

(1989) 08 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5365 of 1988

Laxmi Chandra

APPELLANT

Vs

Mawana Sahkari Ganna Vikas Samiti Ltd. and Others

RESPONDENT

Date of Decision : 03-08-1989

Acts Referred:

Constitution of India, 1950 — Article 133
Representation of the People Act, 1951 — Section 65
Uttar Pradesh Municipalities (Conduct of Elections of Presidents and Election Petitions) Rules, 1964 — Rule 67
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 16, 21B, 439, 439(1), 444

Citation : (1989) 2 AWC 1116 : (1989) RD 470

Hon'ble Judges : V.K. Khanna, J; R.A. Sharma, J

Bench : Division Bench

Advocate : S.P. Gupta and V.K. Goel, for the Appellant;

Final Decision : Dismissed

Judgement

V.K. Khanna, J.—Respondent No. 1 is a co-operative society known as Mawana Sahkari Ganna Vikas Samiti Ltd. Mawana (hereinafter referred to as the Society). The Managing Committee of the society is constituted by 14 Directors who under Rule 444-B of the Rules framed under the Cooperative Societies Act elect Chairman and Vice-Chairman. According to the procedure laid down under the rules, on 19th January, 1988, Petitioner, Respondent No. 3 and 12 were declared to have been elected as Directors of the society to constitute Managing committee. Respondent No. 2, the Election Officer, thereafter took steps for getting the Chairman of the Managing Committee of the Society elected and an election in which the Directors participated was held. The Petitioner and Respondent No. 3 were contestants for the post of Chairman. The Petitioner as well as Respondent No. 3 each received seven valid votes in the said election. The Election Officer thereafter proceeded to draw lots by Parchi purporting to follow the procedure of Rule 444(v). In the said draw of lots a Parchi was drawn and the Parchi was found to be in favour of Respondent No. 3. The election

officer therefore declared Respondent No. 3 to have been elected as Chairman of the Managing Committee of the Society. In this writ petition a prayer has been made for quashing the election of Respondent No. 3 as Chairman of the Managing Committee of the Society on the ground that Rule 444(v) of the rules is ultra vires of the Act inasmuch as the provisions of the Act and rules do not give any power to the election officer to supplement the rule and decide as to who will be deemed to have been elected after the drawing of lot. The precise argument raised by the learned Counsel for the Petitioner is that the Rule ought to have provided as to in whose favour an additional vote will be deemed to have been cast after the drawing of the lots.

2. Reliance has been placed on the provisions of Section 65 of the Representation of the People Act which provides that in case of equality of votes, a lot will be drawn and the person in whose favour the lot is drawn will be deemed to have received an additional vote. According to the learned Counsel for the Petitioner similar provision has been made in Rule 21--B of the U.P. Panchayat Raj Rules and rule 67 of the U.P. Municipalities (Conduct of Election of Members) Order, 1964. However, under Rule 16 of the rules framed under the U.P. Kshetra Samitis and Zila Parishad Adhiniyam, 1961 it has been provided that the person in whose favour the lot is drawn would be deemed to have been eliminated from the election.

3. On the basis of the provisions of the aforesaid Acts providing procedure in the case of equality of votes in elections it has been argued that the provisions of the rule for drawing lots by the Election Officer itself is not a sufficient procedure for the purposes of finding out in whose favour an additional vote should be counted by drawing lots unless the rule would have further provided as in other Acts that either the vote would be counted in favour of the person in whose favour the lot is drawn or the person in whose favour the lot has been drawn would be deemed to have been eliminated. It has been urged that neither the Act nor the Rules give power to the Election Officer to supplement the aforesaid rule and thus the election held under the Rule is liable to be quashed.

4. At the admission stage, contesting Respondent was served and parties have exchanged counter and rejoinder affidavits. The present writ petition is thus being finally disposed of in accordance with the Rules of the Court.

5. Learned counsel for the contesting Respondent has however urged that Registered Bye-law No. 175 of the Bye-laws of the Society clearly provides for such a contingency. Bye law No. 175 reads as follows:

175. Nirvachan Fal Me Barabar Mat Hone Ki Dasha Me Mamle Ka Nirnaya Parchi (Lottery) Dal Kar Kiya Jayaga Jis Naam Ki Parchi Pahle Uthai Jayegi Wah Vijaee Mana Jayega.

6. It has been urged on behalf of the Respondents that Rule 439 of the Rules provides that notwithstanding anything contained in the bye-laws the election of the Co-operative Society or Societies shall be held in accordance with the

provisions of the Act and the Rules. It has been urged that the provisions of the bye laws being consistent with the provisions of the rules and there being no provision in the rules in respect of the person in whose favour the lot drawn should be counted, the provision of bye-law 175 will apply.

