

(1996) 07 AHC CK 0043

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 22405 of 1998

Dal Singh Yadav

APPELLANT

Vs

State through Government Co-operative Society

RESPONDENT

Date of Decision : 16-07-1996

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 29(2)
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 445

Citation : (1996) 07 AHC CK 0043

Hon'ble Judges : Binod Kumar Roy, J and R.K.Mahajan, J

Final Decision : Dismissed

Judgement

1. The petitioner has come up with following prayers : (i) to issue a writ, order or direction in the nature of mandamus commanding the respondents not to enforce U.P. Act No. 19 of 1998 ; (ii) to declare the said Act to be ultra vires as it contravenes the fundamental right of the petitioner and is against the spirit of the cooperative movement; and (iii) to call for the records and direct the respondents to produce Order, dated 10/11/1998 passed by the Registrar, Cooperative Societies, U.P., Lucknow appointing the District Magistrate, Shahjahanpur as Administrator of the District Co operative Bank Limited, Shahjahanpur.

2. The petitioner is Director/Member, Board of Directors of the Committee of the Management of the District Cooperative Bank Ltd., Shahjahanpur whose term is going to expire on May 10, 1999. He asserts that when the BJP found that their party members have not succeeded in the election of the Cooperative Societies, it being in power amended Section 29 reducing the period of 5 years to 3 years thus depriving his vested right to continue till May 10, 1999. Respondent No. 2 has illegally passed a consequential order appointing the District Magistrate, Shahjahanpur as Administrator.

3. According to Sri R.C. Dwivedi, learned Counsel for the petitioner Section 29 (2) of the Uttar Pradesh Cooperative Societies Act, 1965, as it stands after the

U.P. Act 19 of 1998 (second Amendment) Act, "is ultra vires; illegal and be declared as unconstitutional" on the following grounds:

(a) That the Act contravenes the fundamental right of the Committee of Management which was to last until 10th of May, 1999.

(b) That the petitioner has a vested right to continue and work as a member/directors of the Board of Directors/Committee of Management of District Cooperative Bank Ltd., Shahjahanpur till 10th of May, 1999, but by amending Act the term has arbitrarily been curtailed which contravenes the fundamental right of the petitioner.

(c) That the amendment brought in by U.P. Act No. 19 of 1998, is a mala fide and colourable exercise of power hence is liable to be set aside as the same has been made on account of political considerations.

(d) That the amendment brought in by U.P. Act No. 19 of 1998, curtailing the term of the Committee of Management is against the fundamental principles of cooperative movement and negates the principle of cooperation and thus, be declared as ultra vires", (vide paragraph 13 of the writ petition).

3.1. To a question put to Sri Dwivedi as to which particular Article of part II of the Constitution of India has been allegedly violated, he failed to give any answer. He, however, contended that once term of the Committee of Management was fixed for five years by the Legislature it could not be reduced to three years and in doing so the right vested in the Committee of Management has been deprived.

3.2. Sri Dwivedi further contended that the Legislature has acted mala fide in enacting it.

3.3. Sri Dwivedi lastly contended that we must call for a counter from the State and cannot dismiss this writ petition in limine in view of the ratio decidendi laid down by the Apex Court in N.K. Singh v. Union of India and others, (1994) 6 SCC 98.

4. Sri R.P. Goyal, the learned Advocate General, on the other hand, contended as follows:

(i) The submission made by Sri Dwivedi have got prima facie no substance so as to call for a counter from the respondents. The decision in N.K. Singh is not in relation to an Act of Legislature, (ii) Entry No. 32 of the State List of Seventh Schedule of the Constitution of India expressly confers exclusive jurisdiction in the State Legislature to make enactment in regard to Cooperative Societies of the State. Full Bench decision dated 1651973 of our High Court in C.M.W.P. No. 7632 of 1971 and of the Patna High Court in Sheetal Prasad Gupta v. State of Bihar, AIR 1990 SC 65, which follows our Full Bench, give a complete answer regarding the arguments of Sri Dwivedi. (iii) In Sheetal Prasad Gupta (supra), a challenge was made to the provisions of the Bihar and Orissa Cooperative

