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(1992) 05 AHC CK 0005

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 32066 of 1990

Malkiyat Singh and Others — APPELLANT

Vs

Cane Commissioner, Uttar Prdesh, Lucknow/Registrar, Cooperative Cane Unions and Another — RESPONDENT

Date of Decision : 07-05-1992

Acts Referred:

Citation : (1992) 2 AWC 1009 : (1992) 2 UPLBEC 937

Hon'ble Judges : M.K. Mukherjee, C.J;R.A. Sharma, J

Bench : Division Bench

Advocate : Ashok Khare, for the Appellant;

Judgement

R.A. Sharma, J.—Two questions involved in this writ petition and which are required to be decided by this Court are; (i) When does the term of Committee of Management, of a co-operative society, constituted under U.P. Co-operative Societies Act, 1965 (hereinafter referred to as the Act) commences and (ii) Whether the Committee of Management is entitled to extension of its term by the period during which it could not function on account of stay orders passed by the courts. On the answer to the aforesaid questions depends the fate of the order dated January 10, 1991, appointing the Administrator u/s 29(4) of the Act for the U.P. Cooperative Cane Union Federation Limited (hereinafter referred to as the Federation), which has been impugned in this writ petition and of other relief claimed in connection therewith.

2. Both the parties have exchanged affidavits and we have heard learned Counsel for the parties

3. The Federation is an appex co-operative society, constituted under the Act and the Rules framed thereunder, known as U.P. Co-operative Societies Rules, 1968 (hereinafter referred to as the Rules), Although the term of the Committee of Management of the Federation expired on 30-6-1983, but the new Committee of Management could not be elected on account of filing of several writ petitions

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and stay orders passed therein, reference of which have been given in the writ petitions. Ultimately on 7-12-1987 the election schedule was notified fixing 29-12-1987 as the date for election of the members of the Committee of Management and 30-12-1987 as the date for election of its Vice Chairman and other office-bearers. Another Writ Petition No. 24234 of 1987 was filed in which this Court by interim order dated 23-12-1989 although permitted holding of the election and declaration of its result as per schedule, but directed that effect shall not be given to it till further order. Election of the members of the Committee of Management, Vice Chairman and other office-bearers were held as per schedule on 29-12-1987 and 30-12-1987 respectively. The aforesaid writ petition No. 24234 of 1987 was dismissed on 20-5-1988, The appeal filed against the decision of this Court, dismissing the said writ petition, was also rejected on 30-5-1988 by the Supreme Court. However, election of the seven members of the Committee of the management was challenged before Arbitrator, who, by an Award dated 2-6-1988, set-aside the election of those seven members. Against the said Award of the Arbitrator four writ petitions are said to be pending in this Court, in which stay orders have been granted. Thereafter by notice dated 5-8-1988 the first meeting of the Committee of Management was convened for 29-8-1988 against whisht writ petitions were filed before this Court, both at Allahabad and at Lucknow. although in the writ petition filed at Allahabad no stay was granted but stay was granted, staying the holding of the meeting of the Committee, in writ petition No. 757 of 1988 filed before Lucknow Bench. It appears that subsequently, on an application, this Court at Allahabad also granted stay order, staying the holding of the meeting of the Committee of Management. Latter on on 24-12-1988 another agenda for convening the meeting of the Committee of Management on 2-1-1989 was issued and it is stated by the Petitioners that the first meeting of the Committee of Management of the Federation was held on 2-1-1989, which resulted in filing of the contempt petition before Lucknow Beach of this Court, on the ground that the meeting has been held in contravention of the interim order passed by Lucknow Bench. Due to initiation of contempt proceeding Respondents therein had taken the stand that the interim order of this Court dated 29-8-1988 still continues and the Committee of Management of the Federation was not entitled to hold the meeting or to function. Contempt application was ultimately dismissed on 5-1-1990. On 17-9-1990 the writ petition No. 757 of 1988 was also dismissed. Thereafter the present writ petition was filed by the Petitioners, who claim to be the members of the Committee of Management, having been elected on 29-12-1987, for a writ of mandamus restraining the Respondents from interfering in the function of the Committee of Management of the Federation till expiry of its term in June, 1993. Other consequential reliefs in connection therewith were also claimed. After filing of the aforesaid writ petition the Registrar by order dated 10-1-1991 has appointed Arbitrator for the Federation u/s 29(4)(b) of the Act. This order has been passed on assumption that the term of Committee of Management of the Federation had expired on 30-12-1990. This order has been impugned in this writ petition by subsequent amendment of

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petition.

