
(1975) 09 AHC CK 0024

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 4693 of 1975

Mahendra Singh

APPELLANT

Vs

The State of Uttar Pradesh and Another

RESPONDENT

Date of Decision : 16-09-1975

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1976 All 59

Hon'ble Judges : P.N. Bakshi, J

Bench : Single Bench

Advocate : G.C. Saxena, R.S. Nigam and S.C. Khare, for the Appellant; Vinay Singh, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Bakshi, J.—The petitioner is the President of the Nanawta Co-operative Society, Dist. Saharanpur from the year 1969, Since then he and the Committee of Management of the said Society are functioning in office and no fresh elections have been held after the expiry of this period to the Committee of Management of the Society. A notice u/s 29 (4) of the U. P. Co-operative Societies Act (hereinafter referred to as the Act) was given by the Assistant Registrar, Co-operative Societies on 31st December. 1974, to hold elections within three months from the date of communication of the order. It appears, that the Society still failed to hold the elections with the result that on 6th May, 1975, the Assistant Registrar nominated a Committee of Management u/s 29 (5) of the Act. A representation was sent against the order D/- 6th May. 1975 Annexure "I" on 13th May. 1975. A report was called for by the Deputy Registrar which was submitted by the Additional District Co-operative Officer on 14th May 1975 vide Annexure "II". Thereafter the present writ petition was filed on 19th May 1975. This petition was admitted on 23rd May, 1975, and a direction was issued by this Court that the representation should be decided before 7th July, 1975. On 5th July. 1975, the representation was decided by the Assistant Registrar against the

petitioner. Thereafter an amendment application was moved in the writ petition which included the prayer for challenging the order of the Assistant Registrar dated 5th July, 1975.

2. The main submission made by the petitioner's counsel is that the Assistant Registrar had no jurisdiction to take action u/s 29 (5) of the Act, because the society had not failed to elect the members for the Committee of Management after the expiry of their term. In the alternative it is urged that even if he had the power to nominate a new Committee of Management u/s 29 (5) of the Act, the same had been exercised, arbitrarily and unreasonably.

3. For the purposes of the above submissions learned counsel for the petitioner has brought to my notice certain decisions which I shall refer to hereafter. In Rule 445 of the Rules, framed under the Co-op. Societies Act the term of office of the elected members of the Committee of Management has been limited to three co-operative years including the en-operative year of the election. u/s 2 (i) of the said Act "a co-operative year" commences on the first day of July and ends on 30th day of June of the following year. In paragraph 1 of the writ petition, the petitioner claims to be the President of the Nanawta Co-operative Society from the year 1969. It is to be noticed that details have not been furnished by the petitioner to show as to when the Committee of Management of the said Society was elected. But from the facts narrated above, it would be reasonable to infer that the Committee of Management was elected sometime in the year 1969. If however, the election took place prior to 1st July, 1969, then the three co-operative years of the Committee of Management would end on 30th June, 1971. If on the other hand, the election took place after the 1st July, 1969, then three co-operative years would end on 30th June, 1972. Accepting the position most favourable to the petitioner, let us assume that the term of the Committee of Management of the Society expired on 30th June, 1972. Under Rule 90 of the aforesaid Rules the Annual General Meeting for holding the election of the members of the Committee of Management should be held by 31st of December i. e. in the instant case such a meeting should have been held by 31st December 1972. It is, however, open to the Registrar to extend this time further under Rule 90, but no facts have been supplied by the petitioner to show that this time was extended beyond 31st December, 1972 by the Assistant Registrar. The position, therefore, is that it was incumbent upon the Committee of Management to hold fresh elections by 31st December 1972. Admittedly no elections have been held even to this day. Annexure C1 indicates that reminders were sent for holding elections. Thus it is evident that the society has failed to hold the annual general meeting and to elect a fresh Committee of Management after the expiry of its term, as has been laid down u/s 29 (3) of the Act. Since the Society failed to elect the members of the Committee of Management, the Assistant Registrar issued a notice u/s 29 (4) of the Act on 31st December, 1974, calling upon the Society to elect its Committee of Management within three months of the date of communication thereof. The Society still failed to elect its members. Therefore, on 6th May, 1975, the Assistant Registrar nominated a Committee of

Management by virtue of the power conferred on him by Section 29 (5) of the Act.

4. The petitioner's counsel submits that the expression "fails to elect members for the committee of management" used in Section 29 (4) of the Act should be given a very wide interpretation. It should include the entire process of election and not the Act of polling alone. For the purpose of his submission he has relied upon a decision of the Supreme Court reported in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, . He has drawn my attention to Chapter XXIX of the Rules for election framed under the Act. It is not necessary for me to deal with all the rules in this connection. Suffice it to say that under R. 409 before election can be held to the Committee of Management a co-operative society should divide its membership into different groups on territorial or any other rational basis. It has to submit such a list for the approval of the Registrar. It is urged that such a list was submitted to the Deputy Registrar on 28th October, 1974. On 27-1-1975 the Deputy Registrar approved this list of constituencies. Objections were filed thereafter which were finally decided by the Deputy Registrar on 3rd May. 1975. It may be significantly noted here that the writ petition is absolutely silent with regard to the details of these objections. By whom these objections were filed, when they were filed, what was the nature of the objections, and what actually was the decision of the Deputy Registrar thereon have not been placed before this Court. Counsel for the petitioner also submits that before these objections were decided on 3rd May, 1975, a member of the Society filed a suit on 23rd April 1975, for an injunction restraining the election of delegates and obtained an ex parte injunction order. This order was finally vacated on 1st May, 1975. Here also it must be noticed that the petitioner has again failed to take the Court in confidence by omitting to give details regarding the institution of this suit. By whom the suit was filed and what were the allegations in the suit have not been placed before this Court. It may be that the suit was filed by somebody in collusion with the petitioner. The Court has been left completely in the dark to speculate on this question. On 3rd May 1975 it is urged that the Deputy Registrar wrote to the District Magistrate for the appointment of an Election Officer as required under Rule 414 of the said Rules and 18th May 1975 was fixed as the date for the election of the Committee of Management. On the basis of the facts mentioned above the petitioner's counsel submits that the process for the holding of the election of the Committee of Management had commenced on 26th October, 1974 and was in progress and as such it cannot be said that there was a failure to elect a fresh Committee of Management as envisaged in Sub-section (4) of Section 29 of the Act. I am not inclined to accept this submission of the petitioner's counsel. In the first place, as mentioned already, several details on the question involved have been suppressed from the Court, which would be very necessary for coming to the conclusion whether these proceedings, which are alleged to have commenced on 26th October, 1974 and the suit filed on 24th April, 1975, were bona fide or collusive proceedings. In the second place, since the term of the Committee of

