

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B. Civil Writ Petition No. 2368 / 2017

Laxmi Narayan Sharma Son of Shri Murlidhar Sharma,, Aged
About 60 Years, Bagadon Ki Dhani, Radhakishanpura District
Jaipur (Rajasthan) Ex-president Of Radhakishanpura Gram Sewa
Sahakari Samiti Limited, Panchayat Samiti Amer, District Jaipur.

-----Petitioner

Versus

1. State of Rajasthan Through Principal Secretary, Co-operative
Department, Govt. of Rajasthan,, Secretariat, Jaipur

2. Registrar, Co-operative Societies,, Nehru Sahakar Bhawan, 22
Godam, Jaipur.

3. Deputy Registrar, Co-operative Societies,, Jaipur Rural

4. Rajasthan State Co-operative Societies Election Authority,, 10-
B, Raise, Bhawan, Institutional Area, Jaipur.

-----Respondents

For Petitioner(s) : Mr.Pankaj Sharma for Mr.Deepak Asopa

For Respondent(s) : Mr.HC Kandpal for Mr.GS Gill, AAG

HON'BLE MR. JUSTICE M.N. BHANDARI

Judgment

28/04/2017

By this writ petition, a challenge is made to the order,
by which, Administrator has been appointed in the Co-operative
Society.

Learned counsel for petitioner submits that before
completion of tenure, respondents were under an obligation to
notify the election. They have failed to do so thus elections were
not conducted on time. The respondents have appointed
Administrator due to completion of tenure of the elected body. An

officer of the Department has been appointed to administer many societies, which is not humanly and practically possible. In view of above, impugned orders may be interfered with a direction to the respondents to continue the elected body to administer the affairs of the Societies.

It is also submitted that in the similar cases, an interim order has been passed by the Co-ordinate Bench of this Court thus keeping in mind the aforesaid, operation of the impugned order may be stayed.

Learned counsel for the respondents has contested the writ petition. It is submitted that similar bunch of writ petitions was decided by the Co-ordinate Bench of this Court vide order dated 08th December, 2016. It was in the bunch of writ petitions led by **SB Civil Writ Petition No.14091/2016** in the case of **Brahmanand Sharma Vs. State of Rajasthan & Ors**. Therein, a direction has been given to frame rules within the time given therein with a further direction to hold election and, accordingly, compliance would be made. The election of all Co-operative Societies would be conducted in the time frame given by the Co-ordinate Bench of this Court. Accordingly, interference in the impugned order may not be made. It is moreso when, elected bodies have already completed their tenure, as provided under Section 27(2) of the **Rajasthan Co-operative Societies Act, 2001 (for short "the Act of 2001")**. There is no provision for its extension thus it would be contrary to the Act of 2001. A prayer is accordingly made to dismiss the writ petition.

I have considered submissions made by learned counsel for the parties and perused the record.

The order passed by the respondents for appointment of Administrator has been challenged and, in few writ petitions, it is apprehended. The perusal of the orders reveals that elected bodies have completed their tenure as per Section 27(2) of the Act of 2001. The provision aforesaid is quoted hereunder for ready reference :

"27. Appointment of Committees –

(1).....

(2) Every society shall have eleven elected members in its committee, who shall be elected by the general body of the society for a term of five years."

It is also noted that there exists no provision for extension of period of elected body thus by referring Section 30(1) (C) of the Act of 2001, Administrator has been appointed.

The prayer of learned counsel for the petitioner is that till elections are held, elected body may be allowed to continue. It cannot be accepted as it would be de hors the provisions of the Act of 2001 and the Constitution of India. Section 27(2) of the Act of 2001 provides for term of the elected body and, in the instant case, it has already been completed thus prayer of the petitioner to continue the elected body despite expiry of its period cannot be accepted. It would otherwise be an order contrary to the statutory provisions which cannot be passed by the Court unless it is struck down.

The question, however, remains as to why the Government has not issued Notification for holding elections, that too, when they were knowing about term of the elected body and is even mandated under the Act of 2001.

It is seen that the State Government, at times, have failed to hold election so as to replace elected body by another to avoid appointment of Administrator. It is due to their failure that Administrators are appointed at times. The rules were to be amended as per the judgment of the Coordinate Bench of this Court in the case of Brahmanand Sharma (supra). Therein, direction to hold election has also been given.

In view of the above, a direction is given to the State Government to conduct timely elections and it should be notified before expiry of term of any elected body so as to avoid appointment of Administrator. It is moreso when provision for it exists under the Act of 2001.

So far as elections of Co-operative Societies in question are concerned, impugned order provides for it within a period of six months and, out of it, four months have already passed, however, taking into consideration that one and the same officer has been appointed for various Co-operative Societies as Administrator, respondents are directed to hold elections within a period of two months from today. The compliance of this order would be made without fail as otherwise assured by learned Additional Advocate General. The direction aforesaid would apply to other writ petitions also where Administrator was not appointed till filing of the writ petitions.

In view of aforesaid direction/observation, no reason exists to cause interference in the impugned orders. In the result, the writ petition stands disposed of.

A copy of this order be given to learned Additional Advocate General Mr.GS Gill, as prayed, to ensure timely compliance.

(M.N. BHANDARI)J.

Preeti, PA/57

RAJASTHAN HIGH COURT



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