
(2022) 02 UK CK 0064

In the Uttarakhand High Court

Case No : Writ Petition No. 1786 Of 2021 (M/S)

Virendra Singh Mehra And Another

APPELLANT

Vs

Director/Registrar, Dairy Development And Others

RESPONDENT

Date of Decision : 17-02-2022

Acts Referred:

Uttarakhand Cooperative Societies Act, 2003 — Section 128
Uttarakhand State Cooperative Societies Election Rules, 2018 — Rule 16, 17, 30, 31, 39
Uttarakhand Cooperative Societies Rules, 2004 — Rule 450, 450(4), 450(7), 454

Citation : (2022) 02 UK CK 0064

Hon'ble Judges : Sharad Kumar Sharma, J

Bench : Single Bench

Advocate : Sandeep Tiwari, C.S. Rawat, Sadeep Kothari

Final Decision : Disposed Of

Judgement

Sharad Kumar Sharma, J

1. The petitioners to the present writ petition had put a challenge to the impugned order dated 31.08.2021, as passed by respondent no.2, whereby as a consequence of passing of the impugned order, the election of the two Cooperative Society blocks of Kotabagh and Ramnagar, which was supposed to be held for the Primary Dugdh Cooperative Society, had been directed to be kept in abeyance till the conclusion of enquiry which was directed to

be conducted by the Joint Director, Dairy.

2. The petitioners in the present writ petition has come up with the case, that the petitioner nos.1 & 2, they claimed that they are the Directors and

Vice Chairman of Nainital Dugdh Utpadak Sehkari Sangh Limited, in which the petitioner no.1 was elected as a delegate and thereafter as a Director

in Nainital Dugdh Utpadak Sehkari Sangh Limited. The petitioner no.1 has contended, that prior to his election as a Director referred above, initially he was elected as a Member of the Management Committee of the Dugdh Utpadak Sehkari Samiti. The contention of the petitioners in the writ petition, is that the terms of the Committee of Management of the aforesaid Cooperative Society, which commenced from 21.09.2016, which had its term for five years was supposed to expire on 20.09.2021 and as a consequence thereto the election of Dugdh Utpadak Sehkari Samiti, Madiya Ramnagar and that of Kotabagh too was scheduled to be held prior to expiry of the term of the aforesaid Committee of Management of the Cooperative Society i.e. on 20.09.2021.

3. The petitioner no.2 has come up with the case that initially he was the Director of Naintal Dugdh Utpadak Sehkari Sangh Samiti, Lal Kuwan, District Nainital and he was too elected as a Member of the Committee of Management of the Dugdh Utpadak Sehkari Samiti and that as per the terms of the elected Committee of Management which was supposed to expire on 20.09.2021 it will be having a consequential effect of the cessation of the terms of Committee of Management of Dugdh Utpadak Sehkari Samiti, Madiya Ramnagar, District Nainital.

4. The petitioners in the writ petition has come up with the case, that the election of the Primary Cooperative Societies are being governed by the Rules called as 'Uttarakhand Rajya Sehkari Samiti Nirwachan Niyamawali 2018', as it has been notified by the State Government on 27.06.2018, while exercising its powers under Section 128 of the Uttarakhand Cooperative Societies Act. The petitioners contended, that since the term of the Committee of Management was expiring on 20.09.2021, as such the respondent no.4 while exercising its powers under Rule 450 Sub Rule (4) of the Uttarakhand Cooperative Societies Rules of 2004 framed under the Act of 2003, had issued a publication on 12.08.2021, whereby it had determined the extent of the area of each of the constituencies of the respective Cooperative Societies and the total number of seats, which would be allocated for it for the purposes of facilitating the forthcoming elections. He further submitted that in accordance with the provisions contained under the aforesaid Sub Rule (4) of Rule 450 of the Rules of 2004, the objections were invited from all quarters, for the purposes of provisional

determination by the respective constituencies and after inviting of the objections as per Rules of 2004, the hearing of the objections had admittedly taken place on 25.08.2021, as contemplated under Sub Rule (7) of Rule 450 of the Rules and the hearing as such, for the determination of the constituency and the allocation of the seats took place in the office of respondent no.4.

