
(1987) 04 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1838 of 1986

Bharat Lal Dugal

APPELLANT

Vs

The Registrar, Sahakari Samities and Another

RESPONDENT

Date of Decision : 14-04-1987

Acts Referred:

Rajasthan Co-operative Societies Act, 1965 — Section 75
Rajasthan Co-operative Societies Rules, 1966 — Rule 32(3)

Citation : (1987) WLN 690

Hon'ble Judges : S.K. Mal Lodha, J;S.C. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This writ petition relates to the election of the member of the Managing Committee of the Kawat Gram Seva Sahkari Samiti Limited (here in after referred to as "the Sahkari Samiti").

2. The Sahkari Samiti is a Co-operative Society registered under the Rajasthan Co-operative Societies Act, 1965 (here in after referred to as "the Act") and is governed by the provisions of the Act and the Rajasthan Cooperative Societies Rules, 1966 (here in after referred to as "the Rules"), Bharat Lal, the petitioner in this writ petition is a member of the Sahakari Samiti and was elected as the Chairman of the Sahkari Samiti in the elections which were held in January, 1982. Rule 32 of the Rules makes provision for the election of the members of the committee of management of a Co-operative Society and provides for appointment of an Election Officer by the Registrar of Co-operative Societies. Sub-rule (2) of Rule 32 provides that the election of the committee shall be held at a general meeting of the society of which not less than seven clear days notice shall be given to the members. Sub-rule (3) of Rule 32 prescribes that the notice of general meeting shall be sent by the Election Officer to the members and the said notice shall contain information regarding number of vacancies to be filled up by election, any area or constituency that is specified in the bye-laws from

which the members are to be elected the qualification if any prescribed in the bye-laws for eligibility for membership of the committee, the date on which, the place at which and the hours between which nomination papers shall be filed by members, such date being not less than three clear days before the date fixed for election, the date on which the place at which and the hour when the nomination papers will be scrutinised and the date on which, the place at which and the hours between which the polling will take place. Sub-rule (4) of Rule 32 lays down that the Election Officer shall prepare a list, at it stood thirty days prior to the date fixed for the poll of members who are qualified in accordance with the provisions of the Act, Rules and the bye-laws framed there under to vote at the election and publish copies of the list by affixing them to the notice board at the head office of the society and all its branches not less than ten days prior to the date fixed for election.

3. The Assistant Registrar, Co-operative Societies Sikar (here in after referred to as "the Asistant Registrar") by order dated 20th August, 1986 appointed respondent No. 3 as the Election Officer for conducting the election of the members of the Managing Committee of the Sahkari Samiti and respondent No. 3, issued a notice (Ex. Rule 1) dated 28th August, 1986 whereby election programme was announced. Under the said programme objection against the voters" list which was publised on 28th August, 1986 were to be received from 1.00 p.m. to 2.00 p m. on 8th September, 1986 and they were to be considered on 8th September, 1986 at 5.00 p.m. and the final voters" list was to be published on 8th September, 1986 at 6 p.m. The nominations were to be filed on 16th September, 1936 between 10 a.m. and 1 p.m. and scrutiny of the nomination papers was to be held on 16th September, 1986 between 1.30 p.m. and 4.30 p.m. and the nominations were to be withdrawn on 16th Sept., 1986 between 3 p.m. & 5 p.m. 20th Sept., 1986 was the date fixed for poll and 21st September, 1986 was fixed for the election of office bearers. By the notice (Ex. R/2) dated 12th September, 1986 there was some change in the election programme and the date for filing of nominations was altered from 16th September, 1986 to 17th September, 1986, the scrutiny of nomination papers was altered to 17th September, 1986, the date for withdrawal was fixed as 18th September, 1986, the date of poll was fixed as 22nd September, 1986 and the date of election of office bears was fixed as 23rd September, 1986, in accordance with the said notice respondent No. 3 published the final voters" list on 8th September, 1986. Feeling aggrieved by the aforesaid voters list published by respondent No. 3 and the elections which were to be held on the basis of the said voters" list, the petitioner has filed this writ petition where in he has prayed that an appropriate writ, order or direction may be issued directing the Registrar, Co-operative Societies, Assistant Registrar as well as the Election Officer, Sahkari Samiti not to hold elections on 22nd September, 1986 on the basis of the said voters" list and a further direction may be issued to the respondents to issue a proper voters" list after considering objections against the same.