Society Act as amended by the Amendment Ordinance providing that the Members who had completed two terms cannot fight for the third term. It was also attacked on the ground that it has been enacted to serve the perverse political ends of the Chief Minister and thus mala fide. The Patna High Court also considered a Division Bench decision of our High Court in *Jalaun Producers' Cooperative Union Limited v. State of U.P.*, 1979 Allahabad Law journal 244. It is not the case of the petitioner, who has failed to show even prima facie that the object for which the Act has been amended infringes Article 14 of the Constitution. The Bull Bench ultimately held that the Ordinance making power is clothed with all the attributes of an Act of the Legislature and it is not permissible to strike down the ordinance on the ground of nonapplication of mind or mala fide or that the prevailing circumstance did not warrant issuance of Ordinance. The Full Bench further negated the contention made on behalf of the writ petitioners that the Ordinance ultra vires Article 300A of the Constitution of India as they have been deprived of the movable and immovable properties without any provision for compensation on the ground that it has got no substance inasmuch as the Societies not having been wound rather they continue to exist very much. The position here is far better namely, that there is an amendment Act and not an Ordinance, (iv) The Apex Court in *State of U.P. v. C.O.D. Chheoki Employees Cooperative Society Ltd. and others*, (1997) 2 UPLBEC 793 has already held as follows:

"It is settled law that no citizen has a fundamental right under Article 19 (1) (c) to become a member of Cooperative Society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the Society is a statutory right. On fulfilment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, Rules and Byelaws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, Rules and the Byelaws as he has his right under the Act, Rules and Byelaws and is subject to its operation. The steam cannot rise higher than the source."

Accordingly, the petitioner has no locus to challenge the validity of the Act. In *State of A.P. v. Me Dowell and Co.*, AIR 1996 SC 1627 the Apex Court has laid down as follows:

"The law made by the Parliament or the legislature can be struck down by Court on two ground and two grounds alone, viz. (i) lack of legislative competence and (2) violation of any of the fundamental rights guaranteed in Part II of the Constitution or of any other constitutional provision. There is no third ground."

"In other words, say, if an enactment is challenged as violative of Article 14, it can be struck down only if it is found that it is violative of the equality clause/ equal protection clause enshrined therein. Similarly, if an enactment is

challenged as violative of any of the fundamental rights guaranteed by clauses (a) to (g) of Article 19 (1), it can be struck down only if it is found not saved by any of the clauses (2) to (6) of Article 19 and so on. No enactment can be struck down by just saying that it is arbitrary or unreasonable. Some or other constitutional infirmity has to be found before invalidating an Act. An enactment cannot be struck down on the ground that Court thinks it unjustified. The Parliament and the Legislatures, composed as they are of the representatives of the people, are supposed to know and be aware of the needs of the people and what is good and bad for them. The Court cannot sit in judgment over their wisdom."

Thus, there is a very limited scope before us for our scrutiny and in fact even prima facie none to be examined, (vi) In our State right from the very beginning there was three years tenure of the Committee of Management of a Cooperative Society and it was for the first time in the year 1994, during the Chief Ministership of Sri Mulayam Singh Yadav, this three years period was increased to five years, period. By the amendment the present Government has restored back the three years" period for the object and reason stated in the Bill which have not been stated to be mala fide and not for the reason mentioned by the petitioner. By no stretch of imagination it can be argued that the decision taken by the then Chief Minister Sri Mulayam Singh Yadav could not be reviewed by the present Government, otherwise Sri Mulayam Singh Yadav Government's decision itself was incompetent to increase the statutory period of three years to five years. This reduction of the tenure does not militate against the spirit of cooperative movement in the State, (vii) The BJP through its leader the Chief Minister has not been impleaded as party Respondent and thus the plea of mala fide is not entertainable besides it is too vague.

5. Following the learned Advocate General Sri P.M. Singh, the learned Additional Advocate General assisted by Sri H.R. Mishra, learned Standing Counsel informed us that against the judgment of the Full Bench of the Patna High Court, which answers the questions argued by Sri Dwivedi, SLP was preferred before Supreme Court but dismissed.

6. Firstly a brief history of the Legislation.

6.1 Subsection (2) of Section 29 of the Act, enacted in 1965 was as follows;

"(2) The terms of the elected members of the Committee of Management shall be such as may be provided in the rules or the byelaws of the society;

Provided that they shall after the expiry of their term continue as members of the Committee of Management till fresh elections are held by the society under subsection (3) or subsection (4) or nominations are made by the Registrar under subsection (5)."

6.2 Rule 445 of the Rules framed under the Act, extracted by the petitioner in the writ petition shows that the term of the Committee of Management of a

Cooperative Society was for only three cooperative years.

6.3 Subsection (2) of Section 29 aforesaid was substituted by U.P. Act No. 17 of 1994 and the substituted subsection (2), which became operative with effect from 2851994, reads thus:

"(2) The term of every Committee of Management, including a Committee of Management constituted before the commencement of the U.P. Cooperative Societies (Second Amendment) Act, 1994 whose term has not expired on the date of such commencement, shall be five years and the term of the elected members of the Committee of Management shall be coterminus with the term of such Committee.

