
(2006) 05 P&H CK 0140
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4980 of 2006

Balwinder Singh and Others

APPELLANT

Vs

The Financial Commissioner Cooperation and Others

RESPONDENT

Date of Decision : 23-05-2006

Acts Referred:

Citation : (2006) 144 PLR 52 : (2006) 3 RCR(Civil) 702

Hon'ble Judges : Vinod K. Sharma, J; Jasbir Singh, J

Bench : Division Bench

Advocate : D.V. Sharma and Harit Sharma, for the Appellant; Reeta Kohli, D.A.G. for Respondent Nos. 1 to 3 and M.S. Bedi, for the Respondent

Final Decision : Allowed

Judgement

Vinod K. Sharma, J.—The petitioners by way of present writ petition have sought quashing of election programme, Annexure P-2 as well as undated notice, Annexure P-3 and subsequent election process which has taken place on the basis of illegal election programme and further seeking directions to the Board of Directors of Central Co-operative Bank, Gurdaspur to hold election in accordance with law.

2. The facts leading to the filing of the present writ petition are that election programme by the Joint Registrar, Co-operative Societies, Jalandhar was approved on 21.2.2006 and 23.2.2006 was fixed as date for issuance of election programme to the member Societies of Gurdaspur Central Co-operative Bank Ltd., (hereinafter referred to as the Bank). The case of the petitioners is that this election programme is alleged to have been sent under the certificate of posting which, in fact, was not sent. It is further the case of the petitioners that it was impossible to write down 2000 addresses and then affix the stamps and post them. According to the petitioners, the process adopted was not in accordance with law as service under the certificate of posting cannot be said to be service in the eye of law. The election programme as circulated has been attached as Annexure P-2 with the present writ petition which is reproduced below for ready

reference.

The Gurdaspur Central Cooperative Bank Ltd. (Gurdaspur)

Election Programme

The Election to the Board of Directors of the Gurdaspur Central Cooperative Bank Ltd., Gurdaspur will be held as per the election programme given below, which has been approved by the Joint Registrar, Cooperative Societies, Jalandhar Division, Jalandhar vide his letter No. C.asstt.(Society)7G/Election/JR.750 21.2.06:

Sr. No. Details of the programme Date Time and place 1. Last date for sending the notice 23.2.2006 2. Last date for depositing the 11.3.2006 4.00 p.m. in H.O. copies of the resolution to the at Gurdaspur. District Manager 3. Date of filing of nomination 13.3.2006 10.00 to 2.00 in paper H.O. of Bank. 4. Date of filing objections to the 13.3.2006 2.30 to 5.00 in H.O. nomination papers of the Bank. 5. Date of hearing of objections so 14.3.2006 10.00 to 1.00 in H.O. filed and scrutiny of nomination of the Bank. papers. 6. Date of issue of list of nomination 14.3.2006 1.00 to 2.00 in H.O. paper found in order of the Bank. 7. Date of withdrawal of nomination 14.3.2006 2.00 to 3.00 in H.O. papers of the Bank. 8. Date of declaration of result of 14.3.2006 3.00 to 4.00 in H.O. Unopposed candidates of the Bank. 9. Date of allotment of symbols, where 14.3.2006 4.00 to 4.30 in H.O. Nomination papers are more than one of the Bank. 10. Date of issue of list of contesting 14.3.2006 4.30 to 5.00 in H.O. candidates of the Bank. 11. Date of polling 20.3.2006 9.30 to 4.00 12. Declaration of the result of 20.3.2006 Counting of votes would be election started immediately after polling and after counting of votes, declaration of result will be made by the Returning Officer. _____

_____ S No. Zone N.
Place (where polling will be held) 1. Agricultural Service/Credit The Gurdaspur Central Cooperative Bank Marketing Societies. Ltd., Branch Office, Pathankot. 2. - do - The Gurdaspur Central Cooperative Bank Ltd., Branch Office, Dinanagar. 3. - do - The Gurdaspur District Wholesale Cooperative Supply and Marketing Society Ltd., Gurdaspur. 4. - do - The Gurdaspur Central Cooperative Bank Ltd., Branch Office, Dhariwal. 5. - do - The Gurdaspur Central Cooperative Bank Ltd., Branch Office, Kahnuwan. 6. - do - The Gurdaspur Central Cooperative Bank Ltd., Branch Office, Batala. 7. - do - The Gurdaspur Central Cooperative Bank Ltd., Branch Office, Batala. 8. Industrial Societies The Gurdaspur Central Cooperative Bank Ltd., H.O. Gurdaspur. 9. Other and L.C. Societies The Gurdaspur Cooperative Labour and Construction Union Ltd., Gurdaspur. Note:

1. Spare Copies of the list of voters of zones can be had from the Head Office, Gurdaspur on payment of Rs. 50/- per copy.