5. Simultaneously, by virtue of the publication of 12.08.2021, it is contended by the petitioners, that respondent no.2; has declared the election

programme of the respective Cooperative Societies, as already detailed above and particularly pertaining to Ramnagar and Kotabagh too and

accordingly under the Rules of 2018, particularly under Rule 31, the election programme was expected to be commenced with effect from 31.08.2021,

and after notifying of the election programme on 31.08.2021, the election was supposed to be held on 13.09.2021 for the post of Chairman, Vice

Chairman for and the delegates of the Primary Dugdh Utpadak Sehkari Samitis, as already detailed above, which was supposed to be held on

14.09.2021.

6. The petitioners contended that according to the Rules of 2018, as was notified on 26.06.2018 Rule 30 of the Rules of 2018 provided a platform, that

if any person was aggrieved by any procedure, which has been adopted under the Rules of 2018 for conducting the election of the Primary Dugdh

Cooperative Societies or any other Cooperative Sehkari Samiti for that matter under the Rules of 2018, the Election Tribunal was a body constituted to

deal with the respective disputes, if at all, it was raised before it.

7. The petitioners contended, that while exercising the powers within the ambit of Rule 30 of Rule 2018, the Election Officer was to be constituted and

as a consequence thereto, the District Magistrate was nominated, as to be the District Cooperative Election Officer, for the purposes of conducting

the election which was notified to be held on 14.09.2021, as a consequence of the declaration of election programme made on 12.08.2021.

8. The petitioners contended, that since the Rules itself provided for an invitation of objection to the publication which was made under Rule 454 of the

Rules of 2004, as framed under the Act, though the process of election would be deemed to have already commenced with the publication made on

31.08.2021 with a declaration of the election programme, which was scheduled

to be held on 30.09.2021, the petitioner's case is that once the election programme was already notified objections have been dealt with and they were also heard by respondent no.4, prior to finalization of the respective constituencies and the list of members eligible to participate in the election process. The respondents could not have acted or reacted on a complaint submitted by the public and that too without any rhyme and reasons and without application of mind, when the complaint related to the Election Officers and the employees who were thus appointed under the Rules of 2018 for conducting the elections of the Primary Dugdh Cooperative Society Sehkari Samiti, Kotabagh and Ramnagar Blocks.

9. The grievance of the petitioners in the writ petition is that by virtue of the impugned order of 31.08.2021 taking the complaint of the public, as was made against the appointment of Election Officer, as to be an exclusive basis for installing the election process, which was notified to be held, in fact, the entire process of appointment of two member committee under the Chairmanship of the Director, Dairy Development Department of Uttarakhand, in order to look into the complaint submitted by the public as against the appointment of the Election Officers, the same could not have been or ought not to have been entertained for the purposes of suspending the election allegedly, till the conclusion of the inquiry, which was to be conducted by the two member committee appointed by respondent no.2, for conducting an enquiry into the complaints referred above.

10. The petitioners further submitted that if the impugned order of 31.08.2021, as passed by respondent no.2, is taken into consideration, in fact no definite date thereafter was scheduled for the purposes of conducting the election because it has been observed in the impugned order that fresh election programme would be declared later on by respondent no.2, only after the culmination of the enquiry and submission of the enquiry report by the two Member Committee, thus who were appointed by respondent no.2. The respondent no.4 on the basis of the order of 31.08.2021 of Secretary, Cooperative Societies directed the competent authorities to collect all the material and the pre-requisites relating to the credentials of the Election Officers and submit his report regarding the same, showing as to how their nominations as an Election Officer for the purposes of conducting the Election in pursuance to the publication of 12.08.2021, would vitiate the election,

if at all, it is held on the schedule date i.e. 13.09.2021.