Explanation For the purpose of this subsection, the expression "term" in respect of a Committee of Management constituted before the commencement of the Uttar Pradesh Cooperative Societies (Second Amendment) Act, 1994, means a period of three years."

6.4 Subsection (2) of Section 29 as it stands after its present amendment by U.P. Act 19 of 1998, reads thus:

"(2) (a) The term of every Committee of Management shall be three years and the term of the elected members of the Committee of Management shall be coterminus with the term of such Committee.

(b) The provisions of clause (a) shall apply also to a Committee of Management in existence on the date of commencement of the Uttar Pradesh Cooperative Societies (Second Amendment) Act, 1998 and to the elected members of such Committee.

(c) The term of a Committee of Management, which has completed, on or before the date of the commencement of the Act referred to in clause (b), the period three years from the date of its constitution and the term of its elected members, shall expire on such commencement."

6.5 Rule 445 has also been suitably amended by U.P. Cooperative Societies (Thirty fourth Amendment) Rules, 1998 as extracted by the petitioner in Annexure 3.

6.6 A bare perusal of the amended subsection (2) shows that only the five years period has been reduced to three years. From the statement made in paragraph 8 of the writ petition amendment was made in Section 29 when Miss Mayawati was the Chief Minister in 1997 restoring substantially the earlier subsection (2) of Section 29. There is no question of divesting of any vested right as alleged by the petitioner. As simply the period has been reduced from 5 to 3 years it cannot be held that it is against the spirit of the co operative movement.

7. The decisions relied upon by Sri Goyal in (i) State of U.P. (ii) State of A.P. and (iii) Sheetal Prasad Gupta, (supra), all squarely negative the contentions of Sri Dwivedi and support the contentions of Sri Goyal and we accept them. Not a

single decision has been brought to our notice by Sri Dwivedi where either the Apex Court or any High Court of our country has nullified a legislation reducing tenure on account of it being ultra vires. On the contrary our own High Court through a Full Bench decision dated 1651973 in C.M.W.P. No. 7632 of 1971 (referred to in Sheetal Prasad Gupta (supra), held that it is open to the legislature to legislate on all or any aspect of Cooperative Societies including management thereof. The sole decision relied upon by Sri Dwivedi though rendered by the Apex Court in Bajaj Shiksha Parishad and others v. Deputy Director of Education and others, 1988 UPLBEC 267 has not dealt with the question of competence of the Legislature rather it has dealt with the exercise of powers of the Regional Deputy Director of Education in regard to the term of Committee of Management of a College. There is a world of difference between an executive act and a Legislative act. This decision is no authority for the proposition mooted out by Mr. Dwivedi.

8. Now we come to the last submission that we must call for a counter as held by the Supreme Court in N.K. Singh v. Union of India and others, (1994) 6 SCC 98. Mr. Dwivedi placed strong reliance on the following observations made in paragraph 12 of the judgment:

"Allegations of mala fides having been made by the appellant on affidavit, it is difficult to fathom how the Tribunal rejected them without even requiring a counteraffidavit to rebut them. The Tribunal's perception that the allegations made on affidavit by the appellant even without any rebuttal do not constitute the plea of mala fide, is obviously incorrect. The Tribunal also did not appreciate the true extent of scrutiny into such a matter and the grounds on which transfer is judicially reviewable."

8.1 In this context let us see the pleading of the petitioner. In paragraph 9 of the writ petition he has stated as follows:

9. That the Bharitya Janta Party having found that their party members have not succeeded in the election of Cooperative Societies through the State of Uttar Pradesh and with a background to settle its party members through extra constitutional mean, it appears, they have adopted a novel method and by the impugned amendment brought in by U.P. Act 19 of 1998, again amended Section 29."

In his affidavit surprisingly the petitioner claims the aforesaid statement as true to his personal knowledge as well as based on perusal of record both which is intriguing.

8.2 There is a world of difference between an allegation of mala fide in regard to an administrative act and mala fide of Legislature.

8.3 There is a presumption of constitutionality of a statute. Nothing has been brought on the record by the petitioner or could be demonstrated by Sri Dwivedi in course of his submissions prima facie to rebut the aforesaid presumption.

8.4 Facts in detail have not been brought on the record to show that how many persons belonging to BJP have been defeated and how BJP will settle its PartyMembers through ExtraConstitutional means by the appointment of Administrators.

8.5 He has not even impleaded the Chief Minister, who is leader of BJP, as a PartyRespondent.

8.6 Thus, we are of the view that there is nothing tangible before us to call for a counteraffidavit.

9. For the reasons aforementioned, we dismiss this writ petition in limine.

W. P. dismissed.