

(2011) 04 AHC CK 0347
In the Allahabad High Court
Case No : Writ Petition No. 2445 (M/B) of 2011

Pramod Kumar Shrotriya and Others	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Citation : (2011) 4 ADJ 508

Hon'ble Judges : Ritu Raj Awasthi, J; Pradeep Kant, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Petitioners claimed that they are the duly elected members of the Committee of Management of Engineers Evam Karmchari Sahkari Awas Samiti Limited, Aligarh (hereinafter referred to as the "society") by the Election Officer on 26.11.2010 i.e. the date of withdrawal of nomination papers and a certificate to that effect was also issued on that date under Rule 443(1) of U.P. Cooperative Societies Rules, 1968 (hereinafter referred to as the "Rules, 1968") but by the present impugned order dated 23.2.2011, passed by the Registrar, Housing Cooperative Societies U.P. Lucknow (Housing Commissioner, U.P. Lucknow), a direction has been issued to hold the election afresh, ignoring the fact that once the nomination papers have been filed as per the election programme duly issued by the Election Officer and the Petitioners having been declared as members of the Committee of Management unopposed, the election process which was disrupted thereafter can only commence from the stage of disruption and not denovo.

2. The controversy in nutshell is as under:

The society of Engineers Evam Karamchari Sahkari Awas Samiti Limited, Aligarh is a cooperative housing society registered under the provisions of Uttar Pradesh Cooperative Societies Act, 1965 (hereinafter referred to as the "Act") and it has been constituted with the aim to provide cheap and affordable houses to its

members.

3. The term of the last Committee of Management of the society expired on 13/14.9.2010. Initially the dates namely; 11.9.2010 and 12.9.2010 were fixed vide order dated 30.6.2010 passed by the Registrar, for holding elections of the Committee of Management but elections could not be held on that date and therefore, the dates namely 18.12.2010 and 19.12.2010 were fixed for holding elections of the Committee of Management vide order dated 18.12.2010 passed by the Registrar.

4. The District Magistrate, in accordance with Rule 414 of the Rules, 1968 appointed Sri Mahesh Chandra Sharma, Food and Sanitary Inspector, Department of Health, Nagar Nigam, Aligarh, as Election Officer for conducting the elections vide order dated 16.11.2010. The Election Officer published the election programme on 19.11.2010 in accordance with Rule 441 of the Rules, 1968 for election of the members, Chairman, Vice Chairman as well as the delegates of the society. The following election programme was published in a local daily "Rajpath" in its edition dated 20.11.2010:

Dates

Time

Purpose

22.11.2010

1.00 p.m.

Publication of provisional voter list.

23.11.2010

12 "O"clock to 2.00 p.m.

Filing of objections to the provisional voter list.

24.11.2010

11.00 a.m. Onwards

Disposal of objections.

24.11.2010

2.00 p.m. Onwards

Publication of final voters list.

25.11.2010

11.00 a.m. To 2.00 p.m.

Filing of nomination papers.

25.11.2010

3.00 p.m. Onwards

Scrutiny of nomination papers.

25.11.2010

5.00 p.m.

Publication of list of valid nominations.

26.11.2010

1.00 p.m. to 2.00 p.m.

Filing of nominations.

26.11.2010

3.00 p.m. Onwards

Publication of final list of valid nominations and allotment of symbols.

18.12.2010

10.00 a.m. To 4.00 p.m.

Polling for members of committee of Management of the society.

18.12.2010

After polling

Counting of votes and declaration of results of members of committee of management of the society.

19.12.2010

10.00 a.m. onwards

Elections of Chairman and Vice-Chairman of the Committee of Management and the Delegates to be sent to the other societies.

5. It is the specific case of the Petitioners that on 26.11.2010 after the time for withdrawal of nomination papers had expired, the Petitioners were found the only persons to remain in fray from their respective constituencies and their nominations were the only valid nominations from their respective constituencies, therefore, the Election Officer in accordance with the Rule 443 of the Rules, 1968 declared the Petitioners elected as members of the Committee of Management of the society from their respective constituencies. Besides the Petitioners, two other persons were elected unopposed from their respective constituencies.

