

Arun Kumar Singh Vs. State of U.P. and Others

Arun Kumar Singh Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/483422

Court : Allahabad

Decided On : Aug-06-1998

Reported in : 1998(3)AWC2378

Judge : Binod Kumar Roy and ;R.K. Mahajan, JJ.

Acts : Uttar Pradesh Co-operative Societies Act, 1965 - Sections 5, 29, 29(2), (3), (4), (5) and (7), 32(1) and 50; Uttar Pradesh Co-operative Societies (Amendment) Act, 1994; Uttar Pradesh Co-operative Societies (Amendment) Act, 1997; Uttar Pradesh Co-operative Societies (Amendment) Act, 1998; Uttar Pradesh Co-operative Societies (Amendment) Rules, 1998 - Rules 404, 406, 433, 434 and 435

Appeal No. : C.M.W.P. No. 23329 of 1998

Appellant : Arun Kumar Singh

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : D.S.P. Singh and ;S.P. Singh, Adv.

Judgement :

B.K. Roy and R.K. Mahajan, JJ.

1. The prayer of the petitioner is to declare the Uttar Pradesh Co-operative Societies (Second Amendment) Act, 1998 (U. P. Act 19 of 1998). amending Section 29 (2) of the Uttar Pradesh Cooperative Societies Act. 1965 (U. P. Act No. 11 of 1966), as amended by the Uttar Pradesh Co-operative Societies (Amendment) Act. 1997 (U. P. Act No. 1 of 1997) ultra vires and strike it down and to quash the order dated 9.7.1998 passed by the Deputy Registrar, U. P. Co-operative Societies, Azamgarh Division. Azamgarh. (Opposite Party No. 2) (as contained in Annexure-3 to this writ petition).

2. We had upheld the vires of U. P. Act No. 19 of 1998 amending subsection (2) of Section 29 of the U. P. Act No. 1 of 1997 in Civil Misc. Writ Petition No. 22045 of 1998 Dal Singh Yadav v. State of U. P. and another, decided on 16.7.1998.

3. The Submissions :

The main thrust of the submission of Dr. D. S. P. Singh. learned counsel for the petitioner is 'that by Act No. 19 of 1998 the State Legislature has merely amended sub-section (2) of Section 29 of the U. P. Co-operative Societies Act. 1965 (hereinafter referred to as the Act) and not the other provisions of the said section, which have to be read together, and if it read together, the Act becomes unworkable'. He further submitted that 'the State Government has no power to appoint an Administrator to look after the affairs of the Committee of Management'. In regard to our Judgment in Dot Singh Vadau (supra), he contended that 'the petitioner of that case had failed to demonstrate the vires of the Act whereas 'under sub-section (4) Section 29 of the Act. It is the duty of the Secretary of the Co-operative Society to send requisition to the Registrar for the purposes of holding election 4 months earlier than the expiry of the term and under Section 29 (3), it is the duty of the Registrar to hold election 15 days earlier than the expiry of the term of the Co-operative Societies so that the new Committee of Management could replace the outgoing Committee of Management' which was not pressed before us for our consideration. Reducing the period of 5 years to 3 years, the Legislative Intention enshrined in sub-sections (3) and (4) of Section 29 of the Act stands breached/violated by the Impugned Amendment Act. Further Article 14 negatives even arbitrariness of the Legislative Acts.

3.1 in support of his contention aforementioned. Mr. Singh placed strong reliance on *A. P. Krishnaswami v. State of Madras*, AIR 1964 SC 151, at page 1519, wherein it was held by the Apex Court as follows :

'Sections 5 and 50 are the pivotal provisions of the Act. and if they fall, then we are of opinion that the whole Act must be struck down as unconstitutional. The working of the entire Act depends on Section 5 which provides for celling and Section 50 which provides for compensation. If these sections are unconstitutional, as we hold they are, the whole Act must fall.'

4. Mr. H. R. Mtsra, learned standing counsel appearing on behalf of the State, on the other hand, contended as follows :

(i) The petitioner is a notified co-operative society. By virtue of the proviso attached to sub-section (3) of Section 29 of the Act, this provision is not applicable to the petitioner. Accordingly, the entire arguments of Mr. Singh falls like a house of cards.

(ii) Apart from the reasons which were advanced by the learned Advocate General in *Dal Singh Yadav* (supra), which we had accepted, are reiterated, Section 29 of the Act was amended with a view to enshrine smooth and efficient working of the Committee of Management of the Co-operative Societies as stated in the Object and Reasons of the Bill and the Legislature decided to reduce the terms from 5 years to 3 years in respect of the Committee of Management which are already constituted or which may be constituted hereinafter which cannot be termed arbitrary. The question of arbitrariness has been merely stated to be rejected as nothing has been demonstrated in this regard. Earlier the term was only of 3 years and not 5 years, which was increased to 5 years.

