

State Of U.P.. & Anr. Etc vs C.O.D. Chheoki Employees' ... on 17 January, 1997

Equivalent citations: 1997 (3) SCC 681, AIR 1997 SUPREME COURT 1413, 1997 AIR SCW 1539, 1997 ALL. L. J. 576, (1997) 1 SCR 380 (SC), (1997) 2 JT 265 (SC), (1997) 29 ALL LR 520, (1997) 2 UPLBEC 793, (1997) 2 ALL WC 1042, (1997) 1 SCALE 697, (1997) 2 SCT 194

Bench: K. Ramaswamy, S. Saghir Ahmad

PETITIONER:

STATE OF U.P.. & ANR. ETC.

Vs.

RESPONDENT:

C.O.D. CHHEOKI EMPLOYEES' CO-OP.SOCIETY LTD. & ORS. ETC.

DATE OF JUDGMENT: 17/01/1997

BENCH:

K. RAMASWAMY, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NO. 605 OF 1997 (Arising out of SLP (C) No.12379 of 1995) O R D E R
Impleadment and Intervention allowed. Leave granted.

We have heard learned counsel for the parties. These appeals raise an interesting questions of law relating to the validity of the Act and the Rules providing reservation for or nomination of weaker sections into the Co-operative Societies registered under the U.P. Co- operative Societies Act, 1965 (for short, the `Act') and the U.P. Co-operative Societies Rules, 1968 (for short, the Rules `Rules'), as amended from time to time.

The question is: whether the U.P. Legislature has power to make the law to so amend the Act and

the Rules as to provide for reservation to the weaker sections? The High Court declared Section 130(2)(xii) and (xii-A) and the provisos and the explanation to sub-rule 393-A, Rule 393-B, clause (d) of sub-rule (4) and part of sub-rules (6) to (8) of Rules 440, so far as relating to reservation of seats for weaker-sections, sub-rule (3) of Rule 444-A and clause (i) of sub-rule (5) of Rule 453 as ultra vires the Constitution and accordingly quashed them. Calling in question this judgment of the High Court of Allahabad dated March 10, 1995 in CMWP Nos.40006 and 40121 of 1994, these appeal have come to be filed.

Due to absence of representation of democratic character in the management of the co-operative societies on the basis of election by the general body of the society, the members of the weaker sections, namely, Scheduled Castes and Scheduled Tribes women and other backward classes do not find place. Consequently, the Government introduced amendment to the Act. By adoption of the definition of "Other Backward Classes" contained in U.P. Public Services Reservation for Scheduled Castes and Scheduled Tribes and Other backward Classes Act, 1994, brought Other Backward Classes within the ambit of weaker sections and made all of them members of the Committee of the Management of the Co- operative Society registered under. The Act so as to enable them to be elected or nominated as members. Section 4 of the Act prescribes the guidelines in the matter of formation of the Co-operative Societies and reads as under:

"4. Societies which may be registered - Subject to the provisions of this Act, a society which has as its object the promotion of the economic interest of its members in accordance with co-operative principles or a society established with the object of facilitating the operations of such a society, may be registered under this Act.

EXPLANATION - Co-operative
principles shall
(a) advancement of economic
interest of the members in
accordance with public morals,

decency and the relevant directive principles of State Policy enunciated in the Constitution of India;

(b) regulation and restriction of profit notice;

(c) promotion of thrift, mutual aid and self-help;

(d) voluntary membership; and

(e) democratic constitution of the society."

