

(2006) 3 AWC 2636

Allahabad High Court

Case No: CMWP No"s. 16449, 18712 and 18714 of 2006

Sudhir Tyagi

APPELLANT

Vs

State of U.P. and
Others

RESPONDENT

Date of Decision: April 27, 2006

Acts Referred:

- Uttar Pradesh Co-operative Societies Act, 1965 - Section 130, 130(2), 17, 18, 28
- Uttar Pradesh Co-operative Societies Rules, 1968 - Rule 13, 2(11), 2(2), 2(44), 393
- Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 - Section 2

Citation: (2006) 3 AWC 2636

Hon'ble Judges: Yatindra Singh, J; R.K. Rastogi, J

Bench: Division Bench

Advocate: Rajeshwar Singh and H.R. Misra, for the Appellant; Ravindra Singh and C.S.C., for the Respondent

Final Decision: Dismissed

Judgement

Yatindra Singh, J.

These writ petitions relate to manner of reservation in the constituencies for members of the committee of management of a cooperative society.

THE FACTS

2. The elections in the cooperative societies were not being held and administrators were being continued. Writ petition No. 7451 (M/B) of 2005 was filed in the Lucknow bench of the Allahabad High Court for a direction to hold elections. This writ petition was disposed of on 8.12.2005 with a direction to hold elections in the cooperative societies within three months. Another WP No. 5463 of 2006 was disposed of at Allahabad on 7.2.2006 in the similar terms. The Registrar, Cooperative Societies directed that elections for delegates

be held by 15.3.2006 and elections for the committee of management be held by 7.4.2006. It is in pursuance of these directions that elections in the Cooperative societies, including the Kisan Sahkari Chini Mills Samiti Ltd. Gajraula Hasanpur District Jyotibaphule Nagar (the Hasanpur Cane Cooperative), are being held.

3. Section 17 of the UP Cooperative Societies Act (the Act) provides as to who can be a member of a cooperative society. Section 18 of the Act provides for classes of members. Section 28 provides for the final authority in a cooperative society. Section 29 provides for the committee of management. Section 130 of the Act empowers the State Government to frame rules. In pursuance of this, the State Government has framed the UP Cooperative Societies Rules 1968 (the Rules). Chapter VII of the Rules provides for constitution of General body of the cooperative societies. Chapter XXIX of the Rules provides for election in the cooperative societies.

4. The Hasanpur Cane Cooperative has members consisting of individual members, cooperative societies, Gaon Sabhas and sympathiser members. Its area of operation is tehsil Hasanpur district Moradabad. It, not only manages the cane grown by its members but, also runs a sugar factory. It has about 42000 individual members who are spread over Hasanpur Tehsil.

5. Under Rule 84 of the Rules read with Section 28 of the Act, the general body of certain cooperative societies consists of delegates of members {defined under Rule 2(11) of the Rules}. The Hasanpur Cane Cooperative is one of those and its general body consists of delegates of the members. The number of these delegates and their details are provided in the bye laws of the Hasanpur Cane Cooperative. Under the bye-laws of the Hasanpur Cane Cooperative, 200 delegates are to be elected from the individual members namely the cane growers, 10 from the cooperative societies, 5 from the Gaon Sabhas, and 5 from the sympathiser members and the State Government is entitled to nominate 10 delegates.

6. The elections in the Hasanpur Cane Cooperative are to be done at three stages.

(i) The election of general house namely the elections of delegates.

(ii) The election of committee of management by the delegates.

(iii) The election of Vice Chairman by the committee of management.

7. The District Magistrate is ex-officio Chairman of the Society. The elections at these stage are to be done in the seriatum as mentioned above i.e. at first for the delegates, then for the members of the committee of management and then for the Vice Chairman. Apart from it, the election at each stage is independent.

8. There is no dispute regarding finalisation of constituencies of delegates in this case. The election programme for electing 200 delegates from the cane growers was published

on 23.2.2006. After finalisation of the voters list, nominations were to be filed by 4.3.2006. They were to be scrutinised on 6.3.2006 and nomination could be withdrawn by 7.3.2006. The election of delegates was to be held on 11.3.2006 and the declaration of results was to be done on the same date. The elections for delegates have been held in accordance with the programme and results have been declared.

9. "Weaker section" has been defined in Rule 2(2)(ddd) of the Rules to include SC, ST and OBC of citizens. OBC has been defined in Rule 2(44) of the Rules to mean OBC as defined in Section 2(b) of the UP Public Services (Reservations for SC, ST, and OBC) Act, 1994. There are twelve constituencies for the committee of management. Out of these twelve, three are to be reserved by rotation in the order of alphabets of Dev Nagri script.

10. Simultaneously with the publication of the election programme for delegates, the provisional constituencies for the Committee of Management were also published on 23.2.2006. No specific constituency was reserved for SC/ST, OBC, or woman at that time. However a note was appended in which it was clarified that one seat each for SC/ST, one for OBC and one for woman will be reserved in accordance with the Rules. This is to be done under Rule 393 and 444-A of the Rules; reserving three constituencies in Hindi alphabetical order for weaker sections and woman in rotation.