(iii) There is presumption of constitutionality of the Statute, as held by the Apex Court in (a) *Chiranjit Lai v. Union of India*. 1950 SCR 869 ; (b) *M/s. Khoday Distilleries Ltd. etc. v. State of Karnataka and others*. AIR 1996 SC 911 ; (c) *Dr. K. R. Lakshmanan v. State of Tamil Nadu and another*, AIR 1996 SC 1153 ; (d) *P. B. K. Kalltani Anuna v. K. Devi and others*. AIR 1996 SC 1963 ; and (e) *J. K. Industries Ltd. v. Chief Inspector. Factories and others*. JT 1996 (9) SC 27, which

has not been rebutted successfully.

5. Our Findings :

Section 29 of the Act, as originally enacted, was as follows :

'29. (1) Management of every co-operative society shall vest in a Committee of Management constituted in accordance with this Act. the rules and the bye-laws which shall exercise such powers and perform such duties as may be conferred or imposed by this Act, the rules and the bye-laws.

(2) 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 :

Provided that they shall after the expiry of their term continue as members of the Committee of Management till fresh elections are held by the-society under sub-section (3) or sub-section (4), or nominations are made by the Registrar under sub-section (5). (3) After the expiry of the term mentioned in sub-section (2) the co-operative society shall in its ensuing annual general meeting elect member for the Committee of Management as provided in clause (b) of sub-section (1) of Section 32, and thereupon the members so elected shall replace the members whose term expired under sub-section (2).

(4) if the society fails to elect members for the Committee of Management as required under sub-section (3), 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.

(5) 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 bye-laws are qualified for being elected as members of the Committee of Management and the members so nominated shall forthwith replace the elected members of the Committee of Management whose term had expire under sub-section (2).

(6) Within six months from the date of nomination made by the Registrar under sub-section (5), the Registrar shall call a general meeting of the general body of

the society for electing the members for the Committee of Management. When the general meeting has elected members for the Committee of Management, the person nominated by the Registrar under sub-section (5) shall forthwith vacate their office and the members so elected shall continue for the remainder of the term.

By U. P, Act No. 40 of 1976. proviso to sub-section (2) of Section 29 was omitted with effect from 25.6.76.

Sub-section (3) of Section 29 of the Act was substituted by U. P. Act No. 12 of 1976, with effect from 10.2.75, which reads thus :

'(3) it shall be the duty of the Committee of Management to take steps before the expiry of Its term for election of members of the Committee of Management as provided in Section 32 at an annual general meeting, and the members so elected shall replace the members whose term expires under sub-section (2).'

By this very Act sub-section (7) to Section 29 of the Act was Inserted, with effect from 16.2.1976. By U. P. Act No. 40 of 1976 sub-section (7) to section of the Act was omitted with effect from 16.2.1976.

By U. P. Act No. 17 of 1977 proviso to sub-section (3) of Section 29 of the Act was added, which reads thus :

'Provided that the State Government may by notification direct that in respect of such class of co-operative societies as may be specified, the superintendence, direction, control and conduct of elections of the members and Chairman and Vtce-Chairman of the Committees of Management shall vest in the Registrar and such selection may be held otherwise than in any meeting, notwithstanding anything contained in clause (b) of Section 32.'

Sub-section (4) of Section 29 of the Act was substituted by U. P. Act No. 5 of 1983. with effect from 23.12.1981. which reads thus :

'(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

the 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 or a Committee of Administrators (hereinafter, in this section, referred to as the 'Committee') for the management of the affairs of the society until the reconstitution of the Committee of Management in accordance with the provisions of the Act, the rules and the bye-laws of the society, and the Registrar shall have the power to change the Administrator or, as the case may be, any member of the Committee or to appoint a Committee in place of an Administrator or vice versa from time to time :

Provided that any Administrator appointed under sub-section (4), as is stood prior to the commencement of the Uttar Pradesh Cooperative Societies (Amendment) Act, 1983, shall be deemed to have been duly appointed and no action taken or power exercised or function performed by him shall be deemed to be Invalid or shall be called in question in any Court on the ground of any defect in his appointment as such or on the ground that the Committee of Management was not reconstituted within time or the term of his office was not duly extended. (c) Where a Committee is appointed under clause (b) it shall consist of a Chairman and such other members not exceeding eight as may be nominated by the Registrar, out of which at least two shall be Government servants.

