

(1995) 01 AHC CK 0038

Allahabad High Court

Case No: Civil Misc. Writ Petition No's. 37886, 37398 and 38092 of 1994

Sanjeeve Kumar and another

APPELLANT

Vs

Election Officer

RESPONDENT

Date of Decision: Jan. 6, 1995

Acts Referred:

- Constitution of India, 1950 - Article 226, 329
- Uttar Pradesh Public Services (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act, 1994 - Section 2

Citation: AIR 1995 All 135 : (1995) 1 UPLBEC 309

Hon'ble Judges: R.A. Sharma, J; N.L. Ganguly, J

Bench: Division Bench

Advocate: A.D. Prabhakar, for the Appellant; Standing Counsel and Sashi Nand, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. A. Sharma, J.

The two questions, namely, (i) whether the constituencies for weaker section for the purpose of election to the Committee of Management of a Cooperative Society should be reserved before the issue of notice under sub-rule (2) of Rule 441 of the U.P. Co-operative Societies Rules (hereinafter referred to as the Rules) notifying the election programme or is it open to the authorities to reserve the constituencies after the election programme has been announced; and (ii) whether it is open to the authorities to reserve the same constituencies for weaker section, which were reserved in the last election, have been raised in these petitions.

2. First question referred to above is involved in all these writ petitions, whereas the second question is involved only in two Writ Petitions Nos. 37886 of 1994 and 37398 of 1994. With the consent of the learned counsel for the parties Writ Petition No.

-376886 of 1994 has been made the leading case, the fact of which will be narrated hereinafter and the facts of other cases will be referred to only when it is found necessary.

3. We have heard learned counsel for the petitioners. Sri Shashi Nandan learned counsel for the Registrar, Co-operative Societies, Sri A. Kumar, learned counsel for other respondents and the learned counsel for other respondents and the learned Standing counsel. Parties have exchanged affidavits.

4. Petitioner in Writ Petition No. 37886 of 1994 is Co-operative Cane Development Society Ltd. Daurala, Meerut (hereinafter referred to as the society). It is a Co-operative Society notified by the Government of U.P. under sub-section (3) of Section 29 of U.P. Co-operative Societies Act (hereinafter referred to as the Act). Election in respect of such societies is to be held in accordance with part VI of the U.P. Co-operative Societies Rules, 1968 as amended up-to-date. First the election of delegates is required to take place and the delegates so elected are to elect the members of the Committee of Management of the society. Society has been divided into nine constituencies, three of which, namely, Kaithwadi, Dabathua and Daurala were reserved in the last election held in 1987 for weaker sections.

5. In 1994 after the delegates were elected, election programme for election to the Committee of Management of the society was published in newspaper on 16-11-1994, according to which 23-11-1994 was the date for filing of the nomination and 28-11-1994 was the date of election. At the bottom of this notice a note was appended mentioning therein that the reservation of the three constituencies for weaker sections will be announced before the date fixed for filing of the nomination. Thereafter vide order dated 21-11-1994, which was published in newspaper dated 23-11-1994, the same three old constituencies, namely Kaithwadi, Dabathua and Daurala were reserved for Scheduled Caste/Scheduled Tribe, backward class and Woman respectively. Another notice was also published in the newspaper, a copy of which has been filed as Annexure 5 to the writ petition, slightly amending the election schedule of the society by extending the date for filing the nomination by one day, with the result nomination could be filed up to 24-11-1994. Petitioners, who are the delegates elected from the aforesaid two constituencies, namely, Kaithwadi and Daurala, have filed this writ petition, challenging the order dated 21-11-1994 as published on 23-11-1994 reserving three constituencies on two grounds, firstly, constituencies can be reserved before the publication of the election programme and it is not open to the Election Officer or any other authority to reserve the constituencies after the issue of notice under sub-rule (2) of Rule 411; and secondly, the constituencies, which were reserved in the last election cannot be reserved again, because the reservation of the constituencies has to be made by rotation in Hindi alphabetical orders of the names of the constituencies from which _ the members of the Committee of Management are to be elected.

