
(1984) 12 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3662 of 1984

Balwant Singh

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 05-12-1984

Acts Referred:

Citation : (1985) ILR (P&H) 19 : (1985) PLJ 102 : (1985) RRR 347

Hon'ble Judges : M.M.Punchhi, J

Advocate : D.S. Brar, A.A.G. Pb., Advocates for appearing Parties

Judgement

M.M. Panchi, J. (Oral)

1. Is the principle "actus curiae neminem gravabit" applicable to the controversy in hand is the question which has cropped up for consideration in this matter. Though the pleadings are lengthy and so are the appendages, it would suffice to cull out the broad facts therefrom in this manner :

The Rampur Rural Cooperative Bank Ltd., Rampur, arrayed as respondent No. 4, is a cooperative society registered under the Punjab Cooperative Societies Act, 1961 (hereinafter called "the Act"). It has a sizable number of members. Those members on 5.12.1983 elected a Managing Committee of 9 members and the two petitioners herein were amongst those elected the Managing Committee. According to their averments, though the Committee was elected unanimously by the members, the Committee itself inter se was divided into two groups of five and four, and they were in the group consisting of five members. As required under the rules framed under the Act as also the byelaws of the Bank, the Committee had to elect from amongst themselves a President, a VicePresident and other officebearers besides coopting members to the Committee. December 21, 1983 was fixed for the purpose. A day earlier on 20.12.1983 Ajaib Singh respondent No. 9 filed an election petition against the election of the present petitioners and as an interim measure prayed for restraining/staying the Managing Committee from running the working of the Bank till the disposal of the petition. It was presented through an Advocate by the name of Shri

Parminder Singh Gill of Samrala. On that very day the Assistant Registrar, who was the competent authority to decide the election dispute, in purported exercise of powers under section 56(3) of the Act, passed the following order :

"Presented by Sh. Parminder Singh Advocate, Samrala. Heard and ad interim stay is granted till 6.1.1984, restraining the Committee from functioning in the Society. Notice to parties be issued.

Sd/... 20.12.1983."

This order was passed by the Assistant Registrar in his own hand in the margin of the election petition. Ministerially, however, the order conveyed to the parties concerned was somewhat different. That was framed and sent under the signatures of the Stenographer but for the Assistant Registrar. When translated into English, it reads as under :

"Sh. Ajaib Singh s/o Sh. Bakhtawar Singh resident of village Rampur has filed an elected petition today on 20.12.1983 against the election of Balwant Singh and Mehar Singh as Committee members of the Rampur C.A.S.S. Ltd. This petition shall be heard in this Court on 6.1.84 at 10 A.M. So you present your case/ Society to present his side. In case of absence ex parte proceedings shall be taken. Upto this date of hearing Sh. Balwant Singh and Mehar Singh are restrained to take part in the proceedings of the Committee of the Society,

Sd/ Steno 20.12.83 for Assistant Registrar, Cooperative Societies, Samrala (Ludhiana)."

This order was conveyed to the two petitioners as also to the Manager of the Society. Seemingly at the time of the meeting for the purposes of holding election of the office bearers and coopting members. The petitioners apparently then became aware of the restraint order. The matter was brought to the notice of the Assistant Registrar by means of a complaint the same day, i.e. on 21.12.1983. The complaint was presented by a deputation of the members of the Society. They challenged his power to restrain the petitioners from participating in the election. There and then the Assistant Registrar passed the following order in the margin of the application :

"Presented by a deputation of the Rampur Cooperative Agricultural Service Society. Heard. Considered. It was a mistake of Steno which was done inadvertently. Orders be issued as on the file and it may be ordered that the proceedings done by the Committee are cancelled.

Sd/ 21.12.1983."

The same day the Assistant Registrar called the explanation of the Stenotypist as to under what circumstances wrong orders had been conveyed on the summons to the parties and in case no satisfactory reply was forthcoming he would be proceeded against. The Stenotypist then on 22.12.1983 explained his mistake thus as being extremely busy on that day and when Ajaib Singh election

petitioner and another had put pressure on him to be relieved early that he, in a routine matter, had issued the stay order in a hurry, without reading the orders passed on the petition, because he understood that since the petition was against Balwant Singh and Mehar Singh only they had to be restrained from taking part in the proceedings of the Committee of the Society. He owned the mistake but said that it was unintentional. On this the Assistant Registrar passed the following order :

"Reply found satisfactory and he is directed to be careful in future. Original order of stay be issued and proceedings of that day done by Committee be treated as cancelled and inform accordingly to the Committee.

