
(2005) 05 AHC CK 0304
In the Allahabad High Court
Case No : Writ Petition No. 2174 (M/B) of 2005

Sushil Kumar Singh	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 21-05-2005

Acts Referred:

Representation of the People Act, 1951 — Section 123

Citation : (2006) 2 AWC 1380

Hon'ble Judges : Vineet Saran, J;Pradeep Kant, J

Bench : Division Bench

Advocate : Raghvendra Singh and L.P. Misra, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

Pradeep Kant and Vineet Saran, JJ.—In respect of the election of the Committee of Management of Zila Sahkari Bank Ltd., Shahjahanpur, after determination of constituencies" on 19.3.2005, the election programme was notified on 20.3.2005, which was duly published in the newspaper, but the elections were stayed under the directives of the State Government issued to the Registrar.

2. This petition challenges the direction issued by the State Government dated 1.4.2005 to the Registrar for staying the election of the Committee of Management of Zila Sahkari Bank Limited, Shahjahanpur, hereinafter referred to as the Bank, and also directing that the election be held after 10th May, 2005. The order dated 1.4.2005 passed by the Registrar, Cooperative Societies, U. P., Lucknow, in pursuance of the order passed by the State Government for staying the election is also under challenge.

3. Before proceeding with the merits of the case, with the consent of the parties" counsel, we put on record that an impleadment application has been moved by one Sri Ram Murti Singh Verma, Ex.-M. P. and Ex.-State Minister in the State of Uttar Pradesh and one Sri Dal Singh Yadav, Ex.-M.L.A., for being arrayed as

respondents No. 6 and 7. We have allowed the said application by our order today itself and have proceeded to hear the petition on merits in view of the statement given by their counsel Dr. L. P. Misra that newly added respondents would not file any counter-affidavit and would rely upon the counter-affidavit filed by the State.

4. We also find that the respondent No. 5, the State Minister, who was impleaded by name, is not a necessary party for adjudicating the controversy involved viz., for adjudicating upon the validity of the directions issued by the State Government, and consequential order passed by the Registrar, postponing the election and, therefore, we do not intend to issue notice to him.

5. The Bank is a Central Cooperative Society registered under the U.P. Cooperative Societies Act, 1965, hereinafter referred to as the Act. All Primary Agricultural Cooperative Credit Societies in the District as well as few other Societies are the members of the Bank. The delegates are elected from the member Society, to represent the Society in the Bank and form the general body of the Bank. Members of the general body elect the Committee of Management of the Bank. The petitioner is also a member of general body and is interested in contesting the election of Committee of Management of the Bank. The last election of the Committee of Management was held on 6th/7th July, 1999 and the term of the Committee of Management had come to an end on 6.7.2004, thereafter the District Magistrate, Shahjahanpur was appointed as Administrator of the Bank.

6. u/s 29(3) of the Act, it is the statutory duty of the Registrar. Co-operative Societies, U. P., to complete the elections of the Committee of Management of the Cooperative Society at least 15 days before the expiry of the term. The responsibility has been placed upon the Secretary or as the case may be upon the Managing Director of the Society to send, four months before the expiry of the term to the Registrar a requisition for holding the elections.

7. Rule 407 of the U.P. Cooperative Societies Rules, 1968 (hereinafter referred to as the Rules), also enjoins the duty upon the Registrar to reconstitute the new Committee of Management of the society before the expiry of the term.

8. Since the elections were not held before the expiry of the term of the Committee of Management, therefore, District Magistrate was appointed as Administrator of the Committee of Management. Later on, the District Magistrate was replaced by a Committee of Administrators, (hereinafter referred to as "Committee" headed by Sri Dal Singh Yadav. Ex-M.L.A. belonging to Samajwadi Party. On substitution of the Committee in place of the District Magistrate as Administrator, the Committee of Management of the Bank filed a writ petition at Allahabad bearing number 3897 (MB) of 2005 and in that writ petition, an interim order was passed on 23.1.2005 directing that the District Magistrate shall look after the work of Administrator and thus the Committee was restrained from functioning. The writ petition was subsequently allowed alongwith bunch of writ

petitions and the appointment of the Committee in place of the Administrator was quashed.

9. The Registrar in the instant case issued an order on 3.6.2004, i.e., before the expiry of the term of the Committee of Management, fixing the date of election of different class of Co-operative Societies including the District Co-operative Bank but the same was postponed vide orders dated 16.6.2004, 31.8.2004 and thereafter by an order dated 16.11.2004, allegedly on baseless ground. However, in pursuance of the order dated 16.11.2004, constituencies were determined in accordance with the provisions of the Act and Rules and final determination of constituencies was published on 19.3.2005. Thereafter the election programme was published on 20.3.2005. As per the election programme, provisional voter list was to be published on 24.3.2005 and after disposal of the objections, final voter list was to be published on 31.3.2005 and thereafter nominations were to be filed on 2.4.2005.

