
(1971) 11 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 522 of 1969

Dilbagh Rai

APPELLANT

Vs

Brahm Datt and Others

RESPONDENT

Date of Decision : 08-11-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1963 —
Rule 19, 19(3), 3, 5
Punjab Agricultural Produce Markets Act, 1961 — Section 10, 12(2)

Citation : (1974) 1 ILR (P&H) 666

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Advocate : M.J.S. Sethi, for the Appellant; H.L. Mittal, for the Respondent

Final Decision : Allowed

Judgement

A.D. Koshal, J.—By this judgment I shall dispose of two petitions under Articles 226 and 227 of the Constitution of India, being Civil Writs Nos. 522 and 638 of 1969, the facts giving rise to which are these. The Market Committee, Adampur (hereinafter called the Committee) was constituted under the Punjab Agricultural Produce Markets Act, 1961, (hereinafter referred to as the Act). It was to consist of nine members of whom two were to be elected by persons holding licences u/s 10 of the Act (hereinafter mentioned as Licensees) from amongst themselves in accordance with the provisions of Sub-section (2) of Section 12 of the Act.

2. For the two seats reserved for the licensees the candidates were Dilbagh Rai (Petitioner in Civil Writ No. 522 of 1969) and Brahm Datt and Hari Kishan (Respondents Nos. 1 and 2, respectively in both the petitions). The electors whose names were recorded in the electoral roll prepared by the Deputy Commissioner under the powers conferred on him by Rule 3 of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961 (hereinafter called the Rules) included "Messrs Ashok Kumar" (serial No. 47) and

"Messrs Naresh Kumar Mohinder Pal" (serial No. 43), the former being a one-man concern run by Ashok Kumar, Petitioner No. 2 in Civil Writ No. 638 of 1969, and the latter being a partnership concern with Naresh Kumar Aggarwal, Petitioner No. 1 in Civil Writ No. 638 of 1969, as one of the partners.

3. The elections to the Committee were held on the 12th of December, 1968, according to the programme framed by the Deputy Commissioner, Jullundur, under Rule 5 of the Rules. Naresh Kumar and Ashok Kumar above-mentioned appeared at the polling station to cast their votes but were not allowed to do so by the presiding officer who accepted an objection made by Hari Kishan above-mentioned that they were both minors.

Polling being over, counting of votes took place. The three candidates secured votes as under:

Dilbagh Rai .. 13

Brahm Datt .. 13

Hari Kishan .. 15

4. It is the case of the Petitioners in the two petitions that the presiding officer acted illegally in not allowing Naresh Kumar and Ashok Kumar to poll their votes, that in consequence the result of the election has been materially affected and that the election is liable to be quashed on that account.

5. As already stated, the names of the business, concerns of Naresh Kumar and Ashok Kumar figured in the electoral roll. The proviso to Sub-rule (3) of Rule 19 of the Rules states that where the elector, being a licensee u/s 10, happens to be a firm, that partner of the firm who has been duly authorised by all its partners to represent it, and that partner alone, shall be entitled to vote. It is not disputed before me that Naresh Kumar was duly authorised by his only other partner Mohinder Pal to vote on behalf of his firm. Ashok Kumar had the right to vote being the sole proprietor of his concern known as Messrs Ashok Kumar. The question has arisen as to whether the presiding officer was competent to refuse permission to Naresh Kumar and Ashok Kumar to vote at the election when they duly represented electors entered in the final electoral roll which, according to the provisions of Rule 3 of the Rules, is prepared by the Deputy Commissioner after inviting, hearing and deciding objections to the inclusion of any name therein. It appears to me that the question must be answered in the negative. The duties of the presiding officer at the polling are detailed in Rule 19 of the Rules. They include ascertainment of the identity of an elector and the maintenance of secrecy of the ballot. No mention is made of the conferment of any power on the presiding officer of debarring an elector named in the final electoral roll from casting his vote on any ground. The provisions contained in the Rules are comprehensive and envisage that once the presiding officer has satisfied himself about the identity of any elector, he must allow that elector to cast his vote and that he cannot entertain or decide any objection as to whether

the person claiming to be an elector was registered as such in the final electoral roll without justification or in spite of lack of qualification in that behalf. The entertainment and decision of such an objection is the function of the Deputy Commissioner acting under Rule 3 of the Rules. It is obvious that a function which the Deputy Commissioner is enjoined to perform cannot be one, the performance of which a presiding officer may take upon himself, in the absence of a specific provision in that behalf. The functions of the two authorities (the Deputy Commissioner and the presiding officer) are well defined and lie in separate compartments so that they do not overlap. That is the only harmonious interpretation which may be placed on rules 3 and 19 of the Rules.

6. The refusal of the presiding officer in debarring Naresh Kumar and Ashok Kumar from casting their votes, must be held to be illegal in view of the interpretation placed by me on Rule 3 and 19 of the Rules. It is not disputed that if that be so, the result of the election must be held to have been materially affected in consequence. Accepting the two petitions, therefore, I set aside the election. There will be no order as to costs.