6. Rule 393 (1) lays down that a Cooperative Society may have as many persons on its Committee of Management as may be provided in its bye-laws subject to a maximum of 15 persons. Proviso appended to it provides that on the Committee of Management of every society three seats shall be "reserved of which one shall be reserved for Scheduled Caste or Scheduled Tribe, one for backward classes of citizens and one for woman. Sub-rule (2) provides that if for any reason whatsoever a Co-operative Society fails to elect on the Committee, of Management such number of persons for whom seats are reserved or the vacancy occurs, the same shall be filled by the State Government by nominating persons belonging to such class on the Committee of Management of such society. By the explanation appended to the above rule the expression "backward classes of citizens" has been given the meaning assigned to it in clause (b) of Section 2 of U.P. Public Service (Reservation for Schedule Caste, Schedule Tribe and other Backward Classes) Act, 1994. The words "weaker section" have also been defined by the explanation appended to sub-rule (2) of the above Rule so as to mean a person belonging to Scheduled Caste, Scheduled Tribe, woman and Backward classes of citizens. Sub-rules (4) to (8) of Rules 440 provides for determination of constituencies, extent of area of each constituency, total number of seals allotted to each constituency and the number of seats reserved for weaker sections. These sub-rules are as follows :

"440. (4) For the purpose of election of members of Committee of Management of a Co-operative Society, or as the case may be, of delegates to general body 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 Cooperative Society or as the case may be a class of Co-operative Society determine provisionally (emphasis supplied) (a) the number of constituencies in which the area of operation of the society shall be divided;

(b) the extent of area of each constituency;

(c) the total number of seats allotted to each constituency;

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

(5) The Registrar shall thereupon publish in a local newspaper, the provisional determination made under sub-rule (4) for inviting objections within seven days from the date of such publication. A copy thereof shall also be sent to the concerned society for its comments.

(6) The criteria for determination of constituency may be any one or more of the following, namely.

(i) revenue area or areas;

(ii) class or classes of membership;

(iii) other rational basis in relation to area of operation of society :

Provided that the unit of determination in case of primary agricultural credit society shall as far as possible be one or more Gaon Sabhas falling in the area of operation of the society.

(7) The objections and Comments received under sub-rule (5) shall be considered by the Registrar on the thirteenth day of such publication and thereafter he shall finally determine the constituencies, total number of seats and the number of seats reserved for the weaker section as referred in clauses (a) to (d) of sub-rule (4).

(8) The final determination of the constituencies under sub-rule (7) shall be published in the local newspaper on the fourteenth day of such publication and a copy thereof shall be sent to the concerned society and the District Magistrate concerned.

Sub-rule (3) of Rule 444A requires the Registrar or the authorised officer to reserve the constituencies for weaker section under the provisions of sub-rule (6) of Rule 440. This rule is as under :

"444A (3) 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 are to be elected.

Provided that the constituencies so reserved shall be allotted to scheduled castes/ scheduled tribes, backward classes of citizens referred to in the explanation of sub-rule (1) of Rule 393 and woman respectively in Hindi alphabetical order :

Provided further that where the first alphabet in the names of more than one constituency is the same, reservation in such cases shall be regulated by the next alphabet in the names of such constituencies."

7. From the perusal of the above provisions, it is apparent that Registrar is required first to determine provisionally under sub-rule (4) of Rule 440 the number of constituencies in which the area of the society is to be divided, the extent of area of each constituency, total number of seats allotted to each constituency and the number of seats reserved for weaker section. Thereafter the Registrar has to publish the provisions determination in newspaper under sub-rule (5). Criteria for determining the constituencies have been laid down in sub-rule (6). Objections received under sub-rule (5) against the provisional determination is to be considered by the Registrar under sub-rule (7) and thereafter the final determination of the constituencies has to be published in newspapers under sub-rule (8). Every action/step referred to under sub-rules (4) to (8) of Rule 440 has to be taken and completed before the issue of notice under sub-rule (2) of Rule 441. Under sub-rule (1) of Rule 441 the Election Officer has to notify in the local newspaper the date of election. Sub-rule (2) of the said Rule requires the Election Officer to give notice of

not more than thirty days but not less than fifteen days from the date of poll intimating the programme of election as specified under sub-rule (3). Sub-rules (1), (2) and (3) of Rule 441 being relevant are reproduced herein below :

"441 (1) The Election Officer shall notify in the local newspaper the date or dates of election for class or classes of societies or of a group or groups of Co-operative Societies of any area or areas of his jurisdiction.

