(2014) 04 AHC CK 0252

In the Allahabad High Court

Case No : Writ Petition No. 7847 (MB) of 2013

Suryodaya Co-operative Housing Society Ltd. APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 24-04-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Co-operative Societies Act, 1965 — Section 100, 29, 29(1), 29(2), 29(2)(a)

Citation : (2014) 3 UPLBEC 1867

Hon'ble Judges : Dhananjaya Yashwant Chandrachud, C.J;Devendra Kumar Upadhyaya, J

Bench : Division Bench

Advocate : Brijesh Kumar Singh, Advocate for the Appellant; K.S. Pawar and Sanjay Bhasin, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Dr. Dhananjaya Yeshwant Chandrachud, C.J. and Devendra Kumar Upadhayaya, J. —By these proceedings under Article 226 of the Constitution, the petitioner, which is a cooperative society registered under the U.P. Cooperative Societies Act, 1965, seeks to challenge an order passed by the third respondent, namely, the Deputy Housing Commissioner/Deputy Registrar, U.P. Avas Evam Vikas Parishad, appointing an interim Committee in pursuance of the provisions of Rule 438 of the Rules framed under the Act. The petitioner also seeks a mandamus directing the respondents not to interfere in the affairs of the society till the completion of a five year term of the Committee of Management of which the petitioner seeks the benefit under Amending Act 13 of 2013. The election to the Committee of Management of the petitioner took place on 5.2.2011. u/s 29(2), as it then existed, the term of the Committee of Management was two years; the term of the elected members of the Committee of Management was co-terminus with the term of such Committee. On 2.6.2011, U.P. Ordinance No. 2 of 2011 was promulgated and brought into force by which the term of two years was extended to three years. However, by U.P. Ordinance No. 8 of 2012, which was notified on 19.10.2012, the term of the Committee of Management u/s 29(2)(a) was once again reduced from three years to two years. In consequence of the operation of the Ordinance, the term of the Committee of Management of the petitioner, which was elected on 5.2.2011, expired by efflux of time on 5.2.2013. On 15.2.2013, U.P. Act No. 13 of 2013 was brought into force. The Amending Act which was enacted pursuant to the provisions of the 97th constitutional amendment stipulated that the term of every Committee of Management shall be five years. Clause (b) of sub Section 2 stipulated that the provisions of clause (a) shall apply also to a Committee of Management in existence on the date of the commencement of Amending Act 13 of 2013 and to the elected members of such Committee. The relevant provisions of Section 29(2) as amended by Act 13 of 2013 are as follows:-

"(2) (a) The term of every Committee of Management shall be five years and the term of elected members of the Committee of Management shall be co-terminus with the term of such Committee.

(b) The provisions of clause (a) shall apply also to a Committee of Management in existence on the date of the commencement of the Uttar Pradesh Co-operative Societies (Amendment) Act, 2013 and to the elected members of such committee."

2. Now, in the present case, the election to the Committee of Management was held on 5.2.2011. The first meeting of the duly elected Committee was held on 6.2.2011 when the Chairman and the Vice Chairman were elected. On the date of the election, the term of the Committee u/s 29(2)(a), as it then existed, was two years. During the tenure of the Committee, as a result of U.P. Ordinance No. 2 of 2011, the term was extended to three years but again as a result of U.P. Ordinance No. 8 of 2012, the term stood reduced to two years. Consequently, the term of the Committee of Management of the petitioner came to an end on 5.2.2013, that is, before Amending Act 13 of 2013 was brought into force with effect from 15.2.2013. Clause (b) of sub Section 2 of Section 29 of the Amending Act extended the provisions of Clause (a) to a Committee of Management in existence on the date of the commencement of the Amending Act. Since the term of the Committee of Management had already come to an end before 15.2.2013, the extension of the term from two years to five years did not accrue to the benefit of the Committee of Management of the petitioner.