(d) The procedure for summoning and holding of meeting of the Committee, the time and place of holding such meetings, the conduct of business at such meetings and the number of members necessary to form quorum thereof shall be such as may be prescribed.

(e) So long as no Administrator, or as the case may be, the Committee is appointed under clause (b), 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 members of the outgoing Committee of Management, it shall be deemed that the election of the elected members of the Committee of Management has not taken place within the meaning of this sub-section.'

By U. P. Act No. 17 of 1994, which came into effect from 15.7.94. subsections (2), (3) and (4) of Section 29 of the Act were substituted as follows :

'(2) The term of every Committee of Management, including a Committee of Management constituted before the commencement of the U. P. Co-operative Societies (Second Amendment) Act. 1994 whose term has not expired on the date of such commencement, shall be five years, and the term of the elected members of the Committee of Management shall be coterminus with the term of such Committee.

Explanation.--For the purposes of this sub-section, the expression 'term' in respect of a Committee of Management constituted before the commencement of the Uttar Pradesh Co-operative Societies (Second Amendment) Act, 1994. means a period of three years.

(3) Election to reconstitute the Committee of Management of a cooperative society shall be completed in the prescribed manner under the superintendence, control and direction of the Registrar at least fifteen days before the expiry of the term of the Committee of Management and the members so elected shall replace the Committee of Management whose term expires under sub-section (2) :

Provided that, where for any extra-ordinary circumstances, the election of the members of the Committee of Management has not been completed, or could not be completed, the Registrar may, for reasons to be recorded, extend the term of the outgoing Committee of Management so however, that any single extension does not exceed three months and the total extension does not exceed six months and it shall be the duty of the Registrar to get the Committee of Management reconstituted before the expiry of the term so extended and such Committee of

Management shall replace the outgoing Committee of Management even though its extended term may not have expired :

Provided further that notwithstanding anything in this Act, the Administrator or the Committee of Administrators appointed under this section, as it stood before the commencement of the Uttar Pradesh Cooperative Societies (Second Amendment) Act, 1994 shall continue to exercise the powers and perform the duties of the Committee of Management till the Committee of Management is reconstituted under this Act or till December 31. 1995, whichever is earlier.

(4) it shall be the duty of the Secretary or, as the case may be, the Managing Director of the Co-operative Society to send to the Registrar, four months before the expiry of the term of Committee of Management, a requisition for conducting the election and to furnish all such information as may be required by him within such period as may be fixed by him.'

By the said Act sub-sections (5) and (6) of Section 29 were omitted.

By U. P. Act No. 1 of 1997, which came into force from April 16. 1997. In sub-section (3) the following proviso was substituted, for the existing provisos :

'Provided that notwithstanding anything in this Act, the Administrator or the Committee of Administrators appointed under this section, as it stood before the commencement of the Uttar Pradesh Co-operative Societies (Second Amendment) Act, 1994 shall continue to exercise the powers and perform the duties of the Committee of Management till the Committee of Management is reconstituted under this Act or till December 31, 1997 whichever is earlier.'

By the said Act after sub-section (4) of Section 29 the following subsections (5), (6) and (7) were Inserted :

'(5) (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 the 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 or a Committee of Administrators (hereinafter in this section, referred to as the Committee) for the management of the affairs of the society until the reconstitution of the Committee of Management in accordance with the provisions of the Act, the rules and the bye-laws of the society, and the Registrar shall have the power to change the Administrator or, as the case may be, any member of the Committee or to appoint a Committee in place of an Administrator or Dice versa from time to time.

(c) Where a committee is appointed under clause (b) it shall consist of a Chairman and such other members not exceeding eight as may be nominated by the Registrar, out of which atleast two shall be Government Servants.

(d) The procedure for summoning and holding of meetings of the Committee, the time and place of holding such meetings, the conduct of business at such meetings and the number of members necessary to form quorum thereof shall be such as may be prescribed.

(e) So long as no administrator, or, as the case may be. the Committee is appointed clause (b), the Secretary or the Managing Director, as the case may be. of the society shall be incharge 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 members of the outgoing Committee of Management, it shall be deemed that the election of the elected members of the Committee of Management has not taken place within the meaning of this sub-section.