11. The petitioner in the writ petition has submitted, that under the normal election laws, once the election programme has been notified and the

constituencies have been determined, the candidature of the probable candidates has already been determined, the list of voters is finalized after

inviting objections as per the provisions of Rule 450. In that eventuality, the impugned order of 31.08.2021, suspending the election of Dugdh Utpadak

Sehkari Samiti particularly for Block Ramnagar and Kotabagh, would be in violation of Rule 16 and 17 of the Rules of 2018, which contemplates and

provides for a specific inevitable circumstances under which the election programme after being notified could be suspended and since the impugned

order of 31.08.2021 do not fall to be within the specification or the contingencies of calling for suspension of election to be within the ambit and scope

of Rule 16 and 17 of the Rules of 2018, the suspension of election itself did not contemplate the exigency where the election process could have been

kept at bay, which was notified on 12.08.2021. The provisions of Rule 16 and 17 of the Uttarakhand State Co-operative Societies Election Rules, 2018,

providing with the circumstances and the conditions under which the election could be put to suspension is extracted hereunder:-

16. If a candidate whose nomination is found valid under rule 39 and who has not withdrawn his candidature, dies and the information of his death

has reached before the pooling, then the Election Officer, after satisfying himself about the facts of the death of the candidate, shall postpone the poll

of the constituency concerned and shall inform the District Co-operative Election Officer and the Authority and the nomination for that constituency or

post shall be filed de novo but it shall not be necessary to file additional nomination for person who was the candidate for the election at time of

postponing the poll and such person who had withdrawn his candidature before such postponement shall not be disqualified to file nomination after

such postponement and the polling after such postponement shall be held on the date as fixed by the Authority.

17. When the proceedings of election of the Society has started, the election proceedings shall not be disrupted except due to the reasons mentioned in

rule 16:

Provided that if polling or any proceedings of election gets disrupted due to riots

or open violence at the place of polling or holding election is not possible due to any natural calamity, the Election Officer appointed for such election shall declare the postponement of election till next date to be notified later. The information of such postponement shall be given to the District Co-operative Election Officer and the Authority immediately, on which the Authority shall fix the new date for election:

Provided further that the election procedure shall be postponed only after narrating the whole sequence of incidents in a chronological order in the polling diary being used by the Election Officer.â??

12. The petitioners contended, that in the light of the provisions contained under Rule 17 of the Rules of 2018, it rather specifically contemplates, that after the commencement of the process of election, it cannot be stopped except for the reasons, which falls to be within the parameters which has been provided under Rule 16 calling for suspension of the election and it further contemplated, that if at all the election is to be suspended for the reasons, which are covered under Rule 16, the Election Officer, has to inform the District Election Officer of the Cooperative Election Tribunal, justifying the reasons for suspension of the election of the Cooperative Society.

13. The petitioners submitted, that if Rule 17 of the Rules of 2018 is read in its totality and in particular the proviso contained to Rule 17, even if at all the circumstances call for suspending the election, if it at all it falls to be within the parameters of Rule 16, then too compliance of the conditions provided under the proviso to Rule 17 of 2018, it becomes mandatory for the Election Officer; to apply its mind, consider the records available before it, put all the set of circumstances in a chronological manner; in order to justify the assessment of requirement of suspension of the election. The petitioners submitted, that on a harmonious consideration of Rule 16 and 17, to be read alongwith the proviso to Rule 17, the correspondence made by the letter of Director/Registrar, Dairy Development Department, to respondent no.2, recommending for the suspension of election since being in clear violation of Rule 16 and 17 of the Rules of 2018; hence would be bad in the eyes of law. In the light of the provisions contained under Rule 16 and 17, which is foundation of the challenge given by the petitioners to the impugned order, and the said issue has been further elaborated by the petitioner contending thereof, that the Director/Registrar as soon as the elections are

notified and the election programme has been brought within the ambit of a public domain, the Registrar becomes a functus-officio, after declaration of the election programme and as such no right stand vested with him any further to interfere in the election process, thereafter after the appointment of the Election Officer under the provisions of the Rules framed under the Act.

