
(1982) 03 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1895 of 1982

Dhudaram

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 18-03-1982

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Rajasthan Co-operative Societies Act, 1965 — Section 36(1)(a)

Citation : AIR 1983 Raj 29 : (1982) RLW 304 : (1982) WLN 201

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Advocate : M.M. Singhvi and M.S. Singhvi, for the Appellant; R.P. Dave, Dy. Govt. Advocate, N.S. Acharya and Purshottam, for the Respondent

Final Decision : Allowed

Judgement

M.B. Sharma, J.—In this writ petition, an important question is involved about the powers of the State Government to nominate a committee in a co-operative society.

2. The petitioner, agriculturist by profession, is a member of the Bikaner Sahakari Upbhokta Wholesale Bhandar Limited, Bikaner (for short, "the Bhandar" hereinafter) since the year 1963. The Bhandar which is a consumers' cooperative society, was registered as a co-operative society on January 23, 1963 under the provisions of the Rajasthan Co-operative Societies Act, 1965 (hereinafter called "the Act") by registration No. 373-F. The petitioner has been a Chairman of the Bhandar twice and lastly, he was elected as such on August 20, 1976. As per bye-law No. 11 (6) (2) of the Bye-laws of the Bhandar, the period of the Managing Committee (Sanchalak Mandal) is to be three years. The election had taken place on 20-8-1976 and the three years' period was to expire on August 20, 1979 but before the expiry of the aforesaid therefore term, under the provisions of Section 36 (1) (a) of the Act, the committee was removed and in its place, an Administrator was appointed.

3. In order to revive the old practice of holding elections of the democratic institutions within the scheduled time, the State Government took a decision and directed that the elections be held in all the co-operative societies all over Rajasthan on or before Dec. 30, 1981. Hence, when the Administrator was functioning, one Anil Kumar Garg was appointed as Election Officer to conduct the elections of the representatives from amongst individual members "A" class of the consumers for the General Body, In Rashtrdoot dated Nov. 3, 1981, the said Election Officer published the programme of the elections under which the final (provisional) electoral roll was to be published on 23-11-81. Objections to the electoral roll were to be obtained on Nov. 24, 1981. The objections were to be heard on December 9, 1981 and a decision was to be given. Thereafter, the final electoral rolls were to be affixed on the notice board. The nomination papers were to be received on Dec, 11, 1981 in between 10-00 A.M. to 2-00 P.M. The same day, they were to be scrutinized and a list of all the candidates was to be published. The withdrawal was to take place by Dec. 14, 1981 in between 2 to 5 p.m. and if necessary symbols were to be allotted to the candidates. If necessary, elections were to be held on Dec. 20, 1981 from 8-00 a.m. to 4-00 p.m. in accordance with the earlier information dated July 9, 1981 The aforesaid programme for elections was modified and the date for acceptance of membership forms was extended from 15-11-81 to 1-9-11-81.

4. It appears that after the publication of the programme for the elections in Rashtrdoot dated 3-11-81 and before it could be implemented, the State Government, under its order dated Nov. 13. 1981 (Ex. 2 pp. 31-32) appointed one Shri Vijaysingh Advocate as Chairman and ten others as members of the Managing Committee of the Bhandar in place of the Administrator. The petitioner challenged the nomination in this Court, by the present writ petition on 18-11-1981 impleading all the eleven persons as respondents to the petition. To complete the narration of the facts, it may also be mentioned here that thirteen more persons including the petitioner were nominated as members of the Managing Committee under the order of the Government dated Dec. 4, 1981 one of them namely Purshottam, on his application has been impleaded as a respondent.

5. The nomination has been challenged by the petitioner in this petition on two grounds: firstly, that it is discriminatory inasmuch as the other Bhandars, similarly placed, in which there were also administrators functioning, a committee has not been nominated and elections have been allowed to take place and now those Bhandars and other co-operative societies were having elected representatives whereas in the case of the Bhandar, even after the election programme was announced, the Managing Committee was nominated as aforesaid. The members nominated were not qualified and eligible to be members as they were not even members of the Bhandar; and secondly, that the nomination of the committee is beyond the powers of the State Government and as such, is beyond its jurisdiction.

