
(2009) 12 P&H CK 0097
In the Punjab And Haryana At Chandigarh

B. Singh Bhatti	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 15-12-2009

Acts Referred:

Haryana Co-operative Societies Act, 1984 — Section 28

Citation : (2010) 159 PLR 20

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.—The writ petition seeks to quash the election of Managing Committee members of third respondent-Society held on 18.3.2007 in which respondent Nos. 4 to 10 are reported to have been declared as elected. The challenge to the results declared by the second respondent- Assistant Registrar, Co-operative Societies, Haryana is on the basis that Section 28 of the Haryana Co-operative Societies Act, 1984 stipulates a rule of reservation for scheduled castes and backward class in the manner as provided hereunder:

Provided that at least one member belonging to the scheduled caste and one woman member shall also be represented through election in every committee of a co-operative society in the manner prescribed.

Provided further that at least one member belonging to backward class shall also be represented through election in the committee, if their number is ten percentum of more of the total membership of the society, in the manner prescribed.

2. The petitioner's contention is that he is a member of the backward class and from amongst the total members in the society 10% at least of them belong to the backward class and therefore at least one candidate from the backward class ought to be elected in the Managing Committee. According to him, the total number of members in the society are 9719 and that there are about 1200

members belonging to backward class. The contention therefore, was that there ought to have been amongst the elected candidates at least 1 person belonging to backward class but all the persons who have been declared as elected belong to the general category and there is no representation through any member of the reserved category.

3. The averments relating to the petitioner's claim that there are more than 10% persons belonging to backward class from amongst the members of the society is put to challenge by the contentions of the respondents. There had been certain other objections relating to some contentions about the alleged misappropriation of funds and this Court by an interim order dated 24.2.2009 had directed the grievance to be addressed before the Registrar, Co-Operative Societies u/s 102 of the Haryana Co-operative Societies Act. After the order was passed by this Court, the Registrar had received claim settlement from parties and has given a report thought it reads in the form of an order. The report admits the status that there had been no enumeration of castes from amongst the members of the Society and therefore, it was not possible to ascertain whether 10% of the members of the Society belonged to the backward class. The rule providing for a proforma for the nomination form it does not also provide for any particular detail whether a person belongs to backward class or not. It provides in form "A" only as regards the reserved category through a query whether a person belongs to scheduled caste or not. There is no question seeking an answer whether a person belongs to backward class or not. The report therefore, spells out that a direction has been issued the enumeration of all the castes from amongst the members shall be done for future election to take place.

4. One thing should at least be very clear that at the time when the exercise was undertaken for the choice of the members of the Managing Committee, no attempt had been made categorizing the different castes and class distribution amongst the members of the society. The petitioner who seeks for annulling the election result ought in the first place to place definite proof as regards the fact that there were more than 10% of the members as belonging to the backward class. If such a proof is not available, in my view the petitioner cannot have a relief in this writ petition. Learned Counsel for the petitioner would contend that if the statute mandates a reservation in a particular fashion, without an attempt to secure the category wise distribution that would allow for accommodating the claims of the reserved classes, the election itself could not have been held and if such an election was held, it ought to be quashed. Learned Counsel makes a reference to a decision of a Division Bench of the Kerala High Court in *Gopalakrishana Pillai v. State of Kerala* 1976 KLT 754, that held in the context of Section 75 of the Municipal Corporation Act, 1961 that where the said Section granted a power to be exercised in terms of rules as were provided, and to a contention that without framing of rules the power could not be exercised that the rules are regulatory of the power but their existence is not a pre-condition for the operation of the power under statute. Therefore, Section 85 could not be

interpreted to mean that the power conferred thereby remained suspended until Rules were made and become operative only when such Rules became current do not derive any valuable proposition to be applied to the benefit of the petitioner in this case for the issue is not that the rules are not framed in the manner that prevents the application of principle of reservation enunciated in Section 28 of the Cooperative Societies Act. On the other hand, the Election process has gone through without any enumeration whatsoever about the backward class distribution amongst the members of the society. If there ought to have been objection it ought to have been done prior to the commencement of the election process. If the petitioner who seeks to be a backward class has participated in the election process without a challenge to the whole exercise, to annul the entire choice of candidates post-election does not seem desirable in the context of the important role that the Managing Committee may have to perform for running day to day administration of the affairs of the Society. For the present, at least the petitioner cannot have any remedy through this writ petition for the petition lacks a fundamental detail of proof which is necessary that there exists more than 10% members who belong to backward class in order that the petitioner has his grievance redressed in the writ petition.

5. The Ist respondent is directed to consider amending Form "A" in Haryana Co-operative Societies Election Rules to include a query regarding whether the person belongs to backward class and append proof along with the nomination form. The respective Cooperative Societies shall gather details of the members who belong to backward class and such information shall be collected with requisite proof even at the stage of admission to membership. The Ist respondent is directed to give suitable instruction in that regard for giving effect to Section 28 of Haryana Co-operative Societies Act. The enumeration of backward class status among members shall be fully complete before election to Managing Committees are announced and any election held in future without such enumeration will be liable for challenge.

6. The writ petition is dismissed with the above direction.