

Subhash Behar and Etc. Vs. State of Uttarakhand and ors.

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Court : Uttaranchal

Decided On : Jul-03-2008

Reported in : AIR2009Utr19

Judge : V.K. Gupta, C.J. and; J.C.S. Rawat, J.

Appellant : Subhash Behar and Etc.

Respondent : State of Uttarakhand and ors.

Disposition : Petition dismissed

Judgement :

J.C.S. Rawat, J.

1. Since there is a common question of law involved in all the petitions, therefore, all these petitions have been heard together and are being disposed of by this common judgment.

2. By means of all these petitions, the petitioners have initially challenged the validity of the Uttarakhand Co-operative Societies (Amendment) Ordinance, 2007 dated 22-10-2007 promulgated by the Governor of Uttarakhand by amending Section 29 of the Uttarakhand Co-operative Societies Act, 2003 (hereinafter referred as 'Principal Act, 2003'). Thereafter, the aforesaid Ordinance was replaced by an Amendment Act known as Uttarakhand Co-operative Societies

(Amendment) Act, 2007 (Annexure-6) of Writ Petition No. 1203 (M/B) 2007) by which the tenure of the Management Committee of the Co-operative Societies and its elected members has been reduced from 5 years to 2 years. Consequently, the respondent No. 4 appointed the Administrators in all the Cooperative Societies at all levels in the State of Uttarakhand. The petitioners have challenged validity of the Uttarakhand Co-operative Societies (Amendment) Act, 2007 (hereinafter referred as 'Amending Act, 2007'), reducing the tenure of the Management Committee and its elected members from 5 years to 2 years, on the grounds that the sole intention of Amending Act, 2007 was to dislodge the elected members of the Management Committee of Co-operative Societies to manage its affairs which is not only an infringement of the vested rights which have accrued in favour of the elected members of Committee of Management of the Cooperative Societies but it is an invasion over the fundamental rights of the petitioners guaranteed under Article 19(1)(c) of the Constitution of India; the Amending Act, 2007 has been actuated by mala fide and colourable exercise of power, the Amending Act, 2007 curtailing the term of the Committee of Management is against the fundamental principle of formation of Co-operative Society and negates the principle of Cooperative Society.

3. The respondent Uttarakhand State has filed the counter affidavit and stated that the Amending Act, 2007 did not infringe the fundamental rights of the petitioners guaranteed under Article 19(1)(c) of the Constitution of India; no citizen has a fundamental right under Article 19(1)(c) of the Constitution to become a member of Co-operative Society; the rights of the petitioners as elected Members of the Management Committee in the Co-operative Societies are governed by the provisions of the Statute and the rights to become a Member of the Management Committee of the Co-operative Societies is a statutory right; the State Legislative is competent to make an enactment with regard to the Co-operative Societies of the State; the Amending Act, 2007 can only be challenged on the ground of lack of competence of the Legislature to enact the law or it invades the fundamental rights of the petitioners guaranteed under Part-III of the Constitution; the Amending Act, 2007 was enacted with a view to enshrine smooth and efficient working of the Committee of Management of Co-operative Societies as stated in the Objects and Reasons of the Bill; and the Legislature decided to reduce the term from 5 years to

2 years in respect of the Management Committee of the Co-operative Societies which are already constituted or which may be constituted hereinafter which cannot be termed as arbitrary.

4. We have heard the learned Counsel for the parties and perused the record.

5. Sub-clause (2)(3) and (4) of Section 29 of the Uttarakhand Co-operative Societies Act, 2003 reads as follows:

29. Committee of Management.-

(1)....

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

(3) Election to reconstitute the Committee of Management of a co-operative society shall be completed in the prescribed manner under the superintendence, control and direction of the Registrar at least four months 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); if the Committee of Management fails to do so then Registrar will conduct the election before two months of expiry of the term of Management Committee.

(4) It shall be the duty of Chief Executive (Secretary/GM/Managing Director by whatsoever name he is designated 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.

6. By the impugned Amendment, the following amendments were made in Section 29 of the Uttarakhand Co-operative Societies Act, 2003:

The Uttarakhand Co-Operative Societies (Amendment) Bill, 2007 (Bill No. 3 of 2007)

Further to amend the Uttaranchal Cooperative Societies Act, 2003 be enacted in the 58th year of the Republic of India as follows.

