

(2014) 09 AHC CK 0328

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 48241 of 2014

Rajesh Kumar Mishra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-09-2014

Acts Referred:

Citation : (2014) 9 ADJ 513 : (2014) 6 ALJ 762 : (2015) 108 ALR 159 : (2014) 4 UPLBEC 3098

Hon'ble Judges : Vivek Kumar Birla, J;A.P. Sahi, J

Bench : Division Bench

Advocate : Pradip Kumar, Advocate for the Appellant; N.K. Giri, Nripendra Mishra, H.R. Misra and Amit Kumar Pandey, Advocate for the Respondent

Judgement

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1. Heard Sri Pradip Kumar, learned Counsel for the petitioners, learned Standing Counsel for the respondent Nos. 1 and 5, Sri N.K. Giri for the respondent No. 2, Sri Nripendra Mishra for the respondent Nos. 3 and 4 and Sri H.R. Misra, learned Senior Counsel assisted by Sri Amit Kumar Pandey, for the respondent No. 7. The Petitioner No. 2 had earlier come up in Writ Petition No. 34244 of 2014 disputing the membership and the electoral College on certain grounds. The said writ petition was disposed of on 9.7.2014 with the observations that such dispute of membership shall be considered at the stage as provided for under the Rules namely the U.P. State Cooperative Societies Election Rules, 2014. The judgment is extracted hereunder:

"This writ petition has been filed with the prayer that the election of petitioner's Co-operative Society namely Respondent No. 5 should be held only from amongst the valid members and not by the members, who had been enrolled by the Administrator.

The submission of the learned counsel for the petitioner is that the Administrator has no power to induct new members, as per a series of decisions. An interim

order dated 3.9.2009 passed in Writ Petition No. 46865 of 2009, which had been passed by this Court after following the decisions of the Supreme Court, has been brought on record.

Thus the apprehension of the petitioner is that the election, which is now to be held, in terms and direction issued by High Court on 16.1.2014 in Writ -C- No. 22915 of 2013, is likely to be held on an incorrect voter list.

Sri N.K. Giri who appears for the respondent No. 2 Commissioner, Election Commission U.P., Co-operative Societies and Sri Nripendra Mishra, learned counsel for respondent No. 3 Awas Vikas Parishad submit, that after direction dated 16.1.2014, elections could not be held on account of non validity of the Rules that have now been notified on 19.5.2014.

Consequently the election should now be held as per the aforesaid Rules.

A perusal of the Rules indicates that Clause 12 requires publication of an interim voter list and Clause 13 also specifies the manner in which it has to be notified.

So far as the objection to such an interim voter list is concerned, provisions for disposal of any objection is provided for in Rules 34 to 36 and then Rule 37 and 38 provide for the manner of publication of final voter list.

We are therefore of the opinion that it is open to any aggrieved person to file objections before the competent authority who shall decide the same in accordance with the procedure prescribed in the U.P. State Cooperative Societies Election Rules 2014.

Learned counsel for the petitioner has urged that there were only 1007 members who are entitled to participate in the election and no one else. This issue shall also be considered if raised as per the rules aforesaid.

With the aforesaid observations the petition is disposed of."

2. The petitioners again filed Writ Petition No. 44532 of 2014 contending that there is every likelihood that no decision will be taken and the election will be held without deciding the issue of membership and electoral college. The second writ petition was dismissed on 26.8.2014; the judgment whereof is extracted herein below:

"Heard Sri Pradip Kumar, learned counsel for the petitioners, learned Standing Counsel for 1 and 5, Sri H.R. Mishra, learned senior counsel appears for respondent No. 7 and Sri Nripendra Mishra, learned advocate, appears on behalf of Avas Vikas Parishad.

The petitioner had earlier filed Civil Misc. Writ Petition No. 34244 of 2014 (Ishwar Singh Nirvan v. State of U.P. and 4 others), the same was disposed of by the following judgement:

"This writ petition has been filed with the prayer that the election of petitioner's Co-operative Society namely Respondent No. 5 should be held only from

amongst the valid members and not by the members, who had been enrolled by the Administrator.

