

(2015) 09 RAJ CK 0075

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14202 of 2015

Bhupendra Pratap Singh Rathore

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 28-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 09 RAJ CK 0075

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : R.P. Singh, Senior Advocate and Shashikant Saini, for the Appellant;
Anurag Sharma, AAG, Advocates for the Respondent

Judgement

Alok Sharma, J—A copy of the petition was supplied to Mr. Anurag Sharma on 23-9-2015. He seeks time to file reply to writ petition.

2. Mr. R.P. Singh, Senior Advocate appearing with Mr. Shashikant Saini on behalf of the petitioner submits that election inter alia to the post of President of Sarwad Kraya Vikraya Sahakari Samiti Limited (Sarwad Samiti) have not been held despite the order dated 11-8-2015 passed by the Rajasthan State Cooperative Election Authority itself. They were arbitrarily kept in abeyance, instead. Consequent to non holding of the aforesaid election Ward No. 11 representative of the Kraya Vikray Sahakari Samiti will be denied representation in the Committee of the Ajmer Central Cooperative Bank Limited Ajmer contrary to the mandate of its bye-laws i.e. 11(1)(2) (sic). It has been prayed in the interim that it therefore it be directed that before election of the committee of the Ajmer Central Cooperative Bank Limited, registered under the Rajasthan Cooperative Societies Act, 2001 (hereinafter "the 2001 Act"), to be held on 6-10-2015, election to the post of President of the Sarwad Samiti be held.

3. The facts of the case are that the post of President of Sarwad Samiti fell vacant on 4-8-2015 owing to the President's death. Requisite information was sent to the respondent No. 4, Cooperative Election Authority. Thereupon the

respondent No. 4 vide order dated 11-8-2015 issued a calendar and conveyed it inter alia to the Sarwad Samiti whereunder election process for the purpose was to commence on 14-8-2015 for election of one member completed on 30-8-2015, and immediately thereafter on 31-8-2015 election for the post of President of Sarwad Samiti held. It has been submitted that yet oddly, the aforesaid elections were not held purportedly for the reason, quite specious, of the calendar set out vide order 11-8-2015 clashing with Municipal elections in the State of Rajasthan under the Rajasthan Municipalities Act, 2009.

4. It has been submitted that in the circumstances, after the conduct of the Municipal elections which ended on 22-8-2015, on 15-9-2015 a notice was sent on behalf of the petitioner to the respondent No. 4 the Election Authority that due to death of the President of the Sarwad Samiti, a member's seat as also that of the President was vacant. It was stated that less than half of the period of the Committee remained in view of the Committee having been elected on 27-9-2013 and as per obtaining law co-option be allowed to be done on the vacant seat, and election to the post of President of the Sarwad Samiti be held. It was pointed out that the election of the Ajmer Central Cooperative Bank Limited was expected to be notified on or about 22-9-2015, and therefore prior thereto the member on vacant seat of Sarwad Samiti has to be filled up as also the President elected, such that proper representation of Ward No. 11 could be ensured in the Ajmer Central Cooperative Bank Limited. It was stated that even though election for the post of President of the Sarwad Samiti were scheduled in August, 2015 that had postponed purportedly for reason of municipal elections, yet even after 23 days of the completion thereof, election to the post of President of the Sarwad Samiti had not been conducted. It was pointed out that if the election to the post of President of the Sarwad Samiti were not conducted prior to elections of the Ajmer Central Cooperative Bank Limited, it would be prejudicial to the Sarwad Samiti and Ward No. 11 itself for the reason that of 8 Samitis in Ward No. 11, in 7 Samitis Administrators had been appointed. In the circumstances only the Sarwad Samiti had a elected board, consequent to which election to the post of President of the Sarwad Samiti was extremely important for proper representation in the Ajmer Central Cooperative Bank Limited. It was pointed out that if the election of the member and President to the vacancies in Sarwad Samiti were not held prior to election of the Ajmer Central Cooperative Bank Limited, the Election Authority would be answerable in a court of law.