Sd/ 22.12.83."

These extracts and the facts culled out are obtained from the record presented before me by the learned Asstt. Advocate General, Punjab.

In the meantime in the meeting of the 7 members held on 21.12.1983, the petitioners being unable to participate in it, the group of 4 emerged in majority and accordingly Mohinder Singh respondent No. 5 was elected as the President, Jarnail Singh respondent No. 6 as VicePresident and respondents Nos. 7 and 8 came to be coopted as members. In that situation the petitioners on 4.1.1984 filed C.W.P. No. 136 of 1984 in this Court challenging not only the restraint order passed by the Assistant Registrar in the election petition of Ajaib Singh but also his power under section 56(3) of the Act. It was maintained that the Assistant Registrar hearing an election petition had no jurisdiction to grant a temporary injunction restraining the Committee from functioning. Notice of motion was issued by a Motion Bench to which I was a party. The respondents therein were the Assistant Registrar, the Cooperative Bank and Ajaib Singh, the electionpetitioner. Written statement was filed on behalf of the Bank wherein it was stated that the injunction order had been withdrawn and the fresh election had been fixed for 17.2.1984. The plea was repeated at the time of hearing in the presence of the learned counsel for the Bank as also the electionpetitioner. The Bench to which I was member, on 13.2.1984 took note of the averment in the written statement and in view thereof held the writ petition to have become infructuous and dismissed the same as such. Patently the averment in written statement adopted by this Court as part of its order contained two undertakings of the respondents :

(i) the injunction orders issued by the Assistant Registrar had been withdrawn ; and

(ii) fresh election had been fixed for 17.2.1984, which obviously meant in place of those which took place on 21.12.1983.

It appears that before C.W.P. No. 136 of 1984 was disposed of by this Court, Mohinder Singh, the suggested President of the Bank, had filed an appeal against the orders of the Assistant Registrar dated 20.12.1983 passed in the margin of

election petition, copy of which is Annexure P1 to the petition, whereby the Committee had been restrained from functioning in the Society. However, the Deputy Registrar on 28.2.1984 vide order Annexure P2 in C.W.P. No 3662 of 1984 dismissed the appeal finding no force in it. Plainly, no effort was made by Mohinder Singh to have the appeal dismissed as withdrawn in view of the order of this Court in C.W.P. No 136 of 1984. No effort was equally made to apprise the Deputy Registrar of the existence of that order and to the undertakings of the Bank made therein. Mohinder Singh and others then filed a revision petition before the Deputy Secretary to Government, Punjab, Cooperative Department, exercising the powers of the Government but withdrew the same on 21.3.1984, as is evident from order Annexure P3.

Having failed to circumvent the undertakings given to this Court, Mohinder Singh President, Jarnail Singh VicePresident and the two coopted members filed a revision petition under section 69 of the Act, this time against the orders dated 22.12.1984 passed by the Assistant Registrar as also against the final order dated 28.2.1983 passed by the Deputy Registrar, whereby he affirmed the order dated 22.12.83 of the Assistant Registrar who had directed his correct order of 20.12.1983 to be put to operation and to demolish everything which had happened intervening. The Additional Registrar on 16.4.1984, vide order Annexure P4, in a self contradictory order, first opined that Balwant Singh and Mehar Singh, now petitioners, were wrongfully deprived of their right to run the Society, and secondly, the Deputy Registrar in dismissing the appeal had deprived the elected members of their right to function and hold office, which right they acquired on 21.12.83. All the same he observed that the election of the officebearers on 21.12.83 was infirm and the orders of the Assistant Registrar and the Deputy Registrar were not in the spirit of law. He, therefore, directed that a fresh notice for a meeting for electing officerbearers be issued within a week wherein 15 days" clear notice be given to all the concerned members. These orders did not serve the purpose of Mohinder Singh President and his three associates. They then filed second revision petition under section 69 of the Act before the Secretary (Appeals) to the Government, Punjab, which was heard by Shri Pritam Singh, an I.A.S. Officer, and accepted on 10.7.1984. The short order is Annexure P5 to the petition but the main order is Annexure (R 1) to the return of respondents Nos. 4 to 9. The order of this Court was practically be passed by the said officer. He even misread the file. His following observations make it clear :

