

(1995) 02 AHC CK 0064
In the Allahabad High Court
Case No : Spl. Appeal No. 649 of 1994

Markandey Chand and Another	Vs	APPELLANT
Cane Commissioner/Registrar and Others		RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 29
Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 443, 444, 445, 446, 447

Citation : (1995) 02 AHC CK 0064

Hon'ble Judges : R.A.Sharma, J and M.C.Agarwal, J

Final Decision : Allowed

Judgement

R. A. Sharma, J.—Petitioners, who are members of a Cooperative Society, known as Dhuriyapar Kisan Sahkari Chini Mills Ltd. Karpur Gajpur, Gorakhpur (herein after referred to as the Society) and have been elected as members of its Committee of Management, have filed this writ petition for writ of mandamus directing the respondents to conduct the election of the ViceChairman of the Society in accordance with Cooperative Societies Act and rules framed thereunder (hereinafter referred to as the Act and the Rules respectively). Further prayer directing the respondents not to postpone toe election of Vice Chairman any more, has also been made.

2. Respondents have filed counteraffidavits and the petitioners have filed rejoinderaffidavits in reply thereto. We have heard learned counsel for the petitioners, learned counsel for respondents No. 2, 3 and 4 and the learned Standing Counsel.

8. Under the Act and the Rules the only competent authority, who is entitled to issue direction regarding election of the Committee of Management, is the Registrar/Cane Commissioner and the District Magistrate and the Election Officer are bound by his orders and directions. No provisions of law under which the Government can direct postponement of the election of the Cooperative Society, has been placed before us. The Government does not in the picture at all in the

matter relating to the election of the Cooperative Society. If a person or an authority exercises statutory powers in defiance of the statutory provisions at the instance of the Government it is that person or the authority who will be responsible for illegal action and they cannot seek protection under the Government Order. That apart, law does not contemplate interference with the election process at the intermediate stage by any authority. The election process once started has to be allowed to be taken to the logical conclusion and if any person is aggrieved by the result of the election it is open to him to challenge it before Arbitrator under the Act and the Rules framed thereunder.

9. It is apparent that the District Magistrate and the Election Officer have not only flouted the directions and the orders issued by the Registrar from time to time, but have also acted contrary to the provisions of the Act and the Rules. Although they are bound to hold the election on the date fixed by the Registrar and have no jurisdiction to postpone or cancel it, but they have done so without regard to the statutory provisions. They have done what they could not have done under the law. Petitioners have stated in their writ petition that the District Magistrate was not holding the election of the Vice Chairman deliberately and in this connection he has already written a letter dated 8/7/1994 for not holding the election of the Society. In spite of his letter the Registrar issued order for holding the election, but his orders have been flouted. It has been stated that as the District Magistrate was appointed under Section 29 of the Act, Administrator of the Sugar Mill of the Society, his whole attempt was not to hold the election and continue as Administrator/Chairman without any interference and control of the Committee of Management. In this connection the allegations of mala fide/oblique motive against the District Magistrate are contained in paragraphs 17 to 20 of the writ petition. The District Magistrate himself has not filed any counteraffidavit, although he has been impleaded as respondent No. 2 and another person named Sri Avadhesh Tripathi has filed counteraffidavit on his behalf. Mr. Tripathi is the C.D.O. of the Sugar Mill of the Society of which the District Magistrate is the Administrator. The allegations of mala fide made against the District Magistrate in the writ petition have not been rebutted by him.

10. We do not find any justification for not holding the election of the Vice Chairman. The actions of the District Magistrate and the Election Officer in postponing and cancelling the election of the Vice Chairman from time to time, are absolutely without jurisdiction.

11. This writ petition is accordingly allowed with costs. Respondents No. 2 and 3 are directed to hold the election of Vice Chairman of the Society within a period of ten days from the date of presentation of certified copy of this order before them. In view of the facts and circumstances of the case it is a fit case where special cost be awarded, which we assess at Rs. 10,000 (Rupees ten thousand), half of which shall be paid by the District Magistrate and the remaining half by the Election Officer, to the petitioners within a period of one month from the date of presentation of certified copy of this judgment before them.