Section 29 of the Act envisages the constitution of Committee of Management. Sub-section (1) reads as under:

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

(emphasis supplied) Other sub-sections are not relevant; hence omitted. Section 30(1) to (4) deal with election of the Chairman and Vice-Chairman of the Society. Section 130(1) provides that the State Government may make Rules. Sub-section (2) postulates that, in particular, and without prejudice to the generality of the power under sub-section (1), the rules to be made under this section may provide for all or any of the matters enumerated therein. In pursuance thereof, Rules came to be amended. Clauses (xii) and (xii-A) read as under:

"(xii) the election of the members and Chairman and Vice-

Chairman of the Committee of Management of a co-operative society, including delimitation of constituencies, reservation of seats for women and members belonging to weaker sections settlement of election disputes, and levy of fees in respect of any such matter;

(xii-A) the nomination of women and members belonging to weaker sections in the committee of management of a co-operative society."

These amendments were brought on statue by Amendment Act 17 of 1977. Rule 393 (1) provides as under:

"Section 393(1) : A co-operative society may have as many persons on its committee of Management as may e provided in its bye-laws subject to a maximum of fifteen persons. Any other committee or sub- committee of the society shall be smaller than its Committee of Management and in no case such committee or sub-committee shall consist of more than seven members; Provided that in the Committee of Management of every co-operative society three seats shall be reserved of which one shall be reserved for Scheduled Castes or Scheduled Tribes, one for Backward Classes of citizens and one for women:

Provided further that in case of Uttar Pradesh Co-operative Consumer Federation, Central and Primary Consumer Co-operative Societies there seats shall be reserved for women and one for persons belonging to Scheduled Castes or Scheduled Tribes or Backward Classes of citizens.

EXPLANATION - In this rule the expression "backward classes of citizens" shall have the meaning assigned to it in clause (b) of Section 2 of the Uttar Pradesh Public Service (Reservation of Scheduled Castes, Tribes and other Backward Classes) Act, 1994. (2) Where a co-operative society referred to in sub-rule (1) for any reasons whatsoever, fails to elect on the Committee of Management such number of persons for whom seats are reserved or the vacancy occurs the deficiency shall be made good or filed, as the case may be, by the State Government by nominating persons

belonging to such class on the Committee of Management of such society.

Expression "weaker section" referred to in these rules shall mean a person belonging to Scheduled Castes, Scheduled Tribes, women and Backward Classes of citizens referred to in the explanation of sub-rule (1)."

The Preamble of the Constitution provides for socio- economic and political justice to all citizens and dignity of person, with equality of status and of opportunity. Article 46 of the Constitution enjoins that "the State shall promote with special care, the economic interest of the weaker sections of the people". The object of Section 4 of the Act paves way to promote the economic interest and status of the members of the society in accordance with the co-operative principles to facilitate opportunity to augment the economic improvement of the members of the society by co-operative principles by providing facilities and opportunities. The advancement of economic improvement is one of the rights enshrined under the constitution. Section 4, therefore, intends to effectuate the constitutional objective in accordance with co-operative principles, morality, decency and the relevant directive principles and the State Policy enunciated in the Preamble, Fundamental Rights and Directive Principles of the State Policy, by operation of clause (a) of Explanation of Section 4, clause

(c) envisages representation of all sections of the society in a democratic set up so that they all get the opportunity to avail promotion of their economic interests in accordance with co-operative principles by being members of the society established and registered under the Act, rules or bye-laws or by being elected to the management thereof when representation in the management of the Committee by electoral process of the weaker sections is not achieved on account of short fall in their nomination to the Committee. Is one of the principal programmes and the policy under the Act. Clause 24 and (25) of Article 366 define "Scheduled Castes" and "Scheduled Tribes" and Articles 341 and 342 envisage issue of presidential notification specifying for each State the list of Scheduled Castes and Scheduled Tribes respectively. As far as women are concerned, there is no need for specification. The Other Backward Classes are identified as those specified in the Public Services Reservation Act, 1994. The application of this Act is only for the purpose of identification of other Backward Classes and no more. Under the Act, all of them constitute weaker sections for the purpose of the representation in the management of the Committee of the Society. The rules provide for the principles for election or nomination.

