the last Management Committee. President and Secretary can be elected by elected members and not by direct elections. Mahesh Kumar Agarwal and Anand Singh were wrongly elected as Secretary and President. Notice of at least one month prior to the date of elections was not given to members as per Rule 23(2)(b) of the Rules of 1993. The Registrar

appointed the Election Officer on 22.5.2016 and the election program was issued on 2.6.2015. The elections were to commence from very next date i.e. 3.6.2015 and voting was to take place on 12.6.2015.

8. Learned counsel argued that no time was given to any voter to come from fair and distant places to participate in the elections. Notice of election was not served on any of the members of the society. Most of the members are residents of Kolkata and there is no proof that the person, who was contesting election was a lawful member of the society. Names of Mahesh Kumar Agarwal and Kedar Nath Saharia were not in the list of last Management Committee. Learned counsel has relied on the judgement of Full Bench of this Court in Jagan Singh v. State Transport Appellate Tribunal-AIR 1980 Rajasthan 1 to argue that a writ of mandamus may not be issued for restoring of an illegal order as it occasions failure of justice.

9. Relying on the judgement of Supreme Court in Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar & Ors.-(1999) 8 SCC 16, learned senior counsel argued that therein it has been held that if setting aside such an order would result in reviving an invalid order for payment of excess compensation. The High Court would be justified in refusing to interfere if setting aside an order would result in reviving invalid order. Relying on the judgement of Supreme Court in Mohammad Swalleh & Ors. v. Third Additional District Judge, Meerut & Anr.-(1988) 1 SCC 40, learned counsel argued that in that case the District Judge entertained the appeal against the order of prescribed authority even though no such appeal was maintainable. The Supreme Court held that the High Court did not commit any error in denying to interfere with the order of learned District Judge as revival of order of the prescribed authority will result in injustice. Learned senior counsel cited the judgement of this Court in Jagdish & 2 Ors. v. The Additional District Magistrate-II & Ors.- 2003 (1) WLC (Raj.) 296, wherein it was held that if consequence of acceptance of the writ petition and quashing and setting aside the order of additional Collector was to restore an illegal order or revival thereof, the same would not be done. It is argued that the Registrar, Cooperative Societies cannot be said to be incompetent because it is the Deputy Registrar of the Cooperative Societies, who acts as Registrar for registration of the Cooperative Societies and the Registrar is exercising supervisory jurisdiction over him. It cannot be said that the Registrar acted illegally.

10. I have given my anxious consideration to the rival submissions and perused the material on record.

11. Admittedly, the last Management Committee was constituted on 13.11.2011 when the then Administrator SDM, Chomu handed over the charge to such committee on 13.11.2011. As per article 15 of the Article of Association, the Management Committee shall held office for a period of three years at any time. The election to the Management Committee thus were due in 2014. It is in that scenario that Shri Kedarnath Saharia, his wife Smt. Kishori Devi Saharia and Smt. Vijanti Pungalia approached this Court by filing the writ petition alleging

that twice the Collector was appointed as Administrator and that the election that were lastly held on 28.1.2005 were not fair and the same management committee, which was then elected successfully has been shown re-elected. This Court did not directly intervene in the matter, but required them to approach the Registrar, Societies, Jaipur whenever the next elections takes place with the further direction that he shall ensure free and fair elections to be conducted. Petitioners were required to invite his attention with regard to allegations of mismanagement, irregularities and embezzlement of Rs.50 lacs. It appears that the aforesaid order of this Court has been construed by the Rajasthan Cooperative Societies as a direction for holding elections dehors the constitution of the society and bypassing the provisions about the elections contained in its article of association.

12. The petitioners in view of aforesaid order in writ petition filed an application before the Registrar, Cooperative Societies on 18.6.2014 wherein they contended that they are residents of Dibrugarh (Assam) and Kolkata (West Bengal) and are old aged. The office bearers of the Managing Committee of the society was constituted in 2001 for a term of 3 years taking advantage of the situation had been mismanaging the school and misusing or misappropriating the funds of the school. It was violating the provisions of the Rajasthan Non-Governmental Educational Institution Act, 1989. The payment of salary to the employees of the school were not being made in time and amount of provident fund deducted from the salary of employees were not deposited in the P.F. account, employer's contribution on account of Provident Fund was not made and income and expenditure accounts of the school were not kept properly. Reference was made to various complaints and orders on that basis passed by the Government authorities. It was given out that the term of the Administrator was extended till 3.10.2011 vide order dated 21.7.2011 passed by the Government.

