

(2005) 11 AHC CK 0050

In the Allahabad High Court

Case No : Civil Misc.Writ Petition No. 40333 of 2002

Committee of Management C.O.D. Salary Earners
Cooperative Society Ltd.

APPELLANT

Vs

Sub Divisional Magistrate Sadar, District Assistant Registrar
Cooperative Societies and Gopalji Ram

RESPONDENT

Date of Decision : 10-11-2005

Acts Referred:

Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 432, 441, 441C(2), 444C

Citation : (2006) 2 AWC 1426 : (2006) 1 UPLBEC 685

Hon'ble Judges : Vineet Saran, J

Bench : Single Bench

Advocate : Sujeet Kumar Rai, for the Appellant; Pradeep Chauhan and Pradeep Chandra and S.C., for the Respondent

Final Decision : Allowed

Judgement

Vineet Saran, J.—The petitioner is a registered cooperative society. By a notification, which was duly published in the newspaper, the elections of the Society were to be held on 11th/12th December, 2000. By an order passed by the Election Officer, the said election of the Society had been postponed. However, thereafter on 20.2.2001 the election programme was published by the Election Officer, whereby the elections were to be held on 26th/27th February, 2001. Accordingly, in pursuance of the subsequent order of the Election Officer, the elections of the members and office bearers of the Society were held on 26.2.2001 and 27.2.2001 and the results were declared in which one Sri Kale Baba and Sri Anees Ahmad were elected as Chairman and Vice Chairman of the society. The said results were declared on 27.2.2001. Challenging the said elections, on 20.4.2001, Respondent No. 3 filed an election petition before the Prescribed Authority, Respondent No. 1. By order dated 5.9.2002 passed by the Prescribed Authority the election petition was allowed and the elections held on 26/27.2.2001 were quashed. Aggrieved by the aforesaid order dated 5.9.2002 the petitioner has filed this writ petition.

2. I have heard Sri S.K.Rai, learned Counsel for the petitioner and perused the record. Even though the list has been revised, no one is present on behalf of the contesting respondent No. 3. Learned Standing Counsel is, however, present on behalf of the State-Respondent Nos. 1 and 2. Counter and rejoinder affidavits between the contesting parties have been exchanged and accordingly this writ petition is being disposed of at this stage.

3. The election petition has been allowed by the Prescribed Authority solely on, the ground that the subsequent publication of the election programme was not in accordance with Rule 441 of the U.P. Cooperative Societies Rules, 1968 (for short "Rules of 1968") which provide that notice of not more than 30 days but not less than 15 days from the date of poll has to be given by the Election Officer intimating the programme of election and since the notice for the elections to be held on 26/27.2.2001 had been given by the Election Officer on 20.2.2001, which was less than 15 days, the elections so held, being in contravention of Rule 441 of Rules of 1968, were held to be illegal and thus set aside by the Prescribed Authority.

4. Learned Counsel for the petitioner has submitted that Rule 441 of Rules of 1968 would be applicable only where fresh elections were being notified at the initial stage and not to postponed election programme, in which case Rule 432 of Rules of 1968 would be applicable, and since the election programme subsequently published was under Rule 432 of Rules of 1968, the cancellation of the elections held on 26/27.2.2001 on ground of insufficiency of notice under Rule 441 was totally unjustified. It has also been submitted that as per Rule 441-C(2) the election petition could have been filed only within 45 days of the declaration of results (which was on 27.2.2001) and the election petition having been filed on 20.4.2001, was 8 days beyond the said period of limitation, and as such the same could not have been entertained. Lastly it was submitted that the order impugned in this writ petition is bad because in the election petition it was only the Secretary of the Society (who is a government servant and not an elected member), who was impleaded as a respondent and none of the elected members or the office bearers of the society were impleaded and thus the impugned order dated 5.9.2002 was passed without giving an opportunity of hearing to the petitioner and other elected members of the society who are the aggrieved persons, and accordingly the said order was liable to be set aside.

5. Rule 432 of Rules of 1968 refers to the procedure to be followed in case of there being disruption or postponement of the election scheduled. Rule 432 is being quoted herewith as below:-

432. If for any reason the election of any society has been disrupted by the District Magistrate, or the Election Officer, the process of election shall commence from the stage at which it is disrupted or from a stage prior to that or denovo as the Registrar may decide:

Provided that if nominations have been finalized and symbols have been allotted

the process of elevation shall continue and poll shall be held on such date as the Registrar may fix.

6. It is not disputed that the elections which were Initially scheduled to be held on 11th/12th December, 2000 were postponed. From the records it is clear that on 27.1.2001, the Registrar, Cooperative Societies U.P. Lucknow had passed an order, specifically mentioning the same to be under Rule 432, which was to the effect that the postponed dates of election of the members of the society would be 26.2.2001 and the date for the election of the Chairman, Vice Chairman and other office bearers of the society, would be 27.2.2001. It was only in pursuance of the said order of the Registrar, Cooperative Societies that the subsequent dates for elections were notified as 26/27.2.2001. In pursuance of such direction of the Registrar, Cooperative Societies the Election Officer published the programme of election on 20.2.2001, which has to be treated to be under Rule 432 and not 441. The Prescribed Authority has thus gone wrong in not taking this aspect of the matter into consideration while deciding the election petition.

7. Even otherwise, Rule 444-C(2) mandatorily requires that "a dispute relating to election shall be referred by the aggrieved party within forty-five days of the declaration of the result". It is an admitted fact that the results of the elections of the members of the society had been declared on 26.2.2001 and the results of the election of the office bearers of the society were declared on 27.2.2001. It is also not disputed in the counter affidavit that the election petition had been filed on 20.4.2001 which was well over the period of forty-five days. Under the Rules of 1968, no provision for condoning any delay in filing the election petition beyond the period of forty-five days has been brought to my notice. As such the dispute relating to the election in question having been referred by Respondent No. 3 beyond the period of forty-five days could not have been entertained by the Prescribed Authority.

8. Further, while deciding the dispute relating to the election, the persons affected would be the necessary parties to be heard before deciding the petition. In the present case, it cannot be disputed that the affected persons were the elected members and office bearers of the society. They were admittedly not arrayed as respondents nor had any notices been issued to the said persons or were they given any opportunity of hearing before deciding the dispute and passing of the impugned order dated 5.9.2002, It is a well established principle of natural justice that if a right has accrued in favour of a person, then the same can be withdrawn only after he is given adequate notice and opportunity of hearing. The same having not been done in this case, the order impugned in this petition is liable to be quashed on this ground also.

9. For the foregoing reasons, the impugned order dated 5.9.2002 passed by Respondent No. 1 is hereby quashed. The writ petition stands allowed. No order as to cost.