Rules 393-A and 393-B of the Rules read as under:

"Notwithstanding anything contained in these rules or the bye-laws of the society but subject to Rule 453, if the Committee of Management of a co-operative society referred to in the proviso to sub-rule (1) of Rule 393, on the date of commencement of this rule does not have as many persons as are referred in the above sub-rule of weaker sections or women, as the case may be, the State Government shall nominate on the Committee of Management of such societies as many persons as may be necessary to provide representation to the extent specified in the said proviso to sub-rule (1) of Rule 393, and upon the nomination so made, the Committee of

Management of the society concerned shall retire the required number of persons by draw of lots by the authority of the Registrar, so as to accommodate such nominees on the Committee of Management. 393-B. Where the term of the elected members of the Committee of Management of such society does not have such number of persons as provided in the aforesaid rules the State Government shall, notwithstanding anything contained in the bye-laws of such society, nominate on the Committee of Management thereof such number of persons as may be necessary for providing representation to such person to the extent specified in the above referred rule and on the nomination being so made, the Committee of Management of the concerned society shall retire the required number of persons by draw of lots, so as to accommodate such nominees."

Rule 440 sub-rule (1)(4)(d) reads as under:

"(4) For purpose of election of members of Committee of Management of a co-operative society, the Registrar shall, notwithstanding anything contained in the bye-laws of the Society, before the issue of notice under sub-rule (2) of Rule 441 for election of a co-operative society or, as the case may be, of a class of co-operative societies determine provisionally -

(a) ...

(b) ...

(c) ...

(d) the number of seats reserved for weaker section."

Rule 444-A(3) reads as under:

"The Registrar or the authorised officer shall, under provisions of sub-rule (6) of Rule 440, reserve constituencies/areas for weaker section and such reservation shall be made to the extent of the seats reserved by rotation in Hindi alphabetical order of the names of constituencies/areas from which members of the Committee of Management area to be elected."

Rule 453(1)(h) provides that no person shall be eligible to be or to continue as a member of the Committee of Management of any co-operative society, if he is not a member of the General Body thereof.

These rules demarcate the constituencies and provide for their rotation, notwithstanding the absence of the provisions for election of weaker sections so as to effectuate the object of Section 29(1) read with Section 130(2)(xii) and (xii-a). A conjoint and harmonious reading of these provisions would, thus, clearly indicate that the Management of every co-operative Society whose

object is in conformity with Section 4 of the Act, shall be vested in a Committee of management constituted in accordance with this Act, the Rules and the bye-laws with elective component inclusive of weaker sections. In its absence, by nomination of them. Section 130(2) (xii) and (xiii-A) states that rules to be made may provide for election of the members, the Chairman and Vice-Chairman of the Committee of management of a co-operative Society including reservation for women and Other Backward Classes. Therefore, the Rules have been made to effectuate the purpose of the Act, namely, for the election of the Committee of the Management and under the democratic process of election as envisages under the Act and the Rules, they get elected. In case the members of the weaker sections, namely, Scheduled Castes, Scheduled Tribes, other Backward Classes and women are not elected, the Government have been given power to nominate the members belonging to weaker sections and the women to an extent of three seats as envisages thereunder, namely, one Scheduled Caste, one Backward Class and one women in each of the Committee of the Management of the every co-operative society..pa The question is: whether such a power is violative of Article 19(1)(c) of the Constitution? Shri Raju Ramachandran, learned senior counsel for the respondents, contends that the Constitution has conferred right on every citizen to form a society or to be its member. Formation of the Society includes therein inviolability of incorporate character or enrolment of any member who fulfils the objects of the society as per the bye-laws. No outsider would be interposed or thrust against his/her wishes. No outsider, therefore, could be brought or nominated as member of the management Committee without being a member of the General Body. In *Daman Singh & Ors. vs. State of Punjab & Ors.* [(1985) 2 SCC 670 at 681], the Constitution Bench had held that the creation, the constitution and the management of the Society is a creature of the statute. They are controlled by the statute and so, there can be no objection to statutory interference with their composition on the ground of contravention of the individual right to freedom to form association. In para 11, this Court held that once a person becomes a member of a Co-operative Society, he loses his individuality qua the Society and he has no independent rights except those given to him by the statute and the bye- laws. He must act and speak through the Society or rather, the Society alone can act and speak for him qua rights or duties of the Society as a body. The question whether the Legislature has power to enact the law providing for nomination of the members of the Scheduled Castes, Scheduled Tribes and women in the matter of election to the Committee of to the Co-operative Societies, was considered by this Court in *Babaji Kondaji Garad etc. vs. Nasik Merchants C- operative Bank Ltd., Nasik & Ors.* [(1984) 2 SCC 50]. In paragraphs 9 and 12, this Court stated as under:

"The Act was enacted in 1960 and it repealed the Bombay Co-operative Societies Act, 1925. Section 73 provides for the vesting of the management of every society in a committee to be constituted in accordance with the Act, the rules and the bye-laws. At the commencement of the Act, there was no provision for reservation of seats in favour of the members of the Scheduled Castes and the Scheduled Tribes and the weaker section of the members. Section 73- B making observation obligatory was introduced in the Act by Amending Act 27 of 1969. Why was this specific amendment made? The working of the Act must have disclosed a sorry state of affairs that even though the co-operative movement was expanding by leaps and bounds, the members of the Scheduled Castes and Scheduled Tribes or the weaker section of the members of the society was not represented in the committee and had no opportunity

to participate in the decision making process, laying down broad policies and management of the society. Article 43 of the Constitution set the goal that the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas. In our onward march of economic independence, India was destined to be a co-operative commonwealth. Since activities were diversified, more especially in the rural areas. Every activity of a person devoted to agricultural in the rural area is considerably influenced by the co-operative movement, such as seed distribution, credit, disposal of agricultural produce etc. The member of the Scheduled Castes and Scheduled Tribes predominantly in rural areas did not remain unaffected by the gigantic stride that the co-operative movement took. They were directly and substantially affected by it. In order to avoid that those who are affected by the movement in their vital day to day existence enjoy a second class status by being denied the opportunity to be represented in the management council and decision making bodies, a provision like Section 73-B was introduced to ensure representation of such persons who in the absence of reservation may find it difficult to be elected to the Committee in which the entire power of management vests. Absence of representation coupled with subjection to the dictates of the society would be antithesis of democratic process reducing such persons to serfdom. A co-operative society is to be governed by a committee elected by democratic process. This democratic process must permeate in filling in reserved seats otherwise the committee would not enjoy a representative character. One can draw light from the provision contained in Part XVI of the Constitution and especially Articles 330 and 332 which provide for reservation of seats in the House of People and in the Legislative Assembly of every State for the Scheduled Castes and the Scheduled Tribes. The felt necessities of the time and the historical perspective of class domination led to the constitutional guarantee of reservation so that India can truly be a sovereign socialist secular democratic republic. A republic is made up of men and institutions. That is why democratic institutions have to be set up by providing for election and to make the democratic institutions truly representative, reservation of seats for those who on account of their backwardness, exploitation and unjust treatment both social and economic cannot obtain representation because of the class domination. This is the genesis of reservation. Therefore, any provision making for reservation must receive such construction as would advance the purpose and intent underlying the provision making reservation and not thwart it. In the part a method of construction was used to extend a remedial statute called proceeding upon 'the equity of the statute'. In *Hay v. Lord provost of Perth* [(1863) 4 Macq. HL (SC) 535, 544] Lord Westbury observed that the mode of construction known as 'the equity of the statute' was "very common with regard to our earlier statutes, and very consistent with the principle and manner according to which Acts of parliament were at that time framed". Undoubtedly, nowadays this mode of construction has fallen into disuse. Even though the expression 'the equity of the statute' has fallen into disuse, it is still in vogue in somewhat similar form in that if it is manifest that the principles of justice require something to be done which is not expressly provided for in an Act of Parliament, a court of justice will take into

consideration the spirit and meaning of the Act apart from the words. In this context, one can recall the words of Jessel M.R. in *Re Bethlem Hospital* [(1875) LR 19 Eq. 457], that 'the equity of the statute' may as well as mean "such a thing as construing an Act according to its intent, thought not according to its words".