ABill-----Short title and 1.

(1) This Act may be called theCommencement Uttarakhand Co-operative Societies(Amendment) Act, 2007(2) It shall come into force at once.-----Amendment of

Sub-section 2. In Section 29 of the Uttaranchal(2), (3) and (4) Cooperative Societies Act, 2003of Section 29 following amendments shall be made;namely:(a) In Sub-section (2), the words'Five years' shall be substituted bythe words 'two years'(b) The following proviso shall beadded after Sub-section (2), namely:Provided that the tenure of theManagement Committee and itselected members, having completedthe period of two years from thedate of its constitution on orprior to the date of the commencementof the Act shall expire on such commencement.(c) In Sub-section (3), the words'Four months' and Two months'shall be substituted by the words'two months' and 'one month'respectively.(d) In Sub-section (4), the words'four months' shall be substitutedby the words 'two months'.-----

7. There is a very limited scope before us for our scrutiny. There is a presumption of constitutionality of a statute. The matter relating to the Co-operative Societies falls in the State List Entry 32 in VIIth Schedule. By amending the Principal Act, 2003, the Legislature has reduced the tenure of the Management Committee from 5 years to 2 years and the Objects & Reasons of the Bill have been annexed as Annexure-I to the Counter Affidavit filed by the State in which it has stated that it has been experienced if the tenure of the Management Committee of the Co-operative Societies is reduced to 2 years there would be more efficiency and accountability in such Societies and it would also strengthen the democratic process of the Societies. It is also pertinent to mention here that the constitutional validity of an enactment can only be challenged as violative of legislative competence and it being violative of fundamental rights under Part-III of the Constitution of India. The law made by the legislature can only be struck down by the Court on the grounds that the legislature has no competence to enact it or it violates of any fundamental rights guaranteed in part-III of the Constitution or of

any other constitutional provision. The Hon'ble Supreme Court in Public Services Tribunal Bar Association v. State of U.P. and Anr. MANU/SC/0062/2003 : [2003]1SCR666 has held as follows:

26. The constitutional validity of an Act can be challenged only on two grounds viz., (i) lack of legislative competence; and (ii) violation of any of the fundamental rights guaranteed in Part III of the Constitution or of any other constitutional provisions. In State of A.P. v. Mc Dowell & Co. MANU/SC/0427/1996 : [1996]3SCR721 this Court has opined that except the above two grounds there is no third ground on the basis of which the law made by the competent legislature can be invalidated and that the ground of invalidation must necessarily fall within the four corners of the aforementioned two grounds.

8. Learned Senior Counsel for the petitioners has conceded before us that he has not challenged the impugned Amendment on the ground of legislative competence. Learned Senior Counsel for the petitioners contended that the Amending Act, 2007 is an invasion on the fundamental rights given and guaranteed to the petitioners under Sub-clause (1)(c) of Article 19 of the Constitution. Learned Advocate General refuted the contention. The rights of the elected members of the Management Committee of the Co-operative Societies are based on Statute and there is no fundamental right as conferred by the Constitution to become a member of the Co-operative Society. The State has power to legislate in the matters relating to the Co-operative Societies in the Entry 32 in VIII Schedule of the Constitution of India. It is open to the Legislature to legislate on all or any respective Co-operative Societies, including the management thereof as provided under the Constitution of India. No citizen has a fundamental right under Article 19(1)(c) of the Constitution to become a member of the Co-operative Society. The petitioners' rights being the members of the Management Committee of the Co-operative Societies or being the member of the Co-operative Societies are governed by the provisions of the Principal Act, 2003. Thus, their right to become members or to continue work as a member is a statutory right. It cannot be said that they have acquired any fundamental right as guaranteed under Article 19(1)(c) of the Constitution. The Hon'ble Supreme Court in the case of State of U.P. and Anr. v. C.O.D. Chheoki Employees Co-operative

Society Ltd. and Ors. MANU/SC/0332/1997 : [1997]1SCR380 has held as follows:

16. Thus, it is settled law that no citizen has a fundamental right under Article 19(1)(c) to become a member of a Co-operative Society. His right is governed by the provisions of the statute. So, the right to become or to continue being a member of the society is a statutory right. On fulfillment of the qualifications prescribed to become a member and for being a member of the society and on admission, he becomes a member. His being a member of the society is subject to the operation of the Act, rules and bye-laws applicable from time to time. A member of the society has no independent right qua the society and it is the society that is entitled to represent as the corporate aggregate. No individual member is entitled to assail the constitutionality of the provisions of the Act, rules and the bye-laws as he has his right under the Act, rules and the bye-laws and is subject to its operation. The stream cannot rise higher than the source.

