

Ziley Singh, Etc.

Vs

Registrar, Cane Co-Operative Societies and Others

Arzmand Ali

Vs

Sarsawa Sahakari Ganna Samiti Ltd. and Others

Shivanandan Sharma and Others

Vs

The Registrar, Cane Co-Operative Societies and Others

Civil Appeals Nos. 1533, 1797 and 1798 of 1971 and Special Leave Petition Nos. 3254 and 3268 of 1971

(K. S. Hegde, A. N. Grover, A. N. Ray J)

20.01.1971

JUDGMENT

RAY, J. -

1. These three appeals are by special leave. Civil Appeal No. 1533(N) of 1971 is by special leave against the judgment, dated September 18, 1971, of the Arbitrator setting aside the election of the Management Committee of the Co-operative Cane Development Union, Shamli in an election petition filed under Rule 229(2) of the Co-operative Societies Rules, 1967 framed under the Uttar Pradesh Co-operative Societies Act, 1965. Civil Appeal No. 1797 of 1971 is by special leave against the order of the District Magistrate and Registrar, Co-operative Societies Saharanpur dismissing an appeal filed under Section 98(i)(h) of the U.P. Co-operative Societies Act, 1965 against an order of the Arbitrator under Sections 70 and 71 of the U.P. Co-operative Societies Act, 1965 setting aside the election of the Sahkari Ganna Vikas Samiti Ltd., Iqbalpur, District Saharanpur. Civil Appeal No. 1798 of 1971 is against the order and judgment, dated September 16, 1971, of the District Magistrate, Saharanpur dismissing an appeal under Section 98(i)(h) of the U.P. Co-operative Societies Act, 1965, against the order of the Arbitrator under sections 70 and 71 of the U.P. Co-operative Societies Act, 1965, setting aside the election of the Sahkari Ganna Vikas Samiti Ltd., Lhaksar District Saharanpur. Special Leave Petition (Civil) No. 3254 of 1971 is for leave to appeal against the order of the Registrar, Co-operative Societies in appeal under Section 98(i)(h) against the order of the Arbitrator under Sections 70 and 71 of the U.P. Co-operative Societies Act, 1965, setting aside the election of Sahkari Ganna Vikas Samiti, Sarsawa. Special Leave Petition (Civil) No. 3268 of 1971 is for leave to appeal against the order of the District Authority, Bulandshahr setting aside the election of the Committee of Management of the Co-operative Cane Development Union Ltd. on an application under Rule 229 of the U.P. Co-operative Societies Rules, 1968.

2. These matters raise a common question. These Co-operative Societies held their annual general meetings under the provisions of Section 32 of the Uttar Pradesh Co-operative Societies Act, 1965 (hereinafter called the Act). At the general meetings the members of the Committee of Management of the Society were elected by members of the Society. The Registrar of the U.P. Co-operative Societies issued a circular, dated November 5, 1969, interpreting Rule 409 of the U.P. Co-operative Societies Rules, 1968 (Hereinafter called the Rules) and laid down the principle "that all the members of the general body of the Co-operative Society would exercise their right of vote in filling all the seats of elected Directors". The question in the present appeals is whether the Registrar had power to issue the circular interpreting Rule 409 and secondly whether that interpretation is correct in term of the Act and Rules.

3. The Act deals with Co-operative Societies and inter alia their members and their Committee of Management. The relevant sections for the purpose of the present appeals and special leave petitions are Sections 20, 29 and 32 of the Act. Section 20 of the Act speaks of vote of members. Under that section, a member of Co-operative Society shall notwithstanding the quantum of his interest in the capital of the Society have one vote in the affairs of the Society. There are four provisos to Section 20. Proviso (a) deals with nominal or associate member who have no right of vote. Proviso (b) deals with a co-operative society, the State Warehousing Corporation or a body corporate being a member of such society in which case each delegate of such co-operative society, the State Warehousing Corporation or body corporate shall have one vote. Proviso (c) deals with the State Government or the Central Government being a member of such society in which case a nominee of the State Government or the Central Government shall have one vote. Proviso (d) deals with a group of members or any class of members partaking in the affairs of the society through a delegate or delegates each delegate having one vote.