4. By virtue of Section 29 the management of the Co-operative society has been entrusted to the Committee of Management. According to 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 in the Rules or Bye-laws of the society. If the new Committee of Management could not be constituted before expiry of term of the old Committee Sub-section (4) of the said Section requires the Registrar to appoint an Arbitrator or a Committee of Arbitrators for managing the affairs of the society until the Committee of Management is re-constituted.

5. Election of the members of the Committee of Management of Cooperative Societies, other than those societies which have been notified under proviso to Sub-section (3) of Section 29, is required to be held by virtue of the provisions of Sub-section (3) of Section 29 at Annual General Meeting as provided in Section 32. So far as the notified societies are concerned their superintendence, direction, control and conduct of the elections of the members and Chairman and Vice Chairman of the Committee of Management, have been vested in the Registrar and their election can be held otherwise than in any meeting notwithstanding anything contained in Clause (b) of Section 32. Chapter XXIX of the Rules, which consists of several parts, lays down rules of election in co-operative societies; part-I of which containing Rules 402 to 406 deals with the post registration meeting and elections Part II containing Rules 407 to 438 provides for election rules in respect of the societies other than those notified under proviso to Sub-section (3) of Section 29 of the Act Part III consisting of Rules 439 to 444-D provides for election rules in respect of those societies which have been notified under proviso to Sub-section (3) of Section 29. Part V commencing from Rule 445 to 452 deals with terms of the Committee of Management: and other matters connected therewith. Rule 445 (as it was before its amendment in 1985) laid down that except as otherwise provided in Rules 406. 433 and 435 term of Committee of Management of a co-operative society shall be three co-operative years. Co-operative year was defined by Section 2(i) as the year commencing on Ist day of July and ending on 30th day of June next following. Explanation-1 to old Rule 445 laid down that for the purposes of determination of the term of the Committee of Management, the co-operative year during which the election is held, shall be counted as full year irrespective of the period left after such election in that co-operative year. Rule 443 has been amended in 1985 and after the amendment the term of the Committee of Management of the co-operative society has been specified to be three years. But when term of three years will commence has not been laid down by the Act and Rules. A Division Bench of this Court in the case of Mohd. Shamim Ansari v. State of U.P. 1989 (1) UP LB EC 269, relying on Rules 406 and 445, has laid down that the term of the Committee of Management of a cooperative society will commence only after its due constitution in the first Annual General Meeting and not from any earlier date when members were elected. Relevant extract from this judgment is reproduced below:

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How the term of three years has to be calculated from the date the members are elected or any other date, Election by itself does not result in constitution of Committee of Management. Rule 406 which is relevant for this purpose may be extracted below:

406 The provisional Committee of Management constituted under Clause (iii) of Rule 404 and the Chairman and the Vice Chairman elected under sub rule (iv) of that rule shall hold office till the Committee of Management is duly constituted in the first annual general meeting and the Chairman and Vice- Chairman are duly elected respectively.

The language of the rule makes it abundantly clear that the Committee is duly constituted in the first annual general meeting in which Vice-Chairman and Chairman are elected. Since in. an apex society the annual general meeting can be called by the Managing Director, who is la nominated member, the Committee is duly constituted only after the first meeting has been called by bins after his nomination.

...The Committee was thus duly constituted in November, 1985 and not in August, 1985, when the Petitioner was elected. The term of the Committee of Management being three years from its due constitution it could expire in November, 1988.