(2) The Election Officer shall give notice of not more than thirty days but not less than fifteen days from the date of poll intimating the programme of election as specified in sub- rule (3) to -

(i) individual members either in the case of election of delegates of individual members to general body or in case of election of the Committee of Management in Co-operative Societies having general body of individual members.

(ii) delegates in case of societies of which general body consists of delegates of individual members of society members as the case may be.

(iii) individual members and delegates of society members in case of societies of which general body consists of individual members and delegates of society members; one or more of the following modes, viz. -

(a) by personal delivery under acknowledgment,

(b) by post under certificate of posting,

(c) by publication through beat of drum,

(d) by publication through local newspaper;

Provided that the notice and the programme of election shall be published in a local newspaper having circulation in the area of operation of the society at least fifteen days before the poll in case of societies covered in clauses (ii) and (iii).

(3) The Election Officer shall display at the notice board of the society the following programme of election -

(i) the date for display of provisional voters" list,

(ii) the date, time and place for filing objection and their disposal,

(iii) the date for display of final voters" list,

(iv) the date, time and place for filling nominations,

(v) the date, time and place of scrutiny of nominations,

(vi) the date, time and place for withdrawal of nomination,

(vii) the date, time and place for allocation of election symbols and display of final nominations,

(viii) the date, time and place of poll :

Provided that the place of poll shall be the office/headquarters of the society unless for reasons to be recorded by the Election Officer it may be some public place as near the office/headquarters of the society as may be possible and notified in the programme of notice.

(ix) the place at which voters" list can be inspected by any voter,

(x) the names of the constituencies including reserved constituency and the number of persons to be elected.

Although the Registrar under sub-rules (4) to (8) of Rule 440 is required to determine the number of the constituencies and the seats reserved for weaker section; but in view of sub-rule (3) of Rule 444A he or any other authorised officer has also to reserve the constituencies for weaker section under sub-rule (6) of Rule 440. Therefore, the reservation of the constituencies also has to be under Rule 440(6). As has been laid down in sub-rule (4) of Rule 440, power under sub-rules (4) to (8) of Rule 440 can be exercised "before the issue of notice under sub-rule (2) of Rule 441 for election of the co-operative society." It is thus, clear that not only the number of constituencies, their area, the number of seats allotted to each constituency and the number of seats reserved for weaker section; but the reservation of the constituencies has also to be made before before the issue of the notice under sub-rule (2) of Rule 441. Scheme of the Rules clearly indicates that before issue of notice under sub-rule (2) of Rule 441 notifying the election programme everything including determination and reservation of the constituencies for weaker section must be finalised and made known to the persons concerned in accordance with law. If the constituencies are allowed to be reserved after the election programme has been announced, it will prejudice the interest of the people, who are interested in the election or who want to contest it. After the election programme is announced, those, who want to contest the election have to canvass for their candidature and when they are preparing for election and are about to file their nominations, if the constituencies, from which they want to contest, are declared reserved, it will waste time, money and labour spent by them. People must know at the time the election programmes are announced as to what are the constituencies and which are reserved so as to enable them to act accordingly. Reservation of constituencies after the announcement of the election programme, apart from being contrary to the rules, is highly unfair and unjust and cannot be sustained.