11. An order was passed on 7.3.2006, reserving constituencies for election of members of the committee of management of the Hasanpur Cane Cooperative. It was modified on 17.3.2006 changing these reserved constituencies. In WP Nos. 16449 of 2006 and 18712 of 2006 this modification in the reservation is being challenged. WP No. 18712 of 2006 has been filed against the order rejecting nomination of the petitioner on the ground that he did not belong to the category for which that constituency was reserved by the order dated 17.3.2006.

POINTS FOR DETERMINATION

12. We have heard Sri BR Singh and Sri Rajeshwar Singh advocates for the petitioner; standing counsel for the state government and state officers, Sri Ravindra Singh for the Hasanpur Cane Cooperative and Sri HR Misra for the other private respondents. The following points arise for determination:

(i) Whether the reservation in the constituencies for members of the committee of management is illegal.

(ii) Whether the reservation in the constituencies for the members of the committee of management should be done before publication of election programme for the delegates.

(iii) Can the reservation in the constituencies of the committee of management be modified after its finalisation?

1st POINT: THE RESERVATION OF CONSTITUENCY IS CORRECT

13. Section 130 of the Act empowers the State government to frame rules. Section 130(2) (xii) and (xiii) empowers the State Government to frame Rules reserving seats for weaker section and women. The State government has framed Rules. Rule 85-A provides for reservation among different types of societies. In this case Sub-rule (f) of rule 85-A {rule 85-A(f)} is applicable which provides that the number of delegates will be as provided in the bye-laws, and in its absence according to the direction of the Registrar.

14. Chapter III of the Rules is titled "Bye laws". Rules 13 empowers the Registrar to frame model bye laws. The Registrar has framed model bye laws for the cane cooperatives. The Registrar has also been empowered to issue directions to amend the bye-laws. The Registrar has issued directions dated 29.7.1994 to amend the bye-laws to incorporate changes in law. The amended bye law 35 provides for reservation in the election of delegates from members. It provides that in case more than one delegate is to be elected from any constituency then second delegate will be of weaker section. However, there is no specific reservation for any particular weaker section. This delegate from the weaker section could be of any class ie SC or ST or OBC.

15. The reservation in the election of members of the committee has been provided by Rule 393 and 444-A of the Rules. Three constituencies have to be reserved: one for SC/ST, one for OBC, and one for woman. They have to be reserved in rotation in each successive election, according to Hindi alphabetic order:

* in the first one, the first three are to be reserved;

* in the second, the next three namely 4 to 6 are to be reserved; and so on.

This is clear from use of the word "rotation" in Rule 444-A(3) of the Rules.

16. In case of the committee of management, a particular constituency is reserved either for SC/ST or for the OBC or for the women. It is different from the election of delegates where second delegate from the same constituency was to be one from the weaker section namely SC/ST/OBC. There is no reservation for the women among the delegates.

17. The constituencies for election of delegates (who form general body of any cooperative society) and for members of the committee of management are different. The provisions for reservations at these two levels are also different. The constituency of a member of the committee of management is bigger than the constituency of a delegate. It consists of many constituencies of delegates.

18. This difference has created some difficulties as the constituency which is reserved for a particular category-may not have even single delegate of that category. In order to overcome it, Rule 393(2) of the Rules has been framed and the State Government has been empowered to nominate a person of that category for that constituency.

19. In the present case an order was passed on 7.3.2006 reserving Ujhari constituency for SC/ST, Shekhpur Jhakari for OBC and Alia Kalyanpur for woman; rest were open-without any reservation. According to the rule, three constituencies just next in the Hindi alphabetical order to the constituencies which were reserved in the previous election are to be reserved in this election. However, this rule was not followed; it was a mistake and was corrected on 17.3.2006 reserving Puthhee for SC/ST, Singhpur Sahni for woman; Shekhpur Jhakhri continued to be reserved for OBC and rest were made open i.e. without any reservation. Thereafter the election programme for election of the committee of management was published on 19.3.2006. The twelve constituencies alongwith reservation by order dated 7.3.2006 and 17.3.2006 are as follows:

Sl No.	Name of the constituency	Reservation under order dated 7.3.2006	Reservation under order dated 17.3.2006
1.	Aliya Kalyanpur	Woman	
2.	Ujhari	SC/ST	
3.	Gangeshari		
4.	Jaitauli		
5.	Tasiya ki Madayiya		
6.	Mau. Pur Sultan Ther		
7.	Puthhi		SC/ST
8.	Shekhpur Jhakri	OBC	QBC
9.	Singhpur Shani		Woman
10.	Sirsanal		
11.	Sinhali Jagir		
12.	Hasanpur		

(Blank means that there is no reservation and it is general seat)

20. In the first elections held in the year 1994 constituencies 1 to 3 according to Hindi alphabet were reserved. In the next 2000 elections constituencies 4 to 6 were reserved. In the present election, constituencies 7 to 9 were to be reserved however, by the order dated 7.3.2006, constituencies 2, 8 and 1 were reserved. This was the mistake and was rightly corrected by the order dated 17.3.2006. By this order constituencies 7 to 9 according to Hindi alphabet have been reserved in accordance with Rule 444-A. There is no illegality in the order. On the contrary, had the order dated 7.3.2006 continued, it would have resulted into miscarriage of justice.

