
(2018) 04 UK CK 0079

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 755, 902 929, 1111 of 2018

SURENDRA SINGH PARIHAR AND OTHERS

APPELLANT

Vs

STATE OF UTTARAKHAND AND ANOTHER

RESPONDENT

Date of Decision : 23-04-2018

Acts Referred:

Uttarakhand Co-operative Societies Act, 2003 — Section 29(5)(a), 29(5)(b)
Constitution of India, 243ZL

Citation : (2018) 04 UK CK 0079

Hon'ble Judges : SUDHANSHU DHULIA, J

Bench : Single Bench

Advocate : Sandeep Tiwari, Paresh Tripathi

Final Decision : Disposed Off

Judgement

Sudhanshu Dhulia, JÂ

1. All these writ petitions before this Court are either filed on behalf of the elected Chairman of Management Committees of Co-operative Societies or

on behalf of the members of such Societies.Â

2. The fact of the matter is that the term of the Co-operative Societies which is for a period of five years has come to an end on 23.03.2018, but since

new elections of the Board have not taken place in any of these Societies in Uttarakhand, therefore, the State Government has appointed

Administrators in each of these Primary Agriculture Co-operative Credit Society/ Multi-Purpose Co-operative Society, which together are 759 in

numbers.

3. Arguments have been raised by the petitioners where the learned counsels for the petitioners submit that the action or in fact the inaction on the

part of the State and its machinery amounts to violation of the constitutional provisions, inasmuch as, it is the constitutional mandate that before the

term of the Board of a Co-operative Society comes to an end (which is now for a period of five years), a new Board has to be elected. The reason

being simple, it is the constitutional requirement that the powers of the Board should not be given to anyone but to the elected members alone.Â

4. At this juncture, it must be stated that by way of 97th Amendment in the Constitution of India, the Cooperative Societies have been given a

constitutional status and their formation, their period of working and various other provisions have been given in the newly incorporated Part i.e. Part

IX-B under the heading of â??The Co-operative Societies.â??

5. Article 243-ZH to Article 243-ZT of the Constitution of India are regarding the incorporation of co-operative societies, number and term of

members of board and its office bearers, election of members of board, supersession and suspension of board and interim management, etc. As per

clause (2) of Article 243ZJ of the Constitution of India, the term of office of elected members of the board and its office bearers shall be of five years

from the date of election and the term of office bearers shall be coterminous with the term of the board.

6. Article 243-ZK which is regarding the elections of members of Board reads as under:-

â??243-ZK. Election of members of board.- (1) Notwithstanding anything contained in any law made by the Legislature of a State, the election of a

board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office

immediately on the expiry of the term of the office of members of the outgoing board.

(2) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall

vest in such an authority or body, as may be provided by the Legislature of a State, by law:

Provided that the Legislature of a State may, by law, provide for the procedure and guidelines for the conduct of such elections.â??

7. As referred above, the term of the Co-operative Societies i.e., the Primary Agriculture Co-operative Credit Societies/Multi Purpose Co-operative

Societies in Uttarakhand came to an end on 23.03.2018.

8. Admittedly, a new Board to these co-operative societies has not been elected. The writ petitions were filed by the petitioners with a prayer that in

some of the cases as their term is coming to an end, the Board may be allowed to continue and a mandamus be issued to conduct the election

immediately.

9. In the counter affidavit, which has been filed by the State, the reason which has been assigned for not holding the elections for these co-operative

societies in time is that although as per the mandate of clause (2) of Article 243-ZK of the Constitution of India the superintendence, direction and

control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest with an authority or board, as

provided by the Legislature of a State, by law, but this "independent body" could not be constituted in time in the State. Although a principal

decision was taken for constitution of this body/authority which in Uttarakhand is known as the Uttarakhand Co-operative Election Authority, which

has a chairman and three members but since earlier there was some difficulty in the appointment of a chairman as well as the members. It has been

said that the chairman appointed earlier did not continue for long and the matter has been delayed for one reason or the other. All the same, now a

properly constituted authority is in place and it has been stated that if given a reasonable time, the elections will be conducted within a period of three

months from today.Â

10. The fact of the matter is that the term of the Board can only be upto five years. There is no provision under the law, under which the term of the

