

Ram Pyare Chaudhary & Anr vs State Of Uttar Pradesh & Ors on 11 February, 1982

Equivalent citations: 1982 AIR 831, 1982 SCR (3) 207, (1982) UPLBEC 271, AIR 1982 SUPREME COURT 831, 1982 (1) SCC 671, 1982 ALL. L. J. 354, (1982) 3 SCR 207 (SC), 1982 UPLBEC 271, 1982 UJ (SC) 282, 1982 (18) CO-OP LJ 141, (1982) 53 COMCAS 14, (1982) LANDLR 380, (1982) 1 SCJ 328, (1982) 18 COOPLJ 141

Author: D.A. Desai

Bench: D.A. Desai, A.P. Sen, Baharul Islam

PETITIONER:

RAM PYARE CHAUDHARY & ANR.

Vs.

RESPONDENT:

STATE OF UTTAR PRADESH & ORS.

DATE OF JUDGMENT 11/02/1982

BENCH:

DESAI, D.A.

BENCH:

DESAI, D.A.

SEN, A.P. (J)

ISLAM, BAHARUL (J)

CITATION:

1982 AIR 831

1982 SCR (3) 207

1982 SCC (1) 671

1982 SCALE (1) 411

ACT:

U.P. Cooperative Societies Act, 1965-S. 29(2) read with r. 445(1)-Election of members-Poll held but declaration of result withheld by injunction-Term of office fixed under statute-How reckoned-Power to remove elected representatives-Construction of.

HEADNOTE:

The management of a cooperative society registered under the U.P. Cooperative Societies Act vests in a committee constituted in accordance with the provisions of

the Act and the Rules made thereunder. The term of elected members of a committee, according to s. 29(2) read with r. 445(1) is three 'Cooperative years' including the cooperative year in which they are elected. 'Cooperative year' means the year commencing on the 1st day of July and ending on the 30th day of June next following. Fresh members are to be elected before the expiry of the term of existing elected members failing which an administrator can be appointed by the Deputy Registrar, Cooperative Societies to manage the affairs of the cooperative society till the reconstitution of the committee.

In this case the term of the cooperative society in question was drawing to a close and the poll to elect fresh members was held on September 11, 1978. The result of the poll could not be declared immediately owing to an injunction issued by a court in a suit filed by a voter whose name had not appeared in the electoral roll. The result was, however, declared ultimately on January 28, 1980, and appellant No. 1 was elected Chairman of the committee on January 29, 1980. By an order dated July 1, 1981, made under s. 29(4) (b), the Deputy Registrar, Cooperative Societies appointed an administrator to manage the affairs of the society on the ground that the term of members of the Committee had expired on June 30, 1981. The appellants challenged the validity of the order under Art. 226.

The High Court upheld the impugned order and dismissed the petition on the ground that once the poll was held and even though the result of the election was not announced, the term would commence from the date of the poll.

The appellants submitted that even though the poll was held on September 11, 1978, the result having been declared for the first time on January 28, 1980, the term of three cooperative years of the elected members would expire on June 30, 1982.

Allowing the appeal,

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HELD: 1. (a) Election means the process of being elected and the term of office is of elected members. The term of office as member cannot begin to run unless the status of being a member is acquired on being declared elected.

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The result of the election having been declared on January 28, 1980, the term of members commenced from the cooperative year beginning on July 1, 1979 and ending with June 30, 1980 and since their term was three cooperative years including the year of election, it would expire on June 30, 1982. The order appointing the administrator was, therefore illegal.

