
(2005) 08 AHC CK 0150

In the Allahabad High Court

Case No : Writ Petition Nos. 4920 & 4922(M/B) of 2005

Veer Pratap Singh and Anr.

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Uttar Pradesh Co-operative Societies Rules, 1968 — Rule 440, 441

Citation : (2005) 08 AHC CK 0150

Hon'ble Judges : K.S.Rakhra, J and Pradeep Kant, J

Final Decision : Disposed Of

Judgement

1. At the outset it may be mentioned that learned Counsel for the petitioners and learned Counsel for the State, on the instructions received by him, submitted that election process has not started as election programme has not been issued and, therefore, the petitions are maintainable.

2. Writ Petition No. 4920 (MB) of 2005 and Writ Petition No. 4922 (MB) of 2005 are being decided by this common judgment.

3. These are two writ petitions challenging final determination of the constituencies, allocation of the seats to each constituency and also number of seats allocating to individual members constituency.

4. The elections for the Committee of Management of the District Cooperative Federation Ltd., Unnao are to take place on the expiry of the term of the Committee of the Management, which is to expire on 10/9/2005. We have been informed that 14/9/2005 and 15/9/2005 are the dates fixed for polling for elections but the election programme has not been declared.

5. Section 29 (1) of U.P. Cooperative Societies Act, 1965 says that the Management of every Cooperative Society shall vest in a Committee of Management constituted in accordance with this Act, the rules and the byelaws, which shall exercise such powers, and perform such duties as has been conferred or imposed by this Act, the rules and the byelaws.

6. Besides prescribing the term of Committee of Management sub section (3) of Section 29 provides that election to reconstitute the Committee of Management of a Cooperative Society shall be completed in the prescribed manner under the superintendence, control and direction of the Registrar at least fifteen days before the expiry of the term of the Committee of Management and the members so elected shall replace the Committee of Management whose term expires under subsection (2).

7. Subsection (3) aforesaid vests power in the Registrar to hold the election under his superintendence, control and directions. The provision is somewhat analogous to the provisions of Article 324 of the Constitution. The Registrar has thus been conferred the powers of superintendence, control and directions and his directions are binding in the conduct of elections which are to be held in accordance with the manner prescribed which means as prescribed by rules as given in Section 2 (q).

8. For holding the election, constituencies have to be determined and seats have to be allocated to each constituency. Determination of constituencies, seats allocation and reservation of seats has to be done under the provisions of U.P. Cooperative Societies Act, 1968 (hereinafter referred to as "the Act") and the rules framed thereunder, which govern the election.

9. Part III of the Rules is regarding the constitution of Committee of Management in case of amalgamation, division and suppression and other contingencies whereas Part IV are Additional Election Rules in respect of Cooperative Societies (hereinafter referred to as the Rules).

10. Rule 439 (1) of the Rules provides that notwithstanding anything contained in the byelaws, the election of any Co operative Society or societies or class or classes of Co operative Societies shall be held in accordance with the provisions of the Act and the Rules and the District Magistrate of the District in which the headquarters of the society is situate shall take steps to hold the elections on the appointed date and for this purpose the services of any Government servant or official may be requisitioned by him. Rule 439 (2) of the Rules, provides that the election in a Cooperative Society or societies or a class or classes of Cooperative Society shall be held on such dates or dates as the Registrar may by order fix and the District Magistrate concerned shall on such date being so fixed appoint by order, one or more Election Officers or different Election Officers for different class or classes of societies or for different areas for this purpose provided that no officer of the Department which is concerned with the management and administration of the society shall be appointed as Election Officer.

11. Rule 439 in subclause (3) provides that the election of any Cooperative Society or societies or class or classes of Co operative Societies shall be held in accordance with the provisions of the Act and the Rules. The District Magistrate has been empowered to conduct the elections on the date or dates, fixed by Registrar, by taking assistance of the services of any Government servant or

official which is needed for holding the elections including appointment of election officers.

