

Suresh Kumar Tyagi Vs. Krishna Kumar and Others

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Court : Allahabad

Decided On : Apr-19-1994

Reported in : AIR1995All57

Judge : B.L. Yadav and ;R.R.K. Trivedi, JJ.

Acts : [Constitution of India](#) - Article 226; Uttar Pradesh Co-operative Societies Rules, 1968 - Rules 42, 411, 421, 431, 439, 440, 441, 442, 443, 444, 444(8), 444A and 444-C; Uttar Pradesh Co-operative Societies Act, 1965 - Sections 2(A-1); Tamil Nadu Panchayats Act, 1958

Appeal No. : Civil Misc. Writ Petn. No. 13024 of 1994

Appellant : Suresh Kumar Tyagi

Respondent : Krishna Kumar and Others

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : V.K. Goel, Adv.

Judgement :

ORDER

1. Whether this Court in exercise of its jurisdiction under Article 226 of the [Constitution of India](#) must keep its hands off when there is equally efficacious remedy in a dispute pertaining to election, more so when there is statutorily

prescribed remedy which almost reads in mandatory terms, is the short but significant question for determination in the present petition filed by the petitions Suresh Chand Tyagi, seeking relief for issuance of a writ of Certiorari quashing the impugned order dated 14-2-1994 (Annexure-7 to the petition), passed by the Sub-Divisional Officer, Mawana, District Meerut holding that the nomination papers of respondent Nos. 1 to 7 could not be rejected, rather they were held to be correct, and thereafter the election was held for electing members of the Managing Committee including the Chairman and Vice-Chairman of Kisan Sewa Sahkari Samiti, Agwanpur, Meerut, a primary Agricultural Credit Society, (for short the Society), as defined under Section 2(A-1) of the U.P. Co-operative Societies Act, 1965, (hereinafter referred to as the Act), which was registered under the Act.

2. As a result of the impugned order dated 14-2-1994 rendered by the Sub-Divisional Officer, Mawana, Meerut, the rejection of nomination papers of the candidates including the contesting respondents 1 to 7 was held to be illegal and their nomination papers were held to be valid and these respondents were allowed to participate in the election. In place of petitioner, Krishna Kumar, Respondent No. 1 was elected and one Haridatt was also declared elected. Respondent No. 1 Krishna Kumar was declared elected as Vice-Chairman of the Managing Committee of the Society. As a result of the election one Managing Committee of the Society has been constituted with Krishna Kumar, respondent No. 1 as Vice-Chairman and one Haridutt as one of the members of the Managing Committee. Further, the prayer in the writ petition is that the members of the Managing Committee of the Society may be restrained by an ad-interim mandamus from functioning as such.

3. The portrayal of essential facts are these. To eject office-bearers and members of the Committee of Management of Kisan Sewa Sahkari Samiti, Agwanpur, Meerut, a primary agricultural credit society, an election was held in view of the provisions of Rule 411 of the U.P. Cooperative Societies Rules, 1968 (for short the Rules). For that purpose nomination papers in Form-K were obtained in accordance with the provisions of Rule 42 of the Rules and they were presented after completing all the formalities by the petitioner and also by the contesting respondents 1 to 7. It appears that the nomination papers of respondent Nos. 1 to

7 were rejected on technical grounds including that Iqbal, not a party to the writ petition, has got his name entered as Iqbal Khan, whereas he filled up his nomination form with the name Iqbal only. The nomination paper of Ram Bharose, respondent No. 6 was rejected on the ground that in the name of his father the word 'Singh' was added. Similarly with regard to Tika Ram, not a party to the writ petition, his nomination was rejected as his father's name was not entered. Similarly some other nomination papers were also rejected on other technical grounds. The contesting respondents and some other members made an application on 8-2-1994. The District Magistrate, Meerut on 10-2-1994, appointed the Sub-Divisional Officer, Mawana, as Arbitrator who has passed the impugned order correcting the clerical or other mistakes in the nomination papers and the nomination papers of the contesting respondents and some other candidates were held to be valid. Thereafter election was held and respondent Nos. 1 to 7 were declared elected. In view of the facts stated in the supplementary affidavit, the petitioner appears to have participated in the election and in his place respondent No. 1 was elected, who later on was elected as Vice-Chairman of the Committee of Management of the Society. Against this impugned order holding the nomination paper of the contesting respondents 1 to 7 to be valid, the present petition has been filed with the aforesaid relief.

4. Learned counsel for the petitioner contended that reference can be made to the Registrar only after the entire election process is complete. The reference was not correctly made. The impugned order could be challenged only by the present petition and not by the election petition and it cannot be said to be barred by alternative remedy. Reliance was placed on Ramesh Kumar Singh v. State of U.P., (1992) 1 UPLBEC 292. Learned Standing Counsel, however, has refuted the submissions of the learned counsel for the petitioner.

5. As the facts are almost, admitted, learned counsel for the parties suggested that the writ petition itself may be decided on merits without waiting for counter and rejoinder affidavits. We accordingly proceed to decide the Writ petition on merits.

6. Right to contest in election including the election to the office of Member of Vice-Chairman of an agricultural credit society is not a fundamental right nor a

right at common law, rather it is a statutory right. The Act and the Rules contain complete code for the purpose of election, inasmuch as Rules 441 and 442 of the Rules contain procedure as to how the election will be held, how the nomination papers have to be filed. Rule 442 (8) provides how the scrutiny of nomination papers have to be done. Rule 443 provides how the election is to be held after the nomination papers have been finally accepted. Rule 444 provides how the counting of votes have to be completed. Rule 444(8) provides how the ballot papers to be rejected or accepted. Rule 444A provides that the number of members of the Committee of Management of the Society shall be determined according to rules and bye-laws of the Society. Rule 444C provides in very emphatic terms that the election of a cooperative society shall not be called in question either by arbitration or otherwise except on the grounds that the election has not been a fair election by reasons that corrupt practice, bribery or under influence has extensively prevailed at election, or the result of the election has been materially affected by improper acceptance or rejection of any nomination, or by improper reception, refusal or rejection of votes, or by gross failure to comply with the provisions of the Act, Rules and the bye-laws of the Society.