5. Senior Counsel for the petitioner has submitted that despite the notice, the Election Authority smug in the belief that even if elections were to pushed through for the Board of Directors of the Ajmer Central Cooperative Bank Limited, on election being notified, the petitioner would be non-suited in court only on the ground that courts may not interfere with election process even if the whole process were vitiated by gross arbitrariness, and illegality. It has been submitted that in terms of Section 27(4) of the 2001 Act, as amended by the Amendment Act, 2013 it has even been provided that the Committee of a society may fill a casual vacancy on the committee by nomination out of the same class

of members in respect of which the casual vacancy had arisen, if the term of office of the Committee then is less than half of its original term. It has been submitted that vacancy owing to death of the president of the Sarwad Samiti having arisen on 4-7-2015 as of 27-8-2015 more than half of term of the Committee elected on 27-2-2013 had expired and vacancy in the membership could be filled up by way of co-option by the 9 members of the Committee. It has been further submitted in the alternative that even otherwise 9 members of the Committee can constitute the quorum for the election of the president and the entire exercise can be conducted in one day as evident from the order dated 11-8-2015 passed by the respondent No. 4 Election Authority, whereunder in one day the election for the post of President of the Sarwad Samiti was fixed to be conducted on 31-8-2015. Senior counsel submitted that in these circumstances this court, in the interest of justice and compliance with statutory provisions direct that at least election to the post of President of the Sarwad Samiti be held amongst 9 members of the Committee immediately, such that the elected President of the Sarwad Samiti could then, in the facts obtaining, participate in the election for the post of Director in the Ajmer Central Cooperative Bank Limited.

6. Mr. Anurag Sharma, learned Additional Advocate General appearing on behalf of the State submitted that any direction as sought by the petitioner would entail interference with the election process. He submitted that electoral list is being finalised today. Counsel has drawn the court's attention to Section 34(5) of the 2001 Act, which provides that election process once started shall not be stopped or postponed for any reason save for a natural calamity or break down of law and order.

7. Heard. Considered.

8. Section 34(5) of the 2001 Act which is the lynchpin of the arguments of the learned Additional Advocate General merely provides that elections shall not be stopped or postponed unless for extraordinary reasons indicated therein. Directions in aid of lawful conducting of elections and safeguarding of the rights of persons interested in fair elections as per the democratic creed reflected in the Act of 2001 are not prohibited, nor could they be vis-?-vis the equitable and extraordinary jurisdiction of this court under Article 226 of the Constitution of India to be exercised ex debito justitiae. Contrarily, Mr. Sharma has failed to show any provision of law where once an election programme declared for a society, it can be postponed as in the case of Sarwad Samiti where election to the post of President were to be held by 31-8-2015 as per order dated 11-8-2015. The interim prayer of counsel for the petitioner is not for stopping or postponing the election process for the Board of Directors of the Ajmer Central Cooperative Bank Limited. The petitioner merely seeks participation of the Sarwad Samiti in the election process of the Ajmer Central Cooperative Bank Limited through the Kraya Vikraya Sahakari Samiti Ward No. 11.

9. The issue in this petition is about letting the respondent State Cooperative

Election Authority get away with a blatant breach of its obligation under the 2001 Act and its failure to discharge its obligation for conducting election inter alia of the President of the Sarwad Samiti after notifying the said election vide order dated 11-8-2015. This dereliction of statutory obligation cannot be countenanced by a court conferred equitable extraordinary jurisdiction. There is nothing on record to establish that election of a member against a casual vacancy, owing to death of President and of the President himself was impossible or would have caused prejudice to municipal election. Aside of that even subsequent to declaration of result of municipal elections on or about 22-8-2015, no steps were taken by the respondent Election Authority to conduct the requisite elections of the Sarwad Samiti for over a month. Administrators have been appointed on 7 Samities out of 8, which constitute ward No. 11. Non election of the President of the Sarwad Samiti would entail Kray Vikraya Sahakari Samitis, Ward No. 11 not being represented in the Board of Directors of the Ajmer Central Cooperative Bank Limited which would be in clear breach of mandate of the bye-law 11(1)(2) (sic) of the said Bank.

10. This court as a Constitutional court cannot allow such a situation created by the respondents or the perpetuation of a blatant illegality destructive of the integrity of the Election process.

11. In the circumstances of the case, in the interim it is directed that election to the post of President of the Sarwad Kraya Vikraya Sahakari Samiti Ltd. amongst nine of the ten obtaining members be held within two days and the President so elected be allowed to participate in the election for the Board of Directors of the Ajmer Central Cooperative Bank Limited.

12. The respondents to file reply to writ petition within one week.

13. Let the case be listed on October 6, 2015.