2. Nomination forms can be taken from the Head Office Gurdaspur and the branches given in the programme on payment of Rs. 1/- per copy.

3. Sample of the resolution to be passed by the societies is enclosed.

Sd/- District Manager, C.B. Gurdaspur.

3. In this election programme the date of poll was fixed as 20.3.2006 whereas the last date of depositing the copies of the resolutions to the District Manager was fixed as 11.3.2006. It is further the case of the petitioners that in the election programme it was nowhere provided that the resolution passed by the Society authorising one of its members to participate in the election was to be got attested by the Inspector Co-operative Societies and counter-signed by the Assistant Registrar, Co-operative Societies concerned. It is further the case of the petitioner that undated notice was affixed on the Notice Board of the Bank by the District Manager on 11.3.2006 mentioning therein that resolution authorising member Societies should be got attested from the Inspector concerned and countersigned by the Assistant Registrar, Co-operative Societies concerned. Copy of the notice has been attached as Annexing P.3 with the writ petition. It is the case of the petitioner that a fraud has been played with the member Societies as specific resolutions which were required to be submitted to the Bank were got printed by the Bank from the District Cooperative Union Ltd., Gurdaspur, where a note was added at the end of the resolution that the same is required to be attested without mentioning therein that the same has to be got attested from Inspector, Co-operative Societies and countersigned by the Assistant Registrar, Co-operative Societies, concerned. The petitioners have annexed a specimen copy of the resolution as Annexure P.5 to the writ petition. It is further the case of the petitioners that the District Manager had got printed another set of specimen resolution which contained a note that the resolutions should be got attested from the Inspector Co-operative Societies and counter signed by the Assistant Registrar, Co-operative Societies concerned. The second set of specimen resolution has been placed on record as Annexure P.6. It was further the case of the petitioners that when the Member Societies approached the Inspector concerned for attestation of the resolution the same was refused and accordingly the petitioners were deprived from contesting or participating in the election. In order to support its contention it has been pleaded that the area of operation of the Bank was divided into 9 zones and the number of members of the Societies zone-wise is as under:

Zone No. No. of Societies 1. 79 2. 65 3. 64 4. 67 5. 72 6. 79 7. 84 8. 45
9. 47 7. 84 8. 45 9. 47

It is further the case of the petitioners that out of the membership reproduced above, only following resolutions were received:

Zone No. No. of Societies whose Resolution were received. 1. 3 2. 7 3. 8 4. 5 5.
6 6. 6 7. 4 8. 36 9. 42

4. In view of the above said facts, the petitioners sought to draw a conclusion that the resolutions were not received from the Member Societies for want of attestation by the Inspector and countersigning by Assistant Registrar, Co-

operative Societies, concerned. The petitioners further submitted that the Inspector and the Assistant Registrar concerned failed to attest the resolutions under the political influence of the ruling party as the petitioners belong to Akati Party. It is further the case of the petitioners that some of the petitioners had filed a revision petition u/s 69 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act) before the Financial Commissioner, Co-operation, Punjab who declined to entertain the same as C.W.P. No. 2727 of 2006 was pending in this Court in which this Court had permitted holding of election but declaration of the result was stayed.

5. The writ petition was contested by the respondents. A joint written statement was filed on behalf of respondents No. 1 to 3 by the Joint Registrar, Co-operative Societies, Jalandhar, wherein it was stated that though the Managing Committees of the Societies had authorised its members to participate in the election, however, the said resolutions could not be accepted as these were required to be attested under the guideline 24 of the Guidelines issued by the Registrar. Guideline No. 24 is a part of guide lines circulated by the Registrar, Co-operative Societies, Punjab along with his letter dated 11.12.2000 which provides for holding of election to the Managing Committees of the Cooperative Societies in Punjab. Guide-line No. 24 is reproduced as below:

PROCEDURE FOR NOTING

24.0(1). Before a ballot paper is delivered/issued to a voter by the Polling Official, the voter should speak out his name, to the Polling Official, who should compare his/her details with those in the list of voters. In case the voter is representing a cooperative society, he should produce a resolution of the cooperative society, authorising him to do so. Such a resolution should have been passed by the cooperative society after notification of election; should be attested by the Chief Executive Officer of the cooperative society except in case of primary cooperative society where it should be attested by the Inspector in charge of the cooperative society; and should have been received by the Election Manager four days prior to the date of polling.

