

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No.2627 of 2018

Vikar AnjumanPetitioner

Versus

State of Uttarakhand & othersRespondents

With

Writ Petition (M/S) No.2626 of 2018

Bhojraj SainiPetitioner

Versus

State of Uttarakhand & othersRespondents

Present:- Mr. Rakesh Thapliyal, Advocate for the petitioners.

Mr. Yogesh Pandey, Additional CSC for the State.

Mr. Mukesh Rawat, Advocate holding brief of Mr. A.V. Pundir, Advocate for the private respondents.

Hon'ble Sudhanshu Dhulia, J. (Oral)

The dispute raised by the petitioners in these two writ petitions is regarding the elections of the Cooperative Societies in the State of Uttarakhand. The petitioner in WPMS No.2627 of 2018 is the Director of Bahuudeshiya Landhaura Kishan Seva Sahkari Samitit Limited and the petitioner in WPMS No.2626 of 2018 is the Director of Bahuudeshiya Paniyala Kishan Seva Sahkari Samiti Limited.

2. The elections in the Cooperative Societies are done at various stages. Not only there is an election to the Committee of Management of the societies but the Cooperative

Societies also send their delegates, who thereafter cast their votes in electing Members and Chairman of higher societies and so on.

3. Since the issue raised in the aforesaid writ petitions is common and identical, therefore, these writ petitions are heard together and decided by this common judgment. However, for the sake of convenience, the facts of Writ Petition (M/S) No.2627 of 2018 are being referred in this judgment.

4. The case of the petitioner is that private respondent nos. 6 and 7 are nominated members of the Government in the Society who have been nominated by the Government by invoking its powers under Section 34 of the Uttarakhand Cooperative Societies Act, 2003, whereby the State Government has a right to nominate to the Committee of Management two persons, out of which one person should be a Government servant or a professional. The case of the petitioner is also that none of the private respondents are either professional or government servant.

5. Learned counsel for the petitioner contends that as per Rule 45(2) of the Uttarakhand State Co-operative Societies Election Rules 2018 only elected members of the Committee of Management can become either the Chairman or Vice-Chairman, whereas the private respondent no.7, who is merely being nominated and is not an elected member has been made the Chairman.

6. A preliminary objection has been raised by the learned State Counsel that what the petitioner has raised before this Court is essentially an election dispute of a Cooperative Society, for which there is a provision provided

under Rule 247 (2) of the Uttaranchal Co-Operative Societies Rules, 2004 which says that where the dispute relates to the constitution of the Committee of Management or election or appointment of any office bearer or a delegate of a co-operative society, reference shall be made to the Registrar in the case of an apex co-operative society, and in the case of co-operative society other than an Apex Society to the District Magistrate of the district to which the society belongs. This Rule has to be read with Rule 457. Rule 457 reads as under:-

“457. (1) The election in a co-operative society shall not be called in question either by arbitration or otherwise except on the ground that-

(a) the election has not been 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 Bye-laws 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 People Act, 1951.

(2) A dispute relating to election shall be referred by the aggrieved party within 45 days of the declaration of the result.”

7. A bare perusal of the aforesaid provisions shows that the petitioner has a remedy to approach the Registrar, Cooperative Society to raise an election dispute as it is also one of the grounds stipulated under Rule 457 as allegedly even as per the petitioner there is a gross failure to comply

with the provisions of the Act, the Rules or the Bye-laws of the Society in nomination and election of the private respondents.

8. The case of the petitioner is that he has no remedy except to file a writ petition.

9. This is purely a misconception as the aforesaid provision clearly stipulates that even if there is a gross failure to comply with the provisions of the Act, the Rules or the Bye-laws of the Society, it becomes a ground for moving an application before the Registrar under Rule 247 of the aforesaid Rules.

10. This is so also in view of the seminal decision of the Hon'ble Apex Court in the case of **Mohinder Singh Gill and another Vs. The Chief Election Commissioner, New Delhi and others**, reported in **(1978) 1 SCC 405**. Although the Hon'ble Apex Court in the above case was dealing with an election matter relating to the Representation of the People Act, 1951, but the same principle would be applicable here as well. The relevant paragraph nos. 122 and 123 of the aforesaid judgment read as under:-

“122. As already pointed out, it is well-settled that election covers the entire process from the issue of the notification under Section 14 to the declaration of the result under Section 66 of the Act. When a poll that has already taken place has been cancelled and a fresh poll has been ordered, the order therefor, with the amended date, is passed as an integral part of the electoral process. We are not concerned with the question whether the impugned order is right or wrong or invalid on any account. Even if it is a wrong order it does not cease to be an order passed by a competent authority charged with the conduct of elections with the aim and object of completing the elections. Although that is not always decisive, the impugned order itself shows that it has been passed in the exercise of power under Article 324(1) and Section 153 of the Act. That is also the correct position. Such an order,

relating, as it does, to election within the width of the expression as interpreted by this Court, cannot be questioned except by an election petition under the Act.

123. What do the appellants seek in the writ application? One of their prayers is for declaration of the result on the basis of the poll which has been cancelled. This is nothing short of seeking to establish the validity of a very important stage in the election process, namely, the poll which has taken place and which was countermanded by the impugned order. If the appellants succeed, the result may, if possible, be declared on the basis of that poll, or some other suitable orders may be passed. If they fail, a fresh poll will take place and the election will be declared on the basis of the fresh poll. This is, in effect, a vital issue which relates to questioning of the election since the election will be complete only after the fresh poll on the basis of which the declaration of the result will be made. In other words, there are no two elections as there is only one continuing process of election. If, therefore, during the process of election, at an intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law. The appellants, then, will not be without a remedy to question every step in the electoral process and every order that has been passed in the process of the election including the countermanding of the earlier poll. In other words, when the appellants question the election after declaration of the result on the basis of the fresh poll, the election court will be able to entertain their objection with regard to the order of the Election Commission countermanding the earlier poll, and the whole matter will be at large. If, for example, the election court comes to the conclusion that the earlier poll has been wrongly cancelled, or the impugned order of the Election Commission is otherwise invalid, it will be entitled to set aside the election on the basis of the fresh poll and will have power to breathe life into the countermanded poll and to make appropriate directions and orders in accordance with law. There is, therefore, no foundation for a grievance that the appellants will be without any remedy if their writ application is

dismissed. It has in fact been fairly conceded by counsel for the other side that the election court will be able to grant all appropriate reliefs and that the dismissal of the writ petition will not prejudice the appellants.”

11. In paragraph no. 126 of the same judgment, the Hon’ble Apex Court had stressed the fact that elections should only be challenged by means of an election petition and writ petition is not a remedy. Although the findings was made by the Hon’ble Apex Court regarding the elections of Legislative Assembly and Parliament but in my humble opinion, the same principle should also be applicable in the present case as the petitioner has a remedy in the Statute itself as well as under the Rules, where he can raise a similar dispute before the Registrar under the provisions of the Rules as has already been referred above.

12. In view of the above observations, the writ petitions fail and are hereby dismissed.

13. Let a certified copy of this order be given within a period of twenty-four hours on payment of usual charges.

(Sudhanshu Dhulia, J.)

30.11.2018

Ankit/