9. Thus, it is apparent from perusal of the Principal Act, 2003 that the individual member does not have any fundamental right to become a member or to continue being a member of the Society. The management of the Committee is regulated by Section 29 of the Principal Act, 2003 and composition thereof is also regulated by the Act and has to be in accordance with the Rules and bye-laws. Thus, we do not find any force in the contention of the learned senior counsel for the petitioners.

10. Learned senior counsel for the petitioners further contended that the proviso added under Section 29(2) is retrospective in its nature. By virtue of the Principal Act, 2003, a vested right has accrued to continue for a period of 5 years that accrued right of the petitioners cannot be curtailed by the Amending Act, 2007. The learned Advocate General refuted the contention and contented that the provision is not retrospective, but prospective in operation. It was further contended that the sovereign power of the Legislature can be exercised retrospectively by enacting appropriate legislation. It is revealed from the record that the petitioners Committee of Management had taken charge sometime in February 2005. When we go through the entire provisions of the Amending Act it reveals that the tenure of the Management Committee has been reduced from 5

years to 2 years and it provides that the tenure of the Management Committee of the Co-operative Societies and its elected member having completed 2 years from the date of its constitution or prior from the date of commencement of the Amending Act would expire. If they have completed two years their tenure would expire prospectively. Apart from this, the right to remain in office as elected office bearers of the Management Committee of the Co-operative Societies accrued under Section 29 of the Principal Act, 2003. Thus, this right accrued under Section 29 of the Principal Act, 2003 can not be held to be an accrued and vested right. The Hon'ble Supreme Court in the case of Mylapore Club v. State of Tamil Nadu and Anr. MANU/SC/1854/2005 : AIR 2006 SC523 has held as follows:

15. It is open to the legislature to bring in a law that has retrospective operation. That position is not disputed. When it affects the vested rights or accrued rights, that question will have to be considered in that context. But the right to take advantage of a statute has been held to be not an accrued right. The matter has been discussed in detail in *M. Varadaraja Pillai v. Salem Municipal Council* (1972) 85 Mad. L.W. 760 by the Madras High Court after referring to *Abbott v. Minister for Lands* 1895 AC 425 : 64 LJPC 167 and the subsequent decisions. By Section 3, which was in pari materia with Section 9 of the Amending Act of 1960, the legislature had intended that pending proceedings should be affected. Even otherwise, once the applicability of the Act itself is withdrawn, no relief can be granted to a person who could have been or who was earlier a beneficiary under that enactment, after such withdrawal. Here, the Section provides that even if some steps have been taken pursuant to the claim by the tenant under Section 9 of the Parent Act, the proceeding cannot be continued in view of the exemption enacted in favour of the institutions. But the legislature has taken care to save the concluded transactions by providing that nothing contained in the Section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date. Reading Section 3 of the amending Act 2 of 1996, it could not be said that it is a legislative intervention with a judicial decision. The proviso has saved concluded transactions based on judicial adjudications. All that Section 3 does is to make it explicit that the amendment is intended to apply to pending proceedings. In the context of Section 6 of the General Clauses Act, unless it is shown that any right has accrued to the

claimant under Section 6 of the General Clause Act, such a provision making it clear that the Act could not be applied any more to pending proceedings is not in any way invalid or incompetent. Unless the proceedings have concluded and the rights of the landlord have passed to the tenant no right accrues to the tenant. He is only the process of acquiring a right, the process having been set in motion at his instance. When pending proceedings are affected by an amendment, it is open to the legislature to provide that the said process cannot continue. That alone has been done by Section 3 of the amending Act of 1996. As far as concluded judicial proceedings are concerned and cases where orders for possession have been executed or decrees satisfied in full before the date of the amendment,, they have been saved by the proviso thereby ensuring that there was no interference by the legislature with judicial proceedings which had reached a conclusion, even though that judicial proceeding related to a religious or charitable institution exempted by the amendment from the purview of the Parent Act. We are, therefore, not in a position to find any merit in challenge to Section 3 of the Amending Act.

