

(2010) 10 P&H CK 0223
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15117 of 2010 (O and M)

Ajay Singh Malik and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Haryana Panchayati Raj Act, 1994 — Section 115

Citation : (2010) 10 P&H CK 0223

Hon'ble Judges : Kanwaljit Singh Ahluwalia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Kanwaljit Singh Ahluwalia, J.

Civil Misc. No. 14950 of 2010

1. Application is allowed and exemption is granted from filing original/certified copies of Annexures.

Civil Misc. No. 14951 of 2010

2. Application is allowed and reply filed by respondent No. 5 is taken on record.

Civil Misc. No. 14253 of 2010

3. In the present application, a prayer has been made that election of the members of managing committee of HAFED, scheduled to be held on 7th November, 2010 be stayed. It was stated in the application that after the filing of the writ petition, the election schedule has been published to make the writ petition infructuous.

4. Notice was issued in this application and the same has been taken up along with the main case.

5. In view of the decision of the main case, whereby the writ petition has been

allowed, no separate orders are required to be passed in the present application. Accordingly, the same stands disposed of.

Civil Writ Petition No. 15117 of 2010

6. The Haryana State Cooperative Supply and Marketing Federation Ltd. (hereinafter to be referred as, 'HAFED') is a giant in the cooperative movement. The main objects for which the HAFED was constituted, is to make arrangements and undertake procurement, marketing and processing of agricultural produce and allied products. Furthermore, HAFED has assumed another important role upon itself to ensure supply of agricultural inputs such as fertilizers, seeds and agro chemicals. Having such a vast spectrum of operations, HAFED touches day to day life of agriculturists of Haryana.

7. Mr. Pardeep Bansal, Assistant General Manager (Administration) HAFED, who is present in Court has stated that HAFED is having turn over of over 300 crores per annum and more than 1200 employees on its rolls. He further stated that HAFED is managing/running 40 Rice/Oil Mills and is having its offices in each district of the State of Haryana. Another objective and the primary function to which the HAFED is wedded is to facilitate working of the cooperative societies in the State.

8. Concept of cooperative movement in essence, is, that affairs of organization are managed by its members, who come forward and pool their resources, to share dividends, propagate and achieve its objectives. Those who are members of the cooperative societies elect their managing committee and in turn the cooperative societies are stake holders in the apex body like HAFED. Role of the Government is to regulate and facilitate the cooperative movement in the State, so that instead of participation of public and private sector, large section of the people came forward to manage their own affairs so that benefit percolate to the largest section of the society. Maximum good of the maximum by the maximum is the axiom, which binds cooperative movement.

9. Whether the cooperative movement should be represented by all concerned or should be another limb of the Government, is a thrust argument which has been posed before this Court? Whether the Board of Directors should be true representative of stake holders of all those who are concerned with the cooperative movement or should the Board be constituted by way of back door entry of those who are prot?g? of the ruling clique? is another question which has been thrown for adjudication during the course of arguments.

10. To examine the aforesaid arguments, it will be necessary to notice brief facts pleaded, argued and submitted before this Court along with the Bye Laws of HAFED.

11. It is not disputed that affairs of the HAFED are to be managed by the Board of Directors/Board of Administrators/Managing committee of the HAFED. Bye Law No. 18 of Chapter VIII regarding Management of HAFED relates to constitution of

Board of Directors and the same reads as under:

VIII. Management:

18. Constitution of Board of Directors.

The affairs of the Federation shall vest in the Board of Directors, which shall be constituted as follows:

- (i) The Registrar, Cooperative Societies, Haryana, his nominee;
- (ii) The Director of Agriculture or his nominee;
- (iii) The Director of Food & Supplies or his nominee;
- (iv) The Managing Director of the Federation;
- (v) A nominee of the Financing Institution;
- (vi) Government nominees equal to 1/3rd of the elected members or 3 whichever is less.
- (vii) One representative for every ten member societies or part thereof subject to a maximum of seven members elected out of the member societies.