Rule 406, however, may not be of much help to those co-operative societies which have been notified by the State Government under the proviso to Sub-section (3) of Section 29. For such notified societies, as has been mentioned in the said proviso itself the election of the Committee of Management need not necessarily be held in Annual General Meeting as, the same can be held otherwise than in any meeting notwithstanding anything contained in Clause (b) of Section 32. If the Committee of Management has not been elected and constituted in the Annual General Meeting the principle contained in Rule 406 may not apply. When the law neither specifies a particular date from which the term of a Committee would begin nor does it mention any date on which its term will come to an end, the term will commence from the date the Committee takes over charge and starts functioning. The Cane Commissioner/Registrar Cane Co-operative Societies, U.P. has also circulated a letter dated July 7, 1989 mentioning therein that after amendment of Rule 445 term of three years of Managing Committee will commence from the date of its taking over charge. A copy of this letter has been filed as annexure-17 to the writ petition. The Act and Rules not having specified the date from which the term of the Committee of Management of the notified societies is to commence, it is open to the Registrar to specify such a date in order to avoid uncertainty in the working of the management of the Co-operative societies. The above order of the Registrar is not contrary to or inconsistent with the Act and the Rules. Counting the period of three years from the date of taking over charge by the new Committee, is quite fair and reasonable The position would be different if the statute has specified a particular date from which the period of any body or a right will commence. In

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this connection reference may be made to a Division Bench decision of Orissa High Court, in the case of Board of Management, Nayagarh Co-operative Land Development Bank Ltd. and Another Vs. Deputy Registrar, Co-operative Societies, Relevant extract from this judgment is reproduced below:

There may be instances where the right would be up to a particular date; instance, a lease would be for a term of 5 years beginning from one date and ending with another, when the term expires, the lessee''s rights automatically terminate The fact that there had been injunction for a period during the term would not bring about an extension. Take also, for instance, the case of an elected Member to the legislature If on account of an election dispute, he be restrained from functioning, that does not entitle him to an additional period over and above the term of the legislature to which he is elected. With the lapse of time, the House dissolves and that dissolution brings about an end to membership.

6. In the instant case the elections of the members and Vice Chairman and other office-bearers of the Committee of Management were not held in Annual General Meeting. As such the period of three years of the managing committee is to commence from the date of taking over charge by it. It is, however, apparent that the Committee of Management which was elected in December, 1987, could neither take charge nor could function till 2-1-1989. The Petitioner has stated in para 30 of the writ petition that the first meeting of the Managing Committee was held on 2-1-1989 in pursuance of the notice dated 24-12-1988 and thereafter the meetings were held on 29-4-1989 and 24-6-1989. The fact that the Committee of Management of the Federation could not take charge before 2-1-1989 when its first meeting was held, is also clear from annexure 9-A to the writ petition, which is an order of the Administrator, who was functioning till then, in the absence of any managing committee. The Committee of Management having held its first meeting on 2-1-1989 on which date it can be said to have assumed charge and started functioning, three years period of its term will begin from the above date (2-1-1989) and come to an end on 1-1-1992.

7. Learned Counsel for the Respondents has, however, argued that term of the Committee of Management is to begin from 30-12-1987 on which date the election of the Vice Chairman and other office bearers was held. It is not possible to agree with the learned Counsel. By order dated 7-12-1987, 29 12-1987 and 30-12-1987 were fixed for election of the members and other office bearers of the Committee, respectively. 30-12-1987 which was fixed for election of the Vice Chairman and other office-bearers was the date which was notified in accordance with Rule 444-B. This date cannot be treated to be a date on which the Committee of Management has taken over charge and started functioning. The decision of the Supreme Court in the case of Ram Pyare Chaudhary and Another Vs. State of Uttar Pradesh and Others, , cannot be of any help for resolving the controversy involved in the present writ petition. Before the Supreme Court interpretation of Rule 445, as it was before its amendment in 1985, was