Management expired on 31st December, 1972, as held by me above, there is no explanation as to why no steps were taken for holding the election from that date upto 26th October, 1974. That is for at least two more cooperative years the Society failed to take any step for holding fresh elections and thus rendered themselves liable for action being taken u/s 29 (4) and (5) of the Act. Thirdly, the wider meaning of the term "election" cannot possibly be given in the context in which the word is used in Section 29 of the Act. Under Sub-section (2) of Section 29 of the Act the term of the elected members of the committee of management shall be such as may be provided under the rules. The word "elected" here means the actual election itself. It cannot mean the entire process of the election. Otherwise Sub-section (2) of Section 29 of the Act would become meaningless. The proviso to Sub-section (2) of Section 29 of the Act is to the effect that even though the term of the committee of management may have expired, yet it has been allowed to continue to manage till fresh elections are held by the society. Here again the expression "fresh elections" would mean the actual holding of the election and not the entire process of election. Otherwise this proviso would also be rendered nugatory. In Sub-section (3) of Section 29 of the Act it has been mentioned that the "Co-operative Society shall in the ensuing general meeting elect members of the committee of management". This obviously refers to the actual election of the members and not to the entire process of election. In my opinion, in the context in which this expression has been used in Section 29 of the Act the most natural and reasonable interpretation of the expression "to elect members" would be to interpret it as the actual election of the members of the Committee of Management. The wider and liberal meaning as submitted by the petitioner's counsel cannot be given to this expression, as used in Sub-section (4) of Section 29 of the Act. Since I have held above that the society has failed to elect members of the Committee of Management, the Assistant Registrar was fully competent to issue the notice dated 31st December, 1974, to the Society directing it to hold the elections within three months of the date of communication of the order. Since the Society failed to hold the election within this specified period, the Asstt. Registrar was further justified in nominating a fresh Committee of Management u/s 29 (5) of the Act.

5. Petitioner's counsel has next submitted that the power exercised by the Assistant Registrar is arbitrary and unreasonable. He has nominated members of the Committee of Management who are not authorised to be nominated. For this purpose he has placed reliance upon Section 29 (5) of the Act which runs as follows:

"(5) If the society still fails to elect the members of the Committee of management, the Registrar may himself nominate such persons as under the rules and the bye-laws are qualified for being elected as members of the committee of management"

The submission is that the members nominated by the Assistant Registrar were

not qualified for being elected on the Committee of Management and hence their appointment was arbitrary. Reliance was placed upon Annexure C-3 to the counter-affidavit filed by Shiam Lal Gautam.

6. Counsel for the State contested the allegation of the petitioner that the Dominated members were not qualified for being, elected as members of the Committee of Management. He has placed reliance upon the counter- affidavit of Lehna Singh in support of his submission. Whether these members were qualified to be nominated or not thus becomes a disputed question of fact. I am not inclined to enter into disputed questions of fact, which should not be decided in the exercise of writ jurisdiction. Moreover, the factual position is that on 6th May 1975 the impugned order had been passed by the Asstt Registrar under Sect on 29 (5) of the Act Section 29 (6) of the Act lays down.

"within six months from the date of nomination made by the Registrar under Sub-section (5), the "Registrar shall call a general meeting of the general body of the society for electing the members of the committee of management. When the general meeting has elected members for the committee of management the persons nominated by the Registrar under Sub-section (5) shall forthwith vacate their office and the members so elected shall continue for the remainder of the term."

In view of this sub-section the election to the membership of the Committee of Management must be held by 5th November, 1975. On that date the nominated Committee of Management shall cease to function and shall have to vacate their office so as to enable the elected members of the Committee of Management to continue for the remainder of the term. From a perusal of paragraph 15 of the counter-affidavit of Shiam Lal Gautam, I find that on 27th May, 1975, a request has already been made to the District Magistrate to appoint an Election Officer. Steps have now to be taken for holding the actual election under the provisions of this Act. In my opinion, no useful purpose would be served in setting aside the nomination made by the Assistant Registrar for a period of six weeks only. As such it would be futile to issue a writ in this connection.

7. Before, however disposing of this writ petition I feel it necessary to direct the Registrar. Co-operative Societies concerned to take immediate steps for holding the election to the committee of management of the said society so as to complete the same before the 5th of November. 1975.

8. For the reasons given above. I am of the opinion, that there is no merit in this writ petition which is hereby dismissed with costs.