

**(2012) 12 AHC CK 0082**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 63681 of 2012

Mem Chand and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Dec. 7, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Uttar Pradesh Co-operative Societies Rules, 1968 - Rule 444C

**Hon'ble Judges:** Satya Poot Mehrotra, J and Abhinava Upadhyaya, J

**Final Decision:** Allowed

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### **Judgement**

Abhinava Upadhyaya, J.

The present Writ Petition has been filed by the petitioners under Article 226 of the Constitution of India, inter alia, praying for quashing the order dated 1.12.2012 passed by the Election Officer, whereby the nomination papers submitted by the petitioners have been rejected.

The ground raised in the Writ Petition is that the rejection of the nomination papers submitted by the petitioners was illegal and contrary to the provisions of the U.P. Cooperative Societies Act, 1965 (in short "the Act") and the Rules framed thereunder.

We have heard Sri K.N.Mishra, learned counsel for the petitioners and the learned Standing Counsel appearing for the respondent nos.1 to 4.

Learned Standing Counsel appearing for the respondent nos.1 to 4 submits that as per the averments made in paragraph nos. 17 and 18 of the Writ Petition, the election process has already started and the elections are scheduled to take place on 10th December, 2012, and in the circumstances, no interference is called for by this Court in exercise of its Writ Jurisdiction under Article 226 of the Constitution of India.

In reply, Sri K.N.Mishra, learned counsel for the petitioners submits that in view of the illegality committed in rejection of the nomination papers of the petitioners, this Court may exercise its Writ Jurisdiction under Article 226 of the Constitution of India.

We have considered the submissions made by the learned counsel for the parties.

From a perusal of the averments made in the Writ Petition and annexures thereto, particularly paragraph nos. 17 and 18 of the Writ Petition, it is evident that the election process has already started and the elections are scheduled to take place on 10th December, 2012. Since the election process has already started, we are not inclined to exercise of our Writ Jurisdiction under Article 226 of the Constitution of India so as to hamper the ongoing election process.

Rule 444C of the Uttar Pradesh Cooperative Societies Rules, 1968 framed under the U.P.Cooperative Societies Act, 1965 lays down as under:

"444C.(1) The election in a cooperative society shall not be called in question either by arbitration or otherwise except on the ground that

(a) the election has not been a fair election by reasons that corrupt practice, bribery or undue influence has extensively prevailed at the election, or

(b) the result of the election has been materially affected

(i) by improper acceptance or rejection of any nomination, or

(ii) by improper reception, refusal or rejection of voters, or

(iii) by gross failure to comply with the provisions of the Act, the rules or the byelaws of the society.

Explanation. For the purpose of this rule corruption, bribery or undue influence shall have the meaning assigned to each under Section 123 of the Representation of the People Act, 1951.

(2) A dispute relating to election shall be referred by the aggrieved party within fortyfive days of the declaration of the result.

From the perusal of the abovequoted Rule 444C, it is evident that the election in a cooperative society may be questioned by taking proceedings under the said Rule.

Subclause (i) of Clause (b) of subrule (1) of Rule 444C provides that the election in a cooperative society may be questioned by taking proceedings on the ground that the result of the election has been materially affected by improper acceptance or rejection of any nomination. Subclause (ii) of Clause (b) of the said Rule 444C provides that the election in a cooperative society may be questioned on the ground that the result of the election has been materially affected by improper reception, refusal or rejection of voters.

It will, thus, be open to the petitioners, after the elections are over, to avail remedy under the said Rule 444C before appropriate forum for seeking appropriate reliefs for redressal of their alleged grievances, as raised in the Writ Petition.

In view of the above, the Writ Petition filed by the petitioners is liable to be dismissed and the same is, accordingly, dismissed without prejudice to the rights of the petitioners to pursue appropriate remedy as may be available to them under law, after the elections are over, before appropriate forum for appropriate reliefs for redressal of their alleged grievances, as raised in the Writ Petition.