Board can be extended. Moreover, under Section 29 (5) (a) and (b) of the Uttarakhand Co-operative Societies Act, it has been provided that in case

for any reason whatsoever, the election of the elected members of the Committee of Management could not take place before expiry of the term of

the elected members, the Committee of Management shall cease to exist on the expiry of such term and an administrator has to be appointed. Section

29 (5) (a) and (b) of the Uttarakhand Co-operative Societies Act reads as under:-

29. Committee of Management

(1) (a) (i) (a) (i)

(2)â?¡â?!

(3)â?¡â?!

(4)â?¡â?!

(5) (a) Where, for any reason whatsoever, the election of the elected members of the Committee of Management has not taken place or could not

take place before the expiry of the term of the elected members, the Committee of Management shall, notwithstanding anything to the contrary in this

Act or the rules, or the byelaws of the society, cease to exist on the expiry of such term.

(b) On or as soon as may be after the expiry of such term, the Registrar shall appoint an Administrator or a Committee of

Administrators (hereinafter, in this section, referred to as the Committee) for the management of the affairs of the society until the reconstitution of

the Committee of Management in accordance with the provisions of the Act, the rules and the bye-laws of the society, and the Registrar shall have

the power to change the Administrator or, as the case may be, any member of the Committee or to appoint a Committee in place of an Administrator

or vice versa from time to time.â???Â

11. Learned Chief Standing Counsel for the State/Authority would argue that where for any reasons, election of the new members has not taken

place, the erstwhile members of the Board will cease to exist on the expiry of their term. Admittedly, the term of the cooperative societies came to an

end on 23.03.2018.

12. It is a peculiar situation before this Court where the prayer as made by the petitioners cannot be granted inasmuch as their term cannot be

extended beyond the period of five years, which has come to an end. On the other hand, the question is whether cooperative societies should be

manned by bureaucrats instead of elected representatives. Allowing this would be against the objects for which co-operative societies have been

formed.

13. Learned Chief Standing Counsel for the State/Authority Mr. Paresh Tripathi though would also argue that Article 243-ZL of the Constitution of

India also visualises a contingency where in case a body or an authority as contemplated under clause (2) of Article 243-ZK of the Constitution of

India has not been able to conduct the elections of the Board in time then in such a contingency, on expiry of the term of the Board, an Administrator

has to be appointed and the Board will be deemed to be superseded.

14. The other anxiety of this Court is that in many cases, one Administrator is functioning for several cooperative societies. However, this fact has

been denied by the learned Chief Standing Counsel/Authority.

15. The fact remains that the mandate of the Constitution is clear, which is that these co-operative societies should be manned by elected

representatives. It is an unusual situation where elections have not taken place even though the term of the Board has come to an end. Primarily the

State and the State machineries have to take the blame for not conducting these elections in time.

16. Learned counsels for the petitioners, would argue that earlier proviso (i) to (v) of sub-section (1) of Article 243-ZL of the Constitution of India

visualises only an individual contingency of a particular society. It does not visualise a contingency where all the co-operative societies of the State by

a general order are liable to be superseded and the Administrator be appointed merely for the reason that Authority has not been able to hold the election.Â

17. The question as of now before this Court is what is to be done in this intervening period, i.e. between the time the period of elected Board has

come to an end and the time by which the new Board is to be constituted. Since now an Authority has been constituted which is functional as

mandated under clause (2) of Article 243-ZK of the Constitution of India, the writ petitions stand disposed with the mandamus to the respondent

authorities as well as to the State Government to immediately initiate the process of election, including the preparation of electoral rolls in accordance

with law so that newly elected members are elected within a period of three months from today i.e. on or before 23.07.2018.

18. Meanwhile, in the intervening period, the erstwhile elected Chairman shall perform the duties of the Administrators, along with the Administrators

appointed by the State, wherever such request is made by the erstwhile elected Chairman of these societies.