

Ram Pyare Chaudhary and Another

Vs

State of Uttar Pradesh and Others

Civil Appeal No. 478 of 1982

(Bahadur Islam, D. A. Desai, A. P. Sen JJ)

11.02.1982

JUDGMENT

DESAI, J. –

1. The District Cooperative Federation (Zila Sahakari Federation), Basti ('Federation' for short) is a cooperative society registered under the U.P. Cooperative Societies Act, 1965 ('Act' for short). As provided by Section 29 of the Act, the management of the Federation vests in a committee designated as Committee of Management. The Committee consists of 10 elected members and one nominated member. As the term of the Committee was drawing to a close, programme for election of the new committee of Management was announced as required by Part IV (of Chapter XXIX) of the U.P. Cooperative Societies Rules, 1968 (Rules for short). Pursuant to this programme poll was held on September 11, 1978. It is not made clear to us when the counting of the votes commenced, though Rule 444(1) provides that counting of the votes will take place immediately after the close of the poll except when postponed in a given set of circumstances. Sub-rule (4) of Rule 444 provides the election Officer shall announce number of votes secured by each candidate. It appears that one Shri Kashi Nath whose name did not appear in the voters list and who, on account of the omission, could not contest the election filed Civil Suit No. 291 of 1978 in the Court of Munsif, Basti on September 9, 1978 and asked for and obtained ad interim ex parte injunction restraining the defendants in the suit from conducting the election of Board of Directors Committee of Management, President, Vice-President and the delegates of District Cooperative Federation, Basti and / or announcing the result of election. Defendants 1 to 4 in the suit appeared and contested the application for interim injection. The learned Munsif after hearing both sides confirmed the injunction in the following terms.

6-C is allowed and defendants 1 to 4 are directed not to conduct the election and not to declare the result, if any, of Board of Directors of District Cooperative Federation, Basti, till disposal of the suit.

This order was made on September 21, 1978. It appears that by the time the suit was filed and ex parte ad interim injunction obtained, the poll was already held but by the injunction, the defendants in the suit were prohibited from declaring the result and accordingly the result was not declared. It now appears that the result was declared on January 28, 1980, and the election of the Chairman and the Vice-Chairman took place on January 29, 1980. Appellant 1 was elected as Chairman. The term of the members of the Committee of Management as provided by Rule 445 as amended on June 30, 1981, is three cooperative years including the year of election. The Registrar of Cooperative Societies pursuant to the amended Rule 445 issued a teleprinter message to various authorities indicating that the term of the Committee of Management has expired and Administrator should be

appointed as provide by sub-section (4) (b) of Section 29 of the Act. Pursuant to this teleprinter message, the Deputy Registrar, Cooperative Societies, Gorakhpur made an order on July 1, 1981, that the term of the members of the Committee of Management of the Federation has expired on June 20, 1981, and proceeded to appoint an Administrator. The appellants questioned the validity and legality of the order of the Deputy Registrar in Writ petition No. 7869 of 1981 filed in the High Court of Judicature at Allahabad.

2. The High Court was of the opinion that even though under Rule 445 the term of the office of the elected members of the Committee of Management of a cooperative society is three cooperative years including the cooperative year of their election once the poll is held and even though the result of the election is not announced, the term would commence from the date of the poll and therefore, the decision of the Deputy Registrar that the term expired on June 30, 1981, is correct. The High Court accordingly dismissed the writ petition. Hence this appeal by special leave limited to one point only, namely, the commencement and completion of the term of officer of the members of the Committee of Management of the 2nd appellant.

3. Section 29(1) provides that the management of every cooperative society shall vest in a committee of management constituted in accordance with the Act, the Rules and the bye-laws. sub-section (2) prides that the term of the elected members of the Committee of Management shall be such as may be provided in the Rules or the bye-laws of the Society. Rule 445(1) provides that except as otherwise provided in Rules 406,443,434 and 435, the term of the office of the elected members of the Committee of Management of a cooperative society shall be three cooperative years including the cooperative year of their election. Explanation appended to this Rule clarifies how the period of three cooperative years is to be computed. In substance the Explanation clarifies that :

For the purpose of determination on the term of a elected member the cooperative year during which the elections are held shall count as fully year irrespective of the period left after such election in that cooperative year.

