

CASE NO.:
Appeal (civil) 6522 of 2004

PETITIONER:
N. Balaji

RESPONDENT:
Virendra Singh & Ors.

DATE OF JUDGMENT: 05/10/2004

BENCH:
CJI, P.K. Balasubramanyan & P.P. Naolekar

JUDGMENT:
J U D G M E N T

(arising out of SLP) No.8717 OF 2004)

P.P. NAOLEKAR, J.

Leave granted.

This appeal is directed against the judgment of the High Court of Delhi in CWP No. 3706 of 2003. National Cooperative Consumers Federation of India Ltd.(NCCF for short) is a duly registered Society under the provisions of Multi State Cooperative Societies Act, 2002 (hereinafter to be referred to as the 'Act') and before the Act came into force by the provisions of Multi State Cooperative Societies Act, 1984. A notice for the election of the Directors of respondents Society was published on 12.6.2002 under the provisions of Multi State Cooperative Society Act 1984 (hereinafter to be called as the 'Old Act') and the rules framed thereunder. On 23.7.2002 appellant made a representation/objection to the concerned authorities contending therein that the defaulting members should not be given voting rights in the election of the Directors. A list of eligible voters for the ensuing election of the Directors was published. The appellant feeling aggrieved by the voters list published, which according to the appellant, contains the names of the persons who were defaulters, sent a representation dated 7.8.2002 to the Minister requesting him to de-list the names of any ineligible voters from the voters list. On 12.8.2002, the appellant again sent a representation to the Central Registrar to de-list the names of the non-eligible persons from the voters list. It is the case of the appellant that in spite of the representation having been made for delisting the names of the non-eligible persons from the voters list, the election was held on the basis of the electoral roll published on 17.8.2002 and respondents 1, 2 and 3 were declared elected as Directors of the Society. On 21st August, 2002 the appellant again sent a representation to Agriculture and Cooperation Minister, Govt. of India, New Delhi and raised therein an election dispute. The representation inter alia stated that the voters list has been irregularly prepared; non-eligible members have been included in the voters list. The nominations filed by the candidates were proposed and seconded by the members who do not belong to the same zone. The proposers and seconders are not the valid voters as they have not paid the minimum share capital before 15.7.2002 to NCCF. The delegate having a valid vote, has only one vote in the same zone and not in the other zone, according to Section 22 of Multi State Cooperative Societies Act 1984 and Bye Law 19) of NCCF Act. Instead of one vote, according to the Bye Laws, each delegate has cast five votes which is illegal and untenable

and therefore directions would be necessary for each delegate to cast only one vote, according to the Bye Laws etc.

The appellant's representation, raising the election dispute was not taken note of by the Minister concerned or any of the officer of the Society and therefore the appellant approached the High Court of Delhi by filing a Writ Petition which was registered as C.W.P. No. 6504 of 2002.

The High Court vide its order dated 5.12.2002 has noted that the petitioner has challenged the election to the Board of Directors on 17th of August 2002 for which he claims to have made a representation under Section 92 of the relevant Act to the Minister concerned but no action is taken and therefore the petition is filed for quashing the election. However, the limited prayer is made by the counsel, that the directions be issued to the Minister to examine the petitioner's representation and dispose it of within a time frame. Accordingly, directions have been issued by the Court to the concerned Authority/Minister to consider the representation of the petitioner dated 21st of August 2002 and pass appropriate order within one month from the date of the receipt of the order of the Court.

When the matter went back to the Minister, Ministry of Agriculture has taken the stand that Section 84 of the Multi State Cooperative Societies Act 2002 provides for settlement of disputes including a dispute arising in connection with the election of any officer of the multi-state cooperative society through an arbitrator appointed by the Central Registrar and therefore the petitioner has to approach the appropriate authority in appropriate proceedings. The appellant, aggrieved by the said order, has again approached the Delhi High Court and filed a writ petition which is C.W. 1583 and CMs Nos.2598-2600 of 2003 alleging therein that the elections were held under the Act of 1984; objections were filed under the said Act and therefore representation ought to have been considered under the said Act, as there is no provision under the said Act for referring the election dispute to the arbitrator. The dispute could not have been directed to be referred for arbitration. The Division Bench of the Delhi High Court, took note of the submission of the appellant's counsel, has also recorded the submission made by Mr. V.P. Singh, learned counsel for the respondents that the respondents have no objection if the matter is referred to the Central Registrar under the Act of 1984 for deciding the disputes in terms of Sections 74(2) and 74(3) of Multi State Cooperative Societies Act, 1984. The order further records that Mr. V.P. Singh says that if the dispute is barred by limitation, it will be open for the respondents to raise the said objection. The question of limitation will be decided by the Central Registrar. On these submissions the Court has issued the following directions:

"The representation of the petitioners raising disputes or any other petition containing the disputes regarding setting aside of the election of the Board of Directors held on 7th August 2002 be referred to the Central Registrar for adjudication under the Act of 1984. The Central Registrar is directed to decide the said reference within a period of four months in accordance with law. The petition stands disposed of".