6. Show cause notice was issued to the respondents and they have shown cause. According to the reply of the respondents, the election programme had been postponed in consultation with the Registrar due to the Panchayat elections. The revised programme for holding the election for members of the representative body was also published in which the polling was to take place on Jan. 20, 1982. After the election of the representatives of the members, the election of the Chairman and other office-bearers of the Managing Committee would have taken place in accordance with the bye-laws. It will, therefore, be clear that when the Administrator was functioning, a Managing Committee was nominated in his place on Nov. 13, 1981.

7. The State Government, in exercise of the powers conferred on it under S. 139 of the Act, read with Rule 110 of the Rajasthan Co-operative Societies Rules, 1966 (for short, "the Rules" hereafter) issued an order dated June 8, 1981 (Annexure 2A) that the general provisions of the Act are put in abeyance in such of the societies where Administrators are functioning and the percentage of official members was more than the members from the public. After the aforesaid order came to be passed, the aforesaid order dated Nov. 13, 1981 (Ex. 2) nominating Shri Vijaysingh Advocate as Chairman and other ten members was passed.

8. The order of the State Government dated June 8, 1981 reads as follows,--

^ ^ tks fd jktLFkku dks dqN "kh" kZ lgdkjh lfefr;ksa] laLFkkvksa] esaa bl le; ljdkjh vf/kdkjh %v/;{k in ij ,oe dqN esa vuqikr ls vf/kd ljdkjh lnL; euksuhr gS A

vkSj tks fd jkT; ljdkj euksuhr ljdkjh v/;{kks ds LFkku ij xSj ljdkjh v/;{k cukuk rFkk euksuhr ljdkjh lnL;ksa dh la[;k de djuk mi;qDr le>rh gS A

vr% jktLFkku lgdkjh laLFkk vf/kfu;e 1965 dh /kkjk 139 dks jktLFkku lgdkjh laLFkk fu;e 1966 ds fu;e 110 ds lFk i<rs gq, bues fufgr "kfDr;ks ds iz;ksx ls jkT; ljdkj ,rOnkj vf/kfu;e ds lkekU; izko/kkuks dks mUeqDr djrs gqvs funsZ"k nsrh gS fd ,slh lfefr;ksa @ laLFkkoks es eukuhr fdlh Hkh ljdkjh vf/kdkjh v/;{k rFkk ljdkjh lnL; dks gVk dj muds LFkku ij xSj ljdkjh v/;{k vFkok lnL; euksfur fd;s tk ldrs gS A**

Under Section 139 of the Act, the Government may, by general or special order, exempt any co-operative society or any class of Societies from any of the provisions of the Act and that such provisions shall apply to such Societies or class of Societies with such modifications as may be specified in the order. A look at the order aforesaid dated June 8, 1981 would make it clear that in such of the Co-operative Societies where Administrators appointed u/s 36 (1) (a) of the Act were functioning and in such of the Societies where the percentage of the official members in the managing committee was more than the representatives from the public, the general provisions of the Act were put in abeyance. Power was taken by the State Government to nominate non-official persons as Chairman or members. It is the case of the Government as contained in the reply that the Managing Committee was nominated under the powers vested in it u/s 36 (1A)

(c) and (d) of the Act. It will be proper to read clauses (a) of Section 3 (i) (c), (d) and (e) of Sub-section (1A) of Section 36,--

36 (1) (a):-- "Remove the committee, and appoint a Government servant as an administrator, to manage the affairs of the society for a period not exceeding one year as may be specified in the order which period may, with the previous approval of the Government, be extended by the Registrar from time to time, so however, that the aggregate period does not exceed two years;

36 (1A). Where a committee is removed under Sub-section (1);

(c) If the State Government confirms the order of removal of a committee, it may allow the Administrator to continue or may nominate another committee and where the State Government accepts the appeal, and sets aside the order of removal, the committee so removed shall start functioning to all intents and for all purposes, as if it had never been removed;

(d) the administrator appointed under Clause (a) of Sub-section (1) shall cease to hold office immediately upon the nomination of another committee or upon the setting aside of the order of removal, as the case may be. The nominated Committee shall cease to hold office upon the expiry of the remainder of the term of the elected committee removed under Clause (a) of Sub-section (1) :