There is a proviso to this Explanation which is immaterial. The expression 'cooperative year' is defined in Section 2(i) of the Act to mean the yea commencing on the first day of July and ending on the thirtieth day of June next following.

4. Part IV (of Chapter XXIX) of the Rules sets out procedure for holding the election. Election of members of Committee of Management of a cooperative society has to be held in accordance with the provisions of the At and Rules and the District Magistrate of the district in which the head quarter of the society is situated, shall take steps to organise the election under the superintendence, direction and control of the Registrar [see Rule 439 (1)] Sub-rule (1) of Rule 439 provides that the election in a cooperative society or societies, or a class or classes of cooperative societies shall be held on such due date or dates as the Registrar may by order fix and the District Magistrate concerned shall on such dates being so fixed appoint by order one or more Election Officer or different Election Officer for different class or classes of society or for different areas for this purpose. Sub-rule (3) provides that the Election Officer shall perform all such functions as are enjoined upon him by the Rules or as may be incidental to or necessary for the discharge of his duties. Rule 444(1) provides that the counting of votes will take place immediately after the close of the poll and in case it is not possible to count votes immediately after the close of the poll the ballot boxes shall be sealed by the Election Officer and kept in the safe custody in the nearest police station. Sub-rule (4) of Rule 444 proves that the Election Officer shall announce the result of election as soon as the counting is completed indicating the number of votes secured by each

candidate. sub-rule (6) provides that the Election Officer shall display a list of elected candidates on the notice board of the Society and also at such public places as he may deem fit. Sub-rule (7) provides that a copy of the list prepared under sub-rule (6) shall be sent to the District Assistant Registrar concerned or an officer authorised under sub-section (2) of Rule 440 and also to Secretary/Managing Director of the society concerned.

5. Having noticed the conspectus of the provisions bearing on the topic election to a cooperative society the principal point canvassed in its petition may be examined. According to the appellant even though the poll was held on September 11, 1978, the result, as required by Rule 444(4), was declared for the first time on January 28, 1980, the term of three cooperative years of the elected member of the cooperative society will expire on June 30, 1982.

6. On the other hand, according to the respondents, as the poll was held on September 11, 1978, the term of three cooperative years including the cooperative year of the election has expired on June 30, 1981 and there fore the order appointing the Administrator was legal and valid.

7. The question that emerges on rival contentions is as to from what date term of the elected members of the Committee, of Management shall commence. The period of three years as amplified by the Explanation to Rule 445(1) is to be reckoned not from the date of the election but the term shall be three cooperative years including the cooperative year of the election. The cooperative years, as pointed out earlier commences on July 1 and ends on June 30 of the next succeeding year. Therefore, if the term commences from the date of poll which happened to be September 11, 1978, the whole of cooperative year commencing from July 1, 1978 would have to be taken into reckoning for computing the term of three years and, therefore, three years would expire on June 30, 1981. The question however, is whether mere holding of the poll constitutes election of the members of Committee of Management or the result being declared after the counting has been completed and notified in the manner prescribed by sub-rule (6) and (7) of Rule 444 would provide the starting point for a terminus quo for the term of office to commence. If the term was to commence on the declaration of the result of election, in this case admittedly the result was declared on January 28, 1980. That date would fall within the cooperative year from July 1, 1979 to June 30, 1980, and the term of three cooperative years would expire on June 30, 1982.

8. At one stage, Mr. Dikshit, learned counsel for the respondents stated that there is no stage like declaration of result when the election of the member of the Committee of Management of a cooperative society is held. sub-rule (4) of Rule 444 clearly indicates to the contrary and it casts an obligation on the Election Officer to announce the result of election as soon as the counting is complete and he is also under a duty to indicate the number of votes secured by each candidate. His duty does not end there. He has to display a list of elected candidates on the notice board of the Society and laos at such public places as he may deem fit. He is also under an obligation to send a copy of the list prepared under sub-rule (6) to the District Assistant Registrar concerned. It is therefore, not possible to accept the submission that there is nothing like a stage of announcement of the result of election when election is held for electing members of he Committee of Management of a cooperative society. In fact, the various stages of election are clearly demarcated in the Rule. If the poll has become necessary and is held the unavoidable and inescapable stage of counting of votes and the next stage of announcement of result and subsequently publicising the result are part and parcel and necessary adjuncts of conducting poll. If the Rules provide for all the there stages it is difficult to accept the submission that by merely holding of the poll, the process of election can be said to have been completed and the term of members who had contested would commence from the time of holding the election. That is what the High Court holds. Says the High Court.

that the elections since were held on September 11, 1978, mere act of not declaring the result on account of any order issued by the Court or a stay order granted by it which was subsequently vacated could not be taken as if the term of the committee of the management has not commenced.

