
(2011) 02 P&H CK 0327

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No"s. 1116 and 1117 of 2011

Dwarka Nath and Another

APPELLANT

Vs

Returning Officer and Others
 Rajinder Kumar Sharma
and Another Vs State of Haryana and Others

RESPONDENT

Date of Decision : 10-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 8 Rule 5

Citation : (2011) 2 ILR (P&H) 463 : (2011) 162 PLR 145 : (2011) 3 RCR(Civil) 39

Hon'ble Judges : Mehinder Singh Sullar, J

Bench : Single Bench

Judgement

Mehinder Singh Sullar, J.—As identical questions of law and facts are involved, therefore, I propose to dispose of above indicated writ petitions, by means of this common judgment, in order to avoid the repetition. However, the factual matrix, which needs a necessary mention for the limited purpose of deciding the core controversy, involved in the instant writ petitions, has been extracted from (1) CWP No. 1116 of 2011 titled as "Dwarka Nath and Anr. v. Returning Officer and others" in this context.

2. The contour of the facts, culminating in the commencement, relevant for disposal of the present writ petitions and emanating from the record, is that Saraswati Kunj House Building Cooperative Society Limited (Respondent No. 4) (for brevity "the society") is registered and governed by the provisions of The Haryana Co-operative Societies Act, 1984 (hereinafter to be referred as "the Act"). The Petitioners are stated to be its members. The society framed the bye-laws (Annexure P2), to transact its business. The Assistant Registrar, Cooperative Societies-cum-Returning Officer (Respondent No. 1) (for short "Returning Officer") notified the election programme (Annexure P4) for the elections of the members of the Managing Committee of the society.

3. The Petitioners claimed that as per proviso/note of the election programme, which is in consonance with Section 20(d) of the Act and the Rules made

thereunder, no member of a Cooperative Society, shall exercise the right of a member unless he has made all payments due from him to the society. The Returning Officer has exhibited the tentative voters' list (Annexure P14), including the names of defaulters on 22.12.2010, in spite of the fact that several members/voters have not paid their dues to the society. According to the Petitioners that 425 members have paid only upto 10%; 155 members paid 11-24%; 1727 members paid 25-49%; 333 members paid 50-74%; 383 members paid 75-99% of their dues and only 2678 members paid 100% of their dues. The case of the Petitioners further proceeds that it is clear from the information (Annexure P5); audit report (Annexure P6); memo/enquiry report (Annexure P7); order (Annexure P8); notice (Annexure P15); form (Annexure P16); audit report (Annexure P17); letter (Annexure P18) and proceeding book (Annexure P19) that several members, whose names have been included in the voters' list (Annexure P14), are the defaulters. The objections (Annexure P10) filed by the Petitioners to the voters list, were stated to have been wrongly dismissed by the Returning Officer, by virtue of impugned order dated 7.1.2011 (Annexure P13).

4. The Petitioners (in CWP No. 1117 of 2011) have additionally pleaded that general body meeting of the society was held on 6.10.1996, in which, it was resolved that no new member shall be enrolled in future. In spite of said resolution, the Managing Committee kept on inducting new members of the society as per their own will and wish, so that they could allot the plots to their dear ones or for extraneous consideration. Hence, the Petitioners claimed that the memberships of the members enrolled after the resolution dated 6.10.1996 were illegal and they are not entitled to cast their votes. Their names have also been wrongly included in the voters' list (Annexure P14).

5. Levelling a variety of allegations and narrating the sequence of events, in all, according to the Petitioners that the Returning Officer has exhibited illegal and fake voters' list (Annexure P14) for the purpose of election of the society as per election programme (Annexure P4). On the basis of the aforesaid allegations, the Petitioners sought the quashment of impugned order (Annexure P13), voters list (Annexure P14) and all other subsequent proceedings arising therefrom in the manner indicated hereinabove.

