
(1976) 02 MP CK 0007

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 951/73

Brij Behari Gupta

APPELLANT

Vs

L.L. Khare and Another

RESPONDENT

Date of Decision : 27-02-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1976 MP 156 : (1980) ILR (MP) 551 : (1976) JLJ 401 : (1976) 21 MPLJ 302

Hon'ble Judges : S.M.N. Raina, J;G.P. Singh, J

Bench : Division Bench

Advocate : P.G. Pathak, R.P. Agarwal, for the Appellant; S.K. Dixit, (for No. 1), V.S. Pandit, (for No. 2) and R.P. Ravi, (for No. 5), for the Respondent

Final Decision : Allowed

Judgement

S.M.N. Raina, J.

This is a petition under Articles 226 and 227 of the Constitution.

The Jabalpur Wholesale Consumer Co-operative Society Ltd., Jabalpur (hereinafter referred to as "the Society") is a consumer co-operative society duly registered under the Madhya Pradesh Cooperative Societies Act, 1960 (hereinafter referred to as "the Act").

The petitioner is a shareholder of the Society and is also a member of its Managing Committee. Respondent No. 1 who was appointed Election Officer to conduct the elections of the Society issued general notice (Annexure P-1) notifying the programme of election of the members of the Managing Committee of the Society. According to the said pro-programme the election of the members of the Managing Committee was to be held on 16th of December, 1973 at the Annual General Meeting of the Society. The date fixed for filing nomination papers for the members of the Committee was 8-12-1973; the date of scrutiny was 10-12-1973 and the last date for final withdrawal was 12-12-1973.

The petitioner filed his nomination paper on 6-12-1973 for the membership of the Managing Committee. The nomination paper of the petitioner was, however, rejected by the respondent No. 1 vide Annexure P-2 on the ground that he was disqualified for being a candidate at the election. The contention of the petitioner is that his nomination paper was wrongly rejected by respondent No. 1 without affording any opportunity to the petitioner of being heard in the matter. The petitioner, therefore, filed this petition praying that the order of rejection may be quashed and the petitioner may be allowed to contest the election for membership of the Committee.

Rule 40 of the Madhya Pradesh Co-operative Societies Rules (hereinafter referred to as "the Rules") provides that a Society may for the purpose of election of the members to its committee divide its membership into different groups on a territorial or any other basis and the bye-laws of such a society may specify the number or proportion of the members of the committee who may be elected to represent each such group on the committee. Under Bye-law 12 of the Society, 4 members are to be elected by the primary consumer societies; one member is to be elected by marketing and other societies while 4 members are to be elected from amongst the individual shareholders. The petitioner was a candidate for election as one of the four members to be elected as representatives of the individual shareholders of the Society. We are told that the election of the representatives of the other two groups has already taken place and the learned counsel for the petitioner made it clear that the petitioner did not challenge their election. He merely challenged the election of the members representing the third group. It was further not disputed before us that 5 persons including the petitioner had filed their nomination papers for 4 seats. As the petitioner's nomination paper was rejected the other 4 candidates, namely, respondents 4 to 7 could be declared as duly elected, but their election has been stayed by order of this Court dated 15-12-1973.

Before we proceed to deal with this petition on merits, we would like to consider the preliminary objection that this petition is liable to be dismissed on the ground that it was open to the petitioner to pursue the alternative remedy before the Registrar, Co-operative Societies, u/s 64 of the Act. Under Sub-section (1) of Section 64 of the Act, the Registrar is competent to decide disputes arising in connection with the election of any officer of the Society. The word "officer" as defined in Clause (u) of Section 2 of the Act includes a member of the Committee and, therefore, election of a member of the Committee falls within the purview of Section 64. Learned counsel for the petitioner, however, urged that in view of the proviso to Clause (v) of Sub-section (2) of Section 64 of the Act a dispute relating to rejection of a nomination paper would not fall within the purview of Sub-section (1) of Section 64. The said proviso reads as under :

"Provided that any matter arising out of election proceeding between the period commencing from the announcement of election programme and ending with the declaration of results shall not be deemed to be dispute for the purpose of this

clause."

It appears to us that the proviso has not been happily worded and its language is rather involved. It cannot be construed to mean that the Registrar is not competent to decide any dispute relating to a matter arising out of election proceedings between the period commencing from the announcement of the election programme and ending with the declaration of result because a dispute in connection with the election of an officer of the Committee must necessarily relate to any such matter.

In our view the proviso makes a distinction between a dispute relating to any matter arising out of the election process and a dispute relating to the election itself after the process is completed and thus ousts the jurisdiction of the Registrar to deal with a dispute pertaining to any such matter before the election process itself is completed and the result of the election is declared. Once the election process is completed and the result is declared a party aggrieved by the election can approach the Registrar for deciding the election dispute which would naturally include all disputes relating to various matters connected with the process of election.