[213 H, 214 H, 215 A, 216 F-

G]

(b) The provision of s. 29(4) (b) was not attracted as the process of election had begun with the holding of the

poll before the expiry of the term and, once the poll was held as a part of the programme of election, it had to progress to the statutory end of declaration of result. [216 B-E]

2. The various stages of election were clearly demarcated in the Rules. Mere holding of poll, which means recording of votes, without anything more would be inconsequential. It is the counting of votes and the consequent declaration of result which would determine who has become eligible for office by the democratic process. No election process can be said to be complete unless the votes are recorded and counted and the result of the election declared and publicised. [212 G-H, 213 E-G]

3. The election process is sacrosanct and members elected must be permitted to discharge their functions as chosen representatives of the electorate for the statutorily prescribed term and therefore the plea that the administrator should not be disturbed as only four months would remain for the expiry of the term cannot be countenanced. The drastic power of removing elected representatives before the expiry of their term must receive strict and narrow interpretation. [217 A-C]

JUDGMENT :

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 478 of Appeal by special leave from the Judgment and Order dated the 3rd August, 1981 of the Allahabad High Court in Civil Misc. Writ No. 7869 of 1981.

S.N. Singh for the Appellants.

G.N. Dikshit and Shoba Dikshit for the Respondents. The Judgment of the Court was delivered by DESAI, J. The District Co-operative Federation (Zila Sahakari Federation), Basti ('Federation' for short) is a co-operative society registered under the U.P. Co-operative Societies Act, 1965 ('Act' for short). As provided by section 29 of the Act, the management of the Federation vests in a committee designated as Committee of Management. The committee consists of 10 elected members and 1 nominated member. As the term of the Committee was drawing to a close, programme for election of the new committee of management was announced as required by Part VI of the U.P. Co-operative Societies Rules, 1968 ('Rules' for short). Pursuant to this programme poll was held on September 11, 1978. It is not made clear to us when the counting of the votes commenced, though rule 444(1) provides that counting of the votes will take place immediately after the close of the poll except when postponed in a given set of circumstances. Sub-rule (4) of rule 444 provides that Election Officer shall announce the result of election as soon as the counting is completed indicating the number of votes secured by each candidate. It appears that one Shri Kashi Nath whose name did not appear in the voter's list and who, on account of the omission, could not contest the election filed Civil Suit No. 291 of 1978 in the Court of Munsif, Basti on September 9, 1978 and asked for and obtained ad interim ex parte injunction restraining the defendants in the suit from conducting the

election of Board of Directors (Committee of Management), President, Vice-President and the delegates of District Co-operative Federation, Basti and/or announcing the result of election. Defendants Nos. 1 to 4 in the suit appeared and contested the application for interim injunction. The learned Munsif after hearing both sides confirmed the injunction in the following terms:

"6-C. is allowed and the defendants No. 1 to 4 are directed not to conduct the election and not to declare the result, if any, of Board of Directors of District Co-operative Federation, Basti, till disposal of the suit".

This order was made on September 21, 1978. It appears that by the time the suit was filed and ex parte ad interim injunction obtained, the poll was already held but by the injunction, the defendants in the suit were prohibited from declaring the result and accordingly the result was not declared. It now appears that the result was declared on January 28, 1980, and the election of the Chairman and the Vice-Chairman took place on January 29, 1980. Appellant No. 1 was elected as Chairman. The term of the members of the Committee of Management as provided by rule 445 as amended on June 30, 1981, is three co-operative years including the year of election. The Registrar of Co-operative Societies pursuant to the amended rule 445 issued a teleprinter message to various authorities indicating that the term of the committee of management has expired and administrator should be appointed as provided by sub-section (4) (b) of section 29 of the Act. Pursuant to this teleprinter message, the Deputy Registrar, Co-operative Societies, Gorakhpur made an order on July 1, 1981, that the term of the members of the committee of management of the Federation has expired on June 30, 1981, and proceeded to appoint an administrator. The appellants questioned the validity and legality of the order of the Deputy Registrar in Writ Petition No. 7869 of 1981 filed in the High Court of Judicature at Allahabad.

The High Court was of the opinion that even though under rule 445 the term of the office of the elected members of the committee of management of co-operative society is three co-operative years including the co-operative year of their election, once the poll is held and even though the result of the election is not announced, the term would commence from the date of the poll and therefore the decision of the Deputy Registrar that the term expired on June 30, 1981, is correct. The High Court accordingly dismissed the writ petition. Hence this appeal by special leave limited to one point only, namely, the commencement and completion of the term of office of the members of the committee of management of the second appellant.