10. The final voter list was published on 31.3.2005 as per the programme.

11. After publication of the final voter list and before the date of filing of nominations, on 1.4.05 an application/representation was moved by one Sri Ram Murti Singh Verma, (respondent No. 6) Ex-M.P. and Ex-Minister in the State of Uttar Pradesh, mentioning certain irregularities in the preparation of the voter list. On that very date, the Minister concerned endorsed on the same very application/ representation that in view of the dispute raised in regard to the provisional voter list and the final voter list, for which complaint has been received the elections be directed to be held after 10th May, 05 and the present elections be stayed. In pursuance of the aforesaid direction of the Minister concerned, an order was issued on 1.4.2005 itself by the Joint Secretary, Uttar Pradesh Shasan, which purports to be an order passed by the State Government, staying the election process, exercising its power under Second Proviso to Section 29(3) of the Act, with a direction to hold the elections after removal of the alleged irregularities after 10th May, 2005. Consequently, a notification was issued by the Election Officer staying the election process.

12. Learned Counsel for the petitioner Sri Raghvendra Singh has vehemently urged that the action of staying the election proceedings of the Bank was absolutely mala fide and was taken with a view to overcome the order passed by the Court in the writ petition filed by the Committee of Management at Allahabad, by virtue of which, the Administrator's Committee was removed and the District Magistrate was directed to continue as Administrator.

13. Further submission of the learned Counsel for the petitioner is that the order impugned has been passed by the State Government, on the directions issued by the Minister concerned on the application/ representation made by the Ex-M. P. Sri Ram Murti Singh Verma, who was not even a member of the general body of the Bank and that before issuing such direction, the Minister did not at all enter into the question as to whether the complaint made in the representation was

correct or not and simply on the application for staying the elections, on absolutely vague grounds, the order was passed by the Minister concerned.

14. The very fact that the application/representation was made on 1.4.2005 and the Minister issued the direction on that very date and thereafter the State Government also issued the order on 1.4.2005, itself goes to establish beyond doubt that neither the Minister nor the State applied their mind to the complaint made and without, there being any reason, disrupted the election process.

15. Elaborating the aforesaid argument, it has also been submitted that neither the direction issued by the Minister gives any reason for staying the elections or his satisfaction about the complaint made nor the order of the State Government gives any reason or expresses its satisfaction for postponing the elections. The order passed by the State Government shows that only on the alleged complaint made by Sri Ram Murti Singh Verma, Ex-M. P. and Ex-Minister in the State of Uttar Pradesh, an order was issued for staying the elections, which could not have been done.

16. The next argument of the learned Counsel for the petitioner is that since the order staying the elections is per se illegal and invalid, the elections should be directed to be completed from the stage from where they have been disrupted, i.e., by fixing a date for filing of nominations.

17. Reliance has also been placed on the Full Bench Judgment of this Court in the case of Ramesh Kumar Singh v. State of U.P. and Ors. (1992) 1 UPLBEC 292, in support of the submission that the elections, if have been postponed or disrupted, have to be held from the stage where they have been postponed. The Full Bench in this case, defining the power of the Registrar, held as under:

The power of the Registrar under Rule 440 is confined to extension in time schedule of the election from the disrupted stage and does not vest him with the power to reschedule the entire election process. Thus, even in revised schedule the process of election should start from the stage from where it was disrupted. The question referred to this Court by the Division Bench is replied in the following manner:

The Registrar or the Election Officer can revise the schedule of the election process only from the stage from where it was disrupted. Election of person or persons who remained the only candidate after rejection of nomination papers and withdrawal shall be deemed to have been effected after the date of withdrawal. The election process cannot be started de novo but only from the stage it was disrupted. Rule 443 of the Cooperative Societies Rules is arbitrary, discriminatory and liable to be struck down only to the extent hereinabove.

18. The aforesaid Full Bench judgment takes into consideration the unamended Rules 439 and 440, besides other Rules, whereas aforesaid Rules have been amended and substituted by Notifications No. 2700/XLIX-I-94-7(I)-94, dated 15.7.1994 and 2700/XLIX-I-94-7(I)-94, dated 15.7.1994. Thus, we have to

consider the case in the light of the existing provisions in regard to stay of elections, their postponement, and the stage from which they should restart.