(ii) A Polling Official should after comparing the details of the voters with the official copy of list of voters, tick marks against the serial number of the voter in the list of voters in order to ensure that the voter has received the ballot paper. He should also record the serial number of the ballot paper against the entry pertaining to the voter in the list of voters.

(in) No voter representing a cooperative society should be issued a ballot paper provided a copy of the resolution of the cooperative society duly attested, authorising the voter to represent it for the election is received by the Election Manager four days prior to the date of polling and the sample is provided to the Presiding Officer/Alternative Presiding Officer for verification. In case such a resolution is not received by the Election Manager within the stipulated period, such representative of the cooperative society should not be entitled to vote. In

the event that the Election Manager has not forwarded the copy of the resolution received by him to the Presiding Officer/Alternative Presiding Officer for verification, the eligible voter cannot be denied his right to vote.

(iv) The voter having been issued a ballot paper should record his vote in the polling compartment. He should affix the rubber seal of cross-mark (X) on the ballot paper at the name of a candidate in whose favour he wishes to cast the vote or at his election symbol or at the open space against his name and should insert the ballot paper properly folded in the ballot box.

(v) If a voter after obtaining the ballot paper for the purpose of recording his vote decides not to use the same, he should return the ballot paper to the Presiding Officer/Alternative Presiding Officer and the ballot paper so returned should then be marked as "returned/ cancelled" and kept in a separate packet set apart for the purpose and record should be kept by the Presiding Officer/Alternative Presiding Officer of all such ballot papers.

(vi) If under any circumstance, a ballot paper is found to be defective or otherwise unfit for use, the Presiding Officer at the request of the voter should issue another ballot paper and keep the defective one in a separate packet referred to above.

(vii) If any ballot paper, which has been issued to any voter for the purpose of recording his vote, has not been put in the ballot box but it has been found left by the voter at the Polling Station, it should be presumed as cancelled and dealt with in accordance with the procedure mentioned above.

6. These guidelines according to the respondents have been issued as per the provisions of Rule 12, Part 1 of Appendix-C of the Punjab Co-operative Societies Rules, 1963 (hereinafter referred to as the 1963 Rules). It was not disputed that the zonal list of the voters prepared by the Board of Directors on 17.4.2003 was not adhered to for want of approval. The case set up by the respondents is that for conducting the election of the Bank, the zonal list of voters has been prepared by the Manager/Supervisory, Committee of the Bank and the same stands approved by the Joint Registrar, Co-operative Societies, Jalandhar exercising the powers of Registrar. It was further stated by the respondents that all the member Societies were informed about the election through letters sent under certificate of posting. The stand of respondent No. 3 is that though in the election programme the factum of attestation of the resolution by the Inspector concerned and Assistant Registrar is not mentioned, however, a separate notice along with specimen resolution was sent to the members with election programme. The allegations of fraud were denied and it was also denied that another set of specimen resolution was prepared by the District Manager. The allegation of the petitioners that guide-line No. 24 was contrary to the Act and Rules was also denied. The legal submissions made were also controverted and thus, it was prayed that writ petition is liable to be dismissed.

7. The Deputy Registrar, Co-operative Societies, Jalandhar filed a short affidavit

asserting therein that the process of the election was completed as per the Rules and regulations of the Act and there has been no illegality or unlawful activity in the election process.

8. Written statement on behalf of respondents No. 4 to 6 was also filed. While the stand of respondent No. 4 to 6 is also on the similar lines as that of respondents No. 1 to 3, however, it was stated that another specimen of resolution attached as Annexure P.6 was, in fact, printed but the object was to facilitate the members of the Bank to pass appropriate resolutions so as to enable them to participate in the election.

9. Learned Counsel for the petitioners challenged the election programme; firstly on the ground that the reading of the election programme would show that though the date of polling was fixed as 20.3.2006, however, the last date for depositing the copies of the resolutions with the District Manger was fixed as 11.3.2006.