Section 29(1) provides that the management of every co-operative society shall vest in a committee of management constituted in accordance with the Act, the rules and the bye-laws. Sub-section (2) provides that 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. Rule 445(1) provides that except as otherwise provided in rules 406, 433, 434 and 435 the term of the office of the elected members of the committee of management of a co-operative society shall be three co-operative years including the co-operative year of their election. Explanation appended to this Rule clarifies how the period of three co-operative years is to be computed. In substance the explanation clarifies that:

"For the purpose of determination on the term of a elected member the co-operative year during which the elections are held shall count as full year irrespective of the period left after such election in that co-operative year".

There is a proviso to this explanation which is immaterial. The expression 'co-operative year' is defined in section 2(i) of the Act to mean the year commencing on the 1st day of July and ending on the 30th day of June next following.

Part VI of the Rules sets out procedure for holding the election. Election of members of committee of management of a co-operative society has to be held in accordance with the provisions of the Act and rules and the District Magistrate of the district in which the headquarter of the society is situated, shall take steps to organise the election under the superintendence, direction and control of the Registrar [see rule 439 (1)]. Sub-rule (1) of rule 439 provides that the election in a co-operative society or societies or a class or classes of co-operative societies shall be held on such due date or dates as the Registrar may be order fix and the District Magistrate concerned shall on such dates being so fixed appoint by order one or more Election Officers or different Election Officers for different class or classes of society or for different areas for this purpose. Sub-rule (3) provides that the Election Officer shall perform all such functions as are enjoined upon him by the Rules or as may be incidental to or necessary for the discharge of his duties. Rule 444 provides that the counting of votes will take place immediately after the closing of the poll and in case it is not possible to count votes immediately after the close of the poll, the ballot boxes shall be sealed by the Election Officer and kept in the safe custody in the nearest police station. Sub- rule (4) of rule 444 provides that the Election Officer shall announce the result of election as soon as the counting is completed indicating the number of votes secured by each candidate. Sub-rule (6) provides that the Election Officer shall display a list of elected candidates on the notice board of the society and also at such public places as he may deem fit. Sub-rule (7) provides that a copy of the list prepared under sub-rule (6) shall be sent to the District Assistant Registrar concerned or the officer authorised under sub-rule (2) of rule 440 and also to Secretary/Managing Director of the Society concerned.

Having noticed the conspectus of the provisions bearing on the topic 'election to a co-operative society', the principal point canvassed in this petition may be examined. According to the appellant even though the poll was held on September 11, 1978, the result, as required by rule 444(4), was declared for the first time on January 28, 1980, the term of three co-operative years of the elected members of the co-operative society will expire on June 30, 1982.

On the other hand, according to the respondents, as the poll was held on September 11, 1978, the term of three co- operative years including the co-operative year of the election has expired on 30th June, 1981 and therefore the order appointing the administrator was legal and valid.

The question that emerges on rival contentions is as to from what date the term of the elected members of the committee of management shall commence. The period of three years as amplified by the Explanation to rule 445(1) is to be reckoned not from the date of the election but the term shall be three co-operative years including the co-operative year of the election. The co-operative year, as pointed out earlier, commences on July 1 and ends on June 30 of the next succeeding year.

Therefore, if the term commences from the date of poll which happened to be September 11, 1978, the whole of co-operative year commencing from July 1, 1978 would have to be taken into reckoning for computing the term of three years and, therefore, three years would expire on June 30, 1981. The question, however, is whether mere holding of the poll constitutes election of the members of committee of management or the result being declared after the counting has been completed and notified in the manner prescribed by sub-rules (6) and (7) of rule 444 would provide the starting point for a terminus quo for the term of office to commence. If the term was to commence on the declaration of the result of election, in this case admittedly the result was declared on January 28, 1980, that date would fall within the co-operative year from July 1, 1979 to June 30, 1980, and the term of three co-operative years would expire on June 30, 1982.