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involved, Old Rule 445, as mentioned earlier, provided that the term of elected members of the Committee of Management of a co-operative society will be three co-operative years. Co-operative year was defined by Section 2(i) as the year commencing on 1st day of July and ending on 30th day of June next following. Explanation to the said Rule laid down that for the purposes of determination of term of the Committee of Management co-operative year during which the elections are held, shall count as full year irrespective of the period left after such elections in that co-operative year. While considering the said Rule the Supreme Court laid down that the term of the Committee will begin from the year in which the results of the election were declared. Under the old rule there was no difficulty in finding out as to when the term of the Committee will commence, because the year in which the election-results are declared will be the starting point of the term. What was relevant under the old rule was not the date but the co-operative year in which the results of the elections were declared. The position has, however, changed after the amendment of the said rule in 1985. For post amendment period the Supreme Court decision, mentioned above, cannot be relied upon, for the purposes of determination as to what is the date of commencement of the term of the Committee of Management.

8. The learned Counsel for the Petitioner has further argued that after the Committee of Management has taken over charge, the period during which it is precluded from functioning either on account of action of the Respondents or on account of Courts'' orders, is liable to be excluded while computing the period of three years. For this proposition the learned Counsel for the Petitioner has placed reliance on Committee of Management v. Deputy Director of Education 1991 AWC 1469, Methodist Church of India v. Bareilly Development Authority 1988 UP LB EC 218, Vinod Kumar Anand v. Dr. A.D. Sharma 1939 (1) UP LB EC 238 . Reliance has also been placed on the two well known maxim viz. (i) the law does not compel a man to do that which he cannot possibly perform, and (ii) the act of the con it shall prejudice no man In that connection reliance has been placed on the two decisions of the Supreme Court in the cases of Raj Kumar Dey and Others Vs. Tarapada Dey and Others, , and A.R. Antuley v. R.S. Naik 1988 (2) SCC 602. It is not possible to agree with the learned Counsel.

9. If a Committee could not take charge and could not start functioning after its election on account of the stay orders passed by the courts its term will not commence till it takes over charge, after the stay orders are vacated. These Committees are constituted so as to function for a particular period. No. person or an authority can disobey the order of the court and it is not open to them to take charge and start functioning in defiance of the courts'' orders, The two maxims, mentioned herein above. viz. (i) the law does not compel a m in to do that which he cannot possibly perform, and (ii) the act of the court shall prejudice no man, will fully apply to such a case. The position would be different if the Committee had taken over charge and had started working and thereafter it is restrained from performing its function by the Court''s order or by the orders of the State. If the term has begun to run the period of three years will be

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counted from that date, even if the Committee of Management could not function for some period thereafter. A Division Bench of this Court in the case of Committee of Management v. Deputy Director of Education 1991 (2) UP LB EC 1183, while considering the identical question in the case of Committee of Management of Secondary Educational Institution has held that if after the election the Committee of Management is not given charge the period of newly elected Committee would not start, but after it has taken over charge the period of three years will start running and in no case will be extended even if thereafter such Committee is not able to discharge its duties on account of orders passed by the Courts. Relevant extract from the said decision is reproduced below:

The purpose of prescribing period of three years is that elected Committee of Management to function If for some reasons even after election, the newly elected Committee of Management is made to take charge from the earlier Committee of Management or from the Prabandh Sanchalak the period of that Committee of Management would not start However, the day such elected Committee of Management takes over charge and or starts functioning as such, then the period of three years starts running. By looking to the relevant clause of the Scheme of Administration we feel thereafter the period of three years is fixed and in no case extended even if intermittently such Committee of Management is not able to discharge its function on account of infighting litigations between the parties, or on account of stay order passed by this Court.

