
(2014) 08 AHC CK 0238

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 39444 of 2014

Pramod Kumar Shrotriya

APPELLANT

Vs

Chief Election Commissioner

RESPONDENT

Date of Decision : 01-08-2014

Acts Referred:

Uttar Pradesh Co-operative Societies Act, 1965 — Section 130, 29(3)

Citation : (2014) 7 ADJ 478 : (2014) 6 ALJ 120 : (2014) 106 ALR 459 : (2014) 5 AWC 4756 : (2014) 4 ESC 2364 : (2014) 3 UPLBEC 2572

Hon'ble Judges : Vivek Kumar Birla, J;Amreshwar Pratap Sahi, J

Bench : Division Bench

Advocate : S.C. Pandey, M.D. Shekhar and R.D. Tiwari, Advocate for the Appellant; N.K. Giri and Nripendra Mishra, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri M.D. Singh Shekhar learned Senior Counsel assisted by Sri S.C. Pandey for the petitioner, Sri N.K. Giri for the respondent-Election Commission respondent Nos. 1 and 6, Sri Nripendra Mishra for the respondent Nos. 3 and 5 and the learned Standing Counsel for the respondent No. 2. This writ petition arises out of proceedings for holding of fresh elections of a Cooperative Society, the background whereof can be located to the Division Bench judgment in Writ Petition No. 2445 of 2011 decided on 5.4.2011. A copy of the said judgment has been brought on record as Annexure 8 to the writ petition.

2. The election process had been set into motion and according to the petitioner, the same was sought to be disrupted as a result whereof the aforesaid writ petition was filed. The Division Bench according to the petitioner proceeded to quash the order of the Registrar dated 23.2.2011 and a direction was issued 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.

3. Sri M.D. Singh Shekhar submits that the said judgment had to be complied with in letter and spirit, yet the respondent herein did not proceed to execute the same. Instead a query was raised by the Secretary of the Cooperative Election Commission, copy whereof is Annexure 13 to the writ petition. Sri Shekhar has invited the attention of the Court to the response given by the Additional Registrar/Additional Housing Commissioner dated 16.6.2014 to urge that the position was clarified and the commission was informed that the election has to be held only from the stage that it was directed to be held under the aforesaid judgment.

4. He has further invited the attention of the Court to the order of the Apex Court dated 24.3.2014, copy whereof has been filed as Annexure 9 to the writ petition. He submits that it appears that on the basis of a misinformation relating to the holding of the elections of the Committee of Management, that the Apex Court treated the matter to have become infructuous, and declared the term of the office bearers to have come to an end. He submits that this wrong information does not appear to be correct and he submits that the elections had not been held. He, therefore, contends that the order of the Apex Court is not an impediment in the passage of the election commission to comply with the judgment of the High Court. He further submits that the judgment of the High Court is intact and in such a situation the elections had to be held in accordance with the said directions.

5. The petitioner is now aggrieved by the order passed by the Chief Election Officer dated 14.7.2014, copy whereof is Annexure 1 to the writ petition whereby a direction has been issued to hold elections afresh as per the programme entailed therein which also includes that part of the process of election, which according to the petitioner had already been concluded previously as observed in the judgment dated 5.4.2011. The submission therefore is that the election process ought to have been conducted only from the stage it had come to an end previously and not afresh.

6. On the other hand learned counsel for the respondents have relied on the provisions of the Uttar Pradesh Cooperative Society Election Rules, 2014 to contend that in exercise of the powers under Rule 470 of the Uttar Pradesh Cooperative Societies Rules, 1968 framed u/s 130 of the Uttar Pradesh Cooperative Societies Act, 1965, the rules have been promulgated with effect from the date of the publication in the gazette. The publication has been made on 19.5.2014. In such a situation, the said rules having come into force the elections have to be held only in accordance with such rules notwithstanding anything contained in the byelaws of the society.

7. It is further submitted on behalf of the respondents that once the Apex Court has proceeded to indicate its opinion and has treated the earlier exercise to be infructuous then in such circumstances the insistence of the petitioner to proceed with the election only on the strength of the earlier judgment cannot be accepted.

8. Having considered the submissions raised and having perused the records it would be appropriate to extract the relevant portion of the judgment of the Division Bench as follows:

"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.

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.

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.

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.

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.

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.

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.

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.

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.

For the aforesaid reasons, the order passed by the Registrar dated 23.2.2011 contained as Annexure 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.

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

9. It is this dispute that was carried on forward to the Apex Court. A perusal of the aforesaid judgment would indicate that according to the petitioners the provisions that were then existing, are in pari-materia with Rule 18 of the present 2014 Rules and for this reason the petitioner contends that the judgment of the High Court dated 5.4.2011 can still be complied with and be enforced accordingly.

10. We are unable to agree with this proposition for the simple reason that firstly the Apex Court has given its opinion in the following words:

"The alleged election to reconstitute the Committee of Management of a Co-operative Society was said to have been held in 2010. The term of office was two years. The said period is expired long back. Therefore, this petition has become infructuous. It is dismissed as having become infructuous."

11. If there is any error of description as urged by Sri Singh in the aforesaid judgment then it is not for us to sit in appeal or give any explanation for the same.

Secondly Rule 3 of the 2014 rules reads as under:

"Notwithstanding anything contained in the bye-laws, the election of any Co-operative Society or Societies or class or classes of the Co-operative Societies shall be held in accordance with the provisions of the Act and these rules."

12. The Election Officer is now empowered under the rules to enforce it and has to hold elections in accordance with the same. The entire process therefore in

our opinion has to be undertaken afresh as the previous exercise has become infructuous for the reasons given hereinabove. There is no error in the impugned order and the opinion of the Additional Registrar dated 16.6.2014 is of no avail as it is legally contrary to what has been observed by us. There is no merit in the present writ petition. Rejected.