14. He further elaborated his arguments from the prospective, that in fact, if the logic which has been assigned in the impugned order of suspension of election dated 31.08.2021, is taken into consideration in fact, there is no plausible reason has been assigned as such in order to substantiate the logic for suspension of election and particularly when the reasons for suspension, as it has been attributed by respondent no.2 in the impugned order falls to be beyond the scope and the legislative grounds provided under Rule 16, the election of the Dugdh Cooperative Society of Kotabagh and Ramnagar Blocks, could not have been suspended by respondent no.2 and that too without taking respondent no.3, into the confidence, who had been appointed as an Election Officer for the District Cooperative Elections which was scheduled to be held as already elaborated earlier.

15. The petitioner submitted, that in any of the election provisions and particularly the one at hand pertaining to the election of Dugdh Cooperative Society, as soon as the Election Officer, has been notified to be appointed under the Rules of 2004, for conducting the election of respective Cooperative Societies, immediately after their appointment they do not continue to be an employee of the Dairy Development Department, and as such the respondent no.3, didn't had any power vested with him to have recommended for suspension of the election to the respondent no.2, based on the aforesaid public complaint.

16. The petitioners submitted that even at all the respondent nos.2 & 3 had any doubts with regards to the sanctity of the election, which was to be conducted by the Election Officer thus appointed i.e. respondent no.3 herein, in that eventuality too, under the Election Rules of 2018, their officer could have been substituted, because there is always a reserved team of employees, which is available to the election agency, to further continue with the election process, if there is any complaint, which cannot be rectified and which could have attached any doubt with regards to the fair conduct of

election.

17. The petitioners have also attached a malice on part of respondent no.3, contending thereof that since respondent no.2 was conscious, that the term of the petitioners as against the respective post in Dugdh Utpadak Sehkari Samiti, was to come to an end on 20.09.2021, the suspension of the election, had been maliciously made in order to make the petitioners ineligible to contest the election of the Cooperative Societies. It was contended that the order intended to create an obstruction in order to get the candidate of their choice elected in the election which were to be conducted for the aforesaid two Blocks of Dugdh Utpadak Sehkari Samiti and the alleged ground taken therein that the suspension was justified in order to conduct an enquiry, against the Election Officer and the employees who were attached to for the purposes of conducting an election in fact, it was not based on a sound foundation but rather it was an eye wash which was politically motivated.

18. The petitioners reiterated the argument, that in fact, in a democratic set up of country once the election has been notified and the election programme has been floated, objection have been invited and they have dealt with, the election cannot be put to suspension, merely based upon a suspension which has been expressed in the complaint submitted by the public at large, as against the appointment of the Election Officer, who was given the charge, with the responsibility to conduct the election and that too it was since not based upon any material and evidence to justify the ground of suspension of election, the petitioners contended, that if at all there was any suspicion pertaining to the credibility of the office bearers, who were made responsible to conduct the election, the election could have been still being continued after replacing the tainted officials if at all the objections were sustainable, the election could still continue after substituting the same and appointing the other officials to continue with election process.

19. The petitioners submitted that Rule 16 and 17 of the Rules of 2018, particularly when it uses the language necessitating the suspension of the election, that there has had to be "reasons to believe as per law". He submitted that the use of the of the aforesaid word by the legislature had a specific intention and an objective to be met with, and when the law uses the word reasons to believe, there has had to be a plausible

justification supported by logic to be assigned in the impugned order for suspending the election particularly, when it is being suspended after the publication and invitation of objections and its decision being taken on it, which was consequentially taken thereof and hence, he submitted that the impugned order violates Rule 18, as the suspension of the election for whatsoever reasons, if at all it falls to be within the ambit of Rule 16 providing for a ground contemplated for suspension of the election, it has had to begin as per the Rule 18 of the Rule of 2018, from the stage at which the election was put to suspension and hence the petitioners contended that the impugned order of 31.08.2021, would be beyond the ambit of exercise of powers by respondent no.2 and since it is politically motivated, the impugned order cannot be sustained.

