

Ajit Kumar and ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-25-1989

Reported in : AIR1990Raj81

Judge : M.B. Sharma and; I.S. Israni, JJ.

Acts : Rajasthan Co-operative Societies Act, 1965 - Sections 21, 30, 31 and 33;
Rajasthan Co-operative Societies Rules, 1966 - Rules 26, 30, 32 and 34

Appeal No. : Civil Writ Petn. No. 1809 of 1987

Appellant : Ajit Kumar and ors.

Respondent : State of Rajasthan and ors.

Advocate for Def. : M.I. Khan, Addl. Adv. General

Advocate for Pet/Ap. : B.L. Sharma and; Ashok Mishra, Adv.

Disposition : Petition allowed

Judgement :

1. An important question involved in this writ petition is as to whether once a calendar for election in accordance with the provisions of the Rajasthan Cooperative Societies Act, 1965 (for short, the Act of 1965) and under the Rajasthan Cooperative Societies Rules, 1966 (for short, the Rules) has been fixed, all steps except the polling which had been stayed by this Court in the writ petition,

were taken, whether -on dismissal or withdrawal of the writ petition in which the stay order as aforesaid was made, the entire process of election has to restart or has to take place from the stage at which it was stayed? Mr. M.I. Khan, contended that the election process started and there is an alternative remedy efficacious under Section 75 of the Act and, therefore, this court should not interfere. No doubt this court has taken this view in few cases but as shall be presently (com, second column)

a) Publication of provisional voters list inviting objectionsthereto . 12-5-1987b) Hearing of objections 19-5-1987c) Publication of final voters list 20-5-1987d) Receipt of nomination papers 21-5-1987e) Scrutiny of nomination papers 22-5-1987f) Withdrawal of nomination papers and publication ofthe final list of contesting candidates . 23-5-1987g) Poll if necessary 1-6-1987h) Election of office bearers 2-6-1987

2. First the facts in order to understand the question framed by us. The election of members of Board of Director and office bearers of Ajmer Central Co-operative Bank Ltd. Ajmer, respondent No. 4 were to take place. The Joint Registrar, Co-operative Societies Ajmer Zone Ajmer (for short, the Joint Registrar) appointed Shri R. K. Singh as Election Officer to hold the elections of members of the Board of Directors and officer bearers of the aforesaid Bank. The said Election Office issued a notice dt. May 11, 1987 giving the election programme which is as under:

(See the table below)

The above election programme is contained in Annr. 1 to the writ petition. The aforesaid Election-Officer published a final list of contesting candidates on May 23,1987 (Annr. 2). It will be clear from the aforesaid election programme that June 1,1987 was fixed as the date of annual general meeting and poll, if necessary. It appears that before the afore said date i.e. June 1,1987, a writ petition was filed and this court on May 28,1987 had stayed the poll fixed for June 1, 1987. Later on that writ petition was dismissed as withdrawn on June1, 1987, but prior to it after receipt of the stay order of this Court, the Election Officer had adjourned the general meeting which was called for June 1, 1987. When the final voters list was published on May 28, 1987, it contained the names of as many as 161 members

so far as the election of two directors to be elected from amongst the delegates of member Co-operative Societies other than Agricultural Credit Co-operative Societies and Kanya Vikarya Sahkari Samitis, is concerned, out of which one seat is reserved for a delegate of weaker section. But from or after June, 1987 till July 10, 1987, as many as 51 more members further became eligible to participate in the elections. After enrolment of the above-numbered members, another calendar for election was issued on July 17, 1987 (Annr. 4). In the aforesaid programme, July 28, 1987 was fixed as the date for publication of final voters list. It is not disputed that the said voters list contained not only 161 members who were there when the election programme was issued earlier but included 51 more members. Thus, it contained total number 212 members. The petitioner has come to this Court and has challenged Annr, 4.

3. The challenge is basically on the ground that once the election process started and has reached the stage of polling, but no polling could take place because of the stay order of this court, the stage of that date is to be restored and no fresh calendar for election can be issued. If it is allowed to be done, it will lead to malpractices as the persons may for one reason or the other adjourn the general meeting fixed for poll and thereby make -eligible other members who were not eligible to vote earlier.