19. In response, the learned Counsel for the State, relying upon the counter-affidavit filed by respondents No. 1, 2 and 3, submitted that apart from the complaint of the Ex-M. P. Sri Ram Murti Singh Verma, there were certain other complaints filed by Vinod Kumar, a voter, Brajesh Kumar Mishra, another voter and Hetram Gangwar, the Ex-Sanchalak of the Bank and also one Mathura Prasad Pal. It has also been stated in the counter-affidavit of the State that in the final voter list, names of several co-operative societies were included, which have been inducted as members of the District Co-operative Bank Ltd. by the Administrator, despite interim order passed in Writ Petition No. 23943 of 2005, Brajesh Kumar Mishra v. State of U.P. and Ors. wherein Administrator was restrained from making new members, as the Administrator had no power to enroll the members.

20. Learned Counsel for the intervenor Dr. L. P. Misra, for defending the action of the State Government and consequently that of the Registrar, submitted that the order Impugned does not suffer from any error as holding of elections on the basis of incorrect voter list was prejudicial to the interest of the Bank. In this regard, he submitted that apart from the fact that Administrator had enrolled many members, who could not have been enrolled by him, there are approximate 22 member societies, wherein no election of delegates has been held so far and, therefore, also the order passed by the State Government need not be interfered with.

21. In regard to the factual dispute about non-holding the election of delegates from the member societies, suffice it would be to mention that the State Government in its counter-affidavit, has not taken any such plea that since the delegates have not been elected from any member Society and, therefore, the State Government postponed the elections nor the impugned order staying the elections does say so. The said reasons not having been mentioned in the order impugned, cannot be made the basis for defending the order as the validity of the same is to be tested only on the reasons given therein.

22. In the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, it has been held by the Apex Court that "...when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out". The aforesaid plea, therefore, cannot be taken into consideration for judging the validity of the order impugned in the writ petition.

23. The plea of the newly added respondents that the averments to the aforesaid effect (namely, non-holding of elections of delegates in certain member

Societies) in the affidavit in support of application for impleadment remains uncontroverted also does not carry force for the reasons that the affidavit accompanying the application for impleadment is only for the purpose of considering the merits of the application for impleadment and not beyond that and that also because the petitioner did not have any opportunity to controvert the said facts, treating it to be a counter-affidavit. Apart from this, the said plea is not open to be examined with a view to justify the stay and postponement of elections, in view of our findings recorded above.

24. Learned Counsel for the petitioner has emphasized that even if the elections of the delegates from the member societies have not been held, that also could not have been a ground for postponing the elections as Rule 89 of the Rules specifically provides that a delegate once appointed on the general body of a cooperative society shall continue to hold that office until either the body he represents appoints another delegate in his place or he incurs any of the disqualifications mentioned in Rule 87 or forfeits his right to hold that office by virtue of the provision of the bye-laws of the co-operative society which he represents or in which he is represented. Thus, it cannot be presumed that there is any vacancy or the member society would not be represented in the elections.

25. In regard to the plea of the State that the Administrator could not have enrolled the members and, therefore, the members enrolled cannot be allowed to participate in the election, which necessitated its postponement, learned Counsel for the petitioner Sri Raghvendra Singh stated that the aforesaid ground would also not be a reason for staying or postponing the elections, as once the election process had started, the same could have been challenged by filing an election petition after the declaration of the result of elections. His submission is that if voters have been wrongly included and have cast their vote, the said ground may be a ground for challenging the election itself. In the alternative, he submitted that if the aforesaid plea is accepted, even then election has to be restarted from the stage where It was disrupted and that a direction can be issued that the voters enrolled by the Administrators shall not be allowed to vote.

26. Sri Raghvendra Singh also drew attention of the Court to the changing stand taken by the State in various writ petitions, where the said plea of lack of authority of Administrator to enroll members was taken, in which not only the enrollment made by the Administrator was sought to be justified by the State but the opposition to the writ petition was also put on the ground that election process having been started, such a dispute can be raised in the election petition only and not in the writ petition, whereas in the instant case the enrollment of the members by the Administrator is being taken to be a ground for stay of election and their postponement.

27. In the case of K. Shantharaj and another Vs. M.L. Nagaraja and others, the Apex Court, while considering the supersession of the Committee of Management by the Administrator under the provisions of Sections 30 and 30A of the Karnataka Co-operative Societies Act, 1959, held that during the period of

administration, the Administrator had no authority to enroll new members. The Supreme Court rejected the contention that since the Administrator had power to conduct elections, by necessary implication, he has power to update the electoral lists by either enrolling the new members or substituting the legal representatives of the members in accordance with the bye laws, therefore, he has power to enroll the members, and observed that the power of Administrator given under the statute to conduct elections should be confined within the parameters set under the relevant provisions of the Act, rules and bye-laws of the society and that the Administrator has power only to organise election process in accordance with the provisions of the Act, the rules and the bye-laws of the Society.