12. Rule 440 (4) to (8) of the Rules, which is relevant for the question engaging attention of this Court is as follows:

?(4) For purpose of election of members of Committee of Management of a Cooperative Society, or as the case may be, of delegates to general body of a Cooperative Society, the Registrar shall, notwithstanding anything contained in the bye laws of the society, before the issue of notice under subrule (2) of Rule 441 for election of a Cooperative Society or, as the case may be, of a class of Cooperative Societies determine provisionally:

(a) the number of constituencies in which the area of operation of the society shall be divided;

(b) the extent of area of such constituency;

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

(d) the total number of seats reserved for weaker section.

(5) The Registrar shall thereupon publish in a local newspaper, the provisional determination made under subrule (4) for inviting objections within seven days from the date of such publication. A copy thereof shall also be sent to the concerned society for its comments.

(6) The criteria for determination of constituency may be any one or more of the following, namely:

(i) revenue area or areas;

(ii) class or classes of membership;

(iii) other rational basis in relation to area of operation of society :

Provided that the unit of determination in case of primary agricultural credit society shall as far as possible be one or more Gaon Sabhas falling in the area of operation of the society.

(7) The objections and comments received under sub rule (5) shall be considered by the Registrar on the thirteenth day of such publication and thereafter he shall finally determine the constituencies, total number of seats and the number of seats reserved for the weaker section as referred in clauses (a) to (d) of subrule (4).

(8) The final determination of the constituencies under subrule (7) shall be published in the local news paper on the fourteenth day of such publication and a copy thereof shall be sent to the society concerned and the District Magistrate concerned.?

13. Subclause (4) (a) aforesaid enjoins duty upon the Registrar to provisionally

determine the number of constituencies in which the area of operation of society is divided. Subclause 4 (b) provides determination of the extent of area of each constituency. Subclause 4 (c) requires determination of total number of seats allotted to each constituency and subclause 4 (d) provides for determination of total number of seats reserved for weaker section. This has to be done by the Registrar before issuance of notice under Rule 441 (2) of the Rules.

14. Subclause (6) of Rule 440 enumerates the criteria for determination of constituency and gives discretion to the authority to adopt either one or more criteria for the purpose. Under subrule (5) of Rule 440 of the Rules objections are invited by the Registrar against the provisional determination made under subrule (4) within seven days from the date of such publication making it imperative to send copy of the provisional determination to the concerned society for its comments.

15. Combined reading of subrules (4), (5) and (6) of Rule 440 establishes that while making provisional determination of the number of constituencies in which the area of operation of the society shall be divided, the extent of each constituency, the total number of seats allotted to each constituency and number of seats reserved for weaker section, the Registrar has to keep in mind the guide lines issued in subrule (6) which provides that the criteria for determination of the constituency has to be reasonable and on the basis of the guide lines given in sub clauses (i), (ii) and (iii) of subrule (6). On objections being filed, the Registrar has to consider those objections under sub rule (7) on thirteenth day of such objection and then he shall finally determine the constituencies, total number of seats and the number of seats reserved for the weaker section as referred in clauses (a) to (d) of subrule (4).

16. Under subrule (8) of Rule 440 of the Rules, final determination of the constituencies, total number of seats and the number of seats reserved for weaker section has to be published in local newspaper on the fourteenth day of such publication and copy has to be sent to the society concerned and the District Magistrate concerned.

17. The whole scheme of Rule 440 not only gives a detailed procedure for determination of the constituencies, extent of the area of constituency, total number of seats and number of seats reserved for the weaker section but also makes it obligatory upon the Registrar to follow the criteria of determination of the constituency as given in subrule (6) of Rule 440 and thus to determine the seats on a reasonable basis.

18. The right of file objections against proposed or provisional determination of the constituencies etc. has been provide to the society as well as to aggrieved persons and the said right being statutory right has to be availed by the society as well as by the aggrieved persons and if objections are filed they have to be considered and decided by the Registrar, keeping in view the rationality of the objections and determination so made in the provisional determination. The

significance of the right to file objection in the aforesaid matter is also evident by the fact that the aforesaid provision does not simply allow time to file objection, namely statutory period that is seven days but also prescribes fixed statutory date for consideration of the objections so filed under subrule (7) and also the date of publication of the final determination under subrule (8).