4. Notice of this petition was given to the respondents and return has been filed and basically the non-petitioners have fallen on Sub-rule

(4) of Rule 32 of the Rules and it is contended on behalf of the non-petitioners that under the aforesaid provision it is incumbent upon the Election Officer to prepare a list of the voters as it stood 30 days prior to the date of poll of members who were qualified. Because, now a fresh date is to be fixed, therefore, it must contain the names of all voters who became the member even after June 1, 1987 and they cannot be deprived of the right to vote as the same will be violative of Article 19(1)(c) of the Constitution of India. We will now revert to the consideration of the point formulated at the beginning of this order. It will be necessary to see the scheme of the Act and the Rules in so far as a right to vote is concerned. Under Section 29 of the Act the final authority in a co-operative society shall subject to

the provisions of the Act and the Rules vest in the general body of the members. Section 30 of the Act deals with annual general meetings and under its Sub-section

(1) every co-operative society shall within the time prescribed therefor, call an annual general meeting for the purposes contained in Clauses (a) to (e) which includes Clause (b) election, if any, in the the prescribed manner of the members of the committee other than nominated members. Therefore, even for election of the members of the committee, in this case the Board of Directors of respondent No. 4, it is necessary that an annual general meeting is to be called and the elections of the Board of Directors can only be held in the annual general meeting. Whereas, Section 30 deals with annual general meetings, Section 21 is a provision in respect of special general meetings and under Section 31 of the Act, the Committee of a Co-operative Society may at any time call a special general meeting of the society and shall call such meeting within one month after the receipt of requisition in writing from the Registrar or from such number of members not being less than one fifth of the total number of members as may be specified in the bye-laws. It is the general body of the co-operative society which has powers to constitute a committee which may be called by any name, may be the Board of Directors, and such power is vested in the general body under Section 33 of the Act which provides that the general body of a cooperative society shall constitute a committee in accordance with the bye-laws and shall entrust the management of the affairs of the society to such committee. Now we come to the relevant provisions of the Rules. Rule 26 is in respect of admission of members before the general meeting of a society and it provides that no co-operative society shall admit members within thirty days prior to the date of its annual general meeting. Then, there is a bar under rule 26 with the general body that thirty day prior to the date of annual general meeting the co-operative society cannot admit new members. Rule 30 of the Rules deals with general meeting and under its Sub-rule (4)(i) unless otherwise provided in the bye-laws, the quorum for the general meeting shall be one fifth of the total number of the members subsisting as such as on the date of a notice of the general meeting. Under Sub-rule (4)(ii) no general meeting shall be held or proceeded with unless the number of members required to form a quorum is present. Under Sub-rule (4)(iii) if within an hour from the time

appointed for the meeting no quorum is formed, in case of a meeting which has been called on the requisition of members under Sub-section

(1) of Section 31 shall not be adjourned but dissolved. Under Sub-rule

(2) of rule 30 of the Rules if the general meeting cannot be held for want of quorum, it shall be adjourned to a later hour in the same day as may have been specified in the notice calling the meeting or to a subsequent date not earlier than seven days and not later than 15 days and at such adjourned meeting the business on the agenda of the original meeting shall be transacted whether there is a quorum or not. Under Sub-rule

(15) of rule 30 of the Rules in the event of disorder the chairman may suspend the meeting and adjourn it to such date or time as he may fix as provided in Sub-rule (12). It will therefore be clear from the aforesaid provisions of rule 30 that whereas a general meeting which has been called can only be adjourned for one reason or the other, a special general meeting called under Section 31(1) shall not be adjourned but dissolved. The relevant rule so far as election of members of the committee by the general body is concerned is rule 32 and under ks Sub-rule

(1) the election of the members of the Committee of every society belonging to the following classes shall be conducted in the manner specified in rule 32 by an Election Officer appointed by the Registrar (a) Apex Societies, (b) Central Societies, (c) Agricultural Marketing Societies, (d) Primary Land Development Banks, (e) Consumers Cooperative Societies, (f) Housing Cooperative Societies, (g) All other societies not enumerated above, the Share capital of which exceeds Rs. 1 lac. Under Clause (h) the election can be held of any other society or class of societies which may be notified by the Registrar from time to time in this behalf. The proviso to Sub-rule