As per the direction of the Delhi High Court by its order dated 28.2.2003, the election dispute for the election dated 17.8.2002 was taken up by the Central Registrar, Department of Cooperation, Ministry of Agriculture. Order-sheet of the election dispute proceedings dated 30.4.2003 has a material

bearing on the point involved in the case and, therefore, is being referred in extenso. The order sheet records that the case came up for hearing on that day. The petitioner filed a proper dispute petition for deciding the dispute relating to election of the Board of Directors of NCCF held on 17th of August 2002. The petitioner says that he has filed a last and final dispute today which should only be taken into account for deciding the dispute raised by him in this petition relating to conduct of the election of the Board of Directors of NCCF held on August 17, 2002. The dispute petition filed today by the petitioner is taken on record. The counsel for Respondent No.1, NCCF has accepted the copy of the dispute petition filed today by the petitioner Shri N. Balaji on behalf of respondent No.1. Serve notice along with a copy of the dispute petition to the other respondents with direction to file response thereto.

After the service of notice on respondents, an objection has been raised to the maintainability of election dispute by NCCF on the ground that limitation for raising the election dispute to the election of the Director of a Multi State Cooperative Society is within one month from the date of declaration of the election and thus the dispute raised on 30th April 2003 is apparently barred by limitation. The Central Registrar took note of the fact that the dispute to the election has been raised on 2nd August, 12th August, 16th August 2002 and by the petition dated 21st of August 2002. The Central Registrar also noted the fact that different proceedings were taken up by the petitioner before the High Court of Delhi and the directions were issued by the Delhi High Court by its order dated 28.2.2002. The Central Registrar concluded that in view of all the facts and correct understanding of the order of Delhi High Court the objection raised by the NCCF is rejected and the petition is admitted..

Feeling aggrieved by the decision rendered by the Central Registrar, respondents herein filed a writ petition in the High Court of Delhi which was registered as C.W. 3706 of 2003 \026 Virendra Singh & Ors. Vs Union of India & Ors. The Division Bench by its order dated 19.12.2003 has set aside the order of the Central Registrar holding that the election dispute raised by the petitioner was clearly barred by limitation.. The Division Bench is of the view that the election dispute having been raised by the petition dated 30.4.2003 is apparently barred by limitation as having been filed beyond one month of the election dated 17.8.2002 as per Section 75 (1)(d) of the Act of 1984. The Court has also held that the petitioner having not filed any application for condonation of delay in filing the election dispute beyond the period of limitation, the Central Registrar could not have exercised the power to condone the delay in filing the election dispute petition. Aggrieved by the said order of the Division Bench of the Delhi High Court, the present Special Leave Petition has been filed.

It is contended by the learned counsel for the appellant that on true construction of the order passed by the High Court dated 28.2.2003 and the order-sheet recorded by the Central Registrar dated 30th April 2003, it cannot be said that the dispute was raised beyond the period of limitation. On the contrary, the learned counsel for the respondents supporting the judgment of the Division Bench of the Delhi High Court, has urged that the dispute having been raised on 30th of April 2003, it was clearly barred by limitation.

Before we consider the respective submissions so made it would be appropriate to re-produce the relevant portion of Section 75(d) and sub-s.(3) of Sec.75 of the Act, which reads as under :-

Section 75: Limitation

(1) Notwithstanding anything contained in the

Limitation Act, 1963 (36 of 1963), but subject to the specific provisions made in this Act; the period of limitation in the case of a dispute referred to the Central Registrar shall,---

(a)\005\005\005\005\005..

(b)\005\005\005\005\005..

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(d) when the dispute is in respect of an election of an officer of a multi-State co-operative society, be one month from the date of the declaration of the result of the election.

Section 75 (3)

Notwithstanding anything contained in sub-sections (1) and (2), the Central Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the Central Registrar that he had sufficient cause for not referring the dispute within such period.

