
(1998) 08 AHC CK 0065
In the Allahabad High Court
Case No : C.M.W.P. No. 22614 of 1998

Atal Singh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 06-08-1998

Acts Referred:

Constitution of India, 1950 — Article 248

Citation : (1999) 1 AWC 341

Hon'ble Judges : R.K. Mahajan, J;B.K. Roy, J

Bench : Division Bench

Advocate : K.N. Mishra, for the Appellant;

Final Decision : Disposed Of

Judgement

Binod Kumar Roy and R.K. Mahajan, JJ.—The petitioner has come up with following prayers :

(i) Act Nos. 1 of 1997 and 19 of 1998 amending Section 29 of the U. P. Co-operative Societies Act is illegal. ultra vires, unconstitutional, being against the objective and basic structure of the Cooperative movements and has been passed with a mala fide intention and thus be struck down.

(ii) Respondents be restrained from giving effect to Act 19 of 1998.

(iii) The order dated 10.7.1998, passed by Deputy Registrar, Co-operative Societies, U. P., Dareilly Region, Bareilly, as contained in Annexure-I, superseding the Committee of Management headed by the petitioner and illegally appointing the District Magistrate, Pilibhit (Respondent No. 4), as Administrator be quashed.

(iv) The Respondent be commanded to provide a time bound opportunity to the petitioner for conducting the election of the Committee of Management and till the elections are held they be restrained from interfering in his functioning.

2. Mr. K. N. Misra, learned counsel appearing on behalf of the petitioner contended as follows : "The U. P. Co-operative Societies Act was enacted keeping

in view the democratisation and deofficialisation as the objective of the co-operative movement. The co-operative movement is based on co-operation, which is the backbone of economic activities and social progress of the welfare policies. It has been repeatedly emphasised that cooperation is the best method for transforming into the social reality. The ideals are enshrined in our Constitution and implied in the socialistic pattern of the Society. Cooperative is essentially a voluntarily association of persons for their common economic interest formed on the basis of equality of opportunity. One of the most important principle of Co-operative Societies is their Administration to be carried on democratically. It is the object of the co-operative movement to enshrine the democratic principles amongst the members themselves and State should not by an Act or Amendment curtail the rights of a member of the Co-operative Society. The elected bodies, viz.. Parliament. Assembly, Zila Panchayat, Nagar Panchayat, Kshetra Panchayat and Gaon Sabha all are constituted for a period of 5 years and this will be a discrimination to limit the period of elected body of Co-operative Society for 3 years. In Keshava Nand Bharti case it has been held that a constitutional amendment cannot destroy the basic structure of the Constitution. In Atam Prakash Vs. State of Haryana and Others, , it was held that preamble to the Constitution is the guiding light. Act No, 1 of 1997 has been passed without removing the first proviso to sub-section (3) of Section 29 and adding sub-sections (5A) and (5B) and sub-sections (3) and (4) had remained untouched and without complying with the conditions mentioned therein. The action of the State will be ultra vires and against the basic principle of the Co-operative Society. Hence this writ petition is fit to be allowed. Our decisions dated 16.7.1998 in Civil Misc. Writ Petition No. 22045 of 1998 and of today in Civil Misc. Writ Petition No. 23329 of 1998 does not consider his submissions and thus require reconsideration. The Chief Minister is acting mala fide which is apparent from the report of the Newspaper."