10. Mr. D.V.Sharma, learned Counsel for the petitioners contended that prima facie this election programme is contrary to Rule 10 of Appendix-C of 1963, which provides that the resolution is to be presented at least 4 days prior to the date of polling, whereas in the present case, the date of submission of resolutions was fixed 9 days prior to the date of polling and therefore, the election programme being contrary to Rule 10 is liable to be set aside. Rule 10 of Appendix-C of 1963 Rules is reproduced below for ready reference:

10. Procedure of casting of vote.- (1) If the Registrar so requires a voter shall be required to produce an admission card, at the time of casting of his vote, to be issued by the co-operative society under postal certificate. The representatives of members society in addition, produce resolution of their respective co-operative societies authorizing them to represent the co-operative society in the general meeting:

Provided that a copy of resolution, duly attested, of a cooperative society authorising one of its members to represent it for election shall reach the Manager of the Cooperative Society whose election, is to be held at least four days before the date of polling. In case such a resolution is not received by the Manger within the stipulated period such representative of the Co-operative Society shall not be entitled to vote.

(2) If any difficulty arises in regard to the identification of individual members or representatives of the members Co-operative Societies Returning Officer or the Presiding Officer, as the case may be, may call upon one or more officials of the State Co-operative Department to assist him.

(3) The Manager shall make such arrangements in regard to the admission and seating of members and others invited by the Co-operative Society as may be considered necessary by the Returning Officer.

11. The reading of the above Rule leaves no manner of doubt that it was not

open to the District Manger to prepare an election programme which went contrary to statutory Rule 10 of Appendix-C and therefore, the contention of the petitioners is liable to be accepted.

12. The next contention of the learned Counsel for the petitioners is that the procedure adopted by the respondents in proceeding with the election is totally illegal and is the outcome of mala fides on the part of the authorities for political reasons. However, we cannot take notice of these allegations as the party against whom the allegations have been made, has not been made party to the present writ petition.

13. The writ petitioners further contended that the action of the District Manger in not accepting the nomination papers/resolutions of the Society in view of the guide-lines 24 also cannot be sustained. According to the petitioners, the procedure adopted has resulted in making the election as a totally farce. The contention of the learned Counsel for the petitioners is that out of 79 Societies in Zone-1, only 3 resolutions have been accepted. In Zone No. 2 out of 65 member societies 7 resolutions have been accepted whereas in Zone 3 out of 64 member societies only 8 resolutions were accepted and in zone No. 4, out of 67 members societies 6 resolutions were accepted, in zone No. 5 out of 72 members society only 5 resolutions were accepted; in zone No. 6 out of 79 members society 6 resolutions were accepted; in Zone No. 7 out of 84 member societies only 4 resolutions were accepted; in Zone No. 8 out of 454 member societies only 36 resolutions were accepted and in Zone No. 9 out of 477 member societies only 42 resolutions were accepted.

14. Learned Counsel for the petitioners vehemently argued that guide-line No. 24 does not have a statutory force of law and in fact, is merely a guide-line and therefore, could not be used to deny the member societies to participate in election on the basis of resolutions passed in accordance with the Act and Rules. Learned Counsel for me petitioners also made reference to guide-line 42 to contend that the Registrar, Cooperative Societies, Punjab by circulating these guide-lines had made it clear that in case of any conflict between these guide-lines/directions and Act and Rules, the provisions of the Act and Rules would prevail. Learned Counsel for the petitioners in view of the guideline No. 42 contended that guide-line 24 for the purpose of election to the Bank was liable to be ignored as the same goes contrary to Section 36 read with Rule 30 and Rule 10 of Appendix C of the 1963 Rules. Section 36 of the Act and Rule 30 of the 1963 Rules are reproduced below for ready reference:

Section 36, Admission of copy of entry as evidence:

A copy of any entry in a book of a cooperative society regularly kept in course of its business, shall if certified in such manner as may be prescribed, be received in any suit or legal proceedings as prima facie evidence of the existence of such entry and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the

original entry itself is admissible.

Rule 30. Manner of certifying copies of entries in books : For the purpose of Section 36 a copy of an entry in the books of a cooperative society shall be certified by a certificate written at the foot of such copy declaring that it is a true copy of such entry and that the book containing the entry is still in the custody of a cooperative society:

Provided that the said certificate shall be signed and dated by the Manager or Secretary of the Cooperative Society or by an officer authorised by the Cooperative Society to do so.