Relevant provision of Section 74(1) read with Section 74(1) (C) of the Act of 1984 provides that notwithstanding anything contained in any other law for the time being in force, if any dispute arises amongst the members in connection with the election of any officer of the multi-State cooperative society (officer, includes the member of the Board by virtue of definition of Officer in Sec.3 (o) of the old Act), it shall be referred to the Central Registrar for decision and no Court has jurisdiction to entertain any such or other proceedings in respect of such dispute. Thus whenever there is a dispute among the members in connection with the election of a member of the Board, it shall be referred to Central Registrar for decision. Clause (d) of Section 75 postulates that the election dispute of the member of the Board of a multi-State Cooperative Society is to be raised within one month from the date of declaration of the result of the election. Sub-s.(3) of Sec.75 authorizes the Central Registrar for the sufficient cause to admit a dispute after the expiry of the period of limitation if the Central Registrar is satisfied of the sufficiency of the cause of raising the dispute beyond the period of limitation. In the present case it is apparent that the dispute has been raised prior to conduct and declaration of the result of election by the appellant by making representation on 23.7.2002 and 7.8.2002 and on other dates regarding validity of the electoral roll for the conduct of the election and on 21.8.2002 after the election has been held. The appellant approached the Delhi High Court by way of writ petition also. A direction was issued by the Delhi High Court by its order dated 28.2.2003 in specific terms that the representation of the petitioner raising dispute or any other petition containing the dispute regarding setting aside election of the Board of Directors held on 17th August 2002 be referred to the Central Registrar for adjudication under the Act of 1984. The direction in unequivocal terms directs consideration of all the representations or any other petition containing the dispute regarding the election to be referred to the Central Registrar for adjudication. The dispute or the representation made by the appellant regarding the electoral roll would also be a dispute

regarding the election held on 17th of August 2002 apart from the dispute to the election raised by the petitioner after the election by his representation dated 21.8.2002 sent to the Minister concerned. The High Court of Delhi directed the Central Registrar to decide the said dispute within a period of four months. Direction of the High Court clearly contemplates decision on all the petitions raising disputes to the election held on 17th August 2002 within a period of four months. The Court has not left open the question of limitation to be considered while giving directions to decide the dispute within four months. Directions issued by the Court do not in any way specify that the question of limitation will be decided by the Central Registrar. It was only the submission made by counsel for the respondent which was noted by the Court and in spite of the submission being noted on the question of limitation, the said objection was not left open for consideration by the Central Registrar. What was filed on 30.4.2003 before the Central Registrar was only a consolidated dispute petition incorporating all the objections to the election raised by him from time to time. The petition dated 30.4.2003 has to be read in continuation of the several representations and objection petitions filed earlier, from time to time and cannot be considered to be a separate and independent petition. The petition dated 30.4.2003 is a consolidated version of various grounds raising dispute to election in required format so as to facilitate the tribunal to adjudicate and decide all the questions raised after giving adequate opportunity of hearing to all parties. An election dispute raised before or referred to the Central Registrar does not attract application of any rigorous rules of pleadings in a the civil suit under the Civil Procedure Code or the election petition filed under the provisions of Representation of People Act 1951.

In the matter of applicability of the procedural rigors the Constitution Bench of this Court in Sardar Amarjeet Singh Kalra (dead) by Lrs. and Others Vs. Pramod Gupta (Smt)(Dead) by Lrs. and Others (2003) 3 SCC 272 has observed that laws of procedure are meant to regulate effectively, assist and aid the object of substantial and real justice and not to foreclose even an adjudication on the merits of substantial rights of citizen under personal, property and other laws. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. It follows from the decision by the Constitution Bench that the procedure would not be used to discourage the substantial and effective justice but would be so construed as to advance the cause of justice. The consolidated petition filed on 30th April, 2003 filed by the petitioner would not be taken to be a new petition presented before the Central Registrar to declare it to be barred by limitation on the basis of its date of presentation; it shall have to be read in continuation of the earlier representation which were referred to the Central Registrar for adjudication under the orders of the Delhi High Court..

The matter can be looked from the other angle as well. Sub-s.(3) of Sec.75 of the 1984 Act authorizes the Central Registrar to condone the delay in referring the dispute if the Central Registrar is satisfied that there was a sufficient cause for not referring the dispute within the period of limitation. The requirement of sub-s.(3) is the satisfaction of the Central Registrar for the sufficient cause, and is not dependent on

moving of an application for condonation of delay by the petitioner. Even without there being any application for condonation of delay, if the facts which emerge in the case are sufficient to satisfy the Central Registrar of the reasonable cause for not referring the dispute within the period of limitation, the Central Registrar can condone the delay in exercise of the powers conferred on him under sub-s.(3) of Sec.75 of the Act.

On the facts emerging in the case, we find that the discretion which has been exercised in the facts and circumstances of the case in condoning the delay by the Central Registrar is in accordance with the established principles of law and justice and it was not a fanciful or arbitrary exercise of discretion. The exercise of the discretionary power can be interfered by the High Court only if the order passed is violative of some fundamental or basic principle of justice and fair play or suffers from any patent or flagrant error. We do not find any such element present vitiating the exercise of power vesting in the Central Registrar to condone the delay and entertain an election dispute.

For the aforesaid reasons the decision of the Division Bench of the High Court of Delhi is set aside. The Central Registrar shall now proceed with the hearing of the petition of the appellant and expeditiously determine the same on merits. The appeal is allowed but in the circumstances of the case there shall be no order as to costs.