12. During the course of arguments, it has been submitted that normally Haryana State Cooperative Apex Bank nominates a Director from the category of financial institution. It is also admitted case of the parties that at present HAFED is managed by the Board of Administrators which consists of Managing Director, who is an I.A.S. officer, Financial Commissioner, Co-operation who is also an I.A.S. officer, 3 persons who are nominated by the Government and the 6th Director is the Registrar, Cooperative Societies, Haryana who is also an I.A.S. officer.

13. The term of Board of Administrators is coming to an end today.

14. To constitute the Board of Directors, election programme Annexure R3 and R4/6, which is at pages 99 and 100 of the paper-book has been issued.

15. It is to be noticed by this Court that electoral college consists of 68 cooperative marketing societies and these societies have been divided into seven zones. From each zone, one Director is to be elected. Bye Law No. 7 of Chapter IV regarding Membership and Shares of the Federation reads as under:

IV. Membership and Shares:

7. The membership of the Federation shall be open to:

- (a) Co-operative Marketing and Marketing-cum-Processing Societies dealing with Agriculture.
- (b) Cooperative Cold Stores.
- (c) Such other type of Societies as may be approved by the Registrar.

(d) Government.

16. Each Cooperative Society has to send one duly elected representative to vote and participate in the election. About ten societies constitute one zone. Sixty eight societies have been divided into seven zones. Each zone has to elect one Director.

17. The management of the HAFED vests in the Board of Directors. Seven Directors are to be elected from the member cooperative societies. Reference can be made to Clause 18(vii) of the Bye Laws. For election of Directors, each cooperative society has to send one representative to vote in the concerned zone for election of the Director.

18. Mr. Gobinder Singh Sandhu, counsel appearing for the petitioners inter alia has contended that out of 68 Cooperative Societies, in more than 50 per cent Societies, the Government has appointed the Administrators, who are nominees of the Government and they in turn has nominated one member to vote and participate in the election. Mr. Sandhu has stated that such an election is a farce. If the Government in this manner has to choose and elect those who have to vote and participate in the election, the Government can straight way nominate its representative. It is canvassed that electoral college has been stage managed. It has been urged that sanctity of the election has been violated. Majority of the electorates are none but puppets in the hands of the Administrators, who are officials of the Government.

19. This Court was hesitant to examine the aforesaid contention of Mr. Sandhu. But due to his insistence, this Court to verify this fact, on 25.10.2010 passed the following order:-

Learned Counsel for the petitioners has, inter-alia, contended that out of 71 Societies, 50% thereof are being managed by the Administrators, who are the employees of the Government. Therefore, if, out of 71 Societies, 50% voters vote at the behest of the Government, the election will be a farce. He has further submitted that till all the Managing Committees elect their office bearers and in General House, a resolution is passed to authorize the representative to vote on behalf of the respective Societies, the election be kept in abeyance.

The Registrar, Co-operative Societies, Haryana, is directed to file an affidavit to specifically state that in the seven zones, carved out for the election, in each zone as to how many Societies are having the Administrators.

List on 27.10.2010.

A copy of this order, under the signatures of the Reader of this Court, be provided to Ms. Kirti Singh, Deputy Advocate General, Haryana, for onward transmission and compliance.

20. In pursuance of this order, Registrar, Cooperative Societies, Haryana has filed affidavit dated 27.10.2010 which reads as under:-

AFFIDAVIT OF J. P. KAUSHIK REGISTRAR COOPERATIVE SOCIETIES, HARYANA, PANCHKULA

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That the deponent is filling this affidavit in compliance of orders dated 25-10-2010 of Hon''ble High Court given in the above said petition.