6. After declaration of result of the elections of the Petitioners as members of the

Committee of Management, nothing happened but thereafter as per the case of the Petitioners under political pressure the Election Officer wrote a letter on 10.12.2010 to the District Magistrate that election process has been stayed due to apprehension of breach of peace and violence. Thereafter some enquiry appears to have been made on the instructions of the District Magistrate issued on 10.12.2010 itself, by the Assistant Registrar, Cooperative Societies, Aligarh and Cooperative Housing Officer, Agra. The Petitioners, however, dispute that any such enquiry was made and also that there was any apprehension of breach of peace and violence. On the same very day i.e. 10.12.2010, the District Magistrate wrote another letter to the Housing Commissioner/Registrar, Housing Cooperative Societies informing him that due to dispute amongst the members and apprehension of breach of peace and violence, the Election Officer stayed the election vide order dated 10.12.2010 and a request was made by the District Magistrate for fixing further dates for election.

7. It appears that the letter of the District Magistrate aforesaid was not responded to, by the Registrar, therefore, the District Magistrate wrote another letter to him on 16.12.2010 mentioning therein that Election Officer had not performed his duties in accordance with law due to which there was apprehension of breach of peace, therefore, the elections had been stayed. The District Magistrate also stated in the said letter that there was no transparency in the elections viz. the election programme was published in a local daily which is not read by the members/person therefore, they could not know about the election, therefore, recommended for holding the election of the society of the Petitioners afresh from the very beginning, further saying that otherwise the dispute amongst the members will continue.

8. The Registrar thereafter issued the impugned order dated 23.2.2011 exercising his powers u/s 29(3) of the U.P. Cooperative Societies Act, 1965 (hereinafter referred to as "the Act") fixing 9.4.2011 and 10.4.2011 as the dates for holding elections of the members and that of the Chairman, Vice Chairman, respectively, of the society. The Registrar, also passed orders that the election process shall be started afresh.

9. Sri Raghvendra Singh, learned Senior Advocate assisted by Sri Anurag Kumar Singh, appearing for the Petitioners in nutshell has argued that once the election process was duly set into motion and the Petitioners having been declared members of the Committee of Management as "unopposed" in terms of Rule 443 of the Rules, 1968 there would be no occasion for holding their elections afresh after nullifying their elections and neither second proviso to Section 29(3) of the Act nor the Rule 432 of the Rules permits the holding of fresh elections in a case where the election of the members has already taken place and the result has been declared.

10. On factual statements made in the letters of the District Magistrate it has been submitted by him that there was no apprehension of breach of peace or violence but even assuming that further elections could not be held because of

such apprehension, the only authority with the Registrar was to fix a date for the remaining elections and to proceed with the process of election from the stage it was disrupted.

11. A further argument is that the reasons given by the District Magistrate, though are baseless, but even otherwise the ground that the election programme was not widely published in any local daily, cannot be a ground for setting aside the elections already held and for holding fresh election, as a person aggrieved, of the manner in which the elections were held, can challenge the elections after they are over if any case is made out, under the provisions of the Rules, 1968.

12. The Respondent-State in defence has submitted that the Registrar was fully competent to pass an order under second proviso to Section 29(3) of the Act, 1965 to start the elections afresh and this power cannot be overshadowed by the provisions of Rule 442 of the Rules, 1968. The State further submitted that the letter of the District Magistrate dated 10.12.2010 clearly shows that because of the dispute amongst most of the members, the election process was disrupted and there was every apprehension of breach of peace and violence and therefore, soon thereafter on 16.12.2010 after enquiry being conducted, the District Magistrate, further informed that the Election Officer had not discharged his duties faithfully and therefore, the election was stayed on 10.12.2010. There was no transparency in the elections and the election programme was published in a newspaper which was not read by the members of the society nor they could get information about the election and if the elections were not held *denovo*, the dispute would continue. It is only for the purpose of getting a free and fair elections held, that the Registrar has passed the order under challenge for holding the elections afresh.

13. Reliance has been placed by the State upon the case of *Kuldeep Bhardwaj v. State of U.P. and Ors.* : 2010 (3) AWC 3062, in support of its submission that Rule 432 of the Rules, 1968 is sub-servient to second proviso of Section 29(3) of the Act, 1965 and that once the Registrar passes an order under second proviso to Section 29(3) of the Act, 1965 postponing the elections and directing the elections to be held afresh, the order cannot be said to be bad, not being in consonance with Rule 432 of the Rules, 1968.