4. A reply to the writ petition has been filed on behalf of the respondents where

in a preliminary objection has been raised with regard to the maintainability of the writ petition on the ground that the remedy of an arbitration u/s 75 of the Act is available and in view of the availability of the said remedy this writ petition cannot be entertained.

5. It may be mentioned that during pendency of this writ petition an interim order was passed on 18th September, 1986 where by it was directed that the election of the members of the Managing Committee of the Sahkari Samiti may be held as per schedule, but the result of the said election may not be declared. In pursuance of the said order election of the members of the Sahkari Samiti was held as per schedule, but the result has not yet been declared.

6. We have heard Shri Tiwari, the learned Counsel for the petitioner, in support of the writ petition and the learned Addl. Advocate General as well as Shri G.C. Mathur for the respondents.

7. Section 75 of the Act lays down that if any dispute touching the constitution, management, or the business of a Co-operative Society arises among persons referred to in Clauses (a) to (e) of Sub-section (1), such dispute shall be referred to the Registrar for decision and section 77 of the said Act provides that on such reference the Registrar may decide the dispute himself or refer it for disposal to an arbitrator. Sub-section (2) of section 75 specifies the disputes which shall be deemed to be disputes touching the constitution, management, or the business of a co operative society under Clause (c) of Subsection (2) of Section 75 "any dispute arising in connection with the election of any officer of the society" is deemed to be a dispute touching the constitution, management or business of a co-operative society. The term "officer" has been defined in Clause (j) of section 2 of the Act to mean the President, Chairman, Vice Chairman, Secretary, Manager, Liquidator, Administrator or a member of committee and includes any other person empowered under the rules and the bye-laws to give directions in regard to the business of a co-operative society. Since the member of the committee of management of a co-operative society is an officer of the society, a dispute arising in connection with the election of the members of the committee of management of a cooperative society has to be deemed to be a dispute touching the constitution, management or business of a co-operative society u/s 75 of the Act and it is required to be referred to the Registrar for decision who may decide it himself or refer it for disposal to an arbitrator.

8. It would thus appear that the dispute which has been raised by the petitioner in this writ petition relating to the election of the members of the Managing Committee of the Sahkari Samiti is a dispute touching the constitution, management or business of the Sahkari Samiti and the said dispute can be adjudicated upon under the provisions of Section 75 of the Act. It may also be mentioned that u/s 77 (3) of the Act the Registrar or any other person to whom a dispute is referred for decision may, pending the decision of the dispute make such interlocutory orders as he may deem necessary in the interests of justice. In a number of cases this court has refused to entertain writ petitions involving

challenge to the election of the members of the managing committee of a co-operative society in view of the availability of the remedy u/s 75 of the Act.

9. Shri Tiwari, the learned Counsel for the petitioner has, however, urged that in this case there has been large scale induction of new members in the voters' list that was issued by respondent No. 3 on 8th September, 1986 and that the elections should not be allowed to be held on the basis of the said voters list. The submission of Shri Tiwari was that respondent No. 4 as manager of the Sahkari Samiti, had issued number of receipts with regard to payment of membership subscription and share money on 11th August, 1986 and 14th August, 1986 for the purpose of enrolling new members in the Sahkari Samiti and that all these receipts have been ante-dated because receipt books from which these receipts were issued were obtained from the Bank on 18th August, 1986. Shri Tiwari has also submitted that Sub-section (2) of section 19 of the Act prescribes that an application for admission as a member of co operative society shall lie to the committee of that co-operative society and such committee shall decide the application and communicate the decision to the applicant and that in the present case the applications for membership in respect of new members were never submitted before the managing committee of the Sahkari Samiti and the Managing Committee of the Sahkari Samiti never took a decision in respect of those applications and in these circumstances those applicants could not be treated as members of Sahkari Samiti and their names have been wrongly included in the voters' list.