(1) of rule 32 vests power in the society for the purpose of election of members to its committee to divide its membership into different groups on a territorial or any other basis. Under Sub-rule

(2) of rule 32 the election shall be held at a general meeting of the society of which not less than seven clear days notice shall be given to the members. The Election Officer shall commence and conduct the election provided that at the commencement of the meeting there shall be the quorum specified in the rules or bye-laws. Under Sub-rule

(3) it is provided that the notice of the general meeting shall be sent by the Election Officer to the members by one or more of the modes contained in Clauses (a) to (e). The , notice is required to contain the information regarding (a) the number of vacancies to be filled, (b) any area or constituency that is specified in the bye-laws from which the members are to be elected, (c) the qualification if any prescribed in the bye-laws for eligibility for membership of the committee, (d) the date on which, the place at which and the hours between which nomination papers shall be filled by member, such date, being not less than three clear days before the date fixed for election or if that day is a public holiday the next succeeding day which is not a public holiday, (e) the date on which, the place at which and the hour when the nomination papers will be scrutinised, and (f) the date on which the place at which and the hours between which the polling will take place. Sub-rule

(4) of rule 34 on which the entire case has been based by the non-petitioner provides that the election officer shall prepare a list, as it stood thirty days prior to the date fixed for the poll of members who are qualified, in accordance with the provisions of the Act, Rules and the bye-laws framed thereunder to vote at the election and publish copies of the list by affixing them to the notice board at the head office of the Society and all its branches not less than ten days prior to the date fixed for election. The list shall specify the admission number and name of the eligible member, and in case of individual members, the name of the father or husband and the address of such member. A copy of the list shall be supplied by the election officer to any member on payment of fifteen paise per folio. Under Sub-rule 5(i) of rule 32 the nomination of a candidate for election shall be made in form Xo. 'G'. The form shall on application, be supplied to a member on payment of such fee as may be specified by the Election Officer. Then Sub-rule 5(ii) and (iii) provides as to how the nomination paper shall be signed and how it will be

presented and under clause (b) the nomination papers received after the date and hours fixed under clause (ii) of Sub-rule

(3) shall be rejected, Under Sub-rule (6)(i)(a) the Election Officer has to take up the scrutiny of the nomination papers at the time fixed under Clause(ii) of Sub-rule (3). and the Election Officer has to decide the objections which may be made at the time of the scrutiny and may either on such objection or his own motion after such summary enquiry, if any as he thinks necessary, reject any nomination for valid reasons. Then under Sub-rule

(7) of rule 32 the list of valid nominations shall be published on the notice board of the Society on the same day on which the scrutiny is completed. Then there is provision for the candidate for withdrawing his candidature by notice in writing signed by him and thereafter under Sub-rule (8)(ii) the list of contesting candidates shall be published on the notice board of the society after the time of withdrawal is over on the same day. Under Sub-rule

(9) of rule 32, if the number of candidates in respect of whom valid nomination papers have been filed does not exceed the number of candidates to be elected for that area or constituency, the candidates for whom valid nominations have been received shall be deemed to have been duly elected for the area or constituency as the case may be and the names of such candidates shall be published on the notice board of the society, after the date and time fixed for withdrawal under Sub-rule (8). If the number of candidates for any area or constituency for which valid nominations have been received exceeds the number to be elected, the Election Officer has to arrange for taking a poll on the date fixed for the purpose and he may appoint one or more polling officers as may be necessary. The reference to other Sub-rules of rule 32 is not necessary.

5. A perusal of the aforesaid provisions of the Act and Rules will show that after an Election Officer has been appointed, he has to prepare the calendar of election and no outside agency can interfere with the process of election after appointment of the Election Officer. It will also be clear that the list of the contesting candidates is to be published after the entire procedure is gone through and in case the number of candidates for any area or constituency for which elections are to be