8. As regards the second question, it may be mentioned that sub-rule (3) of Rule 444A lays down that reservation of the constituencies for weaker section shall be made "by rotation in Hindi alphabetical order of the names of the constituencies." In the instant case the three constituencies, namely, Kaith-wadi, Dabathua and Daurala were reserved in the last election held in 1987 in Hindi alphabetical order and the same three constituencies have again been reserved for the election of 1994,

although the said sub-rule (3) requires the reservation by rotation in Hindi alphabetical order of the names of the constituencies. Therefore, applying the rule of rotation, next three constituencies in Hindi alphabetical order should have been reserved; but that has not been done. The action of the respondents, as such, is unsustainable.

9. The defence of the respondents in their counter affidavit is that as the reservation of the constituencies has to be made in accordance with the new rules as amended in 1994, the previous reservation of the constituencies has no relevance for the present election. This plea is devoid of merit. Old sub-rule (3) of Rule 444A before its amendment in 1994 also laid down for reservation of the constituencies "by rotation in Hindi alphabetical order of the names of the constituencies." This provision before its amendment, being relevant, is reproduced below :

"444A (3) The Election Officer, shall, subject to the provisions of sub-rule (6) of Rule 440, reserve constituencies/areas for weaker section or, as the case may be, of woman and such reservation shall be made to be 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 are to be elected."

There is no change in this sub-rule so far as reservation by rotation in Hindi alphabetical order of the names of the constituencies are concerned. Therefore, by applying the rule of rotation three constituencies, other than those, which were reserved in the last election, ought to have been reserved for the election of 1994.

10. Before parting with the case, the preliminary objection, which has been raised by some of the learned counsel for the respondents to the effect that the writ petition is not maintainable and the remedy open to the petitioners is to challenge the election after the declaration of its result should also be decided. It is settled that this Court should not interfere with the election process at the intermediate stage leaving the parties to challenge it before the appropriate forum after the result are declared. In this connection reference may be made to S.T. Muthusami Vs. K. Natarajan and Others, wherein after considering its earlier decision, Hon'ble Supreme, Court has laid down as under (Paras 5 and 7) :

"It is no doubt true that rule (1) of the Rules made for the settlement of election disputes which provides that an election can be questioned only by an election petition cannot have the effect of overriding the powers of the High Court under Article 226 of the Constitution of India. It may, however, be taken into consideration in determining whether it would be appropriate for the High Court to exercise its powers under Article 226 of the Constitution of India to a case of this nature.

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It is thus seen that in the above decision (which was rendered by the Full Court) this Court first laid down as a matter of general principle that interference with an

election process between the commencement of such process and the stage of declaration of result by a court would not ordinarily be proper and next laid down that Article 329(b) of the Constitution had the effect of taking away the jurisdiction under Article 226 of the Constitution also in respect of the disputes arising out of election during the said period."

Similar principle was laid down in [Nanhoo Mal and Others Vs. Hira Mal and Others](#) ; but the question whether there can be any extraordinary circumstances in which the High Court could exercise the power under Article 226 of the Constitution in relation to the election was left open. The relevant passage in this connection from the above case of Nanhoo Mal v. Hira Mal was also referred to in the case of S. T. Muthusami v. K. Natarajan (supra). Having laid down as aforesaid the Supreme Court allowed the appeal [S.T. Muthusami Vs. K. Natarajan and Others](#), setting aside the judgment of the High Court by holding as under (at p. 624 of AIR):

"Taking into consideration all the aspects of the present case including the fact that the person who filed the writ petition before the High Court was not one of the candidates nominated by the Indian National Congress (I) and the fact that the President of the Tamil Nadu Congress (I) Committee had written that he had authorised the appellant to contest as the candidate on behalf of his party and he had not given his approval to respondent No. 6 contesting as a candidate on behalf of his party, we feel that the exercise of the jurisdiction by High Court in this case under Article 226 of the Constitution cannot be supported."

