

(2018) 10 UK CK 0036

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 2917 of 2018

Virendra Singh Pokhariyal

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 10-10-2018

Acts Referred:

Uttarakhand State CoOperative Societies Election Rules, 2018 — Section 43(14), Rule 16, 17, 36, 43(14)
Uttaranchal Co-operative Societies Rules, 2004 — Rule 451(1)
Constitution of India, 1950 — Article 243ZH, 243ZI, 243ZJ, 243ZK, 243ZL, 243ZM, 243ZN, 243ZHO, 243ZP, 243ZQ, 243ZR, 243ZS, 243ZT, 243ZJ(2), 243ZK, 243ZK(2)

Citation : (2018) 10 UK CK 0036

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : Shobhit Saharia, Paresh Tripathi, Yogesh Pandey, Rakesh Thapliyal

Final Decision : Disposed Of

Judgement

Sudhanshu Dhulia, J.

1. The petitioner before this Court has challenged the order dated 22.09.2018 passed by the Deputy Registrar, Cooperative Societies, Uttarakhand,

Garhwal Region, Pauri, by which the elections to the Committee of Management of â??Doon Kendriya Stores Limited, Dehradunâ?, which is a

cooperative society have been postponed, though no future date of elections has been mentioned in the order. The order dated 22.09.2018 was duly

advertised in various newspapers, including â??Amar Ujalaâ??. which has a wide circulation in Dehradun.

2. The contention of the petitioner before this Court is that election to these Cooperative Societies now find place in Part IXB of the Constitution of

India. Article 243ZH to 243ZT are for these purposes, which relate to

incorporation of cooperative societies, election to the members of the board, audit of accounts of cooperative societies, etc. Whereas in the past, elections and even duration of elected members of the cooperative societies, including the elected committee of management were at time subjected to the arbitrary order of the State authorities, in as much as the term of the elected members of the committee of management used to be cut short, but now after the incorporation of the cooperative societies in Part IXB, in Article 243ZJ (2) it has been specifically stated that "the term of office of elected members of the board and its office-bearers shall be five years from the date of election and the term of office-bearers shall be coterminous with the term of the board".

3. We are presently faced with the election of a cooperative society. The petitioner has challenged the order of the Deputy Registrar on ground that elections to the cooperative society are being delayed for one reason or the other, and one of the reasons is that not only the Administrator, who is an unelected person and is presently functioning and managing the affairs of the cooperative society will continue, but the cooperative society will also be deprived to send its members as delegates to other district level societies or higher apex level societies, due to which delay in elections. It must be stated here again that what is under challenge here is not the election of a cooperative society but its postponement.

4. The case of the petitioner is primarily that under Article 243ZK(2), the superintendence, direction and control of the preparation of electoral rolls shall now vest with an authority which shall be created by the State. Article 243ZK reads as under:

"243ZK. Election of members of board. (1) Notwithstanding anything contained in any law made by the Legislature of a State, the election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the term of the office of members of the outgoing board.

(2) The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in such authority or body, as may be provided by the Legislature of a State, by law:

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

(emphasis provided)

5. In view of the above, the authority has been created in the State which is known as Uttarakhand Cooperative Election Authority, which is presently

constituted and has constitutional mandate to supervise and control the elections to these cooperative societies. That being the provision, the Chairman

of the Authority notified the elections vide its order dated 23.06.2018, wherein the date for elections to the Central Cooperative Stores is given as

12.10.2018. By the impugned order, this election date has been postponed, not by the Authority but by the orders of the Deputy Registrar. Therefore,

the contention of the petitioner would be that the Deputy Registrar does not have the powers to postpone the elections, and this power has only with

the Authority, which has got powers to hold the election or such authority which is designated by the statute. Reference here would be to Uttarakhand

State Co-Operative Societies Election Rules, 2018 (from hereinafter referred to as the Rules of 2018), which have been framed by the State

Government in exercise of powers given under the Uttarakhand Co-operative Societies Act, 2003. The reliance is on Rule 16 and 17 of the Rules of

2018, which reads as under:

â??16. Cancellation of polling :- 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 polling, 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 of 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 the time of postponing the poll and such persons 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. Cancellation of polling due to violence riots or natural calamity : 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??

