
(2009) 12 AHC CK 0031
In the Allahabad High Court

Sudhir Kumar Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Citation : (2010) 4 AWC 3284

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Kant and Ritu Raj Awasthi, JJ.—Heard Sri Raghvendra Singh assisted by Sri Dhlrendra Singh for the petitioner, Sri Rakesh Bajpai for the State, Sri Devesh Pathak for respondents No. 4 and 5 and Sri Manish Kumar for the intervenor.

2. The elections to the District Co-operative Bank, Siddharthanagar, were notified initially by the Registrar on 1.6.2009, fixing 5/6.10.2009 for elections of Committee of Management of the District Co-operative Banks of the State, including the present Bank.

3. A Civil Misc. Writ Petition No. 45749 of 2009 was filed at Allahabad, wherein an interim order was passed on 2.9.2009 saying that the members enrolled by the Administrator shall not be allowed to participate in the elections.

4. However, the dates aforesaid were postponed by the Registrar to 19.11.2009 and 20.11.2009. Before the elections could take place, the petitioner Bank filed a writ petition at Allahabad bearing number 61517 of 2009. wherein a Division Bench of this Court at Allahabad, considering the plea that the new members enrolled by the Administrator have got no right to participate in the elections, passed an interim order staying the elections of the District Co-operative Bank, Siddhartha Nagar scheduled to be held on 19/20.11.2009 till further orders.

5. This interim order dated 17.11.2009 was challenged in a SLP before the Apex Court and the Apex Court passed an interim order on 20.11.2009 and thereafter

on 27.11.2009 while issuing notice and giving time for exchanging affidavits, directed that the elections may go on but the same shall be subject to outcome of the present proceedings (special leave petition).

6. In view of the aforesaid order passed by the Supreme Court, it appears that the Registrar issued the present notification on 30.11.2009, by means of which, exercising his powers under Rule 432 of the U.P. Co-operative Societies Rules, 1968 (hereinafter referred to as "the rules", he fixed the dates of elections as 15.12.2009 and 16.12.2009. Consequently, an election programme has been issued on 3.12.2009, by means of which elections/date of polls have been notified for 15/16.12.2009, i.e., 15th December for the elections of the members of the Committee of Management and 16th December for Chairman and Vice-Chairman of the Committee of Management, for which necessary publication has also been made in the newspapers.

7. Sri Raghvendra Singh, learned senior advocate, assailing the aforesaid notification and the order of the Registrar, fixing 15/16.12.2009 as the dates for holding the elections of the members and the Chairman and Vice-Chairman respectively, has mainly raised an objection, regarding the time period, which would elapse from the date of issuance of such election programme and the date of polls/elections.

8. Relying upon Rule 441 of the Rules, his submission is that the dates of such elections could not have been fixed without giving at least 15 days clear notice from the date of polls, which could go to maximum 30 days and since obviously neither from the date of order passed by the Registrar, i.e., 30.11.2009 nor from the date of publication of the election programme in the newspapers dated 3.12.2009, 15 days time would lapse, the present elections cannot be held on the basis of such notification.

9. Another argument has been raised by him saying that this is not a case where the District Magistrate or the Election Officer has postponed the elections because of some disruption, as provided under Rule 432 and, therefore, this plea that the elections have to be resumed from the stage where they were disrupted and that since the elections were disrupted after the allotment of symbols, therefore, this notification does not require 15 days clear notice, would not be available to the State. In other words, argument is that if action is not taken under Rule 432, then there will be no occasion for taking advantage of the provisions of the said rule, while fixing date for polling/elections and in which case, the rule available and applicable would be Rule 441 and, therefore, a fresh election programme with clear notice of 15 days, at least, should have been issued.