13. The Administrator of the School was also directed vide aforesaid order dated 21.7.2011 to conduct election of the Managing Committee, but neither election of the managing committee was conducted by the Administrator under his supervision, nor it was constituted in terms of Article 14 of the article of association of the society, instead, charge was handed over on 28.7.2011 in a hurried manner, as per charge handing-over order sheet dated 28.6.2011, to the illegally constituted Managing Committee on 1.3.2011. The Education Department, Government of Rajasthan however extended the term of the Arbitrator upto 31.12.2011, which amounted to fresh appointment of the Administrator and consequent dissolution of the Managing Committee, but surprisingly, the Administrator has not taken back the charge of the school from the unlawful Managing Committee. The petitioners aforesaid invited attention of the Registrar, Cooperative Societies towards the aforesaid judgement of this Court. Petitioners then again submitted an application to the Registrar, Cooperative Societies on 5.1.2015 to the same effect. It was thereafter that the petitioners again filed another application. In this last application, petitioners sought to place on record the information as required under Rule 45(3)(II) with

reference to Article 15A(1) to contend that there were vacancies in the Managing Committee; one President, one Vice President, one Secretary and one Assistant Secretary, one Treasurer and six Members, thus total 11 members. Petitioner also include therewith the list of 36 members of the society. It appears that the Registrar, Cooperative Societies by order dated 22.9.2015 then appointed one Surendra Thenua, the Inspector (Executive) as the Election Officer and also simultaneously published the program of election with 3.6.2015 was notified as the date on which the proposed voter lists would be published. 5.6.2015 was fixed as the date of receiving the objections to the voters list, which was to be received upto 1.00 pm on 5.6.2015 and thereafter on the same day, the objections were to be decided and the voters list was to be finalised. The nominations were to be received between 11.00 am and 2.00 pm on 8.6.2015 and the list of the candidates was to be published on 3.00 pm on that day. The scrutiny of the nomination was to take place on 11.00 am on 9.6.2015 and then the names of the valid candidates was to be published on the same day. The candidates were allowed to withdraw their nomination between 11.00 am and 2.00 pm on 10.6.2015 and thereafter the final list of the candidates was to be published. Elections were to be held between 9.00 am to 5.00 pm on 12.6.2015 and result was to be declared. The election officer has issued the program of election in favour of Anand Singh showing him to have been elected as Secretary on 10.6.2015 and Mahesh Kumar Agarwal as President, Shri Vinod Kumar Negi, Vice President, Gopi Ram Mandotiya as Assistant Secretary, Ratan Lal Goyal as Treasurer, Raghuveer Singh, Mohan Singh Gurjar, Sawai Singh Tanwar, Basant Kumar Sanwaria, Shakti Singh Rathore and Mohd. Ridrish as Executive Members. The office bearers have submitted to the Registrar list of elected members vide Annexure-9 placed on the record.

14. List of members was submitted by Shri Kedar Lal Saharia lifelong President and Smt. Kishori Devi, lifelong Vice President with their application Annexure-5 submitted to the Registrar, Cooperative Societies, which indicates that those elected are amongst the members. In other words, the election was held from amongst the members with voting rights to be given to members only. Grievance of the respondent before the Registrar, Cooperative Societies and before this Court has been that this election should have been conducted either as per the procedure given in the article of association or as per the procedure given in the Cooperative Societies Act, 1993. In so far as Rules of 1993, it is one part of the registration of societies i.e. Senior Secondary School, which claimed at one point of time to receive grant-in-aid and given thereby, but the society having multifunctional activities, therefore, upon overall consideration, it would be deemed in the fitness of things that elections ought to be heeded as per the constitution of society, which is namely as per the provisions contained in articles of association. Conjoint reading of clauses 8, 10, 11, 12, 13, 14 and 15 of article of association indeed show that the Managing Committee had to be elected by mechanism provided within article of association and not by an outside agency. However, since there appears to be conflicts and rivalry amongst the members,

the outside interference is a necessity of time, but at the same time, it is also true that this Court in its earlier judgement did not direct the Registrar Societies, Jaipur to hold elections by appointing the election officer under his supervision. All that was directed was that whenever elections next takes place, free and fair elections to be ensured. In the scenario, which has now emerged before this Court, where two groups are fighting each other, where it has been alleged that some of the members were residing at far and distant places like Dibrugarh (Assam) and Kolkata (West Bengal) and were neither informed and nor participated in the process of election and considering that number of members were quite limited i.e. only 36, their participation was but necessary, the elections were held. Regardless of the fact that the Registrar, Cooperative Societies was not competent to interfere in the elections, the aforesaid elections held cannot be said to be completely free and fair.

15. In the facts of the case, therefore, while setting aside the elections as also the order passed by the Registrar, Cooperative Societies dated 2.9.2015, this Court deems it appropriate to decide this writ petition with the following directions:

- i) that Sub-divisional Officer, Chomu shall act as election officer for holding fresh elections to the Management Committee as per the election program on any date as he deems fit to notify, to be conducted on any date in the month of January, 2017 with right of voting available to 36 members of the society;
- ii) that all the members shall be notified in advance about the program of elections at least one month in advance;
- iii) that the elections shall be held in the premises of the Managing Committee society;
- iv) that the election officer so appointed if he deems fit and necessary, may also requisition police help to ensure orderly conduct of the elections;
- v) that the result of the elections shall be declared on the same day on which the voting takes place and be notified to the Registrar Societies by the election officer;
- vi) that the Managing Committee so elected shall hold its office for a period of three years from the date of elections necessitating fresh elections thereafter.

16. The writ petition is accordingly disposed off.

@Result-Petition disposed of.