4. Section 29 of the Act deals with the Committee of Management. The management of every co-operative society shall vest in a committee of management. The terms of the elected members of the committee of management shall be such as may be provided in the rules and the bye-laws of the society. After the expiry of the term the co-operative society shall at the annual general meeting elect members for the committee of management as provided in Section 32(i)(b) of the Act. If a society fails to elect members for the committee of management the Registrar shall call upon the society by order in writing to elect such members within three months from the date of the communication of the order. If the society still fails to elect the members for the committee of management, the Registrar may himself nominate such persons as under the rules and the bye-laws are qualified for being elected as members of the committee of management. Within six months from the date of nomination made by the Registrar, the Registrar shall call a general meeting for electing members of the committee of management.

5. Section 32 of the Act speaks of annual general meeting which shall be held once in a co-operative year. A co-operative year means the year commencing the first day of July and ending on June 30, of next following. One of the purposes of the annual general meeting is election of the members of the committee of management in accordance with the provisions of the rules and of the bye-laws of the society.

Rule 409 is as follows :

"For the purposes of election to the membership of the committee of management a co-operative society may, with the previous sanction of the Registrar -

(a) divide its membership into different groups on territorial or any other rational basis, and

(b) also specify the number or proportion of the members of the committee of management in such a manner that different areas or interests, as the case may be, in the society may, as far as may be, get suitable representation on the committee of management".

6. In order to appreciate as to how Rule 409 comes up for consideration in the present case it is necessary to refer to facts in Civil Appeal No. 1533(N) of 1971 as a typical case.

7. The Shamli Cane Development Union Ltd., Shamli, Uttar Pradesh was registered under the Co-operative Societies Act, 1912. It was deemed to be registered under the Act. The society had its bye-laws with regard to the formation of the committee of management and its election including the election of the Chairman and the Vice-Chairman. The bye-laws provided for a committee of management consisting of 14 members. The committee of management elects a Chairman and a Vice-Chairman. The delegates constituting the general body of the society are divided into 14 constituencies. Each constituency elects one Director. The delegates of the members of the society in a constituency elect a member of each single member constituency. The 14 members of the committee elected on that basis whereby each delegate of each constituency exercised one vote for electing a member of that constituency.

8. The Secretary of the society fixed October 13, 1970, as the date for filing the nomination for the office of committee of management. October 17, 1970, was the date for scrutiny of nomination papers. October 19, 1970, was the date for withdrawal of nomination papers. October 28, 1970, was the date of poll. By a letter, dated October 14, 1970, the Registrar, Co-operative Societies directed that "the election of the members of the managing committee shall be done by all the representatives of the area of the society and not by representatives of the related constituencies alone. This means that every representative shall have as many votes as the members are to be elected. In short, the Registrar's interpretation of Rule 409 as well as the letter stated that each delegate would vote for 14 members of the committee of management and thus each delegate would exercise 14 votes.

9. The rival contentions which fall for determination are whether the right of vote for election of a member of the committee of management is confined to the delegates of the members of that particular constituency or whether a delegate would have the right to vote for all the constituencies constituting the committee of management.

10. As to the power of the Registrar to interpret Rule 409 it will appear that the rule does not confer any power on the Registrar to interpret or to express views to guide the rights of members to vote at the annual general meeting for the purposes of election of the committee of management. On the contrary, under Rule 409 the Co-operative Society may with the previous sanction of the Registrar (i) divide its membership into different groups on territorial or any other rational basis and (ii) also specify the number or proportion of the members of the committee of management in such a manner that different areas or interests, as the case may be, in the society may, as far as may be got suitable representation on the committee of management. Therefore, under Rule 409 a co-operative society can divide its membership into different groups on territorial or any other rational basis for the purposes of election of the members of the committee. The rule also empowers the society to apportion the membership of the committee of management amongst different groups into which the membership is divided. The number or proportion of members of the committee of management