Alternatively, one can bring in Heydon's test more often noticed by this Court that in order to arrive at true intendment of a statute, the court should pose to itself the questions : (1) what was the situation prior to the provision under construction, (2) what mischief or defect was noticed before introducing the provision, (3) whether it was remedial and (4) the reason for the remedy. Applying this test, the same result would follow inasmuch as looking to the position and the plight of Scheduled Castes and Scheduled Tribes and the weaker section of the members of the society, though they would be subject to the dictate of the society they had no voice in the managerial councils and that to raise the stature and status of such persons so as to bring them on the footing of equality with other segments of the society, reservation was provided in the absence of which those in whose favour reservation was made could not get elected to the decision making bodies. While ascertaining the true canon of construction applicable to Section 73-B, these aspects must start into our face.

When statute requires a certain thing to be done in a certain manner, it can be done in that manner alone unless a contrary indication is to be found in the statute. If the Legislature uses the expression 'if no such persons are elected' it indubitably suggests that primarily the reserved seats are to be filled in by election. Failing the election, one can resort to appointment or co-option. The chronology of the methodology by which seats are to be filled in as set out in Section 73-B clearly manifests the legislative intention. The first and the foremost pride of place is accorded to election, it ought to be so because a representative institution ordinarily must be democratically elected. The section, therefore, speaks 'if no such persons are elected' which would mean that the authorities charged with a duty to hold election must proceed to arrange for holding the election. If election is held giving out information that there are reserved seats and no candidate is forthcoming to contest for the reserved seats, the Legislature in its wisdom provided that the seats shall to remain vacant but can be filled in by two subsidiary methods such as appointment or co-option which cannot be put on par or equated with election which is a universally recognised method by which representative institutions are set up. Therefore, the language and the chronology of the methodology of filling in reserved seats employed in Section 73-B provide a clue to its correct construction and there should be no doubt that opportunity must be provided for filling in seats by election, it is the failure of the election machinery to fill in the seats which would enable the concerned authority to fill in the seats by appointment or co-option.

The condition precedent to filling in reserved seats by appointment or co-option is holding of the election and failure to elect such person should permit resort to other methods of filling in the reserved seats."

In the case of *Toguru Sudhakar Reddy & Anr. vs. Government of A.P. & Ors.* [1993 Supp. (4) SCC 439], this Court considered the power of the Government to nominate women to the Co-operative Societies under Section 31 of the A.P. Co-operative Societies Act and the validity of the Act and the

power of the Government for nomination of them was upheld.

Thus, it is settled law that no citizen has an 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 fulfilment 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 bye-laws and is subject to its operation. The stream cannot rise higher than the source.

So, the society having been formed is governed by the provisions of the Act. The individual members do not have any fundamental right to the management of the Committee except in accordance with the provisions of the Act, rules and bye-laws. The management of the Committee is regulated by Section 29 of the Act. The composition thereof is also regulated by the Act and has to be in accordance with the Rules and the bye-laws. The Rules referred to here in before have to be in furtherance of and in conformity with the provisions contained in Section 130(2)(xii) and (xii-A) and the Rules providing for reservation in the election of the committee or for nomination to the Management Committee of the members belonging to the weaker sections and women should be to effectuate socio-economic and political justice assured by the Preamble, Articles 38 and 46 of the Constitution.