The High Court, at another stage, observed that the postponement of declaration of the result did not justify the holding of the view that elections had not been held in September 1978. Taken to the logical end, the judgment of the High Court would imply that elected and non-elected members both who participated in the poll would have their term as members commence since the poll is held. Could this be the intendment of Rule 445. (1) ? This approach betrays lack of knowledge of the democratic process of election. When the number of the members to be elected to the Committee of Management is fixed and candidates in excess of the fixed number are desirous of seeking office, the democratic process postulates holding of elections. Mere holding of poll which means recording of votes without anything more would be inconsequential. It is the counting of votes and the consequent declaration of result showing who amongst the of votes which would determine who has become eligible for office by the democratic process. Therefore, recording of votes is a preliminary stage, the counting of votes and declaration of result are integral and inseparable election process can be said to be complete unless the votes are recorded, they are counted and those who have secured highest number of votes are declared elected and the result is publicised, as required by the relevant provision. Rule 445 (1) provides that the term of office of the elected members of a Committee of Management of a cooperative society shall be three cooperative years including the cooperative year of their election. This provision indicates the terminus quo of commencement of the term, viz., that the term of office of the elected members would be three cooperative years including he year of their election. Election means process of being elected and the term of office is of the elected member, not of contesting member. When candidates offer themselves for election, they are called candidates and unless elected the term of such candidates would not commence. Their term would commence when elected. The expression year of their election even on literal and grammatical construction would mean the year in which the member concerned whose term is in dispute, is declared elected meaning thereby he become eligible for office and entitled to enter office as a member. Apart from literal construction, the completed process of election comprehends nomination, recording of votes, counting of votes and declaration of result and publicising and notifying the result. There ends the process of election. Recording of votes is a mere stage in the process of election. Even when votes are recorded, the candidates contesting the poll do not esquire the status of members of Committee of Management. That status is acquired on being declared elected. And unless that status is acquired the term of office as member cannot begin to run therefore the expression 'cooperative year of their election year' upon true construction can only mean the year in which the member is declared elected and not the year in which he contested the poll.

9. Turning to the facts of this case, undoubtedly the poll was held on September 11, 1978 but in view of the injunction granted by the learned Munsif the respondents were restrained from declaring the result.

In the counter-affidavit filed on behalf of the respondents in the High Court, the fact that the result was declared on January 28, 1980, is admitted. The relevant portion reads as under :

4. That the election of the committee of management of the Federation was held on September 11, 1978 and not on January 28, 1980 as alleged in the writ petition. In fact, the election was actually held on September 11, 1978, but the declaration of the result of election stayed in pursuance of the order of learned Munsif, Basti, in Suit

No. 291 of 1978 (Kashi Nath Tripathi v. D. M., Basti). Consequent upon the order of the learned Munsif, the election officer also passed similar order on September 11, 1978 on which date the election was held. The result was subsequently declared on January 28, 1980.

It is thus an admitted position that even though the poll was held on September 11, 1978, on account of the injunction granted by the court, the result was declared on January 28, 1980. On the very next day, i.e. January 29, 1980, 1st appellant was elected as Chairman of the Federation. Once it is admitted that the result was declared on January 28, 1980, the term of the members of the Committee of Management would commence from the cooperative year July 1, 1979, ending with June 30, 1980, and including this year the term would be of three years. Therefore, obviously the term would expire on June 30, 1982.