Provided that the State Government may, by order, extend the period of office of a nominated committee for such time not exceeding one year as may be specified in the order; and the State Government may delegate its power of nomination of a committee under Clause (c) to such officer of the State Government and in relation to such co-operative society as may be prescribed." Even a cursory look at the aforesaid provisions of Section 36 of the Act will make it clear that u/s 36 (1) (a), for the reasons contained therein a committee can be removed and in its place, a Government servant as an Administrator to manage the affairs of the Society can be appointed. In such an eventuality, the Registrar must submit his report justifying the removal of the committee to the State Government within a period of fifteen days from the date of removal of the committee. Any member of the committee so removed has a right to appeal to the State Government under Sub-section (1A) (a) of Section 36 against the decision of the Registrar to remove the committee but this right should be exercised within thirty days from the date of the order of removal. If an appeal is filed, then the State Government is bound to hear and pass an order within three months from the date of the order of removal of the committee. In case the State Government confirms the order of removal of the Committee which too is to be done within the aforesaid period of three months and the report of the Registrar justifying the removal of the committee is accepted by the Government, then u/s 36 (1) (c) of the Act, it may allow the Administrator to continue or may nominate another committee. Though an Administrator appointed u/s 36 (1) (a) of the Act can continue so long as the situation warrants and as long as the State Government desires and there is no limitation so far as

the continuance of the Administrator is concerned but Section 36 (1A) (d) of the Act makes; it clear that the Administrator appointed under Clause (a) of Sub-section (1) shall cease to hold office immediately upon the nomination of another committee or the setting aside of the order of removal/as the case may be. It further provides that the nominated committee shall cease to hold office upon the expiry of the remainder of the term of the elected committee, removed under Clause (a) of Sub-section (1). There is a proviso which provides that the State Government may, by order extend the period of office of a nominated committee for such time not exceeding one year as may be specified in the order. The State Government also, u/s 36 (1A) (e) of the Act, can delegate its powers of nomination to such officer of the State Government and in relation to such cooperative society as may be prescribed. Under Sub-section (4) of Section 36 of the Act. the nominated committee, before ceasing to hold office under Clause (d) of Sub-section (1A) as aforesaid shall arrange for the election of a new committee in accordance with the by-laws of the society, and the newly elected committee shall function with effect and on and from the date of the nominated committee ceasing to hold office.

9. It will, therefore, be seen that u/s 36, in place of the Administrator appointed under Clause (a) of Sub-section (1) of Section 36, a committee can be nominated only for the remainder period of the term of the elected committee. This period can be further extended not exceeding one year, as may be specified in the order. Thus, the period of the nominated committee u/s 36 (1) (d) and its proviso can, in no case, extend beyond the remainder period of the committee under Clause (d) of Sub-section (1A), plus the period not exceeding one year, up to which extension may be granted. In the instant case, the elected committee assumed office on Aug. 20, 1976 and as already stated earlier, its term was to expire on Aug, 20, 1979. The Administrator was appointed on June 30, 1979. The committee was not nominated during the remainder period of the elected committee but for the first time, it was nominated on Nov. 30, 1981 under Ex. 2. As already stated, the case of the State is that the aforesaid nomination of the committee was u/s 36 (1A) (c) and (d) of the Act. In my opinion, the nomination of the Managing Committee on Nov. 30, 1981, could not have been done by the Government at all because the elected committee was removed on June 30, 1979 even one year after the three-year term of the elected committee expired on August 20, 1980. u/s 139 of the Act, the Government may, by general or special order, exempt any co-operative society or any class of cooperative society or any class of societies from the provisions of the Act or may direct that such provisions shall apply to the societies aforesaid with such modification, as may be specified in the order. In earlier part of this order. the order dated June 8. 1981 (Ex. 2A) has already been extracted. If the order aforesaid is read it will be seen that the general provisions of the Act were exempted in case of societies where Administrators appointed under Sub-section (1) (a) of Section 36 were functioning or the percentage of official members was more than the members representing the public. The Government took powers to

