

Uda Ram and anr. Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Aug-28-1992

Reported in : 1992(3)WLC192; 1992(2)WLN400

Judge : A.K. Mathur and; Rajendra Saxena, JJ.

Appeal No. : D.B. Civil Writ Petition Nos. 6699 of 1991 and 195, 332 and 588 and 1992

Appellant : Uda Ram and anr.

Respondent : The State of Rajasthan and ors.

Judgement :

ORDER

In exercise of the powers conferred on the State Government by Section 139 of the Rajasthan Cooperative Societies Act, 1965, the State Government hereby orders that the provision of Sub-section (4) of Section 34 of the aforesaid Act regarding disqualification of membership of Committee due to default shall apply with following modification:(1) The default within the meaning of Sub-section (4) of Section 34 shall be construed as default only to the society to which election is sought and to no other society. By ordersd/ (M.L. MEHTA)Secretary to Government(Cooperative)

14. By this order Sub-section (4) of Section 34 of the Act of 1965 has been modified. Section 34 deals with the disqualification of membership etc. of the

Committee. Sub-section (4) says that no person shall be eligible for being elected or appointed as a member of a Committee if he is in default to the society or to any other society, in respect of any loan or loans taken by him for such period as is specified in the bye-laws of the society concerned or in any case for a period exceeding three months and such a member as aforesaid shall cease to hold office as soon as he has incurred the disqualification. Sub-section (4) of Section 34 reads as under

(4) No person shall be eligible for being elected or appointed as a member of a Committee if he is in default to the society or to any other society in respect of any loan or loans taken by him for such period as is specified in the bye-laws of the society concerned or in any case for a period exceeding three months and such a member as aforesaid shall cease to hold office as soon as he has incurred the disqualification mentioned in this Sub-section.

15. Thus, by virtue of Sub-section (4) if any member commits default then he will be disqualified. But by this order the limited amendment has been brought about that under Sub-section (4) of Section 34 the default shall only be the default to the society to which the election is sought. It only modifies the rigor of Sub-section (4). Previously, if any member made even default to any society then he was to be disqualified for election to any Committee. But by this modification of sub-section (4) of Section 34 only a minor change has been brought about that a defaulter should be construed as a defaulter to a particular society where he intends to contest the election for being a Member of a particular Committee. This modification in Sub-section (4) of Section 34 appears to be more of clarifactory in nature rather than frustrating the purpose of the Act. This amendment is not related to any particular society but this is for all societies in Rajasthan. Therefore, looking to the nature of the amendment which has been brought about it cannot be said that it is malafide or with the intention of frustrating the thrust of the cooperative movement.

16. Learned Counsel for the petitioner submitted that under Section 14 a power has been conferred on the Registrar that any amendment may be made in the bye-laws of the cooperative society which is necessary or desirable in the interest

of such society. It is submitted that the power of amending the bye-laws has been conferred on the Registrar i.e. the Registrar is a statutory authority under the Act, which can bring about the amendment in the bye-laws. So far as this amendment is concerned this argument of the learned Counsel cannot be countenanced for the simple reason that no amount of amendment in the bye-laws override sub-section (4) of Section 34. However, we will deal with this argument in greater detail when we deal with the second notification of the State Government dated 21.12.1991 at appropriate place. Therefore, so far as this notification is concerned, we are of the opinion that this notification has been issued by the State Government to clarify Sub-section (4) of Section 34 of the Act in the cooperative societies all over Rajasthan and this cannot be said to be arbitrary or mala fide as it is applicable to all societies in Rajasthan. Thus, this notification does not suffer from any vice of arbitrariness or otherwise.

17. The next question is regarding the notification dated 21.12.1991 (Annex. 13). By virtue of this notification a major change has been brought about regarding reservation for Scheduled Castes and Scheduled Tribes. The order dated 21.12.1991 (Annex. 13) reads as under:

jktLFkkku ljdkj

d`f`k xzqi &4 lgdkfjrk foHkkx

dzekad lk- 411 &4@lg@83 t;ijj fnukad 21-12-91 vkns'k

jktLFkkku lgdkjh laLFkk vf/kfu;e ;k blds v/khu fojfr fu;eks ;k fdlh laLFkk dh mifof/k;ks es vfrfo'V fdlh izfrdwy ckr ds gksus ij Hkh vuqlwfpr tkfr ,oa tutkfr ds lnL;ks dsk d`f`k foi.ku laLFkkvks dh lfefr;ks es leqfpr izfrfuf/kRo nsus ds fy, jkT; ljdkj jktLFkkku lgdkjh laLFkk vf/kfu;e 1965 dh /kkjk 139 ,oa blds vUrZxr fojfr fu;e 1966 ds fu;e 118 ds vUrZxr iznRr vf/kdkjks dk iz;ksx djrs gq, mijksDr vf/kfu;e dh /kkjk 33 ds izko/kkuks dsk fuEu la'ksk/kuk ds lkFk ykxw djus dk vkns'k nsrh gS A&

1 d`f`k foi.ku laLFkk dh lfefr es dqy 9 fuokZfpr lnL;ks ds nks lnL;ks ds in vkj{kr gskxs ftues &

v lfefr ds nks O;fDrxr lnL;ks es ls ,d lnL; dk in vuqlwfpr tutkfr ds fy, vkj{kr jgsxh A

vk nks O;fDrxr lnL;ks dks NksM+dj 'ks'k lkr lnL;ks es ls ,d lnL; dk in vuqlwfpr tkfr ds fy, vkj{kr jgsxk A

2 ;fn mijksDr nks vkj{kr inks es ls fdlh ,d ds Hkh dkj.k ----- in fuokZpu ls ugh Hkjk tk lds rks jkftLVkj dks ;g vf/kdkj gksxk fd og vuqlwfpr tkfr ,oa tutkfr ds lnL;ks dks fdlh Hkh fLFkfr gks lEcU/kr laLFkk dks lfevr es euksuhr djs A

3 mijksDr vf/kfu;e dh /kkjk 13 o 14 rFkk blds vUrZxr fojpr fu;e 1966 ds fu;e 11 dh izfdz;k ds gksrs gq, Hkh d`f'k foi.ku laLFkk ds mifu;eks es bl vk'k; dk lh/kk la'ksk/ku fd;k gqv ekuk tkosxk A

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18. The basic purpose behind this is to reserve one seat in the Committee each for a member of Scheduled Castes and Scheduled Tribes in the Agricultural Marketing Societies. Section 33 provides that at least one third of the members of the Committee of a village service society, farmer service society, a Primary Land Development Bank and a Central Cooperative Bank shall be from weaker sections of the society and if, for any reason whatsoever, the member of weaker sections to the extent as aforesaid are not elected on the Committee of any society or a vacancy occurs amongst them, the deficiency or vacancy shall be made good or filled in as the case may be, by the State Government or by the Registrar, if so authorised by the State Government in relation to any society, by nominating persons belonging to weaker sections on the Committee of such society. The basic germ for giving the benefit to the Weaker sections of the Society was already in existence in Section 33 of the Act of 1965. Therefore, instead of the Registrar directing under Section 14 that each society should amend its bye laws suitably by

incorporating reservation of one seat for Scheduled Castes and one seat for Scheduled Tribes, the State Government in exercise of the power conferred under Section 139 read with Rule 110 has directed that such modification should be treated to have been inserted in the bye-laws of the societies.

19. Learned Counsel for the petitioners submitted that under Section 14 of the Act of 1965 the amendment of the bye-laws can only be brought about by the Registrar, a statutory authority under the Act. Therefore, the Government cannot take resort to Section 139 by bringing this notification as it runs counter to Section 14 of the Act.

20. It is true that under Section 14 of the Act of 1965 the Registrar can direct each society to suitably amend its bye-laws and reserve one seat each for Scheduled Castes and Scheduled Tribes. But instead of that the State Government has exercised this power under Section 139 and has brought about this change in all the Agricultural Marketing Societies no offence can be taken to this method. It was quite possible that the State Government could have directed the Registrar that certain reservation for Scheduled Castes/Scheduled Tribes should be made in the societies and he could have initiated action by following the procedure contained under the Act and the Rules. Instead of doing a thing indirectly, the State Government has done it directly by cutting short these formalities and allowing the matter to drag on for years together in the bureaucratic jungle. If the State Government has resorted to the provisions of Section 139 straight way and made reservation for Scheduled Castes and Scheduled Tribes in such class of societies for the purpose of effecting the intention of Section 33 of the Act then such action cannot be said to be against the purpose of the Act. If the State Government had no power under Section 139 and the power was only left to the Registrar then his argument could have some substance, But since the State Government has a power under Section 139 to modify the provisions of the Act or the Rules and the State Government in the purported exercise of this power has resorted to this method then we do not find that the State Government has exceeded its jurisdiction. Therefore, we are of the opinion that the notification dated 21.12.1991 also does not suffer from any vice of violation of any statutory provision or is actuated with malice or otherwise. On the contrary, the State Government has