2. That there were 71 cooperative marketing societies which were the members of Hafed.

3. That one marketing society namely Sonapat vegetable and fruit cooperative marketing society has been merged with PACS and in Tohana cooperative marketing society neither there is Board of Director nor Board of Administrator and the case of Kaithal marketing society against the order of amalgamation was pending before Special Secretary Cooperation wherein status quo was ordered and as such the name of this society has not been included in the list of voters.

4. That at the time of sending the names of representatives by the 68 cooperative marketing societies, 49 marketing societies were having Board of Administrators and 19 marketing societies were having Board of Directors. The Zone wise position is attached as annexure-I.

21. As is evident, from a perusal of the affidavit, 49 cooperative societies out of total 68 cooperative societies, are having the Administrators. These Administrators have sent their nominees to vote in the election. It will be pertinent to refer to Annexure P4, cited as an example to say that in one of the society, namely, Kharkhoda Cooperative Marketing Society Ltd., Kharkhoda officials have been appointed as Administrators. Relevant portion of the same reads as under:-

Now, therefore, I, Shiv Raman Gaur, IAS, Registrar, Co-operative Societies, Haryana, in exercise of the powers conferred on me u/s 33(1) of the Haryana State Co-operative Societies Act, 1984 do hereby appoint the following persons as Administrators of the Kharkhoda Co-operative Marketing Society Ltd., Kharkhoda from 28.2.2008 to 27.2.2009 for a period of one year or till the ellection is held, whichever is earlier:-

1 Assistant Registrar, Co-operative Societies, Sonapat.

2 Inspector, Co-operative Societies (Incharge of the society).

3 District Manager, Hafed, Sonapat.

22. To controvert this argument, Mr. Girish Agnihotri, Senior Advocate assisted by Mr. Arvind Sethi, Advocate, appearing for respondent No. 5 has submitted that managing committee of the cooperative societies could not be elected due to the fact that there was an on going litigation. It is stated that primarily there was amalgamation of cooperative societies in the year 2006 by the Government. This amalgamation of the cooperative societies was challenged before this Court in

Civil Writ Petition No. 4067 of 2007 and as per judgment of this Court, the Financial Commissioner, Cooperation reconsidered the matter u/s 115 of the Haryana Panchayati Raj Act, 1984 and orders of amalgamation were set aside on 18.9.2009. Instructions were issued to all the Assistant Registrar, Cooperative Societies to the effect that term of cooperative societies has come to an end and, therefore, to run the business and affairs of the cooperative societies, the Boards of Administrators were appointed in each society and election only to 19 cooperative societies could be conducted out of 68 cooperative societies and in the remaining societies the process of election is going on.

23 In case the process of election in the remaining 49 cooperative societies is already under way, then what is great hurry to constitute the Board of Directors? Why the members of cooperative societies cannot elect representatives to vote on behalf of the societies? Why is it that in a great rush, the Government officials who have been appointed Administrators of the Cooperative Societies, have nominated a member of the Society to vote in the election.

24. Whether by adoption of such a process, purity of election can be ensured? Whether such a Board of Directors will be true representative of the cooperative societies who have a stake in the HAFE Dt? Answer to all these questions, which can be deduced from facts is that such a haste shall only ensure inclusion of favorites as Directors of HAFED.

25. Mr. S. S. Dalal, counsel appearing for the HAFED has made the following submissions:-

(a) That the election process is already on, therefore, this Court because of the settled legal position cannot cause interference.

(b) From 3 zones, Directors have been elected and they have not been impleaded as party.

(c) There is no mala fide on the part of the HAFED to constitute the Board of Directors, as the election of Cooperative Societies could not be conducted because of litigation.

(d) The petitioners have not filed the objections regarding constitution of the Zonal Committee.

(e) That appointment of the Administrators was also not challenged.