3. On 8.4.2013, in exercise of powers conferred by Section 29(5), the third respondent appointed a Committee of administrators for management of the petitioner since the term of the Committee of Management had come an end. A writ petition was filed before this Court seeking to challenge the appointment of the Committee of administrators. When the petition came up for hearing on 19.8.2013 (Misc. Bench No. 7233 of 2013), the Court was apprised of the fact that subsequently on 10.6.2013, a fresh order had been passed in supersession of the earlier order dated 8.4.2013, by which the State Government had

constituted an interim Administrative Committee in pursuance of the powers conferred by Rule 438 of U.P. Cooperative Societies Rules, 1968. The petition was dismissed in view of the subsequent order, reserving liberty to the petitioner to file a fresh petition for any pending grievance. Consequent to the order of the Division Bench dated 19.8.2013, these proceedings have been instituted for challenging the order dated 10.6.2013.

4. The first submission, which has been urged on behalf of the petitioner, is that the term of the office of the managing committee of the Cooperative Society stood extended from two years to three years, as a result of the provisions contained in U.P. Ordinance No. 2 of 2011, which was brought into force on 2.6.2011. Hence it has been urged that the Committee was entitled to continue for a period of three years and before the period of three years expired, U.P. Act 13 of 2013 came into force, by which the term of the managing committee was extended to five years. Hence, it has been urged that there was no occasion to appoint either a committee of administrators or an interim committee in exercise of powers conferred by Rule 438.

5. We are unable to accept the correctness of the first submission which has been urged on behalf of the petitioner.

6. The election to the Committee of Management took place on 5.2.2011. On 2.6.2011, by U.P. Ordinance No. 2 of 2011, the term of the Committee of Management was extended from two years to three years. However, subsequently, during the currency of the term, U.P. Ordinance No. 8 of 2012 was promulgated by which the term was reduced from three years to two years. The term of two years came to an end before the enforcement of the U.P. Act No. 13 of 2013. Amending Act 13 of 2013 was brought into force on 15.2.2013. The extension of the term to five years was to apply to a Committee of Management, which was in existence on the date of commencement of the Amending Act. The Committee of Management, in the present case, was not in existence for the simple reason that the period of two years had come to an end before 15.2.2013. Once the period of two years came to an end, prior to the enforcement of the Act 13 of 2013, the extended term of five years would not apply to such a Committee of Management whose term had already expired prior to the enforcement of the amending Act.

7. But in the alternative, it has been urged that the term of two years of the erstwhile Committee of Management would not have ended. In this regard, it was sought to be urged that though elections were held on 5.2.2011, actual charge was handed over to the newly elected Committee on 8.4.2011 and consequently, the term of two years would expire only on 7.4.2013, by which time Amending Act 13 of 2013 had been brought into force.

8. We are unable to accept the alternate submission.

9. Section 29(1) provides that the management of every Cooperative Society shall vest in a Committee constituted in accordance with the Act, the rules and

the bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed by the Act, the rules and the bye-laws. The term of every Committee of Management is to be for the stipulated duration as prescribed in Sub-section (2).

10. Now, under Rule 444-B, a provision has been made for election of a Chairman and Vice Chairman. Sub-rule (1) of Rule 444-B specifies that for the purpose of electing the Chairman, Vice Chairman and other office bearers, if any, the Election Officer of the society concerned shall, as far as possible, immediately, after the declaration of the result of the members of the Committee of Management of the society concerned, convene the first meeting of the members of the Committee of Management. In other words, the election of the Chairman and Vice-Chairman is to take place at the first meeting of the Committee of Management. In the present case, it is not in dispute that the first meeting of the Committee of Management for the purpose of electing a Chairman and Vice Chairman took place on 6.2.2011. Consequently, the term of the Committee of Management would in any event commence upon the constitution of the Committee at the first meeting itself where the election for the posts of Chairman and Vice-Chairman took place. Once that be the position, it is clear that period of two years that was prescribed in U.P. Ordinance No. 8 of 2012 came to an end on 5.2.2013. In other words, before Amending Act 13 of 2013 was brought into force with effect from 15.2.2013, the term of the Committee of Management had come to an end. The Committee of Management was, therefore, not entitled to the benefit of the term of five years which was brought into force on 15.2.2013 and which applied to those Committees which were in existence on that date. The Committee of Management in the case of the petitioner was not in existence on 15.2.2013.