28. Section 30 of the Karnataka Co-operative Societies Act, 1959, considered in the aforesaid case, as extracted in the said judgment, is being quoted below:

30. Supersession of committee.-(1) If in the opinion of the Registrar:

(a) the committee of a cooperative society persistently makes default or is negligent in the performance of the duties imposed on it by this Act or the rules or the bye-laws or commits any act which is prejudicial to the interests of the society or its members, or is otherwise not functioning properly; or

(b) a co-operative society is not functioning in accordance with the provisions of this Act, the rules or bye-laws or any order or direction issued by the State Government or the Registrar,

the Registrar may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the said committee, and appoint an Administrator to manage the affairs of the society for such period, not exceeding one year, as may be specified by the Registrar.

(2) The administrator so appointed shall, subject to the control of the Registrar and such instructions as he may give from time to time, exercise all or any of the functions of the committee or of any officer of the co-operative society and take such action as he may consider necessary in the interest of the society.

(3) The Administrator shall, before the expiry of his term of office arrange for the constitution of a new committee after holding the election in accordance with this Act, the rules and bye-laws of the cooperative society:

Provided that in such an election no member of the committee removed under Sub-section (1) shall, notwithstanding anything contained in this Act, the rules or the bye-laws, be eligible for being elected as a member of the committee, for a period of four years from the date of supersession of the committee under the said sub-section:

Provided further that, if the committee elected in accordance with this sub-section is also superseded within a period of one year from the date of its election, such supersession, may extend to a period not exceeding three years.

(4)-(5)

29. In the U.P. Co-operative Societies Act, u/s 29, when an Administrator is appointed, he is also vested with the responsibility of arranging for the constitution of new Committee of Management, after holding elections. Sub-sections (6) and (7) of Section 29, may be referred to in this regard, which read as follows:

(6) The Administrator or the Committee appointed under Sub-section (5) shall, subject to any directions which the Registrar may from time to time give, have the power to perform all or any of the functions of the Committee of Management or of any officer of the society and shall be deemed for all purposes under this Act, the rules and the bye-laws of the society to be the Committee of Management and the Chairman of such Committee shall exercise the powers and perform the functions of the Chairman of the Committee of Management.

(7) The Administrator or the Committee, as the case may be, appointed under Sub-section (5), shall as soon as may be, but not later than the expiry of two years and six months from the date of appointment, arrange for the reconstitution of the Committee of Management in accordance with the provisions of the Act, the rules and the bye-laws of the society to take over the management of the society from the Administrator or the Committee, as the case may be:

Provided that where an Administrator is replaced by a Committee or a Committee by an Administrator as provided in Clause (b) of Sub-section (5), the period of two years and six months shall count from the date the Administrator or the Committee, as the case may be, was originally appointed.

30. On the strength of the judgment passed by the Apex Court in the case K. Shanthyaraj and Anr. v. M.L. Nagaraj and Ors. (supra) and the provisions of the U.P. Act, it has been urged that the Administrator is appointed for the limited purpose of organizing the elections to be held for new Committee of Management and to look after the affairs of the Society during the period interregnum, i.e., from the date when Administrator is appointed and till the new Committee is elected, and that there is no provision under the Act and the Rules authorising the Administrator to enroll new members.

31. Much emphasis has been laid upon by the State that an interim order having been passed by the High Court at Allahabad in writ petition of Brajesh Kumar Mishra, restraining the Administrator from enrolling the new members, and the Administrator having enrolled new members, it was a sufficient ground to postpone the elections.

32. The interim order passed in aforesaid Writ petition No. 23943 of 2005, Brajesh Kumar Mishra v. State of U.P. and Ors. was as follows:

Issue notice.

Notice on behalf of respondents I to 4 has been accepted by standing counsel. Issue notice to respondents No. 5 to 13 by registered post. List for admission after service upon them. Connect with leading Writ Petition No. 13604 of 2005.

Till further orders of the Court, the Administrator is restrained from making new members. The petitioner may also file objection against the voter list. In case any objection is filed then it should be decided in accordance with law.

Interim mandamus is also issued to Registry to ensure that administrators are restrained from making new members.

33. The aforesaid interim order is dated 30.3.2005, whereas election programme was notified on 20.3.2005.

34. According to the election programme, the provisional voter list was published on 24.3.2005 and after disposal of the objections, final voter list was to be published on 31.5.2005.

35. Nothing has been brought on record to indicate that the Administrator actually enrolled any member after passing of the restraint order on 30.3.2005, as admittedly the final voter list was published on 31.3.2005.

36. The enrollment of members, who were allegedly illegally or unauthorisedly enrolled, was open to challenge by filing objections against the voter list, a fact which has been taken into consideration by the Court, while passing the interim order, which was passed on 30.3.2005, i.e., one day before publication of final voter list. The purpose of affording opportunity to file objections against the voter list is undoubtedly with a view to correct the voter list, which also means exclusion or deletion of the names of voters, who cannot be authorised to vote or in other words, who have illegally or arbitrarily been enrolled against the provisions of law. In case any voter(s) remains on the voter list and participates in the elections, the election can be challenged as per the provisions of Rule 444C of the Rules.