The submission of the learned counsel for the petitioner is that the Administrator has no power to induct new members, as per a series of decisions. An interim order dated 3.9.2009 passed in Writ Petition No. 46865 of 2009, which had been passed by this Court after following the decisions of the Supreme Court, has been brought on record.

Thus the apprehension of the petitioner is that the election, which is now to be held, in terms and direction issued by High Court on 16.1.2014 in Writ -C- No. 22915 of 2013, is likely to be held on an incorrect voter list.

Sri N.K. Giri who appears for the respondent No. 2 Commissioner, Election Commission U.P., Co-operative Societies and Sri Nripendra Mishra, learned counsel for respondent No. 3 Awas Vikas Parishad submit, that after direction dated 16.1.2014, elections could not be held on account of non validity of the Rules that have now been notified on 19.5.2014.

Consequently the election should now be held as per the aforesaid Rules.

A perusal of the Rules indicates that Clause 12 requires publication of an interim voter list and Clause 13 also specifies the manner in which it has to be notified.

So far as the objection to such an interim voter list is concerned, provisions for disposal of any objection is provided for in Rules 34 to 36 and then Rule 37 and 38 provide for the manner of publication of final voter list.

We are therefore of the opinion that it is open to any aggrieved person to file objections before the competent authority who shall decide the same in accordance with the procedure prescribed in the U.P. State Cooperative Societies Election Rules 2014.

Learned counsel for the petitioner has urged that there were only 1007 members who are entitled to participate in the election and no one else. This issue shall also be considered if raised as per the rules aforesaid.

With the aforesaid observations the petition is disposed of."

Sri Pradip Kumar, learned counsel, submits that without considering the objections filed by the petitioners with regard to the genuine members of the society, the respondent No. 5 has issued a notification for taking a decision after objection to define the limits of constituencies.

We cannot apprehend any such action by the Election Commission to declare the electoral college without deciding the objections as directed by us in the judgement dated 9.7.2014 referred to hereinabove. The impugned notification for delimitation does not give rise to any cause relating to the electoral college which is yet to be determined.

Consequently, the apprehension is misplaced. The Election Commission shall be

obliged to decide the objections which have been stated by the petitioners in this regard.

The writ petition being an effectively second petition for the same is not maintainable and is dismissed."

3. This writ petition has now been filed after the constituency has been determined in exercise of powers under Rules 24, 27 and 28 of the 2014 Rules aforesaid. Learned Counsel submits that while determining the constituency, certain claims on merits have been incorrectly decided and secondly, the determination has been made on the asking of a person, who was not the Secretary of the Society.

4. Sri Pradip Kumar submits that the District Election Officer has erroneously treated this to be not the stage for determining membership and to the contrary has published a Notice for holding of the elections with 1439 Members as against the valid 1007 Members. According to Sri Pradip Kumar, the dispute stands finally decided without considering the objection of the petitioners.

5. Having considered the submissions raised, it would be appropriate to extract Rules 24, 26, 27 and 28 of the 2014 Rules:

"24. Action shall be taken for determination of constituencies, if required for election of delegates of general body members, the Chairman, the Vice-Chairman of the Committee of Management of the Cooperative Society and the delegates to be sent to other Co-operative Societies by the District Assistant Co-operative Election Officer belonging to the registered headquarters of all types of Primary Cooperative Societies in the manner prescribed in rules 27 and 28 of the guidelines, given by the Commission:

Provided that in case of the District/Central Co-operative Societies, the action for determination of constituencies shall be taken by the Divisional Cooperative Election Officer.

26. For determination of constituencies, the Secretary or the Managing Director of the Society, as the case may be shall furnish all such information or facts as may be required by the District Assistant Cooperative Election Officer or the Divisional Co-operative Election Officer or the authorized officer of the Commission from time to time.

27. (1) For the purpose of election of members of Committee of Management of a Co-operative Society or as the case may be of delegates to the general body of a Cooperative Society, the District Assistant Co-operative Election Officer or the Divisional Co-operative Election Officer or the Commission or the Authorized Office shall notwithstanding anything contained in the bye-laws of the Co-operative Society, or as the case may be, of a class of Cooperative Societies determine provisionally-

(a) the number of constituencies in which the area of operation of the Co-

operative Society shall be divided;

(b) the extent of area of each constituency;

(c) the total number of seats allotted to each constituency;

(d) marking of constituencies and the number of reserved seats;

Provided that the names of constituencies shall be mentioned in the Hindi Alphabet.