held does not exceed the number of candidates to be elected, it is not necessary to hold any poll. The candidates for whom valid nominations have been received shall be deemed to have been duly elected and their names shall be published on the notice board of the society after the date and time fixed for withdrawal. Thus, once a general meeting has been called, it can only be adjourned in case of lack of quorum or disorder and in no case it can be dissolved. Any subsequent general meeting which had to be adjourned can be called only for the purpose which was left. It has already been said in the earlier part of this order that on May 28, 1987 in a writ petition this Court stayed the polling and the Election Officer had adjourned the general meeting and the said general meeting had not been dissolved, and we may say so it could not be dissolved and generally if any court makes any stay order at any stage of the election, then if subsequently the stay order is vacated, the thread should be taken from the stage which existed at the time when the stay order was made. A reference has already been made for rule 26 of the Rules and at the cost of repetition it may be stated that the said rule contains a clear bar for admission of members within 30 days prior to the date of general meeting. We are of the opinion that if the general meeting had been adjourned for any reason whatsoever, then if the adjourned meeting is held then no fresh member can be admitted. It is a salutary check contained in rule 26 as otherwise the Election Officer for any reason which may not be even a valid reason, and instances are not lacking when the Election Officers do adjourn the general meeting fixed for the poll and those reasons we do not hold good to adjourn the meeting. We are of the opinion that if a general meeting has been called for election of the members of the Board of Directors of the Society and a date for poll has been fixed and it has to be adjourned, then all that is necessary for the Election Officer is to renotify the date of poll and the Election Officer cannot and should not fix a new calendar for elections. The reason is that the nomination papers have already been filed by the members whose names appeared in the final voters list which as already stated earlier could only contain the names of members who had become members before 30 days prior to the date of annual general meeting, if a fresh calendar of elections is to be notified by the Election Officer and if even those members who were enrolled after the date of polls are given right to vote they too will have a right to file nominations. To us it does not appear in accordance with the provisions of

the Act and Rules referred to earlier and, therefore, the meeting can only be said to be adjourned meeting and only a fresh date of annual general meeting is to be notified and only the names of such members whose names appear in the voters list as published under rule 32(4) of the Rules will have a right to vote. The Supreme Court had the occasion to examine an identical question in the case of *State of Karnataka v. Nagappa*, AIR 1975 SC 1708. The Supreme Court in that case was dealing with the election to Karnataka Municipality under the *Karnataka Municipalities Act*. Section 14 of that Act came up for consideration before the Supreme Court. In that case the Returning Officer had been appointed and having published the calendar of elections the Government made an order directing him to rectify the mistake which appeared in the electoral rolls. The action of the Government was challenged in the High Court and the High Court of Karnataka under its judgment dt. Feb. 6, 1975 holding that rule 75 did not empower the Government to make the said order, quashed and set aside the order of the State Government and directed the Returning Officer to hold the elections from the stage at which it was interrupted by the impugned government order after fixing convenient dates for the remaining events so that the election may be completed before Mar. 8, 1975. The aforesaid order of the High Court was challenged before the Supreme Court and the Supreme Court dismissed the appeal and observed that it was not the intention of the Legislature to change the list of voters from time to time during the process of election and the relevant electoral roll for the purpose of preparation of the list of voters must consequently be taken to be the Electoral rolls in force at the date when the election process is commenced that is the date when the calendar of events was published. In the instant case as already stated earlier, the election process was only interrupted by the stay order of this court from the stage of polling which was to take place on June 1, 1987. Therefore, under the provisions of the Act and the Rules only such of the voters whose names appear in the final voters list have right to vote and all that was required to be done by the Election Officer was to renotify the date of poll and not to issue fresh calendar of elections and thereby making eligible even those members not only to vote who were not eligible to vote but to file nomination papers also if they so choose. We are of the opinion that if the Election Officer has published a calendar of election and the only stage which remains is of poll and the general

meeting is adjourned, then, the Election Officer is to hold the Election from the stage at which the process was interrupted by the stay order of this Court. It was given out during the course of argument that some of the candidates whose nominations were filed had withdrawn their security deposit. It may be because more than one and a half years have passed. If so, they will be allowed to re-deposit the security fee and it is not said that any of them has withdrawn their nominations.

6. Consequently, we hereby allow this writ petition, quash Annr. 4 under which a fresh calendar of election has been published and direct the respondents to fix a fresh date of poll which shall only confine to the members whose names appear in the final voters list published by the Election Officer on May 20, 1987 as per the programme issued by him vide notice dated May 11, 1987. The election shall be held as early as possible but in no case later than a month.