It is thus established that this Court cannot interfere with the election process of a Cooperative Society unless there are extraordinary circumstances which warrant interference with the election process at the intermediate stage. We have dismissed large number of writ petitions filed before us challenging the holding of the election on the ground of alternative remedy under Rule 444C; but these writ petitions have been entertained by us for the reason that constituencies have been reserved after the announcement of the election programme, if we do not interfere at this stage, the serious prejudice will be caused to the petitioners and many others, because they cannot contest the election to the Committee of Management as their constituencies from which they are entitled to contest have been reserved after the election programme was announced although these constituencies could not have been reserved if the principle of rotation as laid down by sub-rule (3) of Rule 444A has been followed.

11. Learned counsel for the petitioner in this connection has contended that election commenced after the notice under sub-rule (2) of Rule 441 has been published and as the reservation of the constituencies is required to be made before the election programme is notified, the reservation cannot be the part of the election process and, therefore, it cannot be challenged under Rule 444C after the result of the election is declared. A Division Bench of this Court in *Shrawan Kumar v. S.D.M.* 1988 UPLBEC 119 : (1985 All LJ 302) has held that such plea can be raised in an election

petition under Rule 444C. AH steps/actions taken in connection with the election of a Co-operative Society or its Committee of Management are liable to be challenged under Rule 444C. This contention of the learned counsel for the petitioners, as such, has to be rejected. For the reasons given above this writ petition has to be allowed.

12. In writ petition No. 37398 of 1994, Hafizul Rahman v. Election Officer, when the election programme was announced, three constituencies, namely, Govindpur, Khanpur and Keshwar were reserved for weaker section. Later on the reservation of the aforesaid three constituencies was cancelled and in their places three new constituencies, namely, Seohara, Sahaspur and Sabdalpur were reserved. In the counter affidavit filed by Secretary of the Ganna Vikas Samiti, Seohara, it has been stated that as the three constituencies of Govindpur, Khanpur and Keswar were reserved in the last election, they could not have been reserved again in view of the rule of rotation contained in sub-rule (3) of Rule 444A. Therefore, their reservation was cancelled and in their places three new constituencies were reserved for weaker section. Sri Shashi Nandan, learned counsel for the respondent has accordingly contended that it was a mistake, which was corrected by the Election Officer and as the correction was made before the voting had taken place, no exception can be taken to such an order. In his support learned counsel has relied upon the decision of Srawan Kumar v. S.D.M. (1988 All LJ 302) (supra), wherein in this connection was laid down as under (at p. 303 of All LJ):--

"The question is whether the Election Officer was competent to make alteration in reservation made by him after the candidates have filed their nomination papers. Having given the matter a careful consideration we have no hesitation in answering the question in the affirmative where, as here, a grave and patent mistake is discovered by the Election Officer prior to the final voting."

In the instant cases there was a patent error while reserving the same constituencies, which were reserved in the last election. Various persons filed objections against such reservation, which were accepted by the Election Officer and there after the mistake was corrected by deserving three new constituencies by rotation in Hindi alphabetical order. This case is thus squarely covered by the aforesaid decision of the Division Bench. Although the concerned authority has power to correct grave and patent error before the date fixed for voting; but if such an order adversely affects these, who are contesting the election, it has to notify the election programme again. In the instant case such a contingency does not arise, because the error was corrected before the date fixed nomination. This writ petition, as such, has to be dismissed.

13. In writ petition No. 38092 of 1994, Naipal Singh v. Election Officer, the controversy involved is the same which is involved in writ petition No. 37886 of 1994, For the reasons given therein, this writ petition has to be allowed.

14. Writ Petition No. 37886 of 1994, Sanjeev Kumar v. Election Officer and writ petition No. 38092 of 1994, Naipal Singh v. Election Officer, are allowed. The impugned orders reserving the constituencies for weaker section after the issue of notice under Rule 441(2) are quashed. The respondents are directed to pass fresh orders regarding reservation of constituencies for weaker section in accordance with law forthwith and hold the election of the Committee of Management of the concerned societies immediately thereafter in accordance with law.

15. Writ Petition No. 37398 of 1994, Hafizul Rhman v. Election Officer is dismissed.

16. In view of the facts and circumstances of the case, there shall be no order as to costs.

17. Order accordingly.