It appears that in the instant case the petitioner approached the Court before the election process was completed and the results were declared and he also obtained an order from this Court dated 15-12-1973 staying the election of the 4 directors from amongst the individual shareholders. Looking to the stage at which the petitioner approached this Court, it is obvious that the Registrar was not competent to deal with a dispute of this nature and as such it cannot be said that the alternative remedy under Subsection (1) of Section 64 of the Act was available to the petitioner when he filed this petition. It is a different matter that the Court may not entertain such a petition and direct the petitioner to approach the Registrar under Sub-section (1) of Section 64 after the election process is completed and the result is declared; but in the instant case the petition was admitted for hearing and stay was granted. It would not, therefore, be proper to throw it out now at this stage on the ground that the petitioner can seek his remedy before the Registrar after the declaration of the result. We, therefore, proceed to consider the petition on merits.

The election officer has recorded reasons for rejecting the nomination paper of the petitioner in the following terms in his order dated 10-12-1973 (Annexure P-2) which was recorded on the nomination paper itself :

^Jh jktsanzukFk nqcs us vkif?k dh fd izR;k"kh us HkaMkj ds lkFk ?; fo?; fd;k gSA lnL;rk i= esa "kqHkfpUrd izsl dk irk izR;k"kh dk gS rFkk izR;k"kh us 12&7&73 dks izsl dh vksj ls 114? dk pSd fy;k gS vr% Disqualification ds vuqlkj vLohdkjA

The Returning Officer did not specify the provision under which the disqualification was incurred; but it would appear from the order of the Returning Officer that the petitioner was held to be disqualified under Bye-law 12-A (i) (f) of the Bye-laws of the Society which is reproduced below :

"12-A. Disqualification for membership of the committee.

(i) No person shall be eligible for election as a member of the managing committee of the store if he-

(f) is interested directly or indirectly in any contract made with the store or in any sale or purchase made by the store private or in auction or in any contract or transaction of the store (other than investment or borrowing)."

In paragraph 2 of the return filed on behalf of the respondent No. 1 it is stated that on 12-7-1973 the petitioner had received a cheque for Rs. 114/- from the Society towards the costs of printing letter forms and "Warshik Sammelan Suchi" on behalf of the Shubhchintak Press, Jabalpur in which the petitioner holds an interest as a partner. Although the Election Officer seems to have adjudged the disqualification mainly because of the aforesaid transaction, respondent No. 5 has filed a statement showing the payments by the Society in respect of the printing bills of Shubhchintak Press vide Annexure 5-R. 1. In the said statement as many as 12 transactions are mentioned the last one being dated 4-8-1973. It was not disputed before us that this bill was paid off in September, 1973. These transactions between the Society and the member were not disputed before us by the learned counsel for the petitioner; but his contention was that there was no transaction between the Press and the Society thereafter and thus there was no subsisting contract between the petitioner and the Society on the date of filing of the nomination paper or at any time during the entire period of election.

The fact that there was no transaction after September, 1973 between the petitioner and the Society was not disputed before us and so also the fact that no amount on account of any such transaction was outstanding or was paid to the petitioner at any time after September, 1973. The petitioner cannot, therefore, be said to be interested in any contract with the Society whether directly or indirectly at the time of the election.

Learned counsel for respondent No. 5, however, urged that for the purpose of incurring a disqualification under Bye-law 12-A it is immaterial that there was no subsisting contract between the petitioner and the Society at the time of the election. According to him, the mere fact that the petitioner was at one time interested in certain contracts with the Society prior to the election, was sufficient to disqualify him under the said bye-law. We do not, however, find any merit in this contention.

The expression "is interested directly or indirectly in any contract" in Sub-clause (f) of Clause (i) of Bye-law 12-A clearly means that the petitioner holds an interest in any contract with the Society at the material time, that is, at the time of the election. Such a construction is warranted not only by the language of the aforesaid bye-law but also by the object thereof. The object of the bye-law is that a person who holds a personal interest in a contract with the Society should not be eligible for the membership of the Committee, because by holding such office he could be able to advance his own interests to the detriment of the society.

This naturally means that a person seeking election to the membership of the committee must sever all business relations with the Society. It does not and cannot mean that carrying on of business with the Society at any time would disqualify such person from the membership of the committee for all times.

We, therefore, hold that the : petitioner was not disqualified for the membership of the Committee under Bye-law 12-A and the Returning Officer was clearly in error in rejecting his nomination paper on this ground. No attempt was made to justify the rejection on any other ground before us.

It was urged before us that if the rejection of the nomination paper of the petitioner is quashed, this Court may direct the Election Officer to proceed with the process of election from the stage of scrutiny of nomination papers upto the date of final election; but this cannot be done for the simple reason that entire election is a continuous and an integrated process and it cannot be carried out in two separate parts. Sub-rule (2) of Rule 41 lays down that not less than 10 days before the date fixed for annual General Meeting the Returning Officer shall paste a notice on the Notice Board of the Society stating the number of members to be elected and the entire programme of the election. The Election Officer did fix a programme and since the election of this group could not be completed because of the stay granted by this Court by order dated 15-12-1973, the election of this group will have to be held afresh in accordance with the Rules.

The petition is, therefore, hereby allowed. The impugned order relating to rejection of the nomination paper of the petitioner is hereby quashed and consequentially the entire process of election pertaining to election of the 4 directors from amongst the individual shareholders is hereby quashed. Necessary action will now be taken afresh for the election of the 4 directors in accordance with law. We make no order as to costs of this petition in the circumstances of this case and hereby direct that the security amount shall be refunded to the petitioner.