6. The Respondents contested the claim of the Petitioners. Respondent Nos. 1 to 3 filed their joint written statement, while Respondent No. 4-society filed its separate written statement, inter-alia pleading certain preliminary objections of, maintainability of the petitions, locus standi and cause of action of the Petitioners. The Respondents claimed that the Petitioners have the right to file election dispute under Sections 102 and 103 of the Act before the appropriate competent authority after completion of election process. However, Respondent Nos. 1 to 3 admitted the irregularities and defaults in the audit report (Annexure P6), but the compliance of irregularities was stated to be made by the society.

7. Sequelly, the case set up by the society, in brief in so far as relevant, was that

as the record of the society is missing and not available, therefore, number of defaulters cannot be ascertained. The Respondents have not specifically denied the audit report and the fact that several persons, whose names are included in the voters' list (Annexure P14), are the defaulters. It will not be out of place to mention here that the Respondents have stoutly denied all other allegations contained in the writ petitions and prayed for their dismissal in this respect.

8. Having heard the learned Counsel for the parties, having gone through the records and relevant provisions of the Act/Rules with their valuable help and after bestowal of thoughts over the entire matter, to my mind, the instant petitions deserve to be accepted, for the reasons mentioned hereinbelow.

9. As is evident from the record that the Returning Officer has published the election programme (Annexure P4) to conduct the elections of the Managing Committee of the society and exhibited the tentative voters' list (Annexure P14). The crux of the grounds of attack of the Petitioners is that the names of the defaulter members were wrongly included in the voters' list, who are legally debarred from casting their votes. It has been clearly demonstrated in para 8 of the writ petition that 425 members have paid only upto 10%; 155 members paid 11-24%; 1727 members paid 25-49%; 333 members paid 50-74%; 383 members paid 75-99% of their dues and only 2678 members paid 100% of their dues.

10. It is a matter of fact that the factum of defaulter members has not been specifically denied by the Respondents. The society claimed that since the complete record is not available, so the number of defaulters cannot be ascertained in this regard. The factum of defaulter members has not been specifically denied, that means the same was admitted by the Respondents, as envisaged under Order 8 Rule 5 CPC.

11. Moreover, the defaulter members are also apparently proved from the information (Annexure P5); audit report (Annexure P6); memo/enquiry report (Annexure P7); order (Annexure P8); notice (Annexure P15); form (Annexure P16); audit report (Annexure P17); letter (Annexure P18) and proceeding book (Annexure P19) in the manner indicated hereinabove. It is not a matter of dispute that objections (Annexure P10) to voters' list (Annexure P14) filed by the Petitioners were dismissed by the Returning Officer, by way of impugned order (Annexure P13), the operative part of which is as under:

Sh. Dwarka Nath membership No. 8873 came present. He objected that several members have not paid their membership dues to the society and no member who is in default of any sum due from him to the society shall be eligible to exercise his right to vote as per law. Regarding this objection, the Manager of the society submitted that no such type of the record is available in the society by which it can be verified that when the demand has been raised by the society to its members and who did not deposit the same to the society. He further submitted that in the circumstances of non availability of such kind of record in

the society no member of the society declared as defaulter and every member has been given right to vote, which is their fundamental right.

Hence, on the basis of statement given by the Manager of the society, the request of the applicant can not be accepted in the present circumstances. Hence the objection is disposed off accordingly.

12. Above-all, it is not the case of the society that there is no defaulter member mentioned in the voters" list. In this manner, it stands proved on record that the names of the defaulter members are included in the voters" list in this relevant connection.

13. Such thus being the position on record, now the short and significant question, though important, that arises for determination in these petitions is, as to whether the defaulter members can legally be permitted to participate in the election process or not ?

14. Having regard to the rival contentions of the learned Counsel for the parties, to me, the answer is in negative and the defaulter members cannot legally be permitted to participate in the election process.

