

(2002) 10 AHC CK 0093
In the Allahabad High Court
Case No : C.M.W.P. No. 42383 of 2002

Badan Singh and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-10-2002

Acts Referred:

Citation : (2003) 1 AWC 196

Hon'ble Judges : Rakesh Tiwari, J; M. Katju, J

Bench : Division Bench

Advocate : K.G. Srivastava and Rahul Srivastava, for the Appellant;

Judgement

M. Katju, J.—By means of this writ petition, the petitioners have prayed for a writ of certiorari to quash the impugned orders dated 23.4.2002 and 26.4.2002, Annexures-3 and 4 to the writ petition and for a mandamus directing the respondents not to interfere with the functioning of the petitioner No. 2 as Committee of Management of the Co-operative Society in question till 6.3.2004.

2. The petitioners are relying on the U. P. Co-operative Societies (Amendments) Ordinance, 200.1, being Ordinance No. 27 of 2001 copy of which is Annexure-2 to the writ petition. By means of this Ordinance the term of the society has been extended from 3 years to 5 years.

3. In Committee of Management, Nagar Sahkari Bank Ltd. and Another Vs. Registrar Co-operative Societies and Others, a Division Bench of this Court held that if the term of the Committee of Management has not expired before the date of the promulgation of the above Ordinance on 24.12.2001, its term will continue for five years in view of the above Ordinance. However, subsequently, the same Bench in Civil Misc. Modification Application /Review Petition No. 87293 of 2002 in Writ Petition No. 8375 of 2002 reviewed its own judgment dated 16.3.2002 (referred to above) and has held that since the Ordinance has lapsed, hence, the term of the Committee of Management will only be 3 years and not five years. Accordingly, the Division Bench allowed the review application.

4. Thereafter another development took place, namely, that on 4.7.2002 the U. P. Government issued another Ordinance being U. P. Ordinance No. 10 of 2002 a copy of which is Annexure-5 to the petition. Section 2 (ka) of the said Ordinance states that the term of the Committee of Management will be five years. However, Section 2 (kha) of the said Ordinance states that this Ordinance will be applicable to the society which is in existence on the date of the Ordinance. In other words, the U. P. Ordinance No. 10 of 2002 will only apply to the societies which were in existence on 4.7.2002. Hence, where the term of 3 years of any co-operative society expired before 4.7.2002, that society will not get the benefit of U. P. Ordinance No. 10 of 2002. It is only those societies whose 3 years term had not expired on or before 4.7.2002 which will be entitled to continue in existence for five years.

5. We also make it clear that if any co-operative society is continuing on the strength of an interim order of this Court, that will not get the benefit of U. P. Ordinance No. 10 of 2002 if the original term of 3 years had expired before 4.7.2002.

6. Learned counsel for the petitioner referred to the Supreme Court decision in *T. Venkata Reddy and Others Vs. State of Andhra Pradesh*, . We have carefully perused the said decision and find that it is distinguishable. In that decision, the facts were that the A. P. Abolition of Posts of part-time Village Officers Ordinance, 1984, had abolished the post of part-time Village Officers in Andhra Pradesh. Since that Ordinance lapsed, it was urged that the posts of part-time village officers revived. Repelling this contention, the Supreme Court held that abolition of posts was an accomplished fact. In the present case, a perusal of the new Ordinance (U. P. Ordinance No. 10 of 2002) shows that it has specifically been mentioned in Section 2 (kha) that only those committees existing on the date of the Ordinance (i.e., 4.7.2002) will have their term extended to 5 years. Hence, the petitioner can derive no help from the above mentioned Supreme Court ruling. If a contrary view is taken, then it will mean that despite the clear language of Section 2 (kha) that the term of only those committees existing on 4.7.2002 will be extended, the term of committees whose 3 years term expired prior to 4.7.2002, will also stand extended. This will create an anomaly, and hence such an interpretation is to be avoided.

7. The petitioner No. 2 was elected on: 6.3.1999 and its three years term/ expired on 6.3.2002. It only continued In existence because of U. P. Ordinance No. 27 of 2001 but that Ordinance has lapsed as stated in the order of this Court in Review Petition No. 87293 of 2002. Hence, the petitioners cannot get the benefit of U. P. Ordinance No. 27 of 2001, nor of U. P. Ordinance No. 10 of 2002.

8. Since the petitioners society was not legally In existence on 4.7.2002, it could not in its own right exist beyond the period of 3 years of its election and hence It cannot get the benefit of U. P. Ordinance No. 10 of 2002. The writ petition is, therefore, dismissed.

9. Since a large number of similar writ petitions are pending in this Court, we make it clear that this judgment will be applicable to all the pending writ petitions in which similar points are involved, and will not be confined to this petition alone.