provided a specific benefit to the weaker sections of the society in order to effectuate the mandate contained in Section 33 of the Act of 1965 which provides that one third of the members of the Committee shall be from the weaker sections of the society, by reserving one seat each for Scheduled Castes and Scheduled Tribes candidates. The State Government has rather effectively brought into force the spirit behind Section 33 of the Act. Thus, in this view of the matter, we are of the opinion that this contention of the learned Counsel is also without any basis.

21. The next question is that both these orders were brought about with effect from 21.12.1991 but before that in certain societies the election programmes have been issued and the effective steps for holding the elections were initiated. Therefore, the learned Counsel submitted that these orders should be implemented prospectively and wherever the election programme has been issued and the election process has started it should be continued and completed under the provisions which were in force at the time when the election programme was issued.

22. Learned Counsel for the respondents have contested the matter and submitted that once these orders are legally issued then the election officer cannot ignore the effect of these orders and the elections will have to be conducted in accordance with law, which is in force.

23. We have considered the submission of the learned Counsel. This Court in *Chaina Ram's case* (supra) has taken the view that the Registrar has no power to postpone the election when the process of election has been started and the voters list was published and nomination papers have been filed. It has been held that the Registrar has no power under Section 75 or Section 128 to stay the election process after the same is commenced. It was observed as under:

The Registrar is not competent as the scheme of the Rules and the Act show, to make an interference otherwise than by way of an appeal in Rules. Simply because somebody approaches him and makes a grievance about the incorrect preparation of the voters list the Registrar cannot make any interference. It is interesting to note that no person approached the Minister or the Registrar that his name has not been wrongly shown in the voters list. A vague grievance of the

voters list being not correctly prepared, does not authorise the Registrar to stay and stall the election of the Committee of the society.

24. In the present case, a wireless message was issued by the Government that the election should be held in terms of these orders and thereafter the Registrar issued the consequential order staying the election which was scheduled to be held on 29.12.1991 and 30.12.1991. In pursuance of this, the Assistant Registrar issued the order dated 26.12.1991 staying the election scheduled to be held on 29.12.91 and 30.12.1991.

25. Now, before deciding this issue, the first and foremost question is from what date the election shall be deemed to have been commenced. This question also came up for consideration before this Court in the case of Raju Ram v. Gram Sewa Sahakari Samiti, Momasar and Ors. D.B. Civil Writ Petition No. 2412 of 1986, decided on 15.10.1987 and a Division Bench of this Court in the case of Raju Ram (supra) had an occasion to examine this aspect under the Cooperative Societies Act and the Rules and took the view that the election shall be deemed to have been commenced at moment when the Election Officer issues the election programme. It was observed as under:

The question regarding the starting point of election came for consideration before Hon'ble the Supreme Court in the case of Mohinder Singh Gill and Anr. v. The Chief Election Commissioner, New Delhi and Ors. : [1978]2SCR272 and it was held that election covers the entire process from the issue of the notification under Section 14 of the Representation of the People Act to the declaration of the result under Section 66 of the Act.

It is not in all cases that the voters' list is prepared after the notification for a particular election i.e. to say that the voters; list is already there and then notification for election is issued and then the persons who are in the voters; list are allowed to vote for that particular election. The provisions for conducting elections for the Co-operative Societies are specific. For the election of the Managing Committee of the Cooperative Society, voters; list is prepared for the particular election. The relevant portion of Rule 32 of the Rajasthan Cooperative Societies Rules, 1966 (hereinafter to be referred 'the Rules') makes this position

clear. Rule 32 (4)(i) and (ii) of the Rules read as under:

4(7) The Election Officer shall prepare a list, as it should thirty days prior to the date fixed for the poll of members who are qualified, in accordance with the provisions of the Act, the rules and the bye-laws framed thereunder to vote at the election and published by affixing them to the notice board at the head office of the society and all its branches for inviting objections within a week. The list shall specify the admission number, name of the eligible members and in case of individual members, the name of father or husband as the case may be and the address of such members.

