
(2003) 04 MP CK 0005
In the Madhya Pradesh High Court
Case No : W. P. No. 1217 of 2003

M.P. State Industrial Co-Operative Federation Limited	APPELLANT
Vs	
Uttam Singh and Others	RESPONDENT

Date of Decision : 16-04-2003

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 52B, 64

Citation : (2003) 4 MPLJ 206

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : D.K. Dixit, for the Appellant; Vinod Kumar Mishra for Respondent No. 1 and B.N. Mishra, Government Advocate for Respondents No. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioner in this writ petition is challenging the Order P-11 passed by the Registrar, Co-operative Societies, M.P., Bhopal on 20-2-2002 by which Registrar has interfered in the election process and has by the impugned order set aside the reservation made for women in the petitioner/co-operative society, though this ground was not raised in the memo of revision P/9A preferred before the Registrar, Co-operative Societies. Jurisdictional competence of the Registrar has been questioned to make an interference during course of process of election, particularly when remedy of filing dispute u/s 64 of the M.P. Co-operative Societies Act, 1960 (for short "the Act") is available.

Petitioner/M.P. State Industrial Co-operative Federation Ltd. is a Cooperative Society duly registered under the provisions of the Act. It was registered in the year 1986 and prior to classification of the societies u/s 10 made effective with effect from 1999 it was included in the producer society. State Govt. has issued memorandum No. F-5-2-95-XV-1 dated 22nd February, 1996 published in M.P.

Rajpatra (Asadharan) dated 22-2-1996. State Govt, has provided for reservation to be made for the women in exercise of the powers conferred by section 52B of the Act. Producer society is one of such society, which is covered by the notification issued by the State Government, and in the previous election reservation for women was provided in the petitioner-society. For the ensuing election, initially election programme P-3 was prepared, according to which election process was to commence from 4-12-2002 and to be completed by 17-1-2003, later programme was amended as per P-4 and dates fixed were 8-1-2003 to 20-2-2003. Subsequently, pursuant to the order passed by the Registrar, dates have again been refixed and as per that election has to take place in between 3-3-2003 to 22-3-2003. Again it was modified as per P-13 and lastly it was modified as per P-15 and as per that order the election has to take place in between 9-4-2003 to 26-4-2003.

It is averred in the petition that election of the Board of Directors was to be held, the petitioner/federation requested the Registrar to appoint the election officer to conduct the election of the Board of Directors. Election programme was issued, reissued and modified, reservation was made as directed in P-7 on 23-1-2003. Reservation for women was made by draw of the lots in Sagar and Gwalior Division. Reservation was also made in addition to S.C., S.T. and O.B.C. A revision was preferred by Shri Uttam Singh Kushwaha before the Registrar, Co-operative Societies, memo of revision is P/9A, in this memo of revision there was no whisper made with respect to reservation made for women in Sagar and Gwalior Division, reservation with respect to S.C., S.T. and O.B.C. was challenged, there was no prayer made to quash the reservation made for the women. Revision was preferred after the reservation was made in January 2003. Interim order P-10 was passed on 25-1-2003 by the Addl. Registrar exercising the powers of Registrar and status quo was ordered to be maintained thereby staying the election process. Final order P-11 has been passed on 20-2-2003, though reservation for S.C., S.T. and O.B.C. has been upheld, but reservation with respect to women which was not the subject-matter of revision has been interfered with and has been set aside. It has been held by the Registrar that in the industrial society, there is no reservation for women provided by the State Government as per notification dated 22-2-1996.

Order P-11 is assailed in this writ petition, as without jurisdiction, once the election process has commenced, it was not open to the Registrar to make an interference, remedy is available u/s 64 of the Act. Challenge was only with respect to the reservation for S.C., S.T. and O.B.C, reservation for women was not assailed as such it was not open to the Registrar to make an interference on the said ground. Thus, the impugned order is liable to be quashed.

A return has been filed by respondent No.1. It is contended in the return that there is no infirmity in the order and order is proper.

Return has also been filed by respondents No. 2 and 3. It is contended in the return that petitioner-society is a co-operative society registered under the Act.

Petitioner-society is an "Industrial Society" as defined u/s 2(n-i) of the Act. As per section 10 of the Act reservation is not provided for women in such a society, the fact of passing of orders P/5 to P/8 is not disputed, but it is contended that orders were passed on administrative side and based on misrepresentation of the facts as made by the petitioner-society. Show cause notice was issued before passing the impugned order, bar of section 64(2) is not attracted. Proceedings were taken u/s 80A of the Act. The order passed is proper, no mala fides can be attributed to the answering respondents. Reservation for women candidates has not been provided for all the co-operative societies. So far as petitioner-society is concerned, there is no provision for reservation of women.

Shri. D.K. Dixit, learned counsel appearing for petitioner has submitted that the notification of 1996 has been misconstrued, in the previous election reservation for women was provided and the petitioner-society was included under the producer society, intention of the State Government is writ large that reservation has to be provided for women in the petitioner-society also. In bye-laws P-18 of the society, reservation for women is provided. When reservation for women was not the subject matter of challenge before the Registrar, it was not open for the Registrar to make an interference on the said ground, thus, order P-11 of the Registrar is without jurisdiction. It is also urged that it was not open to the Registrar to make an interference when the election process was going on as matter could be left to be raised in a dispute u/s 64 of the Act. He has also relied on directives P-7 issued by the Joint Registrar, according to which, the petitioner-society was required to make reservation for women by drawing lots.