20. After having heard the learned counsel for the parties and having gone through the Rules which had been laid down, regulating the parameters for conducting the election of the Primary Cooperative Societies, this Court is of the view that if the impugned order of 31.08.2021 is taken into consideration, it was only a momentary suspension of the election, which was to continue only till the conclusion of enquiry which was directed to be conducted by the two member committee thus appointed by respondent no.2, and it would not have vitiated or could not have suspended the election for an indefinite period, because immediately on the culmination of the factual enquiry obviously, the election as notified on 12.08.2021, was to commence from the stage from where it has been put to suspension i.e. 31.08.2021.

21. Be that as it may.

22. After having heard the learned counsel for the petitioners, this Court is of the view, that once the election of the Primary Cooperative Societies, as the case at hand is, once it has been notified, its suspension of election cannot be done in a routine manner, because it infringes and runs contrary to the very democratic set up of augmenting the Cooperative activities for the benefit of public at large and the members attached to it and because of this reason, the petitioners are right in contending that in any election process, if at all there is a remotest doubt created pertaining to the credibility of an office bearer, particularly the Election Officer who had been made responsible to conduct the election, in that eventuality the respondent no.2,

always had a prerogative and the authority too under the rules to have changed the Election Officer and he ought to have given the responsibility to

conduct the election from the stage contemplated under Rule 18 of the Rules of 2018, to a new body, which is a stand by body, kept in reserve for

conducting the election, because under the election law once election was notified it cannot be suspended and that to particularly, when the suspension

happens to be beyond the scope of the parameters prescribed under the Rule 16 of the Rules of 2018.

23. Owing to the peculiar circumstances and the malice which the petitioners have contended to have attached to the order of suspension, this Court is

of the view that in order to balance the equities and in order to ensure that the free and fair election of the Cooperative Societies of the two blocks i.e.

Kotabagh and Ramnagar block, that may be directed to be conducted through any other officer, other than the respondent no.3 by appointing any new

Election Officer to conduct the election in free and fair manner, so that the remotest doubts, which has been created on the basis of the complaint

submitted by the public may also be averted and simultaneously the objective of conducting the election, for providing an elected Committee of

Management to the aforesaid Cooperative Societies may be achieved at, and particularly when the order of 31.08.2021, is taken into consideration, I

am of the view that the suspension in itself since not being in consonance to the provisions of Rule 16 of the Rules, but rather even without addressing

on the said issue on the deliberations which has been made by the counsel for the petitioners.

24. This writ petition is being disposed of with a direction to respondent no.2, to appoint an alternative body and an election officer too in accordance

with Rules of 2004, to be read with the Rules of 2018 and conduct the election by appointment of new Election Officer or by appointing the officials to

conduct the election from the stand by team, so that the objective of constitution of the body of the two Cooperative Societies of Kotabagh and

Ramnagar, is met with. Thus this writ petition is being disposed of with direction to respondent no.2, that in order to meet out the objection which had

been taken by the public about the credibility of Election Officer and the other officials attached to his office for the purposes of conducting the

Election, he may exercise his powers under Section 450 of the Rules of 2004 by appointing a new Election Officer and the other assisting Government

Officials, who are to be appointed for the purposes of assisting the Election Officer in conducting the election and conclude the election of the

Cooperative Societies as expeditiously as possible but not later than two months from the date of service of the certified copy of this order.

25. However the aforesaid directions would be subject to the condition that the election of the aforesaid body, has not yet already been concluded by

respondent no.2, by changing the officials against whom the malice was attached in the public complaint submitted against them.

26. Subject to the aforesaid observations, the writ petition stands disposed of.