10. The case of Committee of Management v. Deputy Director of Education 1991 AWC 1469 (supra) is a decision by learned Single Judge of this Court, wherein it was laid down that the period during which the Committee of Management of the Secondary Educational Institution could not function after commencement of its term, has to be excluded while counting the term of three years of such Committee. The law laid down, on this point, by learned Judge in the above case, being contrary to the law declared by the Division Bench in the case of Committee of Management v. Deputy Director of Education 1991 (2) UP LB EC 1183 (supra), cannot stand and is accordingly overruled. It appears that the aforesaid decision of the Division Bench was not brought to the notice of learned Judge on account of which contrary rate was laid down. The case of Methodist Church of India v. Bareilly Development Authority (supra) is not an authority for proposition propounded by the learned Counsel for the Petitioner. In that case after granting the permission for construction under U.P. Urban Planning and Development Act, 1973, the Development Authority by another order suspended its earlier order granting permission and this order of suspension remained in force for about one and half years. This Court laid down that it would be highly unjust, unfair and inequitable to permit Development Authority to take advantage of its own wrongful act of rendering the order of approval and permission nugatory, futile and ineffective by passing a conflicting order, which was recalled after about one and half years. This case is an authority for proposition that no one can take advantage of its own wrongful act and any loss

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suffered by any person on account of such act is liable to be made good. It is on this basis that the period of about one and half years, during which the order of approval and permission remained suspended, was excluded while counting the period of three years during which the building was to be constructed. The decision of Vinod Kumar Anand v. Dr. A. D. Sharma (supra) also cannot help the Petitioner. In that case an implied limitation into statutory power of Chancellor u/s 68 of the State Universities Act, was read for holding that whenever Chancellor in exercise of power u/s 68, forbids Executive Council to take a decision on recommendation of the selection committee for any period, that period should be excluded while counting the period of four months within which the Executive Council of the University has to take a decision on the recommendation of the selection committee.

11. The case of Methodist Church of India v. Bareilly Development Authority and Vinod Kumar Anand v. Dr. A. D. Sharma (supra) can also be explained on the basis of the maxims mentioned above. In the two decisions of the Supreme Court in Raj Kumar Dey v. Tampa da Dey (supra) and At R. Antuley v. R. S Naik (supra) the above two maxims were applied. But in none of the cases, relied upon by learned Counsel for the Petitioner excepting the decision of learned Single Judge in the case of Committee of Management v. Deputy Director of Education 1991 AWC 1469, (supra) the question as to whether the term of an authority is liable to be extended by the period during which it could not function after it has taken over charge due to orders of the courts or action of the State was not involved and was neither raised nor decided In case the contention of the learned Counsel is accepted it will bring in uncertainty in the working of the managing committees and may also lead to filing of collusive and frivolous cases in the courts in order to stop or neutralize the contemplated adverse action of the State against the society For the above reasons the term of the Committee of Management or the Federation cannot be extended by the period during which it could not function on account of Respondents'' action, appointing an administrator by the impugned order.

12. As mentioned herein before, the term of the Committee of Management of the Federation began on 2-1-1989 on which date it held its first meeting and its term of three years came to an end on 2- 1 1992 On which date it ceased to exist. Sub-section (4) of Section 29 authorises the Registrar to appoint an Administrator or a Committee of Administrators after expiry of the term of the Committee of Management On 10-10-1990, on which date the Administrator was appointed by the impugned order, the term of the Committee of Management had not come to an end. It is not open to the Registrar, under the said provisions, to appoint an Administrator before expiry of the term of the Committee The impugned order of appointment of Administrator, as, such, was without jurisdiction and is liable to be quashed But, as mentioned above, during the pendency of the writ petition the term of the Committee of Management of the Federation has expired and even though the impugned order of appointment of the Administrator is without jurisdiction, no relief can be given to the

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Petitioner due to passage of time, because no useful purpose can be served by setting aside the order of the appointment of the Administrator, in as much as the Registrar is bound to appoint an Administrator again as the term of the Committee of Management of the Federation had already expired on 2-1-1991.

13. In view of the facts and circumstances of the case we dispose of this writ petition by directing the Registrar and the Administrator to re-constitute the Committee of Management, in accordance with law, by holding its elections within a period of three months from the date of presentation of certified copy of this order. There shall no order as to costs.

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