Shri B.N. Mishra, learned Govt. Advocate appearing for respondents 2 and 3 has submitted that Registrar could make an interference u/s 80A of the Act and is not bound by the administrative orders issued earlier and in view of the amended section 10 of the Act, it cannot be said that reservation for women is applicable in the case of petitioner-society.

Shri Vinod Kumar Mishra, learned counsel appearing for respondent No.1 has supported the impugned order P-11 and submits that no interference is called for.

Primary question for consideration is whether it was open to the Registrar to make an interference particularly when election process was going on. It is settled law that once an election process has commenced, it is not open to the Registrar to stay it and make an interference and modify the election programme. Registrar has exceeded the jurisdiction and has violated the law laid down by this Court in number of decisions. It is the consistent view taken by this Court that election should be allowed to be completed peacefully without any interruption from any forum.

In Shiv Narain Pandey vs. Satish Tiwari, 1998 RN 178, this Court laid down that no interference should be made by any forum in the process of election.

In Brij Behari Gupta Vs. L.L. Khare and Another, , this Court observed that election should be allowed to be completed unhindered. In Radhesyam vs.

Chairman, Sewa Sahkari Samiti, 1989 MPLJ 208 : 1989 RN 99, this Court again emphasized that dispute as to the voter list should be raised in election dispute u/s 64 of the Act and not in writ petition. In Ramdeo Sharma vs. Dy. Registrar, Gwalior, 1993 RN 18, this Court again cautioned from making interference in the election process. Similar is the view taken by this Court in Ramswaroop Dohare and Another Vs. Ayukt Sahkarith Avam Panjiyak Sahkari Sanstha, M.P. and Others, , Jagdish Sharma vs. State of M.P., 1996 RN 60 and Suresh Chandra Jain vs. State of M.P., 1996 RN 131. In Bhawani Shanker Sharma Vs. State of Madhya Pradesh and Others, this Court emphasized that dispute as to the election should be raised in the dispute u/s 64 of the Act after completion of the election.

In view of the above discussion, it is clear that the exercise made by the Registrar is entirely misconceived venture and is an act which is without jurisdiction, once an election process has commenced, it ought to have been allowed to be completed peacefully by the Registrar, no interference was warranted by the Registrar particularly in the facts and circumstances of the case as reservation for women was not at all assailed before the Registrar in revision u/s 80A. I have anxiously perused the memo of revision P/9A and I find absolutely no ground in facts or in grounds or in the prayer that reservation for women was challenged by petitioner namely Uttam Singh, respondent No.1 in this petition, before the Registrar. In the absence of challenge to the reservation for women, in my opinion, it was not open to the Registrar to look into that aspect at all, question not raised in revision could not be gone into by the Registrar. That apart there were directives issued by the Joint Registrar with the approval of the Registrar to make reservation for women to the petitioner-society, pursuant to which reservation was made for women and it was not assailed in the revision. The reservation made by the petitioner-society was in accordance with the directives issued by Registrar-Joint Registrar, Co-operative Societies, in view of the administrative instructions issued by the Registrar, it was not open to the Registrar to suo motu take this question particularly when this was not raised by respondent No.1 in the revision before the Registrar.

As the reservation has been wrongly interfered with by Registrar, Cooperative Societies and order P-1 1 is unsustainable on aforesaid two grounds it is not necessary to go into this aspect whether the order passed by the Addl. Registrar, Co-operative Societies, M.P. is proper on merits with respect to making an interference in the reservation for women as this question can be raised in a dispute to be filed u/s 64 of the Act.

It has been submitted by Mr. D.K. Dixit, learned counsel appearing for petitioner-society that even on merits the order passed by the Registrar is not sustainable for the reason that when the notification was issued in the year 1996, the provision of reservation was clearly applicable in case of petitioner-society also, thus, the intention of the State Government is writ large and for petitioner-society also it was made applicable in the last election so by purposive interpretation, learned counsel submits that there is wholesome provision for

electing women and the notification is the culmination of the said statutory mandate, it has to be read in its true spirit and when petitioner-society was included at the time when the notification dated 22-2-1996 was issued within the ambit of the notification and there is no subsequent exclusion made by the State Government for not providing for reservation, on the contrary Registrar-Joint Registrar has directed reservation to be made in the petitioner-society. He has also placed reliance on by-laws of the society.

Shri. B.N. Mishra, learned GA appearing for respondents 2 and 3 submits that when society has been classified in the year 1999 by incorporating amendment in section 10 of the Act, the notification of 1996 is not to be given effect to.

As the question with respect to reservation was not raised in revision, it would not be a proper exercise for this Court to render final decision on that aspect, but prima facie suffice it to observe that the time when reservation was prescribed by the State Government, petitioner-society was included and there is no notification issued subsequently excluding such a society which is covered under the notification. Intention of section 52B read with directives issued by Registrar and Joint Registrar and the bye-laws of the society makes it clear that reservation for women was prima facie properly made by petitioner-society and no interference was called for in the revision preferred before the Registrar as this ground was not raised.

Resultantly, writ petition is allowed, impugned order P-11 is set aside, the election be rescheduled including reservation for women and be completed within a month from today.

C.c. within next three working days.