10. Further argument is that even supposing for the argument sake that the elections of the members of the Committee of Management can take place on 15.12.2009, still for holding the elections of the Chairman and Vice-Chairman of the Committee of Management, there should be a clear 15 days notice

independent of the election programme issued for holding the elections of members of the Committee of Management, and for which reliance has been placed upon the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

11. Para 22 of the judgment in the case of Mohinder Singh Gill (supra) reads as under:

At the first blush we get the comprehensive impression that every calling in question of an election save, at the end by an election petition, is forbidden. What then, is an election? What is "calling in question"? Every step from start to finish of the total process constitutes "election", not merely the conclusion or culmination. Can the cancellation of the entire poll be called a step in the process and for the progress of an election, or is it a reverse step of undoing what has been done in the progress of the election, a non-step or anti-step setting at nought the process and, therefore, not a step towards the goal and hence liberated from the coils of Article 329 (b)? And, if this act or step were to be shielded by the constitutional provision, what is an aggrieved party to do? This takes us to the enquiry about the ambit of Section 100 of the Act and the object of Article 329(b) read with Article 324. Such is the outline of the complex issue projected before us.

12. There cannot be any dispute that the election process would include every stage from start to finish of the entire process of election and, therefore, it can be safely presumed that the requirement of issuing at least 15 days notice before the date of election would include the entire process of election and not every stage of election. The election process as has been given in the rules and which is meant for electing the Committee of Management of the District Cooperative Bank, clearly indicates the manner in which such a Committee of Management is to be elected. It starts from the publication of tentative voter list of members and after scrutinizing the voter list and carrying on other steps, finally the members are elected and the members so elected, constitute the electoral college for electing the Chairman and Vice-Chairman of the Committee of Management. Thus, the election process starts on issuance of the election programme, which provides for publishing the tentative, voter list, and all other steps, till the elections/polls" are held.

13. It is not being urged or disputed by either parties that if elections are postponed or disrupted, as per the provisions of Rule 432 then the election is to be proceeded with from the stage where it was disrupted, if the nominations have been scrutinized and symbols have been allotted.

14. In the case in hand, 14.11.2009 was the date for allotment of symbols which was actually done. The elections for the members were to take place on 19.11.2009 and for Chairman and Vice-Chairman on 20.11.2009. It was at this stage and before the polls could take place for the members that the interim order was passed by the High Court on 17.11.2009. i.e., two days from the date

when polls for members of the Committee of Management were to be held and three days before the date of elections of Vice-Chairman and Chairman.

15. On the stay order being granted by the Apex Court against the order of the High Court with the direction that the elections may go on, the Registrar has fixed the aforesaid dates of 15/16.12.2009 and the Election Officer has issued the programme for holding the elections.

16. The argument of the petitioner regarding the requirement of at least 15 days notice from the date of polls, while issuing the election programme, has to be tested in the light of the rules and the scheme thereof.

17. Rule 441 prescribes that the Election Officer shall notify in the local newspaper the date or dates of election for class or classes of societies or of a group or groups of cooperative societies of any area or areas of his jurisdiction. Sub-clause (2) of Rule 441 says that the Election Officer shall give notice of not more than thirty days but not less than fifteen days from the date of poll intimating the programme of election as specified in Sub-rule (3) to the members specified therein.

18. Sub-rule (3) gives the details of the election programme and reads as under:

(3) The Election Officer shall display at the notice board of the society the following programme of election:

- (i) the date for display of provisional voter's list,
- (ii) the date, time and place for filing objections and their disposal,
- (iii) the date for display of final voter's list,
- (iv) the date, time and place for filing nominations,
- (v) the date, time and place of scrutiny of nominations,
- (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:

Provided that the place of poll shall be the office or headquarter of the society unless for reasons to be recorded by the Election Officer it may be some public place as near the office or headquarter or branch of the society as may be possible and notified in the programme of notice:

Provided further, that in case of election of delegates of society, members as mentioned in Sub-rule (4) of Rule 84A, the place of poll shall be any public place in addition to office or headquarter or branch of the society, as determined by the Election Officer.

(ix) the place at which voters' list can be inspected by any voter,

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

19. This election programme includes both the elections of the members of the Committee of Management as well as Chairman and Vice-Chairman. It is one combined programme and rightly as the elections are to be held for constituting the Committee of Management, which could only be constituted, when election of the members as well as that of the Chairman and Vice-Chairman takes place. Sub-rule (2) of Rule 441, therefore, has to be followed with respect to the time schedule, when the election programme is to be notified.