At one stage, Mr. Dixit, learned counsel for the respondents stated that there is no stage like declaration of result when the election of the members of the committee of management of a co-operative society is held. Sub-rule (4) of rule 444 clearly indicates to the contrary and it casts an obligation on the Election Officer to announce the result of election as soon as the counting is complete and he is also under a duty to indicate the number of votes secured by each candidate. His duty does not end there. He has to display a list of elected candidates on the notice board of the society and also at such public places as he may deem fit. He is also under an obligation to send a copy of the list prepared under sub-rule (6) to the District Assistant Registrar concerned. It is, therefore, not possible to accept the submission that there is nothing like a stage of announcement of the result of election when election is held for electing members of the committee of management of a co-operative society. In fact, the various stages of election are clearly demarcated in the rules. If the poll has become necessary and is held the unavoidable and inescapable stage of counting of votes and the next stage of announcement of result and subsequently publicising the result are part and parcel and necessary adjuncts of conducting poll. If the rules provide for all the three stages it is difficult to accept the submission that by merely holding of the poll, the process of election can be said to have been completed and the term of members who had contested would commence from the time of holding the election. That is what the High Court holds. Says the High Court:

"that the elections since were held on 11.9.78, mere act of not declaring the result on account of any order issued by the Court or a stay order granted by it which was subsequently vacated could not be taken as if the term of the committee of the management has not commenced".

The High Court, at another stage, observed that the postponement of declaration of the result did not justify the holding of the view that elections had not been held in September 1978. Taken to the logical end, the judgment of the High Court would imply that elected and non-elected members both who participated in the poll would have their term as members commence since the poll is held. Could this be the intendment of rule 445(1) ? This approach betrays lack of knowledge of the democratic process of election. When the number of the members to be elected to the committee of management is fixed and candidates in excess of the fixed number are desirous of seeking office, the democratic process postulates holding of elections. Mere holding of poll which means recording of votes without anything more would be inconsequential. It is the counting of votes and the consequent declaration of result showing who amongst the contesting candidates has secured

highest number of votes or large number of votes which would determine who has become eligible for office by the democratic process. Therefore, recording of votes is a preliminary stage, the counting of votes and declaration of result are integral and inseparable part of process of holding and completing the process of election. No election process can be said to be complete unless the votes are recorded, they are counted and those who have secured highest number of votes are declared elected and the result is publicised, as required by the relevant provision. Rule 445(1) provides that the term of office of the elected members of a committee of management of a co-operative society shall be three co-operative years including the co-operative year of their election. This provision indicates the terminus quo for commencement of the term, viz., that the term of office of the elected members would be three co-operative years including the year of their election. Election means process of being elected and the term of office is of the elected member, not of contesting member. When candidates offer themselves for election, they are called candidates and unless elected the term of such candidates would not commence. Their term would commence when elected. The expression 'year of their election' even on literal and grammatical construction would mean the year in which the member concerned whose term is in dispute, is declared elected meaning thereby he became eligible for office and entitled to enter office as a member. Apart from literal construction, the completed process of election comprehends nomination, recording of votes, counting of votes and declaration of result and publicising and notifying the result. There ends the process of election. Recording of votes is a mere stage in the process of election. Even when votes are recorded, the candidates contesting the poll do not acquire the status of members of committee of management. That status is acquired on being declared elected. And unless that status is acquired the term of office as member cannot begin to run. Therefore, the expression 'co-operative year of their election year', upon true construction can only mean the year in which the member is declared elected and not the year in which he contested the poll.

Turning to the facts of this case, undoubtedly the poll was held on September 11, 1978, but in view of the injunction granted by the learned Munsif the respondents were restrained from declaring the result. In the counter-affidavit filed on behalf of the respondents in the High Court, the fact that the result was declared on January 28, 1980, is admitted. The relevant portion reads as under:

"4. That the election of the committee of management of the Federation was held on 11.9.78 and not on 28.1.80 as alleged in the writ petition: In fact, the election was actually held on 11.9.78, but the declaration of the result of election stayed in pursuance of the order of learned Munsif, Basti, in Suit No. 291 of 1978 (Kashi Nath Tripathi v. D.M., Basti). Consequent upon the order of the learned Munsif, the election officer also passed similar order on 11.9.78 on which date the election was held. The result was subsequently declared on 28.1.80".