will have to be apportioned in such a manner that the different areas or interests into which the membership of the society are divided may obtain suitable representation on the committee of management. The entire purpose of division of membership into different groups and specifying suitable representation of such group on the committee of management is to emphasise the right of the particular group to send its representative to the committee. To illustrate if a society is divided into 14 separate groups on a territorial basis and one member of the committee of management is allotted to each group and if delegates of one group have the right to cast 14 votes two consequences will follow. First, the right of choosing a representative of the constituency will be not confined to that constituency but will be enlarged to outsiders in other constituencies. Secondly, a member of the committee from one constituency may be elected by a majority of votes from delegates of other constituencies. If delegates residing outside a territorial constituency take part at the election for member of a committee from territorial constituency within which he is not a resident it will not only amount to enlarging the right of representation beyond one's territorial basis but also deny the delegates within the constituency the right of electing their own representative.

11. It was said on behalf of the appellants that Section 20 of the Act speaks of a member of the co-operative society having one vote in the affairs of the society with the result that each member is entitled to exercise as many votes as the members of the committee of management. Accent was placed on the words, 'affairs of the society' and it was said that the constitution of the committee of management was one of the principal affairs of the society and therefore each member would be entitled to cast as many votes as the strength of the committee of management. The fallacy lies in over-looking the significant words in Section 20 of the Act that a member shall have one vote. It may also be noticed that if each member exercises by way of illustration 14 votes in regard to 14 members of the committee each member shall be exercising 14 votes in the affairs of the society.

12. Under Rule 409 the principal matter to be kept in the forefront are these. First, the society will divide the constituencies on territorial basis or any other rational basis. By territorial basis is meant territory where the member will reside. Residence is therefore the relative requirement of territorial basis. If any other rational basis like occupation or vocation is determined to be the basis of a constituency the persons falling within the constituency will satisfy that test. Secondly, the society will specify the proportion of members of the committee in such a manner that different areas or interests may get suitable representation. The inherent idea is that such areas or interests will obtain representation. If membership is on territorial basis the different areas will get representation according to the interest of such territories. Again, if occupational or vocational or professional tests are created for dividing groups such interest will have to be given suitable representation. Representation is therefore with reference to areas or interests. Judged by these principles the impeached circular of the Registrar suffers from the vice of giving the members the right of casting vote in constituencies to which they do not belong. This strikes at the basic root of right of representation. This also rends as under the principle of one member one vote which is made into a rule of law on the Act.

13. The words 'affairs of the society' cannot be equated with the constituencies to give each member a right to vote for each constituency, that would defeat the purpose of Section 20 and Rule 409. The basic idea of a representative for each constituency depends on the mandate of the respective constituency and not of other constituencies. That is why Section 20 of the Act speaks of one member having one vote irrespective of shareholding. It means equality of votes of members.

14. The constitution of the committee of management is indisputably one of the affairs of the society. If each member exercises franchise with respect to the representation from his constituency

he is not in any manner prevented from having a right to partake in the affairs of the society through a member elected from the constituency.

15. Some reliance was placed by counsel for the appellants on Rule 105 in support of the contention that every member would have one vote for each member of the committee of management. Rule 105 occurs in Chapter VII relating to meetings and speaks of matters before a committee being decided by a majority of votes of the members prescient. That rule obviously has no reference to election but only to passing of resolution by majority at meetings. It is obvious that members of the committee of management will have the right to vote at all matters at the meeting and matters will be decided by a majority of votes.

16. The impeached circular of the Registrar is illegal and unwarranted. The Registrar has no power to interpret Rule 409. The Register has equally no power to express view with regard to conduct of the election and regulate the voting rights by giving the members more than one vote. The society is to frame rules for elections. Rules require the sanction of the Registrar. The rules and bye-laws cannot be in derogation of the statute and statutory rules. At an election of members of the committee of management one member will have only one vote for the constituency to which he belongs.

17. The result is that the elections which were held following the circular of the Registrar are bad.

18. For these reasons the three appeals fail and are dismissed. The two special leave petitions are also dismissed. Parties will pay and bear their own costs.

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