(2) The District Assistant Co-operative Election Officer/the Divisional Co-operative Election Officer/the competent authority shall thereupon publish in any major daily newspaper the provisional determination for inviting objections while fixing the date for hearing within seven days from the date of such publication. A copy thereof shall be sent to the concerned Society for its comments:

Provided that in case of Primary, District or Central Co-operative Societies, it shall be published in major daily newspapers being circulated from the Division and in case of the State Level Apex Co-operative Societies, it shall be published in all editions of daily newspapers at the Divisional Level:

Provided further that the provisional determination of a Primary, District or Central Co-operative Society having area of operation extending to more than one revenue Districts, shall be published in major daily newspapers having circulation in the area of operation of the Society.

(3) The criteria for determination of constituency may be any one or more of the following namely-

1. Revenue Area;

2. Class or classes of membership;

3. Other logical basis in relation to the area of operation of society;

Provided that the unit of determination in case of a Primary Agricultural Credit Society or Primary Sugarcane Society or Dairy Society shall as far as possible be one or more Gram Panchayats falling in the area of operation of the society.

(4)(a) The objections and comments received under provisional determination shall be considered by the District Assistant Co-operative Election Officer/the Divisional Co-operative Election Officer/the Competent Authority on the eleventh/twelfth/thirteenth day as mentioned in the provisional determination of such publication after hearing the objections, he shall give a brief statement of objections and the facts found during hearing on the concerned register and get it signed by the objector while signing it himself.

(b) The copy of the mentioned facts and the decision taken in the hearing referred to in clause (a) may be obtained by the objector by depositing the fee at the rate of ten rupees per page.

(5) Thereafter, the District Assistant Co-operative Election Officer/the Divisional Co-operative Election Officer/the competent authority shall write his comments as required pertaining to the resolution of objections in the concerned register and finally determine the constituencies, the number of seats and the number of reserved seats. The final determination made, shall be published on the fifteenth day of the publication of the provisional determination and a copy thereof shall be sent to the Society concerned.

28. The District Assistant Co-operative Election Officer/the Divisional Co-operative Election Officer/the competent authority shall under the provisions of the proviso to sub-section (5) of Section 29 of the Act, reserve the constituencies/areas for the reserved seats and such reservation shall be done by placing the names of such constituencies/areas from where the election of the members of the Committee of Management is to be, in the Hindi alphabetical order in rotation to the extent necessary for the reservation of seats:

Provided that the areas so reserved shall be allowed in the Hindi alphabets order as follows:

1. One for the Scheduled Castes/the Scheduled Tribes;
2. One for the other backward Classes of the citizen;
3. Two for women;

Provided further that where the letter of more than one constituency is the same, there is such cases, the reservation shall be regulated by the next letter of name of a constituency."

6. A perusal of the scheme of Rules under Chapter III thereof demonstrates that this is clearly in relation to determination of constituency of the general body and Committee of Management of the Society for the purpose of election. Thus, this Chapter and the powers conferred therein are confined to the determination of constituency on the basis of the criteria as provided under sub-rule (3) of Rule 27. The said criteria also indicates that the authority shall determine the Constituency on the criteria of class or classes of membership.

7. Sri Pradip Kumar submits that this criteria clearly includes within it's fold the issue of actual determination of membership and not only classes of membership. He, therefore, contends that the authority has exercised it's jurisdiction by wrongly stating that this is not the stage of deciding the issue of membership and on the other hand has finally published the notice which indicates that the elections are proposed to be held on the basis of a wrong electoral college.

