
(1988) 09 AHC CK 0070

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 7185 of 1988

Mohd. Shamim Ansari and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-09-1988

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 29(4), 31A

Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 404, 406, 433, 434, 435

Citation : (1988) 2 AWC 1287

Hon'ble Judges : R.P. Singh, J; R.M. Sahai, J

Bench : Division Bench

Advocate : M.B. Saxena and R.P. Agarwal, for the Appellant; S.R. Misra and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—The short question that arises for consideration in this petition by members of Committee of Management of an apex Industrial Cooperative Society, is if the terms of the committee of Management has to be counted from the date of election of the members or from the date the first meeting is held.

2. Last election of the Committee of Management of UPICA was held on 17th August, 1984. Under bye-laws 37D of the Association bye laws the Committee is comprised of 15 members. Since State government has subscribed more than 60% of share capital it could nominate 2/3rd that is, ten members to the Committee of Management. u/s 31-A of U.P. Cooperative Societies Act the Managing Director who is a Government servant performs duties and functions of Secretary of apex society. Clause (ii) of Sub-section (4) of the Act empowers him to convene meetings of Committee of Management and the general body. Nomination was done by Government in September, 1985. The Managing Director of the Committee who is an officer nominated under the rules by the government and is empowered to call the first meeting of the apex society called it on 18th November, 1985 in which the Petitioner was elected as Vice-Chairman.

In September, 1987 the Registrar in exercise of power u/s 29(4) of the U.P. Cooperative Societies Act appointed a new committee of Management as according to it the terms of elected members of the Committee of Management came to an end in August, 1987.

3. Could (sic) do so? was the exercise of power u/s 29(4) in accordance with law? Sub-section (4)(a) of section reads as under:

(a) Where for any reason whatsoever, the election of the elected members of the Committee of Management has not taken place or could not take place before the expiry of the term of elected members, the Committee of Management shall, notwithstanding anything to the contrary in this Act or the rules, or the bye-laws of the Society, cease to exist on the expiry of such term.

It envisages automatic caesura of Committee of Management either because fresh election could not take place or the term of the committee expired. Therefore, the Registrar could exercise power under this sub-section and nominate Administrator or committee under Clause (b) of Sub-section (4) only if the term of the Committee expired and no election took place. The crucial question is when the term of the members elected in August, 1984 expired. That has been provided by Rule 445. It reads as under:

445. Except as otherwise provided in Rules 433, 434 and 435 the term of the Committee of Management of a Cooperative Society shall be three years. The term of the office of an elected member of the Committee of Management shall be co-terminus with the term of the committee of management. Prior to its amendment in 1980 it provided that the terms of elected member of a cooperative society shall be three years including the cooperative year of election from "three cooperative years including the year of election" it is now co-terminus with the term of Committee of Management which is three years. 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 a nominated member the committee is duly constituted only after the first meeting has been called by him after his nomination. Therefore, the Committee of Management of an apex society is duly constituted not on the date when members were elected but when the meeting is

called and Chairman and Vice Chairman are elected. Rule 445 appears to have been amended to achieve this purpose as the experience must have been shown that delay in nominating members could frustrate the right of elected members. For instance, in this very case the Petitioner was elected in August, 1984 but the official members were nominated in September, 1985. And the first meeting was held in November, 1985. Since nomination could not be made the elected members could not function. They started functioning from November, 1985 only. If their term is held to come to an end in August, 1987 it would be giving effect to the rule as it existed prior to 1980. That was the error committed by the Registrar. The Committee was thus duly constituted in November, 1985 and not in August, 1984 when Petitioner was elected. The term of Committee of Management being three years from its due constitution it could expire in November, 1988. And as the term of elected member is co-terminus with the term of Committee of Management the Petitioner had a right to continue till November, 1988. As the term of Committee of Management had not expired the Registrar acted without jurisdiction in exercising power under Sub-section (4) of Section 29 of the Act.

4. In the result this petition succeeds and is allowed. The order of Registrar passed u/s 29(4) of the Act nominating a committee as the term of elected members had come to an end in August, 1987 is quashed, direction is issued to opposite parties to permit Petitioner and the elected members to continue till the term of duly constituted committee expires under Rule 445 read with Rule 406. There shall be no order as to costs.