14. In the aforesaid case, the elections were postponed after the nominations were entertained. The Election Officer vide order dated 10.8.2009 postponed the elections on the basis of the recommendation made by the District Magistrate, Bulandshahr, and requested the District Magistrate to notify fresh dates for election. He also recommended that the elections be held afresh. The Registrar, Cooperative Societies, U.P. Lucknow issued an order on 10.8.2009 itself in exercise of powers conferred under Sub-section (3) of Section 29 of the Act, 1965 postponing the elections of the Society and directing it to be held afresh. This order became the subject matter of challenge by all those persons who claimed the benefit of Rule 432 of the Rules, 1968 as they had filed nominations.

15. The Division Bench of the High Court, in the aforesaid case found that under Rule 432 of the Rules, 1968, if for any reason, the election of any Co-operative Society has been disrupted by the District Magistrate, or the Election Officer, the process of election will commence from the stage at which it is disrupted or from a stage prior to that or denovo as the Registrar may decide. However, the proviso to said Rule 432 of the Rules, 1968 provides that if nominations have been finalised and symbols have been allotted, the process of election shall continue and poll shall be held on such date as the Registrar may fix, whereas second proviso to Sub-section (3) of Section 29 of the Act, 1965 would control Rule 432 of the Rules 1968 notwithstanding the provisions contained in the proviso to Rule 432 of the Rules, 1968, which will evidently be subject to the provisions of the Act, 1965. The Division Bench held that the order passed by the Registrar, directing the elections to be held afresh, was valid.

16. Second proviso to Sub-section (3) of Section 29 of the Act is a provision which relates to the satisfaction of the State Government in getting the elections postponed, even after fixing the date of election by the Registrar. If the State Government finds that there exists circumstances which render it difficult to hold the election on the date fixed by the Registrar, then only on such satisfaction of the State Government, it can issue a direction to the Registrar for postponement of the elections and the elections are to be postponed accordingly by the Registrar. This power is to be exercised by the State Government and not by the Registrar of its own.

17. The scope of Rules 418 and 432 along with second proviso to Sub-section (3) of Section 29 of the Act, 1965 came up for consideration before a Division Bench of this Court in the case of Sushil Kumar Singh v. State of U.P. and Ors. 2006 (24) LCD 234, wherein the Division Bench considered the aforesaid provisions and came to the conclusion that under Rule 432 of the Rules, 1968 if for any reason the election of the society has been disrupted by the District Magistrate or the Election Officer, the process of election shall commence from the stage at which it is disrupted or from a stage prior to that or denovo as the Registrar may decide. The proviso added therein says that if nominations have been finalized and symbols have been allotted, the process of election shall continue and poll shall be held on such date as the Registrar may fix.

18. In regard to the proviso attached to Rule 432 of the Rules, 1968 the Court opined that it, restricts the liberty of the Registrar to hold the elections from a different stage than the stage from where the elections were disrupted in cases where nominations have been finalized and the symbols have been allotted, in which circumstances the election shall continue and the poll shall be held on such date as the Registrar may fix.

19. In regard to second proviso to Section 29(3) of the Act, 1965 the Court took into consideration the proviso aforesaid specifically providing that where the State Government is satisfied that circumstances exist which render it difficult to hold the election on the date fixed by the Registrar, it may direct the Registrar to

postpone the election, and thereupon Registrar shall postpone the election and all proceedings with reference to the election shall be commenced afresh in all respect.

20. The Division Bench found that plain and simple meaning of the aforesaid provision is that for exercising power under the second proviso to Section 29(3) there have to be circumstances; which render the holding of the election difficult to the satisfaction of the State Government. If the State Government is satisfied about existence of such circumstances, it is only then, it can issue a direction to the Registrar to postpone the elections. This satisfaction has to be based on objective consideration of the circumstances. The consequence of postponement of the elections, under the directions of the State is that all proceedings with respect to the election shall also stand postponed and the same shall commence afresh in all respects. The discretion of the State Government is thus, circumscribed with the conditions pre-laid in the aforesaid proviso.