7. The learned Counsel for the Petitioner in this connection has urged that the provisions of the bye-laws are excluded by Rule 439 (1) inasmuch as it clearly says that "notwithstanding anything contained in the bye-laws the election of I the Cooperative Society shall be held in accordance with the provisions of the Act and the Rules and under the superintendence, direction and control of the Registrar. It has also been urged that the rules do not confer any power on the election Officer to supplement the provisions of the Rules including the provisions of Rule 444 (v).

8. For the purposes of deciding the question raised in this writ petition it will be useful to reproduce the relevant rules having bearing on this question. Rule 439 (iii) of the rules provides as follows:

439 (iii) The Election Officer shall perform all such functions as are enjoined upon him by these rules or as may be incidental to or necessary for the discharge of his duties

(emphasis provided).

Rule 444(v) of the Rules provide as follows:

44 (v) : In the event of equality of votes the matter shall be decided by draw of lots.

9. The question that arises for consideration in this case is as to whether the Election Officer while drawing lots could decide as to how the decision will be arrived to after drawing lots or this had to as provided by the Rules itself.

10. For deciding the aforesaid question it will be useful to refer to the meaning of word "Lot" and "Drawing lot" as has been given in some English Dictionaries. History and the meaning of the word "lot" and "drawing lot" has been given in "A New English Dictionary on Historical principles" edited by Sir James A.H. Murray (1908 Edition). According to the meaning given in the aforesaid dictionary "Lot" means "An object (app. usually a piece of wood) used in a widely diffused ancient method of deciding disputes, dividing plunder or property, selecting persons for an office or duty etc. By an appeal to chance or the divine agency supposed to be concerned in the results of chance. In abstract sense it means "The casting or drawing of lots, or the use of any equivalent process to obtain a decision." It has alphabets stated that the ancients knew that election by lot was the most democratic of all modes of appointment. The only remaining possibility is either the lots or the decision of some external will."

11. In the Chambers Twentieth Century Dictionary 1980 edition, the meaning of the word "Lot" has been given as follows:

An object, as a slip of wood, a straw, drawn or thrown out from among a number in order to reach a decision by chance.

Cast or draw lots is said to mean to draw from a set alike in appearance in order to reach a decision.

12. If one reads Rule 444 which provides for the election of the Chairman it would become apparent that the election has to be done by secret ballot and the person would be elected Chairman who receives the majority of votes of the Directors who are entitled to cast votes in such an election. However, in case there is equality of votes the decision has to be arrived by drawing lots i.e. on the basis of chance.

13. It has now to be seen as to whether the element of chance by which the decision has to be arrived in the case of equality of votes gets diminished in case the Rule does not provide the manner in which the decision after drawing the lot will be taken. It has not been disputed before us that in arriving at a decision by drawing lots only two methods can be employed. It can either be that the person in whose favour the lot is drawn is declared to be elected or can be declared to be eliminated. By no stretch of imagination it can be said that by following either of the aforesaid process the element of chance in any way gets reduced or either of the candidates are in any way prejudiced. The provisions of the various Acts which have been cited by the learned Counsel for the Petitioner itself show that in some of the Acts it has been provided that the person in whose favour the lot is drawn will be deemed to have been elected while under the U.P. Kshetra Samiti and Zila Parishad Adhiniyam, 1961 it has been provided that the person, in whose favour the lot is drawn would be deemed to have been eliminated from the election. It has not been disputed that in the present case the Election Officer before drawing of the lots had announced that the person in whose favour the lot is drawn will be declared to have been elected. It is therefore clear that before drawing of the lots, the chance to win was there in favour of either of the parties as one did not know in whose favour the lot will be drawn. If that be so, in our opinion, not providing as to whether the person in whose favour the lot is drawn would be declared successful or unsuccessful is not such a part of the process of drawing lots that the same has to be provided for by the Rule itself. The scheme of the Rule requires that the process of taking final decision in the election has to be completed by the Election Officer himself. Lots have also to be drawn by him. Rule 439 (iii) specifically confers on the Election Officer the power to perform all such functions as are enjoined upon him by the Rules or as may be incidental to or necessary for the discharge of his duties (emphasis provided) In our opinion, for the purposes of drawing lots it was the incidental duty of the Election Officer to have announced before the drawing of lots as to whether the person in whose favour the lot is drawn shall be deemed to have been elected or the person in whose favour lot has been drawn shall be deemed to have been eliminated. In the present case, as stated above, the Election Officer had made such an announcement. The decision arrived therefore, cannot be said to be against the

basic principle of chance. The arguments raised by the learned Counsel for the Petitioner, in our opinion, thus has no force.

14. No other point has been pressed before us.

15. For the reasons stated above, the present writ petition is dismissed. Stay order granted by this Court is discharged. However, looking to the entire facts and circumstances of this case the parties shall bear their own costs.

16. Learned counsel for the Petitioner after the delivery of judgment has made an oral prayer for granting certificate under Article 133(i) of the Constitution of India. After hearing the arguments advanced by the learned Counsel for the Petitioner, we are, however, of the opinion that the case does not involve any substantial question of law of general importance which needs to be decided by the Supreme Court.

17. The prayer is accordingly rejected.