(1976) 09 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1869 of 1976

Dhanna Singh APPELLANT

Vs

Assistant Registrar, Cooperative Societies, Moga RESPONDENT

Date of Decision : 10-09-1976

Acts Referred:

Citation : (1976) ILR (P&H) 661 : (1977) PLJ 108 : (1984) RRR 304

Hon'ble Judges : M.R.Sharma, J

Advocate : Mr. Surjit Bindra, Advocates., Mr. B.S. Bindra, Advocates for appearing Parties

Judgement

M.R. Sharma, J. (Oral)

1. This petition under Article 226 of the Constitution has been filed by the shareholders and Directors of the Mandi Nihal Singhwala Tappa Cooperative Marketing Society Ltd., Nihal Singhwala, Tehsil Moga, district Faridkot (hereinafter referred to as the Society).

2. The society has as its members some cooperative societies which are functioning in the area of operation of the Society as also some individual members. The State Government has also subscribed to the share capital of the Society. The Committee of the Society consists of six Directors to be elected after a period of three years. The individual members elect three Directors and the remaining three are elected by the member societies. The last election of the Society was held on May 4, 1973, in which the petitioners and Sarvshri Jaswant Singh, Sant Singh and Gurdev Singh were elected as Directors. The term of that Committee was to expire in the first week of May, 1976.

3. It is alleged that the old Committee did not make arrangements for holding the elections 90 days before the date of the expiry of its term as laid down in section 26 of the Punjab Cooperative Societies Act, 1961 (hereinafter called the Act). This matter came up before the Committee of the Society on March 17, 1976, and it was decided to consider the arrangements for the election of the

Directors to be held on April 29, 1976. Some objections raised by the petitioners were overruled. In that very meeting, the question regarding the enrolment of new members was considered. The petitioners raised objections that before the new members were accepted, their names and other particulars should be indicated. The objection was also turned down by a majority vote. In that very meeting the President and the Manager of the Committee were directed to carve out new zones for the election and to submit the proposals to the Registrar of Cooperative Societies for his approval. These proposals were duly made and the Assistant Registrar exercising the powers of the Registrar gave approval to the scheme of zones and the election programme.

4. The grievance of the petitioners is that a large number of individuals have been accepted as members of the Society because of which the party of the petitioners has been rendered into a minority party. The other objections raised are that under section 26(1A) of the Act, it is the function of the Executive Committee of a Cooperative Society to carve out the zones and that this power could not have been delegated to the President and the Manager of the Society, and that under the Rules only the Manager was competent to frame the election programme and to submit it for approval to the authorised Registrar and as against this the programme has been framed by the President and the Manager both acting together.

5. After giving a careful consideration to the arguments addressed at the Bar, I am of the view that none of the grounds of challenge urged on behalf of the petitioners is such on the basis of which the election should be set aside.

6. In the very nature of things a cooperative society is a democratic institution and its decisions are taken in accordance with the majority vote of the shareholders. Section 23 of the Act provides that final authority in a cooperative society shall vest in the general body of the members but where a cooperative society consists of the prescribed number of members the general body may elect a smaller body, which in turn may transact the day to day business of the cooperative society. It cannot be disputed that acceptance of new persons as members of the Society is a recognised business of the Society. If the majority of members were of the view that new members should be added, the petitioners who were in minority could not claim with any justification that new members should not be accepted and it cannot be urged on their behalf that the action of the Committee should be declared illegal merely because it has decided to accept more members.

7. Section 26 of the Act relates to election and nominations of the members of committees. Subsection (1A) of this section provides that the committee of a cooperative society may, subject to the approval of the Registrar, divide the area of operation of the Society into zones for the purpose of election of members of the Committee. If this provision is strictly construed, then it becomes obvious that the Executive Committee of the Society as a whole has been invested with the jurisdiction to carve out zones. Mr. Bindra argues that since the Committee

did not itself carve out the zones and delegated its power to the President and the Manager of the Society, the zones carved out by them should be declared as illegally caved out, and the election held on the basis of such zones should be set aside. I may also observe at this stage that rule 4 appearing in Appendix `C'' to the Punjab Cooperative Societies Rules, 1963 lays down that the Manager of a Society shall draw a detailed election programme and send the same to the Registrar for approval and for appointment of Returning Officer. If this rule is literally interpreted, then the President of the Society could not associate with the Manager for drawing out an election programme. It would thus be seen that the aforementioned two objections are pari materia and are based on an argument that the statutory provisions have not been strictly adhered to.

8. It is now to be seen whether these two objections should be regarded as fatal to the election which was subsequently held or not. The learned counsel for the petitioners has placed reliance upon Barium Chemicals Ltd., and another v. Company Law Board and others, A.I.R. 1967 S.C. 295, for the proposition that where an authority is vested with the jurisdiction to do a particular thing, then prima facie it is for that authority alone to do that thing and it cannot delegate its functions to another individual or authority. The facts of the case decided by the Supreme Court were entirely different. In this case I am concerned with statutory provisions which do not invest any quasijudicial discretion in the authorities concerned. The process of carving out of zones and the making of tentative suggestions for the election programme for the approval of another body are mere ministerial matters. These proposals when made by themselves do not acquire any legal validity. Legal validity is conferred upon them as soon as the Registrar accords his approval. The Legislative has for valid reasons invested the Registrar with this jurisdiction. The Registrar or an authorised Registrar is expected to know the functioning of a society operating within the area of his jurisdiction and I cannot imagine that the authorised Registrar would accord approval to the carving out of the zones or the fixing of the election programme in a mechanical manner. I am clearly of the view that the election cannot be set aside on the ground that proposals for making the zones were initiated by the President instead of the whole Committee and that the election programme was submitted jointly by the President and the Manager instead of the Manager acting singly. It is settled law that an election a time consuming process. The will of the electorate has to be shown due respect and an election cannot be set aside on wholly technical grounds especially when it has not been shown that because of the technical departure from the statutory provisions or the rules the result of the election has been materially affected."

9. For the reasons mentioned above, I find no merit in this petition and order that the same be dismissed with costs.