37. We thus, do not intend to enter into the controversy as to whether the Administrator was having any power to enroll the new members or not, in view of the fact that such a dispute is not necessary to be tested in this petition and also because no such new member has been impleaded as a party.

38. Once the election programme has been notified, the power of the State Government to stay or postpone the elections can be exercised only within the parameters and the authority given under the Act. The State Government does not have any power or authority to stay the elections or postpone the same on such grounds, which even if found to be correct, can be a subject-matter of election dispute.

39. For judging the validity of the order passed by the State Government on 1.4.2005 postponing the elections, it would be necessary to have a look at the provisions of second proviso to Section 29(3) of the Co-operative Societies Act,

which reads as under:

Provided further that where the State Government is satisfied that circumstances exist which render it difficult to hold the election on the date fixed by the Registrar, it may direct the Registrar to postpone the election, and thereupon the Registrar shall postpone the election, and all proceedings with reference to the election shall be commenced afresh in all respects.

40. The proviso aforesaid, specifically provides that where the State Government is satisfied that circumstances exist which render it difficult to hold the election on the date fixed by the Registrar, it may direct the Registrar to postpone the election, and thereupon Registrar shall postpone the election and all proceedings with reference to the election shall be commenced afresh in all respects.

41. The plain and simple meaning of the aforesaid provision is that for exercising power under the Second Proviso to Section 29(3), there have to be circumstances, which render the holding of the election difficult to the satisfaction of the State Government. If the State Government is satisfied about existence of such circumstances, it is only then, it can issue a direction to the Registrar to postpone the elections. This satisfaction has to be based on objective consideration of the circumstances. The consequence of postponement of the elections, under the directions of the State Is that all proceedings with respect to the election shall also stand postponed and the same shall commence afresh in all respects.

42. The discretion of the State Government is thus, circumscribed with the conditions pre-laid in the aforesaid proviso.

43. Rule 418 and Rule 432 of the Rules, which read as under, also provide for postponement of the election in given circumstances.

418. If polling or any proceeding of election gets disrupted due to riots or open violence at the place of polling or holding election is not possible at any place due to any natural calamity, or any other cogent reason, the Election Officer appointed for such election, shall declare postponement of election till next date to be notified later. The information of such postponement shall be given to the District Magistrate and the Registrar immediately on which the Registrar shall fix the new date for the election.

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.

44. Under Rule 432 of the Rules, 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 added therein 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.

45. No other provision, except the provision of Second Proviso to Section 29(3) of the Act, Rule 418 and Rule 432 of the Rules has been brought to our notice, which gives power to any authority to stay the elections or to extend its date as also Rule 417, which relates to countermanding of the poll on the death of a candidate, whose nomination has been found valid and has not withdrawn his candidature.

46. The State Government, under the Second Proviso to Section 29(3) would be competent to postpone the elections, if such circumstances exist, which render it difficult to hold the elections, which obviously would not include such irregularities, for which a different forum either that of the election petition or remedy of approaching the Registrar, under whose superintendence, control and direction, elections are to be held, is available.

47. It is the duty of the Registrar to see that the elections are being conducted by following the due procedure of law and the manner prescribed and he can exercise his discretion as to what steps should be taken for the faithful discharge of the provisions of the Rules regarding holding of elections. The State Government would only be having authority to postpone the elections in case such circumstances exist, which make it difficult to hold the elections, for example, if riots break out or floods occur affecting the area, where the elections are to be held, or for some other cogent and valid reason, it becomes difficult to hold the elections. Examples given by us are only illustrative and not exhaustive, as there may be many more reasons, which may make the holding of the elections difficult, where the State Government can exercise its power for postponement of the elections. It may be relevant to mention here that unless reasons/circumstances are not such, which make it difficult to hold the elections, any small or tit-bit reason or a reason wholly unconnected with the holding of elections, would not allow the State Government to postpone the elections under the aforesaid proviso.

48. Once the process of election starts, it is not to be interfered with casually. Unless such circumstances intervene, which make it difficult to hold the elections, the election process cannot be allowed to be intermeddled or interfered with in a manner, which has the effect of postponing the elections. Keeping in line with the aforesaid principles, Rule 444C(2) also provides that a dispute relating to election shall be referred by the aggrieved party within forty-five days of the declaration of the result, meaning thereby election can be challenged only after the result of the election has been declared and that too within a period of 45 days. The grounds on which the elections can be challenged have also been enumerated

under Rule 444C.