21. It was further observed in the said case that the State Government under the second proviso to Section 29(3) would be competent to postpone the elections, if such circumstances exist, which render it difficult to hold the elections, which obviously would not include such irregularities, for which a different forum either that of the election petition or remedy of approaching the Registrar, under whose superintendence, control and direction, elections are to be held, is available.

22. The provision of Rule 444-C(1) of the Rules, 1968 puts an embargo upon the elections of the cooperative society being challenged during the course of election, as it says that the election in a cooperative society shall not be called in question either by arbitration or otherwise except on the ground that (a) the election has not been a fair election by reasons that corrupt practice, bribery or undue influence has extensively prevailed at the election; or (b) the result of the election has been materially affected; (i) by improper acceptance or rejection of any nomination, or (ii) by improper reception, refusal or rejection of voters, or (iii) by gross failure to comply with the provisions of the Act, the rules or the bye-laws of the society.

23. The election can be challenged within 45 days from the date of declaration of result.

24. Considering the provision of Rule 407 of the Rules i.e. the requirement of holding the elections by the Registrar before expiry of term of the Committee of Management and thereafter with respect to the provision of Rules 418 and 432 and also second proviso to Sub-section (3) of Section 29, the Court held in the case of Sushil Kumar Singh (*supra*) that u/s 29(3) of the Act, it is the statutory duty of the Registrar, Cooperative Societies, U.P. to complete the elections of the Committee of Management of the Cooperative Society at least 15 days before the expiry of the term whereas Rule 407 also enjoins the duty upon the Registrar to reconstitute a new Committee of Management of the Society before the expiry of the term. The State Government does not have any power to stay the election or

postpone the same on the ground which can be subject matter of adjudication in the appropriate forum, and that power of the Registrar can be exercised only on the directive of the State Government under the second proviso to Section 29(3) of the Act, 1965, if the State Government is satisfied that circumstances exist which render it difficult to hold the election on the date fixed by the Registrar.

25. In the case of Kuldeep Bhardwaj (supra), it appears that the attention of the Court was not drawn to the Division Bench judgment, rendered in the case of Sushil Kumar Singh (supra) where the provisions of the aforesaid Rules namely Rules 407 and 418 were also taken into consideration.

26. It is not clear from the judgment rendered in the case of Kuldeep Bhardwaj (supra) that whether in that case the State Government issued any direction to the Registrar for postponement of the elections and the reason for such directive being issued by the Registrar nor it takes into consideration the provisions of Rules 407, 418, 432 and 444-C of the Rules, 1968, though the said matters have been specifically considered in the case of Sushil Kumar Singh (supra) and therefore, the judgment rendered in the case of Kuldeep Bhardwaj is of no assistance to the Respondents.

27. In the instant case, for the reason that here the elections were not stayed by the State Government but by the District Magistrate vide order dated 10.12.2010 on the ground that there is some dispute amongst the members and there is apprehension of breach of peace and violence. As a matter of fact, nothing was to be done, on that date, so far as election process is concerned. The election programme does not show that anything was to be done for proceeding with the election on 10.12.2010. How the District Magistrate and on what reasons, passed an order staying the election on 10.12.2010, could not be explained by the State. Likewise nothing was to be done on 16.12.2010 when the District Magistrate sent the other letter saying that election programme was published in a local daily which is not read by the members of the society, and the members could not know about the publication of election programme for holding the elections.

28. A perusal of the election programme would reveal that 26.11.2010 was the date fixed for filing nominations from 1.00 p.m. to 2.00 p.m. and on 26.11.2010 itself from 3.00 p.m. onwards the final list of valid nominations and allotment of symbols was published. On this date, since the Petitioners were the only persons whose valid nomination papers were accepted and they were the only persons in the fray in regard to their respective constituencies, therefore, as per Rule 443 of the Rules 1968 they were to be declared as elected unopposed. Such declaration has been brought on record.