(6) The Administrator or the Committee appointed under sub-section (5) shall, subject to any directions which the Registrar may from time to time give, have the power to perform all or any of the functions of the Committee of Management or of any officer of the society and shall be deemed for all purposes under this Act. the rules and the bye-laws of the society to be the Committee of Management and the

Chairman of such Committee shall exercise the powers and perform the functions of the Chairman of the Committee of Management.

(7) The Administrator or the Committee, as the case may be. appointed under sub-section (5), shall as soon as may be, but not later than the expiry of one year from the date of appointment, arrange for the reconstitution of the Committee of Management in accordance with the provisions of this Act, the rules and the bye-laws of the society to take over the management of the society from the Administrator or the Committee, as the case may be :

Provided that where an Administrator is replaced by a Committee or a Committee by an Administrator as provided in clause (b) of sub-section (5). the period of one year shall count from the date the Administrator or the Committee, as the case may be, was originally appointed.

Explanation.--Notwithstanding that the process of election may have commenced before the appointment of Administrator or the Committee under sub-section (5) a fresh process of election shall commence after such appointment.'

By U. P. Act No. 19 of 1998. sub-section [2) of Section 29 was substituted as follows :

'(2) (a) The term of every Committee of Management shall be three years and the term of the elected members of the Committee of Management shall be co-terminus with the term of such Committee.

(b) The provisions of clause (a) shall apply also to a Committee of Management in existence on the date of the commencement of the Uttar Pradesh Co-operative Societies (Second Amendment] Act, 1998 and to the elected members of such Committee.

(c) The term of a Committee of Management, which has completed, on or before the date of the commencement of the Act referred to in clause (b), the period of three years from the date of Its constitution, and the term of Its elected members, shall expire on such commencement.'

By U. P. Co-operative Societies (Thirty-Fourth Amendment) Rules, 1998, the following amendments were made in the existing Rules :

'445. Except as otherwise provided in Rules 406. 433. 434 and 435 the term of the Committee of Management of a Co-operative Society shall be three years. The term of the office of an elected member of the Committee of Management shall be co-terminus with the term of the Committee of Management.

449. (1) No person shall be eligible to be elected or co-opted as a member of the Committee of Management of a Co-operative Society after he has held such office in the society during two consecutive terms, whether full or part :

Provided terms, the period of office held by a person as a member of the Committee of Management constituted under Rule 404 or under Rule 434 or under Rule 435 or under clause (a) of sub-section (3) of Section 35 shall not count for reckoning the period under this rule.

Explanation.--Where any person holding office as a member of Committee of Management of a Co-operative Society at the time of commencement of these rules is again elected or Co-opted to that office after such commencement, he shall for the purpose of this rule, be deemed to have held office for one term before such election or Co-option.

(2) A member who has remained out of office (i.e., he does not remain a member of the Committee of Management of a Co-operative Society) continuously for atleast three years, shall again become eligible for election or Co-option as a member of the Committee of Management of that Society.'

The Statement and Objects and Reasons while introducing the Second Amendment Bill, 1998 was as follows :

'Section 29 of the Uttar Pradesh Co-operative Societies Act. 1965 provides that the term of every Committee of Management shall be five years and the term of elected members of the Committee of Management shall be co-terminus with the term of the Committee of Management. With a view to ensuring smooth and efficient working of the Committee of Management of the Co-operative Societies, it

has been decided to amend the said Act to reduce the term from five years to three years in respect of the Committees of Management which are already constituted which may be constituted hereafter.

The Uttar Pradesh Co-operative Societies (Second Amendment) Bill, 1998 is introduced accordingly.'

6. We accept the submissions made by Sri H. R, Misra as we find substance in them. The Legislature has merely reduced the terms of the Committee of Management from 5 years to 3 years.

7. By and large, the questions raised by Mr. Singh have already been answered by us in the negative after recording detailed reasons in our Judgment in Dal Singh Yadav's case (supra), which need not be repeated. The competency of the State Legislature to amend the Act has been upheld by us and has not been doubted by Mr. Singh.

8. On a bare perusal of Sections 29 (3) and 29 (4). It is apparent that the submission of Sri Singh has got no substance. Sub-sections (3) and (4) of Section 29 of the Act are also separable from sub-section (2) and the decision in A. P. Krishnaswami referred to by Mr. Singh. Is of no help to him.

9. In terms of sub-section (5) of the Amendment Act. 1997, the jurisdiction is vested in the Registrar of the Co-operative Societies to appoint an Administrator or a Committee of Administrators for the management of the affairs of the Society until the reconstitution of the Committee of Management in accordance with the provisions of Act, Rules and Bye-laws of the society.

10. We are of the view that this writ petition lacks substance and is hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com