19. Rule 41 of the Rules, 1968 casts a duty upon Election Officer to notify in the Local news paper the date of election for class or classes of society or of a group or groups of Cooperative Societies of any area or areas of his jurisdiction.

20. Subrule (2) provides that 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 subrule (3). Subrule (3) of Rule 441 provides that the Election Officer shall display at the notice board of the society the following programme of election

- (i) the date for display of provisional voters' list,
- (ii) the date, time and place for filing objections and their disposal,
- (iii) the date for display of final voters' 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 or poll shall be the office or headquarters 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 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 subrule (4) of Rule 84A, the place of poll shall be any public place in addition to office or headquarters or branch of the society, as determined by 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.?

21. Thus, determination of constituencies, allotment of seats to each constituency, extent of the area of each constituency, the total number of seats allotted to each constituency and the number of seats reserved for weaker section are the steps which are to be taken before issuance of election

programme and that is why complete code had been prescribed under the rules for giving adequate opportunity to the person concerned in proceeding in the matter of determination of the constituencies etc. for the purpose of holding election.

22. For the purpose of election in District Cooperative Federation, Unnao provisional determination of the constituencies was done by the Registrar on 1772005. In this provisional determination, only six constituencies were shown as against earlier existing seven constituencies. It is undisputed case of parties that prior to issuance of provisional determination of the constituencies for the present election, there always remained one constituency for special societies separately. This constituency of special societies since was not found in the provisional determination of the constituencies, the petitioners, who are either elected delegate members from respective societies or members of general body of District Cooperative Federation, particularly, petitioner No. 1 Veer Pratap Singh who is individual member of District Cooperative Federation and the Chairman of the present Committee of Management, filed objections as per rules, giving notice to the Registrar that there was no justification for abolition of the constituency of "special societies" and merging it in other societies.

23. The reason for not continuing special constituency for special societies and merging the same with constituency of other societies, as reflects from the impugned order, is, that though special societies include marketing societies, which are the main ordinary members, they will loose their natural right of representation in all the constituencies though their representation should be in every constituency and if such societies are kept in other constituencies there would be representation of marketing societies in each constituency. Right to represent in the Committee of Management of the Federation or of the marketing societies cannot be said to be their natural right. Even otherwise abolition of constituency of special societies, on the aforesaid ground apparently does not meet the object for which such abolition has been made. If special societies, which include marketing societies, are kept in separate constituency, marketing societies would have an assured chance of representation in the management of District Co operative Federation and in case this constituency is merged with other constituencies that will only give a right of participation in the election with no assurance of representation in the Committee of Management of the Federation which representation depends upon the outcome of the ejection.

24. Determination of the constituencies has to be done on rational basis i.e. on some reasonable criteria. Right from the year 1988 there has always been a separate constituency for special societies and only in these elections said constituency has been abolished.

25. The Registrar, U.P. Cooperative Societies earlier issued a circular on 2481998 directing the Deputy Registrar and other officers for not changing constituencies as far as possible so that reservation might not be effected. This was again reiterated by circular issued by the Registrar on 362004 when election

programme was published in respect of the Committee of Management of the Cooperative Societies of the State. In clause 6 of the aforesaid circular dated 362004, it was provided that while determining the areas/constituencies, with a view to make reservation in accordance with rules, it would be appropriate that constituencies, already determined in the last election, be maintained and the election areas be not changed so that the reservation be done in accordance with the provisions of Rule 444A (3) without any impediment.