8. Replying to the aforesaid submission, Sri H.R. Misra, learned Senior Counsel, for the respondent No. 7 submits that the aforesaid argument does not hold water unless the stage of determination of membership arises which is included in Chapter IV of the Rules particularly Rule 33. He contends that Rule 33 is

exhaustive and the provisional electoral list and the final electoral list are to be prepared under Rule 33 and not under Rule 27 as urged by Pradip Kumar. He has invited the attention of the Court to Rule 33 which is extracted hereunder:

"33. (a) It shall be responsibility of the Secretary or the Managing Director of the Society to display the information of the election programme and place of polling of the Society on the notice board of society at least 15 days before the date of publication of the provisional voters list:

Provided that this notice shall also be displayed on the notice board of concerned development block in case of a primary co-operative society of the office of the District Magistrate in case of district/central Co-operative Society and the Office of Commissioner and Registrar and of the commission in case of the State Level/ Apex Co-operative Society.

(b) Following shall be displayed in the election programme:

(i) the date of display of provisional voters list;

(ii) the date, time and place for filing objections on provisional voters list and its disposal;

(iii) the date of display of final votes list;

(iv) the date, time and place for filing nominations;

(v) the date, time and place of scrutiny of nomination;

(vi) the date, time and place for withdrawal of nominations;

(vii) the date, time and place for allocation of election symbols and display of final nominations;

(viii) the date, time and place of poll;

(ix) the place at which voters' list can be inspected by voters;

(x) names of the constituencies including reserved constituency and the number of persons to be elected;

Provided that the date and time for serial Nos. (i) to (viii) shall be such as may be determined by the commission and information and place for serial No. (x) shall be such as may be decided by the District Assistant Co-operative Election Officer/Competent Authority."

9. Learned Additional Chief Standing Counsel Sri Suresh Singh has also adopted the same arguments and he contends that membership is not finally decided and objections have to be dealt with only after the provisional list of Members is brought on the notice Board as per Rule 33. He contends that the said stage having not arrived at, the apprehension of the petitioners is misplaced.

10. We have heard Sri Nripendra Mishra and Sri N.K. Giri, who have also adopted

the same arguments.

11. Having considered the submissions so raised, we are of the opinion that Rule 27(4)(a) and sub-rule (5) are clear provisions for determination of the constituency on the basis of the criteria namely revenue area, class or classes of membership and other logical basis in relation to the area of operation of the Society. The aforesaid criteria does not deal with the actual validity of any particular Member to be included in the electoral college. The class of membership is a different issue altogether. In our opinion so far as the issue of validity of membership or entitlement of any particular member to participate in the election is concerned, that squarely falls within the powers of the authority at the stage of Rule 33 and not prior to that.

12. The apprehension of the petitioners that finality is attached to the status of member who are entitled to participate, therefore, is not the stage of Rule 27 and has to be determined according to Rule 33.

13. The petitioners apprehend that 432 Members, who have been incorrectly projected as the valid members, are not entitled to participate. We are afraid that this is not the stage of such determination and the authority has to decide as per Rule 33 as explained. The aggrieved persons have a right to object to the provisional voter list published under Rule 33 and the authority will be obliged to decide the same in accordance with rules. The determination shall be made in accordance with Rule 33 to rule 36 of 2014 Rules.

14. In view of the aforesaid position that emerges above, the issue of membership is yet to be decided and will be decided at the stage of Rule 33 and the notice determining Constituency does not attach finality to the same.

15. The contention of the petitioner is that even on merits, there is no correct appreciation of the objections. In our opinion, the election programme has been announced, it should not be interfered with at every stage. If any person is aggrieved by the wrong participation of a member, the same has to be dealt with through the procedure of election disputes under the 2014 Rules.

16. The next question is that the determination of the constituency is also on the strength of the projected electoral college as shown in the notice dated 3.9.2014. The same indicates that the 8th ward of the constituency indicates that the members entitled to participate would be from serial No. 1261 onwards whereas the dispute is that there are only 1007 Members and in such a situation, the determination of the constituency will get affected.

17. In that view of the matter the power of the Election Officer does not get denuded in the sense that as and when the electoral College is finally determined as per Rule 33, the members can be reallocated and the Constituency can be, accordingly, redetermined. Consequently, the said stage having not yet arrived, we are not inclined to interfere at the instance of the petitioners at this stage. The writ petition is, accordingly, dismissed without prejudice to the rights of the

petitioners to contest the matter in future as explained above.