49. Rule 418 takes into consideration the circumstances where the polling or any proceeding of election gets disrupted due to riots or open violence at the place of polling or holding election is not possible at any place due to any natural calamity or any other cogent reason and provides that in the aforesaid circumstances, the Election officer shall declare the postponement of election till next date, which is to be notified by the Registrar for elections. The Registrar, thus has to notify the next date of election, if the elections are postponed for the reasons and circumstances given in Rule 418.

50. Rule 432 takes into consideration the situation where the election of a Society has been disrupted by the District Magistrate or the Election Officer and in those circumstances, the Registrar has been given authority to decide as to from what stage the election should be proceeded with, i.e., from the stage when it was-disrupted or a stage prior-to that or de novo. The proviso attached to the said Rule says that if nominations have been finalised and symbols have been allotted the process of election shall continue and shall be held on such date as the Registrar may fix.

51. The aforesaid provisions, which deal with a situation where the election can be postponed or disrupted, cannot be interpreted to mean that that every irregularity like alleged discrepancy in the final voter list, which may result in casting of vote of such members, who are allegedly not enrolled in accordance, with rules or that any other such alike irregularity, can be treated to be a reason for postponing or disrupting the elections, either by the State Government or the Election Officer. The remedy for such disputes lies in challenging the elections after they are held and the result is declared under Rule 444C.

52. The distinction between the power vested with the State Government for postponing the elections under Second Proviso to Section 29(3) and the power of the Registrar to restart the elections under Rule 418 and Rule 432 from any one of the stages as provided therein, is the power vested in the two separate authorities, namely, the State Government and the Registrar, which are clearly distinct and separate. The State Government can exercise its power only after the date of election has been fixed by the Registrar and thereafter, if circumstances intervene to the satisfaction of the State Government, making it difficult to hold the elections, the State Government can issue a directive to the Registrar for postponement of the elections. This power is thus exercised by the State Government and not by the Registrar, who, simply follows the directives issued by the State Government. In case the elections are postponed on the directions of the State Government, all process of election has to start afresh.

53. Under Rule 432, the Registrar can order for restarting the election process and completing the election from the stage from where the elections were disrupted and he has also discretion to restart the elections from a stage prior to that or to hold the election de novo, as he may decide.

54. The proviso attached to Rule 432 restricts the liberty of the Registrar to hold the elections from a different stage than the stage from where the elections were disrupted or to hold de novo elections, in cases where nominations have been finalized and the symbols have been allotted, in which circumstances the election shall continue and the poll shall be held on such date as the Registrar may fix.

55. In a case where the elections are postponed under the directives issued by the State Government by the Registrar under Second Proviso to Section 29(3), the lawful consequence is that on the postponement of the election, all proceedings with reference to the election have to be commenced afresh in all respects. Thus, the postponement of the elections on the directives of the State Government would result into holding of proceedings with reference to the elections afresh in all respects, whereas when the Registrar has to exercise his power under Rule 432, he has the discretion to start or recontinue the elections from the stage as per his own discretion subject to the conditions of the Proviso attached to Rule 432.

56. In the instant case, the material which was placed before the State Government was the directive issued by the Minister concerned on the application of Sri Ram Murti Singh Verma, Ex-M. P., who is not even a voter in the elections, in which allegations were made that final voter list has not been prepared impartially and that there are certain members, who though were enrolled on 23.2.2005 but in wholly biased manner, their election has been shown to have taken place on 17.1.2005 for including them in the final voter list despite there being a restraint order of 30.3.2005 of the High Court, and that the Election Officer was biased being under the influence of a Member of Parliament belonging to Congress Party.

57. The said application again did not say that the election of certain delegates from member Societies has not taken place, therefore, election be postponed.

58. On this allegation of Election Officer being under the influence of the Member of Parliament belonging to Congress Party, a prayer was made for postponement of the elections and the Minister concerned, without even verifying the aforesaid facts, immediately on that very date on the application itself issued the direction for postponing the election and holding the election after 10th May, 2005. The State Government, in turn, issued an order on the same day, i.e., 1.4.2005, in which it has been mentioned that it has been brought to the notice that the voter list prepared for the elections to be held on 10th and 11th April, 2005 for the Committee of Management, suffers from gross irregularities, which would affect the various constituencies and, therefore, it was directed to the Registrar, purportedly under the provisions of the Second Proviso to Section 29(3), to postpone the election so that irregularities in the voter list may be corrected.

59. A bare reading of the aforesaid order shows that the State Government, while issuing such direction to the Registrar for postponement of the election, did not at all express its satisfaction about the reasons or circumstances, which

made it difficult to hold the elections. Curiously enough, the State Government did not record its satisfaction about the allegations made by the complainant Sri Ram Murti Singh Verma, Ex-M. P. and Ex-Minister of the State nor considered that whether the allegations made in the complaint, render it "difficult" to hold the elections within the meaning of the said term as used in the Second Proviso to Section 29(3) but merely on the complaint, it was expected to stay the elections and on the same very recommendations of the Ex-M. P. Sri Ram Murti Singh Verma, first the Minister made a recommendation to the State Government and thereafter the State Government issued the direction to the Registrar.