11. Learned senior counsel for the petitioners further contended that by the impugned Amending Act the Legislature has curtailed the tenure of the Management Committee from 5 years to 2 years. If the elected members would have served for a period of 5 years the purpose of the present Government would not have been served. It was further contended that only with a view to serve the political ends of the present Government the impugned Amending Act, 2007 has been enacted. Apparently, there appears no nexus with the object. It is apparent that the impugned Amendment Act 2007 has been enacted arbitrarily without any rationale and with mala fide. It was further contended that the said Amending Act is colourable legislation and the said Act is ultra vires to the Constitution. The learned Advocate General refuted the contention and contended that the State Legislature has enacted the said enactment by its wisdom. It is open to the Legislature to legislate on all or any aspect of the Co-operative Societies including the Management thereof. The Amending Act 2007 was enacted with a view to enshrine smooth and efficient working of the Management Committee of the Co-operative Societies as stated in the Objects and Reasons of the Bill and the Legislature decided to reduce the term from 5 years to 2 years in respect of the Management Committee of the Co-operative Societies which are already

constituted or which may be constituted hereinafter which cannot be termed as arbitrary. Learned Counsel for the petitioners did not dispute the competence of the Legislature to enact the Amending Act because the impugned Amending Act falls within the competence of the Legislature in the State List Entry 32 in VII Schedule of the Constitution of India. Learned Counsel for the petitioners emphasize that it is a colourable legislation enacted by the legislature. The Hon'ble Supreme Court in *Naga People's Movement of Human Rights v. Union of India* 1998 (2) SCC 109 : AIR 1998 SC 431 has held as follows:

34. The use of the expression 'colourable legislation' seeks to convey that by enacting the legislation in question the legislature is seeking to do indirectly what it cannot do directly. But ultimately the issue boils down to the question whether the legislature had the competence to enact the legislation because if the impugned legislation falls within the competence of the legislature the question of doing something indirectly which cannot be done directly does not arise.

12. Thus, the Hon'ble Supreme Court has held that the validity of the enactment on the ground of being colourable legislation means the lack of competence of the Legislature. As we have pointed out that the Amending Act, 2007 was passed with its legislative competency. The enactment was passed by the Legislature where all the members elected by the people were present and the enactment was debated and thereafter it was passed. The Uttarakhand Legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. The Hon'ble Supreme Court in the case of *G.C. Kanungo v. State of Orissa* MANU/SC/0319/1995 : AIR 1995 SC1655 has held as follows:

11. The argument advanced on behalf of the petitioners that the 1991 Amendment Act was enacted by the Orissa State Legislature which was actuated by mala fides and hence the same is unconstitutional, is difficult of acceptance. That mala fides or ulterior motives attributed to a State Legislature in making a law within its competence can never make such law unconstitutional, is well settled. In *K. Nagaraj v. State of A.P.* MANU/SC/0343/1985 : (1985)ILLJ444SC , while dealing

with the mala fides attributed to a legislature in which it had competence to make the law, this Court said thus:

The legislature, as a body, cannot be accused of having passed a law for an extraneous purpose. If no reasons are so stated as appears from the provisions enacted by it. Its reasons for passing a law or those that are stated in the Objects and Reasons. Even assuming that the executive, in a given case, has an ulterior motive in moving a legislation, that motive cannot render the passing of the law mala fide. This kind of 'transferred malice' is unknown in the field of legislation.

13. Thus, it is apparent that the Legislature can only make laws within its legislative competence. Its legislative field may be circumscribed by specific legislative entries or limited by Fundamental Rights created by the Constitution. The Court can scrutinize the law to ascertain whether the Legislature by device purports to make a law which, though in form appears to be within its sphere, in effect and substance, reaches beyond it. If, in fact, it has power to make the law, its motives in making the law are irrelevant.