29. Although an effort has been made by the State saying that the declaration of the aforesaid result does not appear to be a bona fide act of the Election Officer but the said plea besides being specifically refuted by the Petitioners can also not be taken into consideration for the reason that neither two letters of the District

Magistrate inflicted any doubt upon the declaration of such result nor the order impugned passed by the Registrar raises any finger against the declaration so made. The only ground, which the Registrar, has mentioned in the impugned order for postponing the election and holding it afresh, is that the election programme was published in a newspaper, which is not read by the members, as informed by the District Magistrate and therefore, if the elections are not held afresh, the dispute amongst the members would continue.

30. In our opinion, this hardly can be a ground for ordering fresh elections as the irregularity in holding the elections, if any, could be the subject matter of election petition, and no power vested with the Registrar to nullify an election in which result has been declared under Rule 443 of the Rules 1968.

31. The ground aforesaid otherwise also is absolutely vague as it cannot be presumed that the members and the persons concerned who were willing to contest the election did not read newspaper which was published whereas the Petitioners have brought on record that the said daily newspaper "Rajpath" is a scheduled newspaper for Aligarh Region (published at Bareilly) and it has wide circulation. It has also been stated on oath by the Petitioners that the election programmes of major cooperative societies of the district including District Cooperative Bank Limited, Aligarh, District Cooperative Development Federation, Aligarh were published in this very newspaper.

32. We do not intend to enter into the plea as to whether the election programme was published in a newspaper which was read by the members or not, as we are of the view that publication of election programme is not in dispute. It has also not been disputed by the Respondents-Registrar or the Election Officer or District Magistrate that in fact the results of unopposed election of the Petitioners were not declared on 26.11.2010 or that it was a date on which such results could not have been declared.

33. If the elections have been held in gross violation of the Rules and suffer from material irregularity that can be a subject matter of election petition or arbitration, but that would not give a ground for holding the elections afresh in the presence of Rule 432 of the Rules 1968.

34. By applying second proviso to Section 29(3) of the Act, 1965 the provisions of Rule 432 of the Rules, 1968 cannot be negated nor can be made redundant. The two provisions operate in two different fields namely; second proviso to Section 29(3) of the Act 1965 would come into operation, if the State Government is satisfied that circumstances do exist which render it difficult to hold the elections on the date fixed by the Registrar, thus it may issue directive to Registrar to postpone the elections and to hold them afresh, whereas Rule 432 of the Rules, 1968 speaks about disruption of election during election proceedings by the Election Officer or the District Magistrate under the circumstances, as may prevail at that time and in such a situation, in view of proviso added to Rule 432, if the nominations have been finalised and symbols

have been allotted the process of election has to proceed from the stage from which it has been disrupted. There is no over-lapping effect between second proviso to Section 29(3) and Rule 432 of the Rules 1968 read with its proviso.

35. We thus, conclude that the order passed by the Registrar dated 23.2.2011 directing the elections to be held afresh is per-se illegal and without authority, besides being arbitrary. The order does not give any ground which can be referable to the second proviso of Section 29(3) of the Act nor it is the case of the Respondent that elections have been postponed by the Registrar on the directive issued by the State Government. Mere statement made by the District Magistrate that the newspaper in which the election programme was published is not read by the members of the society nor they could know the election programme besides being absolutely conjectural does not make any legal basis to nullify the elections already held of the members and the declaration made so as to order for fresh elections. It also could not be explained by the Respondents that when the result of the election of the members was declared on 26.11.2010 and as per the election programme it was only on 18.12.2010 that the polling was to be held by the members, then why and for what reason the District Magistrate passed an order on 10.12.2010 for postponing the election when on that date, no polling was to be held.

36. For the aforesaid reasons, the order passed by the Registrar dated 23.2.2011 contained as Annexure No. 1 to the writ petition, is hereby quashed, in so far as, it directs the elections to be held afresh. We further direct that the election process shall be completed by proceeding from the stage from where it was disrupted under the orders passed by the District Magistrate dated 10.12.2010, which requires the Registrar to fix a date for election/polling of the members of the Committee of Management where the poll (voting) was to take place and where results of such unopposed elections were declared from the stage it was disrupted, which means that no election in the constituencies in which the Petitioners or any other members have been declared unopposed would be held and the remaining election process shall continue from the stage they were disrupted. If any election programme has been issued in pursuance of the directive issued by the Registrar on 23.2.2011 the same shall be modified accordingly forthwith.

37. The petition is allowed. No order as to costs.