3. Mr. H. R. Misra, learned standing counsel appearing on behalf of the respondents, in reply contended as follows : (i) He is reiterating the submissions already made before us in Civil Misc. Writ Petition No. 22405 of 1998, Dal Singh Yadav v. State of U. P. and another and Civil Misc. Writ Petition No. 23329 of 1998 Arun Kumar Singh v. State of U. P. and others, which have already been accepted and the attack to the vires of the Acts have been repelled by us correctly, (ii) From the various provisions of the Act and the Rules it is clear that the co-operative movement or the preamble for which the Act was enacted has not been touched by the Legislature. It has merely reduced the tenure from 5 years to 3 years. The submission of the learned counsel for the petitioner that all democratic institutions have got a tenure of 5 years is factually incorrect inasmuch as in Gujarat the Co-operative Societies have a tenure of 3 years only which is apparent from perusal of the judgment of the Apex Court in Ganpatbhai M. Solanki Vs. District Collector, Vadodara and another, . (iii) The charge of mala fide against the Chief Minister is also somewhat misplaced. The petitioner has nowhere stated as a fact that any member belonging to the Bhartiya Janta Party

has been appointed as an Administrator, in fact in the instant case it was the District Magistrate who was appointed as an Administrator. Reliance on a press report is accordingly misplaced besides inadmissible, (iv) in addition to the decisions already cited before us in the aforementioned two cases. Mr. Misra drew our further attention to the decisions of the Supreme Court in K. Nagaraj and Others Vs. State of Andhra Pradesh and Another, : G.C. Kanungo and D.C. Routray Vs. State of Orissa, and Naga People's Movement of Human Rights Vs. Union of India (UOI), . (v) Accordingly, this writ petition is fit to be dismissed in limine,

4. We do not find any merit in any of the submissions of the learned counsel for the petitioner to change our view taken in two writ petitions. Rather, we find substance in the arguments of the learned standing counsel and accept them.

5. We have already held the competency of the State Legislature to enact the Amendment Acts of 1997 and 1998.

6. We had not seen nor do we see even now any vice of arbitrariness or otherwise. By the proposed amendments merely the 5 years period has been reduced to 3 years. How it can be said from it that by the amendments, the Co-operative movement has been finished by the Legislature.

7. In K. Nagaraj case (supra), it was observed by the Supreme Court thus :

"The Legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. If no reasons are so stated as appears from the provisions enacted by it (sic.) Its reasons for passing a law or those that are stated in the Objects and Reasons. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of "transferred malice" is unknown in the field of legislation."

8. In G. C. Kanungo case (supra) the Apex Court held as follows :

"The argument advanced on behalf of the petitioners that the 1991 Amendment Act was enacted by the Orissa State Legislature which actuated by mala fides and hence the same is unconstitutional, is difficult of acceptance. That mala fides or ulterior motives attributed to a State Legislature in making a law within its competence can never make such law unconstitutional, is well-settled."

9. in Naga People's Movement of Human Rights (supra) which is a . Constitution Bench Judgment, the Apex Court has observed thus :

"The use of expression "colourable legislation" seeks to convey that by enacting the legislation in question the Legislature is seeking to do indirectly what it cannot do directly. But ultimately the issue boil down to the question whether the Legislature had the competence to enact the Legislation because if the impugned Legislation falls within the competence of the Legislature the question of doing something indirectly which cannot be done directly does not arise. As regards the

competence of Parliament to enact the Central Act, we have already found that keeping in view Entry 1 of the State List and Article 248 read with Entry 97 and Entries 2 and 2A of the Union List, Parliament was competent to enact the Central Act in 1958 in exercise of its legislative power under Entry 2 of the Union List and Article 248 read with Entry 97 of the Union List and, after the Forty-second Amendment to the Constitution. The legislative power to enact the said legislation is expressly conferred under Entry 2A of the Union List and that it cannot be regarded as a law falling under Entry 1 of the State List. Since Parliament is competent to enact the Central Act, it is not open to challenge on the ground of being a colourable legislation or a fraud on the legislation power conferred on Parliament."

10. Following the reasons already given by us in our aforesaid two decisions, which stand strengthened by the ratio laid down by the Supreme Court in the aforementioned three decisions, we are of the view that the arguments made by Sri K. N. Misra, learned counsel for the petitioner are *prima facie* not worthy of acceptance at all.

11. We, accordingly, dismiss this writ petition also in limine.