15. What is not disputed here is that Part III of the Haryana Cooperative Societies Rules, 1989 (for brevity "the Rules") deals with the procedure for election to the committees of the Primary Cooperative Societies. Rule 35 postulates that notwithstanding anything contained in the bye-laws of the Primary Cooperative Society concerned, the Manager shall, within a week of the receipt of communication in respect of the date fixed for conducting election, prepare the list of voters as on the date of the receipt of the communication referred to in sub-para (3) of Para 34, and submit the same to the Returning Officer for his approval. The notice indicating the list of voters shall be exhibited by the Returning Officer for a period of three days at his own office as well as the registered office and branch office, if any, of the Primary Cooperative Society concerned and at such other common place in the area of operation of the Primary Cooperative Society as the Returning Officer may specify.

16. Sequelly, sub-rules (3) and (4) of this Rule further posit that any member of the Primary Cooperative Society may, on the last day of the exhibition of voters list, submit his objections, for amendment or corrections thereto, to the Returning Officer. The notice exhibited under sub-para (2) shall indicate the date, time and place for hearing the objections by the Returning Officer. The Returning Officer shall hear and summarily decide the objections, and the acceptance or rejections thereof shall be recorded with reasons. He shall there and then approve the list of voters which shall be conclusive for the purpose of election. The voters" list so approved shall be a priced publication.

17. In the same sequence, Rule 36 envisages that the Returning Officer shall frame an election programme and intimate the same to the Manager, specifying the date, time and place in the indicated therein. In pursuance thereof, the

Returning Officer issued the election programme (Annexure P4) and as per its note No. 3, no member of the Cooperative Society shall exercise the right of a member unless he has made all payments due from him to the society.

18. Likewise, Section 20(d) of the Act escalates that every member of a cooperative society shall have one vote in affairs of the society, provided that a member in default of any sum due from him to the society shall not be eligible to exercise his right to vote.

19. Similarly, Rule 2(g) of the Rules defines the voter to mean a person who is either a share-holder or an authorized representative of a member cooperative society duly qualified to participate in the election and includes, a delegate of a cooperative society elected or selected in accordance with the proviso to Section 25 of the Act.

20. A conjoint reading of these provisions would reveal that any member/voter in default of any sum due from him to the society shall not be eligible to exercise his right to vote.

21. However, the cosmetic argument of learned Counsel for Respondents and the reasoning of the Returning Officer in the impugned order (Annexure P13) that since the record of the society is not available, so, the number of defaulters cannot be ascertained, is not only devoid of merit but misplaced as well. The misplacement or non-availability of record of the society will not nullify the statutory provisions of Section 20(d) of the Act and Rules 35 and 36 of the Rules in this regard. The mandate of this section and the rules is clear and explicit that a member/voter, who is defaulter, cannot legally be permitted to participate in the election process and the mandatory provisions and command of law have to be complied with in the same manner as envisaged and mandated by any statute and it cannot be interpreted otherwise.

22. As indicated earlier, the names of several defaulter members are included in the voters' list (Annexure P14). Therefore, the contrary arguments of learned Counsel for Respondents "stricto sensu" deserve to be and are hereby repelled under the present set of circumstances.

23. Meaning thereby, it stands proved on record that the election programme (Annexure P4) and voters' list (Annexure P14) are not only illegal, but against the statutory provisions as well and the same cannot possibly be maintained in the obtaining circumstances of the case.

24. No other point, worth consideration, has either been urged or pressed by the learned Counsel for the parties.

25. In the light of the aforesaid reasons, the instant writ petitions are accepted with costs. Consequently, the impugned election programme (Annexure P4), impugned order (Annexure P13) and voters' list (Annexure P14) are hereby set aside. The Returning Officer is directed to prepare a fresh voters' list as defined under Rule 2(g) of Appendix A and Part -I of the Rules and Section 20(d) of the

Act, after hearing the objections of the parties and then to start the election process in accordance with law as expeditiously as possible. He will also consider the validity and legality or otherwise of the alleged resolution dated 6.10.1996 in preparing the new voters" list in view of the aforesaid observations.

26. Needless to mention here that if any person is still aggrieved in this context, then he shall be at liberty to raise such dispute before the appropriate Forums, as contemplated under the Act.