60. The order of the State Government does not reflect that at any point of time, State Government applied its mind or ever considered that whether any such circumstance does exist which render it difficult to hold the elections or the complaint made by the Ex-M. P. with allegations made therein, could be a ground for postponement of the election under the aforesaid proviso.

61. Taking on the face value, the allegations, as they have been made by Sri Ram Murti Singh Verma, it transpires that the Election Officer first published a tentative voter list for which opportunity was available to the aggrieved person to file objections and after filing of the objections, the voter list was finalized. Obviously, if there has been any wrong inclusion or exclusion of any voter, the remedy lies in approaching the appropriate forum under Rule 44C of the U.P. Cooperative Societies Rules, but such a circumstance, even if found to be correct, would not be a circumstance so as to be covered by Second Proviso to Section 29(3). It is no gainsaying that the State Government never expressed its satisfaction about any such circumstance, which made it difficult to hold the elections. The order thus passed by the State Government is not in consonance with the provisions of Second Proviso to Section 29(3) nor it falls within its scope and ambit.

62. The Apex Court in the case of Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, while considering the provisions of the Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971, held that preparation of voter list is part of the election process for constituting the Managing Committee of a specified society and that breach or non-compliance of mandatory provisions of rules, during preparation of the electoral roll can be challenged in an election petition u/s 144T of the Maharashtra Co-operative Societies Act, 1960, after the declaration of the result.

63. Considering the provisions of the Maharashtra State Act and the Rules, the Supreme Court held that various stages of the election includes the preparation of the voter list also.

64. We accordingly consider the relevant Rules under the U.P. Act for the purpose.

65. Rule 407 of the Rules rests the duty upon the Registrar to constitute the new Committee of Management in accordance with the provisions of the Act, rules

and bye-laws before the expiry of the term of elected Committee of Management of any Co-operative society and says that the constituencies shall be determined in the manner prescribed in Rule 440 before the declaration of the election programme.

66. Rule 409 obligates the Secretary or the Managing Director of the Society to prepare the voter list as per the provisions contained therein.

67. Rule 409 reads as under:

409. The Secretary or the Managing Director of the society shall in accordance with directions given by the Registrar from time to time or the provisions for time being in force, prepare a list of all the voters against whose name the disqualification, if any, as described in the Act, rules or bye-laws shall be mentioned in the list and the members, ordinary or sympathisers, duly enrolled 45 days before the date of election, shall only be included, provided in case of the societies where general body is constituted by individual members and the delegates of the societies or only by the delegates of the societies, the voter list shall be prepared under Rule 89 and the voter list, so prepared, shall be called the provisional voter list which will bear the signature and seal of the Secretary or the Managing Director and the Chairman of the Committee of Management.

68. Rule 410 of the Rules, which reads as under, says that the voter list prepared in accordance with aforesaid rule has to be displayed by the Election Officer on the date and time and place as notified in the election programme.

410. The provisional voter list prepared in accordance with Rule 409 shall be displayed by the Election Officer on the date and time and place as notified in the election programme.

69. The rules under the heading Additional Election Rules in respect of Co-operative Societies" under Part IV, in Sub-rule (1) of Rule 439 casts a duty upon the Election Officer to 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 and Sub-rule (2) makes it mandatory upon the Election Officer to give notice of the requisite period from the date of poll intimating the programme of election to the members as specified in Sub-rule (3). Sub-rule (3) of the said rule enjoins duty upon the Election Officer to display on the notice board of the society the following election programme, i.e., the date for display of provisional voter's list; the date, time and place for filing objections and their disposal; the date for display of final voter's list, the date, time and place for filing nominations, the date, time and place of scrutiny of nominations; the date, time and place for withdrawal of nominations; the date, time and place for allocation of election symbols and display of final nominations; and the date, time and place of poll.

70. The provisions referred to above with respect to holding of elections in the co-operative societies and in particular Rule 410, and Rule 441(2) and (3) make it

explicit that the election programme under the Cooperative Societies Act and the Rules would include the date for display of provisional voter list and also the filing of objections against the said list and the display of final voter list. Since the preparation of the voter list is a part of the election programme as per the rules any breach in its preparation ordinarily would not be a ground for by-passing the remedy of filing the election petition (arbitration) by approaching under Rule 444C, which reads as under:

Rule 444C. (1) The election in a co-operative society shall not be called in question either by arbitration or otherwise except on the ground that:

(a) the election has not been a fair election by reasons that corrupt practice, bribery or undue influence has extensively prevailed at the election; or

(b) the result of the election has been materially affected:

(1) by improper acceptance or rejection of any nomination, or

(ii) by improper reception, refusal or rejection of voters, or

(iii) by gross failure to comply with the provisions of the Act, the rules or the bye-laws of the society.