"It is quite clear that the orders restraining respondents Balwant Singh and Mehar Singh from participating in the proceedings of the Society dated 20.12.83 were conveyed under the signatures of Assistant Registrar, Co operative Societies, respondent No. 2, and not that of his Stenographer."

As observed earlier, the file as produced before me disclosed that the orders were sent by the Steno under his signature and not the Assistant Registrar. Rather the Steno was asked to convey the order of the Assistant Registrar

passed on 20.12.1983 restraining the entire committee from functioning. If that had timely been conveyed no elections could have taken place on 21.12.1983. The so-called election did take place inadvertently on 21.12.1983 and it was to forestall the same that the Assistant Registrar passed as orders on 21.12.1983 when a deputation of the members of the Society met him and then called the explanation of the Stenographer which was rendered on 22.12.1983. The Secretary (Appeals), however, took the view that once the election had been held the Assistant Registrar could not act under section 56 of the Act. He even termed the conduct of the Assistant Registrar as smacking of arbitrariness and having made his Stenographer a scapegoat. It is on these premises that he held that the orders on the body of the election petition appeared not free from doubt and the same was his opinion regarding order passed on 21.12.1983. He even went to the length of observing that it was not an innocent error but a deliberate design in order to cover up acts of omission and commission by making two wrong orders. Expectations were expressed in the order that the Assistant Registrar should have rather owned his mistake and not made his Stenographer a scapegoat. It was primarily on this view that the revision petition was accepted and all the orders aforesaid, i.e. of the Assistant Registrar, Deputy Registrar and the Additional Registrar, were set aside. The result of the said order obviously was that the election which took place on 21.12.1983 stood untouched and the group of four runs the Society against the group of five, which stands ousted. Resultantly, Mohinder Singh respondent No. 5 is President, Jarnail Singh respondent No. 6 the Vice President and respondents No. 7 and 8 the coopted members of the Society. It is against these orders that the petitioners have approached this Court raising the question forefocussed. Returns have been filed in support of the view expressed by the Security (Appeals) to the impugned orders.

2. The learned counsel for the petitioners Shri Kuldip Bhandari has vehemently urged that this is a case of deliberate violation of the undertakings made before this Court, as otherwise, but for the concessions made in C.W.P. No 136 of 1984, this Court might have opined in its order that the Assistant Registrar had no power to pass any adinterim order in an election petition restraining the Committee from functioning in the Society. He further maintained that had such an eventuality happened all what followed from the restraint order would have automatically collapsed. He urged with equal vehemence that the same result stood achieved for the petitioners by the undertakings of the Bank given through its Manager. By considering that the interlocutory orders had been withdrawn and fresh elections would take place on 17.2.1984, the same result had inherently followed in treating the proceedings of 21.12.1983 to have been wiped out. As against this, the learned counsel for respondents No. 5 to 8 has maintained that whatever happened on 21.12.1983, that remained beyond challenge and the election of respondents Nos.5 and 6 and the cooption of respondents Nos. 7 and 8 had to be challenged by a regular election petition and not otherwise. It is precisely in answer to such a technical objection that the salutary principle of

"actus curiae neminem gravabit" has been put in the forefront by the learned counsel for the petitioners.

3. The Supreme Court of India in *Jang Singh v. Brij Lal and others*, 1963 Current Law Journal (S.C.) 11, observed that there was no higher principle for the guidance of the Court than the one that no act of Court should harm a litigant and it is the bounden duty of the Court to see that if a person is harmed by a mistake of the Court he should be restored to the position he would have occupied but for that mistake, and further that the principle was aptly summed up in the maxim "Actus curiae neminem gravabit." A Full Bench of this Court in *Deep Chand and another v. Additional Director, Consolidation of Holdings, Punjab, Jullundur and another*, 1964 PLR 318, extended this principle to quasijudicial tribunals also. Thus, the Assistant Registrar purporting to exercise power under section 56(3) of the Act, while passing an interlocutory order in an election petition, would obviously exercise quasi judicial functions, and if he commits a mistake not only he has the right to correct it but would further have the right to see that the party which has suffered a wrong by his mistake gets restored to the position it would have occupied but for that mistake.