nominate non-officials as Chairman or members. The order did not say that the provisions of Sub-section (1A) Clause (a), (d) (e) and sub-set. (4) of Section 36 of the Act will apply with modifications, if so, with what modifications. So far as the power to nominate a committee is concerned, it was there already, but the term of such a nominated committee would not continue beyond the remainder term of the committee removed under Clause (a) of Sub-section (1) of Section 36 and a period not exceeding one year more. The order aforesaid dated June 8, 1981 did not specify that Clauses (c) and (d) of Sub-section (1A) of Section 36 will apply to the class of societies; as contained in the order, with the modification that a committee can be nominated or chairman or members can be nominated for any period whatsoever.

10. Let us view this position from another angle. If Section 36 (1A) (c) and (d) does not apply, then whether there is any other provision in the Act conferring power upon the State Government or the Registrar to nominate a committee of the society. Except an order u/s 139 of the Act as aforesaid, specifying that such and such provisions of the Act with such modification which should be stated clearly in the order, will apply; there appears to be none. The submission of Mr, Acharya, learned advocate for the respondents is that the powers are vested in the State Government u/s 139 of the Act and the order dated June 8, 1981 was passed by the State Government to meet the aims and objects of the Act. As already stated earlier, the powers are vested in the State Government u/s 139 of the Act to exempt any co-operative society or any class of societies from any provision of the Act or to direct that such provisions shall apply to such society or class of societies may be specified in the order. Under the order dated June 8, 1981, the general provisions of the Act have been exempted for those classes of societies which have been already stated earlier. It has not been stated anywhere in the aforesaid order dated June 8, 1981 that some provisions, and if so, which, of the Act, will apply to such co-operative societies, and with what modification. As already stated earlier, even the State Government has come out with a plea that the nomination of the Chairman of the Managing Committee and the members has been done u/s 36 Sub-section (1A) Clause (c) and (d) of the Act. I have already dealt with, in detail, Section 36 (1) (a) and Section 36 (1A) (c) and the proviso of the Act and I have no hesitation in holding that under the aforesaid provisions, a committee can only be nominated for the remainder term of the effected body and for a period not exceeding one year thereafter. If in the order made u/s 139 of the Act. it would have been specified that in the of the Bbandar or in such type of societies, the provisions of Section 36 (1A) will apply with the modification that a committee can be nominated for any length of period, the matter perhaps would have been different. But even in that case, it would have been permissible for this Court to examine if the power has been exercised so as to advance the policy and objects of the Act or has been exercised in colourable exercise of powers and as such, is mala fide.

11. Mr. Singhvi, learned counsel for the petitioner, during the course of the arguments, has not challenged the vires of Section 139 of the Act, and rightly so.

Their Lordships of the Supreme Court in *The Registrar of Co-operative Societies, Trivandrum and Another Vs. K. Kunjabmu and Others*, while dealing with Section 60 of the Madras Co-operative Societies Act, 1932, which also vested powers in the State Government by general or special order, held it to be *intra vires*. It was observed by their Lordships (at p. 354),--

".....In fact, the too rigorous applications of some of the provisions of the Act may itself occasionally result in frustrating the very objects of the Act instead of advancing them. It is to provide for such situations that the Government is invested by Section 60 with a power to relax the occasional rigour of the provisions of the Act and to advance the objects of the Act. Section 60 empowers the State Government to exempt a registered society from any of the provisions of the Act or to direct that such provision shall apply to such society with specified modification. The power given to the Government u/s 60 of the Act is to be exercised so as to advance the policy and objects of the Act, according to the guidelines as may be gleaned from the preamble and other provisions which we have already pointed out, are clear".

I am, therefore, of the opinion that as the order dated June 8, 1981 is couched, it was beyond the powers of the State Government, under its orders dated November 13 and December 4, 1981 to nominate a Managing Committee for a co-operative society beyond the remainder term of the elected committee. In the instant case, as already stated, the committee was nominated on Nov. 20, 1981 and further members were added to it on Dec, 4, 1981 and as such the nomination of the committee is not in accordance with law and is beyond the powers of the State Government.