"Officer" has been defined in Section 2(h) of the Act to mean, a President, Vice-President, Committee Member, Manager, Secretary treasurer etc.

15. The reading of the provisions of the Act and Rules referred to above leaves no manner of doubt that guide-line 24 goes contrary to the Act and Rules referred to above. Further reading of Rule 10 of Appendix-C of the 1963 Rules shows that procedure for casting of vote has been provided in the Rules. Care has been taken for identification of individual members or representatives of the Co-operative Societies, Under Sub-Rule (2) of Rule 10 of Appendix-C. When this rule is read with Section 36 and Rule 30 of the Act and Rules, it leaves no manner of doubt that guide-line 24 should not have been applied to reject the resolution by the member societies in view of the guide line No. 42 issued by the Registrar.

16. Learned Counsel appearing for the respondents have vehemently argued that these guide-lines having been issued by the Registrar Under Rule 12 of Appendix-C of the 1963 Rules were binding on the Manager and the authorities. Rule 12 reads as under:

12. General.- (1) The Registrar may issue such instructions as may be necessary for the purpose of drawing of election programme, filing of nomination papers, withdrawal of nomination papers, allotment of symbols, manner of voting, counting and other relevant matter to facilitate the holding of elections in respect of a Co-operative Society or class of Co-operative Societies.

(2) If any dispute arises in connection with the election of any officer of the Co-operative Society, it shall be referred within 90 days of the date of declaration of the result of such election to the Registrar in the same manner as provided in rule 51 of the Rules.

17. The reading of Rule 12 shows that this is a general rule authorising the Registrar to issue instructions which may be necessary for the purpose of drawing of election programme, filing of nomination papers, withdrawal of nomination papers, allotment of symbols, manner of voting, counting and other relevant matters to facilitate the holding of elections in respect of Co-operative Society or class of Co-operative Societies. This general rule is meant to fill up lacunas, if any, with respect to the election programme but cannot be used to

issue instructions which go contrary to the specific provisions of the Act and Rules. It may be pertinent to note here that the Registrar while issuing guide-lines was aware of this aspect of the matter that Under Rule 12 he had no authority to issue any instruction which goes contrary to the Act and Rules and therefore, guide line 2 as referred to above was added to the guide-lines issued for holding of election.

18. Therefore, in view of the facts stated above, we have no hesitation to hold that the procedure adopted by the respondents with regard to the rejecting of resolutions and insisting with the condition that the resolution was required to be attested by the Inspector Co-operative Societies and Assistant Registrar concerned was not in accordance with the Act and Rules and therefore, cannot be sustained. In the present case, mischief done in following this guide-line to deny the right of participating to the members in election is writ large as noticed above, as in the garb of attestation, resolutions were not accepted. Therefore, we feel no hesitation to hold that the procedure adopted was totally illegal which has resulted in denying the right to the members to participate in the elections. Keeping in view the fact that this Court has already stayed declaration of the result in the earlier writ petition we deem it appropriate to quash the election programme attached as Annexure P.2 to this writ petition and also subsequent election process which had taken place on the basis of illegal election programme and direct the respondents to hold the election of the Board of Directors of the Bank in accordance with the law within 3 months from the date of the receipt of the copy of this order.

19. We would also like to observe here that election programme along with requisite sample resolution passed by the members society should be sent to the respective members by way of registered letter or other mode of service as per the Act and Rules and posting of the programme under Postal Certificate be not resorted to. The election programme is to be prepared strictly in accordance with the rules as framed under Appendix-C to the 1963 Rules.

20. We have noticed with regret that in the present case also zonal list has been prepared by the Manager/Supervisory Committee, though no fault can be found with this under the given facts and circumstances of the case, but it may be noticed that this has occasioned by ignoring the law declared by this Court in *Bahvant Singh and Ors. v. The Union Territory Administration and Ors.* 1994 P.L.J. 6 (P&H) and *Brij Kishore Arora Vs. The Administrator, U.T. Chandigarh and Others*, that concept of supervisory officer is alien to the Act. The Administrators appointed in the Society are not taking steps to perform their statutory duty in holding the election within the stipulated period and therefore, we would like to direct that in future if and when any Administrator is appointed in a Co-operative Society he shall be bound to hold the election during his tenure and in case of failure to do so the State Government/Registrar, Co-operative Societies should take disciplinary action against them/him and no supervisory officer/Committee is appointed/constituted.