It is thus an admitted position that even though the poll was held on September 11, 1978, on account of the injunction granted by the Court, the result was declared on January 28, 1980. On the very next day, i.e. January 29, 1980, first appellant was elected as Chairman of the Federation. Once it is admitted that the result was declared on January 28, 1980, the term of the members of the committee of the management would commence from the co-

operative year July 1, 1979, ending with June 30, 1980, and including this year the term would be of three years. Therefore, obviously the term would expire on June 30, 1982.

Mr. Dixit, however, urged that where for any reason whatsoever, 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 the Act or the Rules or the bye-laws of the society, cease to exist on the expiry of the said term. In support of this submission he relied upon sub-section (4)

(a) and (b) of section 29. They may be extracted:

"29. Committee of management:

x x x (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 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 for the management of the affairs of the society until the reconstitution of the Committee of Management in accordance with the provisions of this Act, the rules and the bye-laws of the society, and the Registrar shall have power to change the Administrator from time to time:

Provided that so long as no Administrator is appointed under this sub-

section, 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 commit-

tee, it shall be deemed that the election of the elected members of the committee has not taken place within the meaning of this sub-section".

Sub-section 4(a) would not be attracted at all in the facts of this case because when the term of the members of the former committee of management expired, poll was held on September 11, 1978. Once poll was held as a part of the programme of the election it must progress to the statutory end of declaration of result. Unless the term begins to run it cannot come to an end. Sub-section (4) (a) caters to a situation where the term of the members of a committee of management has begun and the election could not be held before the expiry of the term then, notwithstanding that no election has been held the term of the members of the former committee would come to an end and the

committee of management would cease to exist on expiry of said term. Sub-section (4) (b) would only be attracted if the term expires as contemplated by sub-section (4) (a). If the term expires and the old managing committee whose term has expired ceases to exist and the election has not been held or could not be held to elect a new committee of management then in the interregnum the Registrar has the power to appoint an administrator for the management of the affairs of the society. In the fact situation as we have in the present case, sub-section (4) (a) and (b) are not attracted and, therefore, the provision therein contained would not assist the respondent in any manner.

As the term of the committee of management would commence from the co-operative year from July 1979 to June 1980, the same would expire on June 30, 1982. On this reckoning the Registrar could not have issued teleprinter message declaring that the term has come to an end on June 30, 1981. If the term had not expired, the administrator could not be appointed as contemplated by sub-section (4)

(b) of section 29. Therefore, the order of the Deputy Registrar of the Co-operative Societies, Gorakhpur Division dated July 1, 1981, appointing administrator is without jurisdiction and is clearly illegal and invalid and must be quashed and set aside.

Mr. Dixit lastly urged that even on the view this Court would take, the term of the committee of management would expire on June 30, 1982, and therefore, hardly a period of four months remains and the Court should not, therefore, disturb the administrator. This submission does not commend to us because the Government by executive fiat cannot reduce the term of office statutorily fixed. Further, the elections to panchayats, co-operative societies and smaller local bodies provide an apotheosis or a training ground for success of our larger experiment of parliamentary democracy. Election process is sacrosanct. Members elected must be permitted to discharge their functions as chosen representatives of the electorate for the statutory terms. Such a drastic power of removing elected representatives before the expiry of term and substituting non-elected persons must receive strict and narrow interpretation at the hands of the courts. If allowed to foster it would be the negation of the democratic process and would engulf the whole fabric of democratic institutions which we are trying to build up. Therefore, even though the term would expire roughly after four months, we would be perfectly justified in removing the administrator and re-instating the elected representatives.

Accordingly, this appeal is allowed and the judgment of the High Court is set aside. A writ in the nature of mandamus is issued quashing the impugned order dated July 1, 1981, of the Deputy Registrar, Co-operative Societies, Gorakhpur Division, Gorakhpur. It is declared that the term of the committee of management of District Co-operative Federation Limited, Basti, and the 1st appellant-Chairman has not expired and the elected members continue to occupy the office. The administrator is hereby directed to hand over the charge forthwith to the Chairman of the Committee of Management. There will be no order as to costs.

H.L.C.

Appeal allowed.