Shri Raju Ramachandran, relying upon the judgment of this Court in *Damyanti Naranga vs. The Union of India & Ors.* [(1971 3 SCR 840)], has contended that in view of the ration laid down by this Court, the Government is devoid of power to make law unless any of the restrictions as controlled by clause (4) of Article 19 of the Constitution of India are infringed. The Government has no power to enact a law incorporating the reservation to the members of weaker sections and women thereof. We find no force in the contention. It could be seen that therein, the Government had enacted the *Sahitya Sammelan Act* exercising the power under Entry 63, List I of the Seventh Schedule to the Constitution. This Court pointed out that the Act did not envisage that the Samiti is of national importance. Therefore, it was held that the Parliament had 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*. This Court also held that the properties belonging to the original Society stood vested in the Society incorporated under Section 4 of the Act without any compensation. Therefore, it was violative of Article 31 of the Constitution of India, as it stood then. The ratio therein has no application to the facts in this case. He then contended that "Other Backward Classes" defined under the *State Public Services Reservation Act* applicable to and covering the public services, they are being inducted as members of the society which are otherwise not eligible and, therefore, the induction of them by amendment of Rules made on 15.7.1994 is unconstitutional. In support thereof, he contends that though Article 15(4) of the Act provides that it is subject to Articles 15(2) and 29(2) of the Constitution, it does not envisage that it is also subject to Article 19(1)(c) of the Constitution. Therefore, the reservation provided to the

weaker sections is unconstitutional. We find no force in the contention. The object of Article 15(4) is to lift the prohibition of general equality guaranteed in Article 15(2) and 29(2) of the Constitution dealing with the right to admission into an educational institution maintained by the State or receiving aid from the State. Therefore, their object is distinct and different from Article 19(1)(c). Though Article 19(1)(c) gives freedom to form association, it is controlled by the provisions of the Act. As held by this Court, once a society has been registered under the Act, the management of the society through Section 29 and the Rules made thereunder, is regulated by duly elected members. In the democratic set up, all eligible persons are entitled to contest the election, as held, according to the provisions of the Act and Rules. In the absence of elected members belonging to the weaker sections and women elected, nomination of them by the Government is the alternative dispensation envisaged as one of the policies of the Act. Therefore, the Court cannot interfere with the policy and declare it is unconstitutional violating Article 19(1)(c) of the Constitution.

It is then contended that nomination of the members belonging to the waker sections is arbitrary and uncanalised and it is violative of Article 14 of the Constitution. It is seen that the provisions of the Act and the relevant Rules provide necessary guidelines. The persons are identified. The bye-laws prescribe the eligibility of the members who would be eligible to be nominated as members of the society and the disqualifications have been provided under Rule 393 of the Rules. Under those circumstances, these provisions do indicate the guidelines under the Act, If any one is nominated in derogation of the guidelines provided under the Act and rules, that would be an individual case to be considered separately but on that count alone, the Act and the Rules cannot be declared to be ultra vires.

Shri Raju Ramachandran relied upon the judgment of this Court in Lalit Narayan Mishra of Economic Development and Social Change, Patna etc. vs. State of Bihar & Ors. [AIR 1988 SC 1136] in support of his contention. But far from helping him, the ratio therein also is consistent with the law laid down by this Court.

It is then contended by Mr. S. Markandeya, learned counsel for some of the respondents, that the Workers Ordinance Co-operative Society consists of weaker sections and further induction of weaker sections by nomination or women who do not become members of the society is unconstitutional. The election of nomination of the weaker sections to the Committee of Management is as per the provisions of the Act, the Rules and the bye-laws. If any society consists solely of those segments and elected Committee of Management consists of them, the question of nomination to represent them as that segment again would not arise. In the absence of elected members being there in the Committee, necessarily, the Government have the power to nominate the unfilled membership of the Committee.

Thus considered, we are of the view that the provisions of the Act and rules are consistent with the policy and object of the Constitution and, therefore, the High Court was wholly incorrect in declaring the aforesaid provision to be ultra vires the Constitution.

The appeals are accordingly allowed. The writ petition stands dismissed. No costs.