7. Recently in *Ram Chandra Ganpat Shinde v. State of Maharashtra*, (1993) 4 JT (SC) 573 : (AIR 1994 SC 1673), it was held by the apex Court as follows:

'The High Court must bear in mind the policy of the Legislature to have the dispute decided speedily through the machinery of election petition and decline to exercise its writ jurisdiction in election dispute. Once the election process was set in motion according to law any illegality or irregularity committed while the election process is in progress or the conduct of the election is vitiated by any illegality or irregularity in its process, the proper remedy is to lay the action before the Tribunal constituted under that Act by means of an election petition and have the dispute adjudicated without the election process being interdicted or retarded in its mid way.'

8. In *S. T. Muthusami v. K. Natarajan*, AIR 1988 SC 616, it was observed as follows:

'It is not appropriate for the High Court to interfere with an election process at an intermediate stage after the commencement of the election process and before the declaration of the result of the election-held for the purpose of filling a vacancy in the office of the Chairman of a Panchayat Union under the provisions of the Tamil Nadu Panchayats Act, 1958 on the ground that there was an error in the matter of allotment of symbols to the candidates contesting at such election. The parties who are aggrieved by the result of the election can question the validity of election by an election petition which is an effective alternative remedy.'

9. In *N. P. Ponnuswami v. Returning Officer Namakkal Constituency*, 1952 SC 218 : (AIR 1952 SC 64), it was held at page 234 (of SCR) (at p. 70 of AIR) as followed :

'Having regard to the important functions which the Legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of election should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted, and that if any irregularities are committed while it is in progress and they belong to the category or class which, under the laws by which elections are governed, would have the effect of vitiating the election, in that event those irregularities, must be brought before the special tribunal by means of an election petition and shall not be made subject of dispute before any court while the election is in progress.'

10. In *A. K. M. Hassan Uzzaman v. Union of India*, (1982) 2 SCC 218, it was held by a Constitution Bench of the apex Court that the High Court should not entertain writ in which no substantial question of constitutionality is involved. In the matters of election and where the election is imminent the High Court must be very cautious and slow to interfere with or to pass orders of direction postponing the election.

11. In *Gujarat University v. N. U. Raj-guru*, 1987 (Supp) SCC 512: (AIR 1988 SC 66), it was held by the apex court that disputes relating to election of teachers to Court of the University to be referred to the State Government for decision under

Section 58 and not open to challenge before the High Court under Article 226 of the Constitution as there was an alternative remedy of filing an election petition or referring the matter to the State Government. The Legislature has constituted a forum for determination of disputes in respect of matters specified therein and the aggrieved person should pursue that remedy before the forum provided by the Statute.

12. In *Dhartipakar Madanlal Agarwal v. Sri Rajiv Gandhi*, AIR 1987 SC 1577, it was held that the appropriate remedy in the matter of election disputes is that such disputes should be decided only by election petition as the right to question the election is statutory right.

13. The facts contained in the supplementary affidavit are that the election process is over and in view of the impugned order the nomination papers of respondent Nos. 1 to 7 were found to be correct and thereafter election was held and the petitioner also participated and in his place respondent No. 1 was elected, who later on was elected as Vice-Chairman of the Committee of Management. Rule 444-C of the Rules provides remedy of questioning the election only by preferring an election petition before the appropriate authority. The election should be questioned either on the ground that it was not free and fair election as corrupt practices prevailed and on account of that fact the result of the election was materially affected by improper acceptance and rejection of the votes or by the failure to comply within the provisions of Rules and bye-laws of the society. The petitioner has ample remedy to file election petition before the Tribunal specifically constituted for the purpose under the Rules.

14. *Ramesh Kumar Singh v. State of U.P.*, (1992) 1 UPLBEC 292, relied upon by the learned counsel for the petitioner is based on different facts and is distinguishable, inasmuch as a Full Bench of this Court has considered the provisions of Rules 440, 443, 439, 431 and 421 of the U.P. Co-operative Societies Rules, 1968 and had held that where the number of valid nominations for any office does not exceed the number of vacancies to be filled, the candidates for whom valid nominations have been received shall be deemed to have been duly elected to fill such vacancies and the Presiding Officer may make announcement

accordingly at the commencement of the election meeting.

15. In the present case as the nomination papers of respondent Nos. 1 to 7 have been held to be valid by the impugned order, and thereafter election was held and respondent Nos. 1 to 7 were elected, and respondent No. 1 was elected in place of petitioner, consequently after the result has been declared and the committee of Management of the Society has been constituted, it is open to the petitioner to challenge any irregularity in the election in accordance with the provisions of Rule 444-C of the Rules or under some other relevant provisions.

Resultantly the writ petition under Article 226 of the [Constitution of India](#) is not the appropriate remedy in the matters of election disputes when the result of the election has already been declared. The efficacious and effective remedy available to the petitioner is to file an election petition under Rule 444C of the Rules or under some other appropriate provision. No ground for interference has been made out under Art. 226 of the [Constitution of India](#).

16. Consequently, the petition fails and it is dismissed summarily.

17. Petition dismissed.