14. Learned senior counsel for the petitioners relied upon the decisions of the Hon'ble Supreme Court in Dinnapati Sadasiva Reddi, Vice-Chancellor, Osmania University v. Chancellor, Osmania University and Ors. AIR 1967 SC 1305 and P. Venugopal v. Union of India MANU/SC/2315/2008 : (2008)5SCC1 . In the former case, the Andhra Pradesh Legislature passed the Osmania University (Amendment) Act, 1966 (Act II of 1966) amending the Osmania University Act, 1959 and reducing the term of Vice-Chancellor from 5 years to 3 years. Again, the Second Amendment was introduced in the year 1966 to the effect that the person holding the office of the Vice Chancellor, immediately before the commencement of the Amending Act of 1966, was to hold office only until a new Vice Chancellor was appointed under Sub-section (1) of Section 12 of the Act and such appointment shall be made within 90 days after such commencement. The Hon'ble Supreme Court has held that the Second Amendment, 1966 directs its provisions, by enacting Section 13-A, against one individual, viz., the Vice Chancellor. It was further held that the Vice Chancellor, who is appointed under the Act, or the vice Chancellor who was holding that post on the date of the commencement of the

Second Amendment Act, form one single group or class. Even assuming that the classification of these two types of persons as coming under two different groups can be made, nevertheless, it is essential that such a classification must be founded on an intelligible differentia which distinguishes the appellant from the Vice Chancellor appointed under the Act. The Hon'ble Supreme Court did not find such intelligible differentia on the basis of which the classification can be justified. This decision is not applicable in the present case. The Second Amendment was only incorporated to oust the Vice Chancellor who was holding the post at that time. It was also on the record that the First Amendment Bill was criticized by him in public. In the latter case viz. Dr. P. Venugopal (supra), legislation was enacted only to oust an individual and the Hon'ble Supreme Court struck down the provision of the said enactment. We are of the opinion that the aforecited cases have no relevance to the facts of this case. In the instant case, the tenure of all the Management Committees of all Co-operative Societies has been curtailed from 5 years to 2 years.

15. Learned senior counsel for the petitioners also relied upon the decision of the Hon'ble Supreme Court in Smt. Damyanti Naranga v. Union of India MANU/SC/0726/1971 : [1971]3SCR840 in which the Government had enacted the Sahitya Sammelan Act exercising the power under Entry 63, List I of the Seventh Schedule to the Constitution. The Hon'ble Supreme Court did not find that the Samiti is of national importance. It was held that the

Parliament lacked power to enact the law incorporating the society and inducting outside members against the wishes of the founder members of the society registered under the Societies Registration Act. The said Samiti was a voluntary association and the said enactment also provided that the properties belonging to the original society stood vested in the society incorporated under Section 4 of the Act without any compensation. Therefore, the said legislation was struck down. This judgment has been considered in C.O.D. Chheoki Employees: MANU/SC/0332/1997 : [1997]1SCR380 (supra). The rulings on which the learned senior counsel for the petitioners are relying upon are not applicable in the facts and circumstances of the present case.

16. It is pertinent to mention here that the Uttarakhand Co-operative Societies Act, 2003 is in pari-materia to the U.P. Co-operative Society Act, 1965. There was a tenure of three years for the Committee of Management of the Co-operative Societies under the aforesaid U. P. Act and for the first time in the year 1994 the said period of 3 years was increased to 5 years by way of an Amending Act. Thereafter, the Government changed and the new Government again restored the three years period. The said Amending Act was challenged before the Allahabad High Court. The Allahabad High Court upheld the validity of the Amending Act and dismissed the writ petition in the case of Dal Singh Yadav v. State Government and Ors. MANU/UP/0381/1998 : 1998(2)AWC1595 and Arun Kumar Singh v. State of U.P. MANU/UP/0583/1998 : 1998(3)AWC2378 . All the present cases are squarely covered by the aforesaid two decisions of the Allahabad High Court.

17. In view of the aforesaid reasoning, we are of the opinion that the submissions made by the learned senior counsel for the petitioners have no substance. We accept the submissions made by the learned Advocate General as we find substance in them. The Legislature has merely reduced the tenures of the Committees of Management from 5 years to 2 years. The Uttarakhand Legislature was competent to enact the Amending Act, 2007 in the exercise of the legislative power vesting in it.

18. All the writ petitions lack merit and are hereby dismissed accordingly. No order as to costs.