26. To fortify the aforesaid submissions, reliance has been placed upon Boddula Krishnaiah and another Vs. State Election Commissioner, A.P. and others, wherein it has been held that in the election of Gram Panchayat, the High Court cannot direct to declare the result of election and order to conduct fresh poll. Further reliance has been placed upon Harnek Singh v. Charanjit Singh and others AIR 2005 SCW 5459 in which it has been held that ordinarily election dispute should not be entertained by the Court. Further reliance has been placed on Om Parkash Mann v. State of Haryana 2001(2) RCR 743 where a Division

Bench of this Court has held that once the election process has been issued, election has to be held on the basis of voters list which has been prepared. Another judgment has been relied upon in the case of Ram Kumar v. The Registrar, Cooperative Societies, Haryana, Panchkula and Ors. 2009(2) RCR 601 in which it has been held that if alternative remedy is available, writ Court should not ordinarily exercise its jurisdiction. Reliance has been further placed upon Sardar Mohammad v. State of Haryana and Ors. 1977 P.L.J. 12 wherein it has been held that Registrar, Cooperative Societies has no inherent powers to postpone the election. Counsel has further placed reliance on Zorawar Singh v. State of Haryana and Ors. 1995 PLR 297 to say that once the election process has commenced, the only remedy available to the aggrieved person is to file the election petition.

27. There is no quarrel with the proposition that ordinarily, the writ Court should not intervene in the election matters. Nitty-gritty of acceptance and rejection of candidature, wrong and right declaration of the candidate, are all matters which can be adjudicated by the Election Tribunal in the election petition. But there are certain circumstances where the Courts can interfere, such as where there is blatant misuse of the powers by the authorities, where election is a sham, where purity and sanctity of the election is violated, the writ Court can always cause interference and balance the equities. Free and fair election is a part of the basic structure of the Constitution. It is sad that this Court has to comment upon an election in which out of 68 representatives, who have to vote, 49 representatives are under the thumb of the Government. What kind of election it will be? Instead of this, the Government outrightly ought to have nominated the Directors. There is no justification to induct Directors by way of back door entry. Holding of election is neither formality nor ritual. It is on this premise that this Court intends to accept the present petition.

28. Having observed that the election of seven Directors from seven zones of the Cooperative Societies from the electoral college constituted at the instance of officials of the Government violates purity and sanctity of the election, all this Court can say is that rest of the arguments advanced by Mr. Dalal shall pale into insignificance. The argument that three Directors have been elected is of no relevance, especially when the election has taken place during the pendency of the writ petition. This writ petition was filed on 23rd August, 2010 and filing of nomination papers was scheduled for 18th October, 2010. It was incumbent upon the Returning Officer to acquaint the candidates, who came forward to file nomination papers, regarding pendency of the writ petition so that they could present themselves before this Court to project their view. This Court has not examined the malafide on the part of the Government, but has only held that the process of election is not free and fair. Non-filing of objections and non-challenge to the appointment of administrators will not condone the acts of omission and commission on the part of the Government, which on the touchstone of free and fair election cannot be sustained in the eyes of law.

29. This Court has given no credence to the arguments advanced by Mr. Sandhu that reservation of zones for women and Scheduled Castes was not in consonance with the rules. This Court also not considered the argument that zones were prepared in a manner to favour their own persons. But this Court cannot shut its eyes to the fact that electoral college of 68 representatives consists of 49 persons, who have been nominated by functionaries of the Government. Hence, this Court is constrained to quash the election process by giving a direction that the duly elected Managing Committees of 68 Cooperative Societies who have to send a representative to vote, shall be constituted within four months from today. Thereafter in another three months, the Board of Directors of HAFED shall be constituted. This direction is given, being conscious of the fact that for the last one year HAFED is being managed by the Board of Administrators. If that is so, for another seven months, the same Board can continue to manage affairs of the HAFED, thus it will make no substantial difference to the functioning of the HAFED. The arrangement which is existing for the last one year will continue but the Board of Directors must ensure that true stake holders of the Societies, are elected in the manner which is fair, transparent and accountable.

30. With the aforesaid directions, the present writ petition is allowed.