6. The argument of the petitioner would be that under Rule 16, only when a nominated candidate dies after his nomination but before the date of

election, the polling date can be postponed and under Rule 17 it can be postponed under a contingency if there are riots or

open violence or natural calamity. None of these contingencies exist in the present case. The only reason for postponing the election is that members

of the particular society i.e. the members of the â??Doon Kendriya Stores Limitedâ? have yet not been verified and in case the members itself have

not been verified, it would not be a proper delimitation, and consequently election would not be a proper election.

7. To this, the learned counsel for the petitioner would argue that once the elections have been notified, they are not liable to be interfered with and a

very heavy reliance has been placed on a Constitution Bench decision of Honâ??ble Apex Court in the case of Mohinder

Singh Gill v. Chief Election Commissioner, New Delhi reported in (1978) 1 SCC 405 where the Honâ??ble Apex Court has even directed that even

courts should not interfere with the elections once the elections have been notified. The reason being simple. If interference is to be made at every

small pretext, then election which has to be held on regular intervals can never be held, which can go to the root of the democratic institutions.

8. The argument of the learned counsel for the petitioner would be that in the present case firstly the authority which has postponed the election is not

authorised under the law to do so and moreover even the designated authority under Rule 16 & 17 can postpone the election it can do so on very

limited grounds, which presently do not exist.

9. Learned Chief Standing Counsel for the State as well as the Authority, Mr. Paresh Tripathi would argue that the authorities as well as the State

Government have been consistently sending reminders to the Doon Kendriya Stores Limited that they must verify the list of the members as

according to the information which is there with the authority as well as the State Government, out of total number of 12,000 members, most of them

have either passed away or do not reside in that area and therefore unless the list of members is verified, the delimitation and distribution of

constituencies and even the elections would not be a fair election. The society has been evading this verification on one pretext or the another,

according to the learned Chief Standing Counsel for the State.

10. Learned counsel for the petitioner, on the other hand, would argue that power has been given to the Election Officer under Rule 43 (14) of the

Rules of 2018 to satisfy regarding identity of the voter. Section 43(14) of the Rules reads as under:

43 (14) It shall be mandatory for a voter to satisfy the Election Officer regarding his identity from one of his identity proofs specified by the

Authority before using his vote.

11. Subsequently, the Authority has also given guidelines as to how a voter can be identified and certain documents have been listed for this purpose

such as Identity Card issued by the Election Commission of India, Driving License, PAN Card, Bank Passbook, Aadhar Card, Ration Card, Kishan Jot

Bahi, Passport, MGNREGA Job Card, etc. and therefore a strict compliance of this provision ought to have been made by the Election Officer and it

cannot be said that fake voters would be casting their vote in the elections.

12. As far as locus of the petitioner is concerned, objections have been raised at the hands of the respondents, but this Court is not inclined to accept

those objection as the petitioner was erstwhile Chairman of the Committee of Management and in any case the Committee of Management cannot

come before this Court, because there is no Committee of Management in Doon Kendriya Stores Ltd., as of now, and presently an

administrator is functioning there, who is an officer of the State Government.

13. Considering the rival submission of the parties, I come to the conclusion that once the elections are notified, the elections cannot be interfered with

as has been done in the present case. The elections can be postponed but on limited ground, which are given in Rule 16 and 17 of the Rules of 2018,

which is presently not the case.

14. In case the verification of members was required, this should have been done in advance, which has not been done. It is too late in the date to cry

foul or raise the bogey of verification, because of the reasons that elections admittedly have already been notified.

15. At this stage, Mr. Paresh Tripathi, who is counsel for the authority as well as Chief Standing Counsel for the State has apprised this Court that

there would be a practical difficulty in conducting the elections, which are scheduled to be held on 12.10.2018, as a mandatory notice of 15 days has to

be given under Rule 451 (1) of the Uttaranchal Co-operative Societies Rules, 2004. Rule 451 (1) of the Uttaranchal Co-operative Societies Rules,

2004 reads as under:

451. (1) The Election Officer shall notify in the local daily newspaper the date or dates of election for class or classes of societies or of a group or

groups of co-operative societies of any area or areas of his jurisdiction.

16. Mr. Paresh Tripathi, who is counsel for the authority as well as the Chief Standing Counsel for the State fairly submits that in view of the

court's order, elections will be held but the practical difficulty be taken into consideration.

17. In view thereof, let the election schedule, as notified in the order dated 23.06.2018 be shifted by 15 days, and the elections be held thereafter, but

not beyond 1. 11.2018.

18. With the directions as aforesaid, writ petition stands disposed of.

19. Let a certified copy of this order be issued within twenty-four hours on payment of usual charges.