12. The next contention of Mr. Singhvi is that u/s 139 vide order dated June 8, 1981, the provisions of the Act were exempted for such of the societies where administrators appointed under Clause (a) of Sub-section (1) of Section 36 were functioning and where the percentage of the official members was more than the members representing the public. He submits that such of the societies were one class. In para 7 (b) (internal p. 10 of the writ petition) it has been averred that after announcing the elections the State Government has not appointed any such committee in place of Administrator in any similar co-operative society in the whole of Rajasthan. In ground I-C (p. 11 (b) amended petition) it has been further mentioned that order Ex. 2 is also vitiated as the same is discriminatory and violative of Article 14 of the Constitution, inasmuch as, no such Committee has been appointed in place of the Administrator in any other co-operative society in Rajasthan after the announcement of the election of the co-operative societies in Rajasthan. Similarly, in ground ID (p. 11-C), it has further been mentioned that the order Ex. 2 issued in respect of the Bhandar in question only is against the spirit of the order Ex. 2A itself, because if non-official persons as Chairman were to be nominated for the administrator or official members, then the same should have been done in respect of all the co-operative societies in Rajasthan, similarly placed, By isolating the Bhandar in question, as a single

instance, is mala fide and the State Government has practised high degree of discrimination. These averments have not been challenged in the reply either by the State Government or by the other respondents and all that has been stated is that the power is vested in the State Government. The power which I have held above, in the facts and circumstances of the case, did not vest in it. The State Government has not stated as to why. out of such class of co-operative societies or Bhan-dar where Administrators were functioning under Clause (a) of Sub-section (1) of Section 36 of the Ad, only the Bhandar has been picked up and in all others, elections were allowed to take place. To my mind, discrimination is writ large in this case. It appears to be a clear case of hostile discrimination amongst Bhan-dars similarly placed. The spirit of the Act is that the co-operative societies should have elected representatives and only in such cases, where their functioning has become difficult because of financial stringencies, or the society makes default" or is negligent in the performance of the duties imposed on it by the Act or Rules or bylaws or commits any act which is prejudicial to the society or its members or is not discharging its functions properly, a committee can be removed and an administrator can be appointed or as already stated earlier, in its place, a committee may be nominated for the remainder period of the elected committee or for a period not exceeding one year thereafter.

13. It is given out by Mr. Dave, learned Deputy Government Advocate that the Government is serious to hold elections. It is good that such appears to be the intention of the Government, He submits that because the elections are going to be held, the nomination of the committee should not be quashed. Mr. Acharya submits that those who were further nominated to the committee under the order of the State Government on Dec. 4. 1981, all of them have not been impleaded. None has come forward except Purshottam. There is no material on record that others have assumed charge as members. I am, therefore, of the opinion that with the view which I have taken, it is not necessary that all those who were also members on Dec. 4, 1981 should be made parties also, as it is not going to effect the merits of the case. Moreover, if it were so, the Government may go on adding or removing persons as members during the pendency of the writ petition and If the argument of Mr. Acharya is accepted, there would be no end to it.

14. The question now is as to what relief should be granted in this petition? Whether the nominated committee should be allowed to continue and a direction should be given to the respondents Nos. 1" to 6 to hold the elections within a specified period or the orders nominating the committee should be set aside and administrator should be appointed and elections should be held? I feel that a balanced view is required. I does not appear in this case and there is no material on record produced on behalf of the State Govt. that to achieve the aims and objects of the Bhandar as contained in the bye-laws, the elections were not held and a committee had to be nominated. Thus, to me, it appears that the action of the State Government in nominating the committee for the Bhandar and not

treating the other societies similarly placed in the similar manner, is clearly discriminatory.

15. It will, therefore, allow this writ petition, quash the order Anx. 2 dated 13-11-81 as well as 4-12-81 nominating the Chairman and members of the Managing Committee but in order to facilitate the functioning of the Bhandar till other arrangements by appointment of an administrator are made. I hereby order that the committee nominated shall cease to function after a period of one month and by then, it is expected that an Administrator is appointed, then as far as possible, elections should be held within a period of three months and for that purpose, an election officer be appointed without any delay, if one is not already there. The costs of this petition are, however made easy.