4. As has been observed earlier, in the instant case, the mistake was that of the Stenographer in conveying an order which was totally out of tune with the parent order on the file. That order he had sent under his own signatures for the Assistant Registrar. That was an obvious mistake of a ministerial working under the quasijudicial authority. Even if it had been sent by the Assistant Registrar himself, the position in law would not have been any different. Courts and quasijudicial tribunals have the power to correct not only clerical and arithmetical mistakes in their orders, but also orders passed on account of accidental slips and omissions. That is their inherent right. If the Assistant Registrar could have owned that he sent the order on 21.12.1983 accidentally by a slip or omission, then no controversy could arise whatsoever, but he had to own it only if he had actually committed the mistake. As observed earlier, the mistake had been committed by the Stenographer and, on misreading of the file, was taken by the Secretary (Appeals) to be a mistake of the Assistant Registrar but wrongly shifted over to the Stenographer. It is these twists of the facts which have led to the error on the face of the record for, there is no evidence on the file to cause observations or adverse remarks against the conduct of the Assistant Registrar. The election petition was presented by an Advocate and the restraint orders were passed on the same in the presence of that Advocate. That Advocate never disputed his presence before the Assistant Registrar on 20.12.1983 at any stage or to the passing of the restraint orders against the Committee. It was nobody's case that the orders had not been passed. It was not even the case of the Stenographer that he was orally asked to convey the orders as he did on 21.12.1983 or later on the order was passed on the parent petition contradictory to the orders of 21.12.1983. Rather the Stenographer admitted his mistake that he had, without reading the file conveyed the order on 21.12.1983. Thus, there is no escape from concluding that neither is the file of the Assistant Registrar

capable of raising any doubt, nor his orders, forthcoming thereon. The conduct of the Assistant Registrar does not smack of any arbitrariness, as held by the Secretary (Appeals). Since these observations have been made without any evidence on the file, these are errors of jurisdiction apparent on the face of the record and capable of being quashed in a certiorari.

5. The matter is then to be viewed from another angle also. Had the restraint order dated 20.12.1983 been conveyed to the Bank and the Committee, no elections would have taken place and thus the case of the petitioners would not have been prejudiced in any manner. It is only by the wrong conveying of the orders by the Stenographer that not only did the election take place but the petitioners were prohibited from participating in the same. Wrongfully depriving the petitioners from participating in the elections has visited them with great injustice. Equally letting respondents Nos. 5 to 8 to continue in that position as elected/coopted members as a result of the meeting of 21.12.1983 would again be even greater injustice. Two wrongs cannot make one right. It is precisely in this way that the maxim above quoted comes into play, when the Court owns its mistake, rather the mistake of its functionary as its own mistake and restores the party to the position as it originally occupied but for the mistake. In this process the stance adopted by the Bank before this Court in C.W.P. No 136 of 1984 was the right one and any deviatory tactics later adopted by the usurpers of the office tended in a way to be contempt of Court. These observations have been made in a limited way to dispose of these proceedings and are not a final expression on the guilt of those persons. Thus, it seems to me that the undertakings given to this Court by the respondents cannot be surreptitiously, dubiously or otherwise allowed to be circumvented or withdrawn. The net result is that there was a restraint order and there could not be any elected officebearer of the Committee or even a coopted member. The unanimously elected Committee of 9 has yet to elect its officebearers and coopt members. And if for one reason or the other the members had not been able to do so, even on 17.2.1984 as originally undertaken, a meeting for the purpose has to be held, and is directed to be held, in any case by 15.1.1985, for which purpose, the Assistant Registrar is directed to set into motion the legal process or mechanism. This petition is accordingly allowed for the aforesaid reasons and with costs. Counsel fee Rs 500/. Orders dated 10.7.84, Annexure P.5/R.1 is quashed.