

(2005) 04 AHC CK 0188
In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 23925 of 2005

O.P. Sharma alias Bijendra Sharma, Elected Delegate/General Body Member, District Cooperative Bank Ltd. and Ashok Kumar Sharma, Elected Delegate/General Body Member, District Cooperative Federation Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

Date of Decision : 08-04-2005

Acts Referred:

Citation : (2005) 04 AHC CK 0188

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : H.R. Mishra, for the Appellant; M.P. Gupta and S.C., for the Respondent

Final Decision : Allowed

Judgement

Arun Tandon, J.—Heard Sri H.R. Mishra, learned counsel for the petitioners, Sri M.P. Gupta, Advocate on behalf of the respondent Nos. 7 and 8 and, and Learned Standing Counsel for the respondent Nos. 1, 2, 3, 4 and 9. It is not necessary to issue notice to respondent Nos. 5 and 6 in view of the order proposed to be passed in the present writ petition today.

2. The petitioners, who are two in number, admittedly have been appointed as delegates of District Co-operative Bank Ltd., Bulandshahr and as such they become entitled to be one of the members of the electoral college constituted for the purposes of elections of the Committee of Management of the District Co-operative-Bank Ltd, Bulandshahr as well as of the Chairman and Vice-Chairman. Respondent Nos. 7 and 8, who have been restrained from participating in the election as delegates, have initiated proceedings u/s 70 of the U.P. Co-operative Societies Act (hereinafter referred to as the Act) by way of arbitration proceedings . before the Registrar, Cooperative Societies. The Arbitrator i.e. the District Magistrate, Bulandshahr while entertaining the arbitral proceedings in

exercise of power u/s 71 (3) of the Act has passed the impugned order dated 17th March, 2005 whereby he has restrained the petitioners from exercise powers as delegates including their right from exercise their franchise in the elections to be held for the post of members of the Committee of Management as well as the-Chairman or Vice Chairman of the District Cooperative Bank Ltd. Bulandshahr. The aforesaid order has been challenged by the petitioners on the ground that the said order virtually amounts to grant of final relief and such order is legally not permissible in the eyes of law. The petitioner has placed reliance upon the Division Bench Judgment of this Court dated 6th April, 2005, which has been passed in Civil Misc. Writ Petition No. 27173 of 2005 (Smt. Usha and Ors. v. State of U.P. and Ors.) practically in similar circumstances.

3. On behalf of the respondents it is contended that against the order impugned in the present writ petition an; appeal u/s 98 (1) (h) of the Act is maintainable. Therefore the writ petition is liable to be dismissed on the ground of availability of statutory alternative remedy. It is further submitted that the petitioners have been admitted as members of the General Body of Sadhan Sahkari Bank Ltd., Bulandshahr by the administrator, who has no authority to do so, in view of the law laid down by the Hon"ble Supreme Court in the judgment reported in J.T. 1997 (3) 680 (Sant Raja v. Naagraja). Therefore, this Court may interfere with the order passed by the District Magistrate, Bulandshahr. The respondents have relied upon the judgment of Hon"ble Supreme Court reported in Deoraj Vs. State of Maharashtra and Others, for the proposition that the Courts may pass an order amounting to a mandamus at interim stage also.

4. I have heard learned counsel for the parties and have gone through the records.

5. So far as the objection with regard to the availability of statutory alternative remedy is concerned, suffice it to point out that Section 98 (1) (h) of the Act provides for an appeal against an order passed by an arbitrator u/s 71 of the Act, For ready reference Section 98 (1) (h) of the Act reads as follows:

"an award made by an arbitrator or board of arbitrators under Sub-section (1) or Sub-section (2) of Section 71"

6. The power to grant an interim order vests in the arbitrator u/s 71 (3) of the Act. Section 71 (3) of the Act is quoted herein below:

"The Registrar, the arbitrator or the board of arbitrators, to whom a dispute is referred for decision under this section may, pending the decision of the dispute make such interlocutory orders including attachment of property as he or they may deem necessary in the interest of justice."

7. Therefore the order, which is impugned in the present writ petition is referable to Section 71 (3) of the Act. No appeal against such an order under the provisions of Section 98(1) (h) of the Act is maintainable. It is settled law that right of appeal is statutory right and it cannot be exercised Unless expressly

provided for. The preliminary objection raised by the respondents as such is overruled.

8. From the order impugned in the present writ petition it is apparently clear that the order amounts to grant of final relief at the interim stage. If the petitioners are restrained from participating in the election which are to be held for the post of members of the Committee of Management as well as for the post of Chairman and Vice-Chairman of the District Cooperative Bank Ltd, Bulandshahr, ultimately the arbitrator makes the award in their favour, the petitioner's right to participate in the election would be lost and cannot be restored even when the final award is in their favour. In such circumstances, this Court is of the opinion that the grant of final relief at the interim stage cannot be legally sustained. The Segal position in that regard has been settled by the Division Bench Judgment of this Court in the case of Smt. Usha and Ors. (Supra), which is applicable with all force in the facts of the present case. Accordingly the order passed by the Arbitrator dated 17th March, 2005 which amounts to grant final relief at this interim stage cannot be sustained.

9. So far as the contention of the respondent with regard to the admission of the petitioners as members of the general body by the Administrator is concerned, suffice it to point out that the said issue is subject matter of considerations in the arbitral proceedings, therefore, this Court is not required to express any opinion on the aforesaid aspect at this stage.

10. The Hon'ble Supreme Court in the case of Deoraj (Supra) has held that an order tantamounting to a mandamus can be issued at the interim stage in a given case where by the time the main matter comes up for hearing, nothing would remain to be allowed as the relief. The Hon'ble Supreme Court has further clarified that interim orders can be granted, where the applicant has established prima facie case, balance of convenience and irreparable loss and injury in his favour.

11. In the facts of the present case, no irreparable loss or injury can be said to be caused to the respondents nor balance of convenience is in their favour so as to warrant an order as the one under challenge.

12. In view of the aforesaid, the writ petition is allowed. The order of the arbitrator (District Magistrate, Bulandshahr) dated 17th March, 2005 is hereby quashed. However, in the facts and proceed to decide Arbitration Case No. 1 of 2005 (Sri Mahesh Chandra Sharma and Ors. v. Sri Ashok Kumar and Ors.), at the earliest possible, preferably, within four weeks from the date a certified copy of this order is produced before the Arbitrator.