26. The directions issued by the Registrar are referable to the provisions of Section 29 (3) and, therefore, ought to have been followed while determining constituencies and while making provisions for reservation but the Deputy Registrar in exercise of powers of Registrar under Cooperative Societies Act on 297 2005 deviated from the said directives by giving a reason while cannot be valid or a reasonable ground. Determination of the constituencies since the year 1988, including the last elections, has been done by making a separate constituency for special societies. In the absence of any criteria or valid reason, such a change could not have been effected by the Deputy Registrar. Representation of special societies in the Committee of Management of the Federation would have been assured in case separate constituency for special societies is maintained.

27. It has been seriously contended by learned Counsel for the petitioners that this change in constituency determination has been done with view to change rotation of reservation which has to be done in accordance with the provisions of Rule 444A (3). The State Counsel, however, denied any such mala fide move in determination of constituencies. Be that is it may, it is true that by abolition of constituency the serial of reserved constituencies may be changed in terms of Rule 444A (3) and may be that such an order might have been passed because of the aforesaid reason but we do not find it necessary to dwell upon this question as we do not find any sufficient material that this has been done deliberately for the aforesaid purpose.

28. We also refrain from expressing our view of this point for the reason that we have found that aforesaid determination of constituencies, by abolition of special constituency, is not reasonable nor befit the criteria of determination of constituencies as laid down in Rule 440 (6).

29. In regard to the question that whether for individual member constituency only one seat could have been allotted or two seats ought to have been allotted, we have to look into the provisions of Rule 44 (b) and Rules 444A (1), (2), (3), (4) and (5).

30. It is not being disputed by the respondents that membership of individual member constituency is more than 100 and, therefore, under Rule 444A (5) (iv) (ii) they are entitled for two representatives.

31. Rule 444A (5) is being quoted below for convenience:

?(5) The individual members of

(i) Marketing society,

(ii) Block union,

(iii) District Cooperative Federation, and

(iv) District/Central Cooperative Bank shall be subject to clause (b) of subsection (2) of Section 18 of the Act represented on the Committee of Management of their respective societies as follows:

(i) one representative, if the membership is 100 or less,

(ii) two representatives, if the membership is above 100 but not more than 500,

(iii) three representatives if the membership is above 500 :

Provided that the total representatives of individual members on the Committee of Management of District/Central Co operative Federation shall not exceed more than two.?

32. The Deputy Registrar in his order impugned has given following reasons for allotting one seat to individual member constituency.

33. The Deputy Registrar has placed reliance on the provisions of Rule 44 and Rule 85A for holding that there was no justification under the aforesaid rules for allotting more than one seat to individual members. Rebutting the plea of two representatives above membership of 100 but not more than 500, as given in Rule 44A (5), the Deputy Registrar observed that said Rule is applicable only for ordinary members of the society whereas individual members in the federation are not natural ordinary members and if such members are given more than one seat then it could adversely effect ordinary members.

34. Rule 44 (b) (ii) of the Rules, referred to in the impugned order, says that "no person, who is an individual shall be admitted as an ordinary member in a central society which includes any other central society in its ordinary membership".

35. The instant society in question is though a central society but does not include any other central society in its ordinary membership. The provisions of the aforesaid rules thus are not attracted for the aforesaid society.

36. Rule 85A (b) of the rules relates to delegates in the general body of the District Cooperative Federation. Aforesaid rule does not have any relationship with any individual member or ordinary members of general body of Cooperative Federation.

37. Section 18 of the Act specifies the class of members who are in addition to the ordinary members, namely, sympathizer members, nominal members and associate members. The only restrictions which has been given in subsection (b)

of Section 18 is with respect of the number of sympathizer members in a society as against total number of ordinary members. This provision does not restrict membership ordinary or individual membership. The individual members are themselves ordinary members, for whom, there is no limit or ceiling prescribed.

38. Section 17 of the Act provides disqualification for becoming ordinary member. On appraisal of the aforesaid rules we find that reason given by Deputy Registrar for allotting only one seat to the individual members is not in consonance thereof. This also finds corroboration from the fact that right from the year 1988 continuously two seats have been allotted to individual member constituency and only this time only one seat has been allotted.