11. Initially, as we have noted above, an order was passed on 8.4.2013 purporting to appoint a committee of administrators in exercise of powers conferred by sub-section (5) of Section 29 of the U.P. Cooperative Societies Act, 1965. In sub-section (5) of Section 29(a) as it stood prior to its amendment by U.P. Act No. 13 of 2013., there was a provision by which, the Committee of Management, on the expiry of its term would cease to exist. There upon a provision was made by which, on or after expiry of the term, an administrator or committee of administrator would stand appointed. The provisions of sub Section 5 were substituted by Amending Act 13 of 2013. The appointment of an administrator by the order dated 8.4.2013 was made under a mistaken belief that the erstwhile provision of Section 29(5) still continued to be on the statute book. This mistake was, however, rectified by the subsequent order dated 10.6.2013, by which an interim Committee was appointed in exercise of powers conferred by Rule 438. Rule 438 specifies that where the Committee of Management of a cooperative society ceases to exist or to function or an interlocutory order which is passed under sub Section 3 of Section 71 or u/s 100 requires an interim arrangement to be made for the management of the affairs of the society and an interim committee is appointed by the Registrar, the interim

committee shall elect its Chairman and Vice Chairman in accordance with the provisions of Rule 437.

12. In the present case, the erstwhile Committee ceased to exist by operation of law when the term of its office came to an end on 5.2.2013. Thereupon, in exercise of powers conferred by Rule 438, an interim committee has been appointed.

13. We are unable to subscribe to the contention that in such a case, the erstwhile Committee of the Management would have to be revived until fresh elections are held. Once the term of office of the erstwhile Committee of Management had come to an end and Committee had ceased to exist to function, within the meaning of Rule 438, an interim Committee could have been appointed in law.

14. Having reached to this conclusion, we are, however, of the view that steps must be taken for holding of fresh elections under Rule 438-A, wherein an interim committee is appointed. It is the responsibility of the interim committee to arrange for reconstitution of an elected Committee of Management within six months of its appointment, which upon election would be replaced by the elected Committee. As a consequence of Amending Act No. 13 of 2013, Section 29 has been amended and sub-section (3) thereof provides that election to reconstitute the Committee of Management of every cooperative society shall be completed in the prescribed manner under the superintendence, control and direction of the Election Commission.

15. The Election Commission is represented before the Court in these proceedings. The attention of the Court has been drawn to the fact that as far back as on 3.10.2013, an order was passed by a Division Bench of this Court in Sri Ram & others vs. State of U.P. and others (Misc. Bench No. 8065 of 2013), directing that elections should be held of cooperative societies within six months. That period which was fixed by the Division Bench has already expired. During the course of hearing, we have requested the learned Counsel appearing for the Election Commission to take instructions. The Court has been apprised of the fact that the English version of the draft Rules, for the purpose of conducting elections, has already been prepared by the State Legislative Department and has been submitted to the Language Department for its Hindi translation.

16. The Court has been assured that the elections to primary cooperative societies would be completed within three months after finalization of the Rules, which exercise will be completed within a period of one month from today.

17. Further, it has been stated that the elections to the central and apex societies would be completed no later than in a period of six months from the date of finalization of the Rules. A difficulty has been expressed on behalf of the Commission that the State Government is yet to make the budget available to facilitate the exercise of holding elections.

18. Having due regard to the amendment, which has been made by the State legislature by which superintendence, control and direction over elections to cooperative societies is vested in the Election Commission, it is but necessary for the State Government to make available the requisite infrastructure and funds for conducting the elections.

19. We, accordingly, direct the State Government to ensure that all necessary assistance is rendered to the Election Commission by creation of requisite infrastructure and for the release of funds to conclude the electoral exercise in terms of the assurance which has been handed over to the Court in the aforesaid terms. We have accepted the assurance which shall be treated as a binding order of the Court.

20. Subject to the aforesaid direction, which has been issued in regard to the expeditious conduct of the elections, we see no reason to interfere in the writ proceedings. The writ petition shall stand disposed of.