2nd POINT: WHEN RESERVATION TO THE CONSTITUENCY SHOULD BE DONE

21. The counsel for the petitioners submitted:

- * The process for reservation of constituency in the committee of management has to be done before start of the election process of delegates-Rule 407 of the Rules;
- * Reservation in the constituencies of members of the committee of management was not done before publication of the election programme for electing delegates; and so
- * The entire election is illegal.

22. The counsel for the respondents submitted:

- * The Hasanpur Cane Cooperative is a notified society and so Rule 407 is not applicable to it;
- * The constituencies for elections of delegates and of members of the committee of management are different. The criteria for reservation of constituencies in these two are also different. The determination of constituency and reservation for delegates has to be done before start of election process for the delegates, Similarly determination of constituency and reservation in the committee of management has to be done before start of the election process for the committee of management and so it is necessary to determine the constituency and reservation for the committee of management before election programme of the delegates is published.

23. It is not necessary to decide the rival submissions. The petitioners are not entitled to any relief even if it is accepted that:

- * Rule 407 is applicable; and
- * The matter of constituencies and reservation for the committee of management is to be finalised before the election process for the delegates is published.

24. In the present case, constituencies for the committee of management were not finalised before the publication of election process of delegates. In fact the first order dated 7.3.2006 was passed on the date of withdrawal/finalisation of nomination papers,

for the delegates. The petitioner never challenged the election process for the delegates. As a matter of fact, elections of delegates have not been questioned even now. Accepting the petitioners plea will mean that not only the election of the petitioners as the delegates will be rendered illegal but also the election of all other delegates will be rendered illegal. Those other delegates are not even parties in this writ petition. If the petitioners wanted to challenge the elections on this ground, they ought to have challenged it before elections for the delegates. The challenge on this ground can not be raised at this stage.

25. The other reason for not permitting the petitioners to raise this plea is that we have already upheld the reservation as modified by the order dated 17.3.2006. Even if the petitioners are elected again, they will not be able to contest the elections in the committee of management. It will be an exercise in futility.

3rd POINT: MISTAKE IN RESERVATION CAN BE CORRECTED

26. The mistake in the reservation was corrected on 17.3.2006. The election programme for the committee of management was published on 19.3.2006. The last date for filing of the nomination paper was 23.3.2006. The reservation in the constituencies was corrected on 17.3.2006 which is prior to the date of publication of election programme for the committee of management. Such correction has been upheld by two division bench decisions of our court reported in Sharwan Kumar v. SDM Sadar 1988 UPLBEC 119 and Sanjeev Kumar v. Election Officer AIR 1995 Allahabad 135 (paragraph 12). If the constituencies had been reserved after the date of nomination; or against the reservation quota provided under Rule 444-A, then some thing could have been said in favour of the petitioners but not in this case.

27. The counsel for the petitioners submitted that there is not even a single delegate belonging to the reserved category from the constituencies where reservation is changed and great injustice will be caused as they will go unrepresented in the committee of management. This could have happened even if the reservation was finalised before the election for the delegates such an eventuality has been taken care of under Rule 393(2) of the Rules, which states that in such a situation the State Government is empowered to nominate a person from that category.

SUGGESTIONS

28. We did not decide the following two questions and have left them open:

(i) Whether the constituency and reservation in the committee of management should be done before publication of election programme of delegates; and

(ii) Who can be nominated under Rule 393(2) of the Rules.

29. However, we wish to make the following suggestions in this regard.

(i) Irrespective of answer to the question number (i) of the preceding paragraph, reservation of the constituency for the committee of management may be made before the election process for the delegate is published so that the members may elect such delegates as can represent them in the committee of management.

(ii) In case the state government has to exercise powers under Rule 393(2) to nominate a person from the reserved category, then that person should be member of that constituency so that his constituency may not go unrepresented. When such a member is not available from that constituency then only any other person may be considered for nomination.

CONCLUSIONS

30. Our conclusions are as follows:

(a) The reservation in the constituencies for the committee of management should be done in rotation in each successive elections according to Hindi alphabetic order.

(b) In the circumstances of the case, there is no miscarriage of justice in correcting the apparent mistake in the reservation order.

30. In view of our conclusions, the writ petitions are dismissed. Interim orders are vacated. The result of the elections may be announced and fresh date for elections of vice chairman be fixed. Let a copy of this order be placed in the record of WP No. 18712 of 2006 and 18714 of 2006.