(ii) The Election Officer after considering the objections shall finalise the list and publish the same as above not less than ten days prior to the date fixed for the Election. A copy of the list shall be supplied by the Election Officer to any member on payment of Rupee one per folio.

These provisions make it clear that so far as the Co- operative Societies are concerned preparation of list is an integral part of the process of election. The question regarding the legality of voters' list for the election. The question regarding the legality of voters' list for the election of the Managing Committee of the Co-operative Society came for consideration before the Division Bench of this Court in the case of Bharat Lal Dugal v. The Registrar, Sahakari Samiti Raj. Jaipur and Anr. 1987 RLR (1) 730 and it was held that the preparation of voters' list for election of members of Managing Committee of Coop. Society is a part of election process and dispute relating to legality of voters' list is a dispute arising in connection with the election and as such it can be properly adjudicated in proceedings Under Section 75 of the Act and as such writ petition cannot be entertained.

26. Therefore, in the light of the decision of the Division Bench of this Court, the election shall commence from the date the notification for election is issued. Therefore, in the present case, the election programme for conducting the election was issued by the Election Officer on 9.12.1991 (Annex. 7.). In pursuance of this the nominations were also filed and scrutiny of the nomination papers was also made. Therefore, in the light of the legal position which emerged on account of the

ratio laid down by the Division Bench as aforesaid the day the election programme was issued i.e. 9.12.1991 by the Election Officer that should be the date treated to be the date of commencement of the process of election. Once the election process starts then neither the State Government nor the Registrar is competent to stay the election in view of the decision of the Division Bench of this Court in the case of Chaina Ram (supra). The resultant position is that once the election programme is issued then neither the State Government nor the Registrar has a power under Section 75 or Section 128 to stay the election. As such the State Government or the Registrar was not competent to stay the election. If the stay order has not been granted by the State Government or the Registrar then the election would have been completed and concluded. But on account of the stay order passed by the State Government the election could not be held and these two orders of the State Government issued under Section 139 dated 21.12.1991 came to be issued. But since the process of election has already commenced and during the process of this election both these notifications (Annex. 12 and 13) dated 21.12.1991 came to be issued, therefore, they can be given only prospective effect as the election process has already commenced with the issuance of the election programme by the Election Officer. Thus, the election has to be held on the basis of the law which was obtaining at the time when the election process commenced and any notification or any amendment brought about by the State Government during the election process cannot be taken into consideration. Similarly, this Court has also taken the view that once the election is stayed and it commences back then it shall resume from the stage where it was left as has been observed in the case of Chaina Ram (supra). Therefore, in view of the law laid down by this Court by series of judgments mentioned above it becomes clear that once the election process starts then under Section 75 or Section 128 of the Act of 1965 the State Government or the Registrar has no authority to stay the election, however, subject to appeal under Rule 24 of the Rules. But that is not the case here. It has also been held that the election process starts from the moment the election programme is issued and it has also been held that if any stay is granted by any authority rightly or wrongly or by any court then the election shall resume back from the stage where it is left. Once having these parameters fixed by the decision of this Court, the next question follows is

that if any law is brought about during the intervening period then such law will have prospective effect and it shall not affect the election process which has already commenced. Once the election process starts it cannot be stayed and it has to resume back from the stage where it is left then obviously the effect is that the law which has been changed during the intervening period cannot be given retrospective effect. As such the election which has been stayed by the order of the Government has to commence from that stage and it has to be completed and concluded on the basis of the law which was obtaining on the date the election programme was issued.

27. Therefore, in the result, we hold that wherever the elections have not been completed and the election programme has been issued and the process of election was in progress and the same was stayed by the Government then such elections shall be held on the basis of the law which was obtaining at the time of issue of the election programme and both the notifications of the State Government dated 21.12.1991 (Annexs. 12 and 13) shall be ignored.

28. It has been brought to our notice that in some of the cases elections have been held on the basis of the amended law i.e. Annexs. 12 and 13. There is no such case before us. However, if the election has already taken place and the parties have not approached this Court then those elections shall not be reopened on the basis of this decision. However, where the election has been stayed and the same has not been resumed back, the same may be held according to the law which was obtaining at the time the election programme was issued.

29. All the writ petitions are accordingly disposed of in the light of the observations made above.