10. The respondents have disputed the correctness of the aforesaid facts. With regard to the enrolment of new members of the Sahkari Samiti, it has been pointed out that under proviso to Sub-section (2) of section 19 it is laid down that every person including one belonging to weaker section who applies for membership to the Assistant Registrar or to the committee of a village service society, primary Land Development Bank or a farmers' service society shall be deemed to have been admitted to such membership with effect from the date of the receipt of the application in the office of the society. It has been submitted that the Sahkari Samiti is a village service society and is governed by the said proviso. It has also been submitted that in view of the aforesaid proviso the application for membership has to be addressed to the managing committee of the Sahkari Samiti but it has to be submitted in the office of the Sahkari Samiti and the applicant becomes a member with effect from the date of the receipt of the application in the office of the Sahkari Samiti and it is not necessary that the said application should be placed before the managing committee of the Sahkari Samiti and should be accepted by the managing committee before the applicant can become a member. It has also been pointed out that in bye-law No. 5 of the Bye-laws of the Sahkari Samiti it has been laid down that the application for memberships should be submitted before the manager of the Sahkari Samiti or the Assistant Registrar along with one rupee admission fee of the share money and as soon as the said application form is received by the Assistant Registrar or by the manager of the Sahkari Samiti, the applicant is to be treated as a

member of the Sahkari Samiti. It has also been urged by the learned Counsel for the respondents that the assertion by the petitioner that the receipt books out of which the receipts for new members were issued on 11th August, 1986 and 14th August, 1986 had been obtained from the Bank on 18th August, 1986, is not correct and that the said receipt books were obtained on 14th August, 1986. It has also been stated that on 11th August, 1986, 150 members had come along with admission forms as well as the admission fee and share money and as per directions of the petitioner the Manager of the Sahkari Samiti deposited the amount paid by the members on 11th August, 1986 in the cash book and since no receipt book was available on that date, receipts were issued after obtaining the receipt book on 14th August, 1986 and the said receipts were issued bearing the date 11th August, 1986 as per directions of the petitioner because the application form of members had been received on 11th August, 1986 and the share money as well as admission fee had also been deposited in the cash book on 11th August, 1986. The other receipts bearing the date 14th August, 1986 were issued out of the receipt books which were obtained from the Bank on 14th August, 1986 and they were not issued from the receipt books obtained on 18th August, 1986. In support of the aforesaid submission, Shri Mathur, the learned Counsel for the respondents Nos. 4 and 5 has placed before us a certificate issued by the Bank relating to the delivery of the receipt books on 14th August, 1986 and 18th August, 1986.

11. We have considered the rival submissions of the learned Counsel for the parties. In the present case the dispute raised by the petitioner relates to the legality of the voters' list issued by Respondent No. 3. The preparation of the voters' list is a part of the election process and a dispute relating to the legality of the voters' list is, therefore, a dispute arising in connection with the election of the members of the managing committee. More over, there is a serious dispute on questions of fact which can only be determined on the basis of evidence and the said dispute can be properly adjudicated in proceedings u/s 75 of the Act. In our opinion the remedy u/s 75 of the Act is an efficacious remedy for decision of the dispute raised by the petition and in the circumstances we are of the opinion that this writ petition cannot be entertained.

12. The writ petition is, therefore, dismissed. The interim order passed by this Court on 18th September, 1986 which was affirmed by order dated 16th October, 1986 is vacated. No order as to costs.