10 Mr. Dikshit, however, urged that where for any reason, whatsoever, election of he elected members of the Committee of Management has not taken place or could not take place before the expiry of the term of elected members, the Committee of Management shall, notwithstanding anything to the contrary in the Act or the Rules or the bye-laws of the Society, cease to exist on the expiry of the said term. In support of this submission he relied upon sub-section (4) (a) and (b) of Section 29. They may be extracted :

#29. Committee of Management - * * *##

(4) (a) Where, for any reason whatsoever, the election of the elected members of the Committee of Management has not taken place or could not take place before expiry of the term of elected members, the Committee of Management shall, notwithstanding anything to the contrary in this Act or the rules, or the bye-laws of the Society, cease to exist on the expiry of such term.

(b) On or as soon as may be after the expiry of such term, the Registrar shall appoint an Administrator for the management of the affairs of the society until the reconstitution of the Committee of Management in accordance with the provisions of this Act, the rules and the bye-laws of the society, and the Registrar shall have power to change the Administrator from time to time :

Provided that so long as no Administrator is appointed under this sub-section, the Secretary or the Managing Director, as the case may be, of the society shall be in charge only of the current duties of the Committee of Management.

Explanation - Where results of the election of members of the Committee of Management have not been or could not be declared, for any reason whatsoever, before the expiry of the term of the elected member of the outgoing Committee, it shall be deemed that the election of the elected members of the Committee has not taken place within the meaning of this sub-section.

Sub-section (4) (a) would not be attracted at all in the facts of this case because when the term of the members of the former committee of Management expired, poll was held on September 11, 1978. Once poll was held as a part of the programme of the election it must progress to the statutory end of declaration of result. Unless the term begins to run it cannot come to an end. Sub-section (4) (a) caters to a situation where the term of the members of a Committee of Management has begun and the election could not be held before the expiry of the term then, notwithstanding that no election

has been held the term of the members of the former Committee would come to an end and the Committee of Management would cease to exist on expiry of the said term. Sub-section (4) (b) would only be attracted if the term expires as contemplated by sub-section (4) (a). If the term expires and the old Managing Committee whose term has expired ceases to exist and the election has not been held or could not be held to elect a new Committee of Management then in the interregnum the Registrar has the power to appoint an Administrator for the management of the affairs of the Society. In the fact situation as we have in the present case, sub-sections (4) (b) are not attracted and, therefore, the provisions therein contained would not assist the respondent in any manner.

11. As the term of the Committee of management would commence from the cooperative year from July 1979 to June 1980, the same would expire on June 30, 1982. On this reckoning the Registrar could not have issued teleprinter message declaring that the term has come to an end on June 30, 1981. If the term had not expired, the Administrator could not be appointed as contemplated by sub-section (4) (b) of Section 29. Therefore, the order of the Deputy Registrar of the Cooperative Societies, Gorakhpur Division dated July 1, 1981, appointing Administrator is without jurisdiction and is clearly illegal and invalid and must be quashed and set aside.

12. Mr. Dikshit lastly urged that even on the view this Court would take, the term of the Committee of Management would expire on June 30, 1982, and therefore hardly a period of four months remains and the Court should not, therefore, disturb the Administrator. This submission does not commend to us because the Government by executive fiat cannot reduce the term of office statutorily fixed. Further, the elections to panchayats, cooperative societies and smaller local bodies provide an apotheosis or a training ground for success of our larger expedient of parliamentary democracy. Election process is sacrosanct. Members elected must be permitted to discharge their functions as chosen representatives of the electorate for the statutory terms. Such a drastic power of removing elected representatives before the expiry of term and substituting non-elected persons must receive strict and narrow interpretation at the hands of the courts. If allowed to foster it would be the negation of the democratic process and would engulf the whole fabric of democratic institutions which we are trying to build up. Therefore, even though the term would expire roughly after four months, we would be perfectly justified in removing the Administrator and reinstating the elected representatives.

13. Accordingly, this appeal is allowed and the judgment of the High Court is set aside. A writ in the nature of mandamus is issued quashing the impugned order dated July 1, 1981, of the Deputy Registrar, Cooperative Societies, Gorakhpur Division, Gorakhpur. It is declared that the term of the Committee of Management of District Cooperative Federation Limited Basti, and the 1st appellant-Chairman has not expired and the elected members continue to occupy the office. The Administrator is hereby directed to hand over the charge forthwith to the Chairman of the Committee of Management. There will be no order as to costs.

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