39. We also find force in the argument of learned Counsel for the petitioners that reasoning given in the impugned order of the Deputy Registrar on the face of it has to be rejected as in similar conditions, in the matter of District Cooperative Federation Limited, Sitapur two seats have been allotted to the individual member constituency in this election also. The principles and the interpretations made by Deputy Registrar of Rule 44 (b) and Rule 85A (d) would have been equally applicable in the case of District Cooperative Federation Limited, Sitapur but the Deputy Registrar himself has not followed his own version of the aforesaid rules in regard to the Federation of Sitapur.

40. Third grievance which has been raised by learned Counsel for the petitioners is that allotment of seats to different constituencies determined by the Deputy Registrar has been done in arbitrary manner. After the provisional determination final allotment of the seats has been done in a manner which does not appear to be reasonable or on any definite criteria. A chart has been made by the petitioners about provisional determination of the seats as, in which the constituencies which are having more number of members/larger number of member societies are shown to have been allotted less number of seats which number in final determination has though been changed into two seats but still the determination so made suffers from vice of arbitrariness.

41. It is not in dispute that for Unnao constituency, which has eight members/member societies, three seats have been allocated. For Purva constituency, which has five members/member societies, two seats have been allocated as against three in final determination. In Bighapur constituency there are twentytwo members/member societies and only two seats have been allocated. In Safipur constituency there are ten members/member societies and three seats have been allocated whereas in Hasanganj constituency there are twenty members/member societies and only two seats have been allocated. The aforesaid allocation does not give any reason as to when constituencies having only five member societies or eight member societies have been allocated two and three seats respectively then under what circumstances and under what reasons the constituencies like Bighapur and Hasanganj, which are having twenty two and twenty member societies respectively, have been allotted only two seats.

42. The allotment of seats as indicated, does not show any criteria or basis on which the seats have been allocated nor it indicates any reason as to why for the constituency, which has large number of membership, lesser seats have been allocated.

43. Aforesaid determination of constituencies, allotment of one seat to individual member constituency and allotment of seats to various constituencies has been assailed on the ground that such a change has been brought to effect reservation in the manner so that it serves the purpose of a particular class or a group of persons and also on the ground that determination made by the Deputy Registrar making such a change is not having any reasonable basis and cannot be termed as rational.

44. In case an order is passed giving reasons the Court would have power to look into the reasons and to find out as to whether the reasons given have a nexus with the object which is sought to be achieved or, in other words, they are germane to the issue. If it is found that the order was passed in violation of the rules or the reasons given therein are not valid and the order is not based on any reasonable criteria, such an order can be set aside by the Court.

45. In regard to the plea of mala fide for the purpose of changing reservation and excluding petitioner No. 1 Veer Pratap Singh from contesting the election by allotting only one seat to individual member constituency which could fall under reservation for schedule caste category and petitioner No. 1 not being of that category, we would reiterate that since we have found that reasons on the basis of which constituency of special societies has been abolished and only one seat has been allotted to individual member constituency cannot be sustained under the rules therefore, we do not find it expedient to record any finding on the aforesaid issue.

46. For the reasons stated above, we hold that the abolition of special society, constituency and allocation of one seat to individual member society and also allocation of the seat to different constituencies has not been done on any reasonable basis nor in accordance with the provisions of the Act and Rules.

47. We, therefore, quash the order passed by Deputy Registrar dated 29/7/2005 and direct that the Registrar shall reconsider the objections/representations of the petitioners and other objections also if any have been filed, keeping in mind the provisions of the U.P. Cooperative Societies Act and Rules framed thereunder. Final determination of the constituencies done on 30/7/2005 consequently is hereby quashed. The Registrar after reconsidering the matter shall issue fresh orders without any unreasonable delay with required promptness so that the elections be not delayed unnecessarily.

48. The writ petitions are allowed. No order as to costs.

49. Since we have pronounced this order in the open Court and, therefore, we authorize learned Counsel for the parties to apprise the text of this order to the

Registrar for compliance thereof who shall proceed with the matter without waiting for a certified copy of this order pending its availability.