Explanation.-For the purpose of this rule corruption, bribery or undue influence shall have the meaning assigned to each u/s 123 of the Representation of People Act, 1951.

(2) A dispute relating to election shall be referred by the aggrieved party within forty-five days of the declaration of the result.

71. Rule 444C allows an election to be challenged not only on the ground that the election has not been a fair election by reason that corrupt practice, bribery or undue influence has extensively prevailed at the election but also on the grounds of improper acceptance or rejection of any nomination, or improper reception, refusal or rejection of voters, or by gross failure to comply with the provisions of the Act, the rules or the bye-laws of the society, if the result of the election has been materially affected by the aforesaid reasons. The challenge to an election thus can be made on various grounds including that of improper reception or refusal or rejection of voters or because of gross failure to comply with the provisions of the Act, the rules or the bye-laws of the society, If result of the election has been materially affected by such reasons, therefore, for challenging the election and getting it set aside, it is not only necessary to establish that some voter has illegally been included in the voter list, who has cast his vote or that there has been gross failure to comply with the provisions of the Act, the rules or the bye-laws of the society but it also requires that such an illegality should have materially affected the result of the election.

72. The plea, therefore, that the Administrator has enrolled some members illegally and without authority which compelled the State Government to postpone the elections not only has to be tested on the provisions of Second

Proviso to Section 29(3) but also in the light of the requirement of the provisions of Rule 444C, according to which, even if some members were enrolled as voters by the Administrator, who could not have been enrolled by him, and if they had cast their votes, the election would not be set aside simply because of their casting the votes unless it is found that by the votes so caused, the result of the election was materially affected. Of course, if such a voter has participated in the election by contesting the election himself for any office/post, and he succeeds therein, that may be one example, besides others, which can be urged in an election petition, for proving that it has materially affected the result of the election but such a dispute, after the election programme has been notified, can very well be seen in proceedings of arbitration, if initiated under Rule 444C, after the declaration of the result of the election.

73. The State thus, exceeded its authority in interfering with the elections when the election programme had already been issued and the date of filing nominations was the very next date, i.e., 2.4.2005 by passing the order on 1.4.2005.

74. Learned Counsel for the State Sri S. N. Shukla, in support of his submission that the State Government had not taken the aforesaid decision of postponement of the election solely on the recommendations of Sri Ram Murti Verma, also laid emphasis upon the alleged complaints said to have been made by various persons, namely, Vinod Kumar and others, whose names have already been given in the earlier part of the judgment.

75. The material brought on record, namely, alleged complaints of Sri Vinod Kumar and others only reflects, over zealotness of the State to defend its order and in doing so, such material which was not even before the State Government or before the Minister at the time of passing of the order, has also been introduced in the writ petition. We take serious note of this stand of the State Government and express our displeasure. We record following reasons for observing so.

76. The complaint was made by Sri Ram Murti Singh Verma on 1.4,2005. On that very day, the Minister issued the direction on that very application for staying the elections and holding elections after 10th May, 2005 and, in turn, on that very date the State Government issued the order for postponing the elections. The order of the Minister does not mention about any other complaint but for the complaint of Sri Ram Murti Singh Verma and the State Government's order explicitly clarified, that it has been brought to its notice on the complaint of Sri Ram Murti Singh Verma that gross irregularities were committed in preparation of voter list, therefore, it was expected to postpone the elections and as a consequence thereof, directions have been issued purportedly in exercise of second proviso to Section 29(3) for postponing the elections. This order also does not say that there were other complaints also.

77. It is not believable that if all the complaints were made on the same day, i.e.,

1.4.2005, then why the aforesaid complaints were not placed before the Minister or before the State Government. The entire action has been taken on one and only one day, i.e., 1.4.2005 and had these other complaints been made, there was no reason as to why they would not have been mentioned either by the Minister or by the State Government. We, therefore, cannot place any reliance upon such documents, which were not the subject-matter of consideration by the State Government while issuing an order of postponement of elections.

78. After holding that the orders postponing the election dated 1.4.2005 passed by the State Government and consequently the notification issued by the Registrar/Election Officer deserve to be quashed we would like to issue direction for holding the elections.

79. The orders dated 1.4.2005 passed by the State Government as well as by the Registrar are hereby quashed. We further issue a writ in the nature of mandamus for holding the elections on the date fixed, if any date has been fixed, and if not, by fixing a date within a maximum period of eight weeks from the date of receipt of a certified copy of this order, The elections shall be continued as per the election programme by fixing date for filing nomination papers and proceeding further in accordance with the election programme.

80. The writ petition is allowed. No order as to costs.