20. The reason for giving at least 15 days time and not more than 30 days time from the date of issuance of election programme, for the date of election, is also obvious as before the date on which actual polling can take place, there are certain mandatory requirements, which are to be fulfilled, which include constitution of electoral college as well as its publicity or pronouncement to the persons concerned. Unless the voter list is finalized and the final voter list is made known, there would be difficulty in holding the elections and, therefore, the election programme, which is statutory in character prescribed under the Rules itself, has to be strictly followed.

21. Once the election programme has been notified in accordance with the provisions of Rule 441 and if after such notification, the elections are disrupted either under Rule 418 or under Rule 432, consequences have to follow. If elections are disrupted because of any of the conditions as mentioned in Rule 418, the dates of election/polls have to be fixed anew by the Registrar as given therein, but if the elections are postponed for any reason, which is covered under Rule 432, then the elections are to be resumed in the manner as given therein on the conditions, as laid down.

22. No other provision has been brought to our notice by either of the parties, under which the dates can be fixed for a postponed election by the Registrar.

23. In the instant case, the elections have not been postponed nor were disrupted for any reason whatsoever, as given in Rule 418 but the elections have been postponed for a valid reason, i.e., the orders of the Court. Under the circumstances, the Registrar could have refixed the dates of election only under Rule 432. Rule 432 reads as under:

432. If for any reason the election of any 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 de novo as the Registrar may decide:

Provided 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.

24. Rule 432 says that if for any reason the election of any 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 de novo as the Registrar may decide. The proviso says 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.

25. Here, under the stay order granted by the High Court, elections were disrupted and of course, the District Magistrate, who was the Election Officer, had to postpone the elections. It is thus, a case, which would be covered by Rule 432 itself as it takes into account the postponement of election for any reason.

26. The elections have been postponed after the symbols were allotted, therefore, they should stand resumed from the stage from where they were disrupted and while continuing the process of election, poll has to be held on such dates as the Registrar may fix. It is this date of poll, which was fixed by the Registrar in his order dated 30.11.2009.

27. It is also significant to mention that the period of 15 days notice before the date of poll while issuing the election programme apparently is a requirement, when the election programme, as given in Sub-rule (3) of Rule 441 is issued.

28. In case the election is disrupted at any intermediary stage, it would not require the compliance of the aforesaid provisions of Rule 441 but, of course, a reasonable time should be provided so that concerned public/persons may know the dates of elections, which has to be refixed by the Registrar.

29. Sri Raghvendra Singh in support of his plea that 15 days time, at least, should have been given before the date of elections, also cited a hypothetical situation that once elections have been disrupted or postponed, all the persons who are willing to contest the elections of the Chairman and Vice-Chairman cannot remain in their area for indefinite period waiting for such date, therefore, if fifteen days formula is followed, then whosoever are the persons and wherever they are, they might come back in the constituency and exercise the right of participation in elections.

30. Firstly, there is no pleading to that effect in the writ petition but even assuming that there are some persons, who are willing to contest the election and whose nominations have been accepted and symbols have been allotted for contesting the elections of members, they would have sufficient time, if the dates have been refixed by the Registrar and duly notified, and in any case they should remain vigilant, if they really want to contest the election. Mere personal convenience of any person, would not make the action illegal.

31. It may also be taken into account that while interpreting a statutory provision of the Act or the Rules, the Court would not decide its validity on an issue, which is not raised and which is purely hypothetical.

32. In the case in hand, since the election process was disrupted because of the interim order passed by the High Court, the Registrar was obliged to fix a date as per the provision of Rule 432 after the Supreme Court stayed the order passed by this Court and directed for continuance of the elections, for which the Registrar fixed the dates of 15/16.12.2009 on 30.9.2009 for which election programme has been issued on 3.12.2009 by the Election Officer.

33. We, for the reasons aforesaid, do not find any reason to interfere the election process.

The writ petition is dismissed.