

(2013) 05 P&H CK 0031

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 9572 and 9574 of 2013

Gurvinder Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 04-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2013) 171 PLR 350

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Anupam Bhardwaj, for the Appellant; Pankaj Muhwani, DAG, Punjab, Mr. Ashwani Prashar for Respondents No. 4 and 5, Mr. Jatinder Singh, District Manager of the Bank and Mr. Devinder Parshad, Deputy Registrar-cum-Returning Officer, for the Respondent

Final Decision : Dismissed

Judgement

Rameshwar Singh Malik, J.—This order proposes to decide together two identical writ petitions bearing CWP No. 9572 of 2013 and CWP No. 9574 of 2013. However, for the facility of reference, facts are being culled out from CWP No. 9572 of 2013. Petitioners have challenged the action of the respondent authorities, while not allowing them to contest the election of respondent Cooperative Bank. Further, the petitioners seek a writ in the nature of Certiorari for quashing the election of respondent No. 7, as unopposed.

2. As the polling was scheduled for 6.5.2013, notice of motion was issued on 3.5.2013, by passing the following order:-

Relies upon order dated 2.5.2013 passed in CWP No. 9455 of 2013 Avtar Singh and another v. State of Punjab and others.

Learned counsel for the petitioner submits that the petitioner has come to know that respondent No. 7 has been declared elected and the nomination of the petitioner has been rejected on the ground that the resolution from his Society

was not received in time whereas the same had been duly received well in time as per Annexure P-2/3.

Notice of motion for 4.5.2013.

To be heard with CWP No. 9455 of 2013.

On the asking of the Court, Mr. Suresh Singla, Additional A.G., Punjab accepts notice on behalf of respondent No. 1 to 3 only.

Mr. Ashwani Parashar, Advocate accepts notice on behalf of respondents No. 4 and 5.

Process dasti for respondents No. 6 and 7.

Learned counsel for the petitioner undertakes to supply three sets of the writ petition to the learned counsel for the State and two sets of writ petition to the learned counsel for respondents No. 4 and 5 during the course of the date.

The Returning Officer as well as the respondent-bank are directed to depute their responsible officers from their respective offices to attend this Court alongwith the complete relevant record.

Copy of the order be given to the learned counsel for the State/respondents No. 1 to 3 and counsel for respondents No. 4 and 5 under the signatures of Court Secretary of this Court.

3. Learned counsel for the petitioners submits that resolutions passed by the respondent Cooperative Societies, which were to be represented by the petitioner, were not entered in the appropriate register and in the voters list of the respondent Cooperative Bank, so as to deny the right of the petitioners to contest the election. He further submits that action of the respondent authorities was based on extraneous considerations. He finally prays that election of respondent No. 7, held in most arbitrary and illegal manner, may be set aside allowing the present writ petition.

4. Per contra, learned counsel for the respondents submit that once the election qua respondent No. 7 has taken place and he has been declared elected, his election cannot be challenged by way of present writ petitions. Petitioners have got the alternative remedy in the form of election petition. To substantiate their arguments, learned counsel for the respondents also rely upon the judgment of the Hon"ble Supreme Court in Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others, . Finally, they pray for dismissal of both the writ petitions.

5. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that no interference is warranted at the hands of this Court, while exercising its writ jurisdiction under Article 226/227 of the Constitution of India. To say so, reasons

are more than one, which are being recorded hereinafter.

6. It is undisputed on record that respondents No. 7 (Amarjit Singh in CWP No. 9572 of 2013 and Satwinder Pal Singh in CWP No. 9574 of 2013), have been declared elected. It is also not disputed even by the learned counsel for the petitioners that remedy of election petition is available to the petitioners, which has not been availed by them, before filing these writ petitions before this Court. In this view of the matter, it is unhesitatingly held that the petitioners were under legal obligation to challenge election of respondent No. 7, by way of election petition and not by way of these writ petitions under Article 226/227 of the Constitution of India.

7. The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in Umesh Shivappa Ambi's case (supra) and relevant part thereof, which can be gainfully followed in the present case, reads as under:-

2. Election for 11 Directors of the respondent No. 3-Co-operative Bank for the years 1997-98 to 1999-2000 was conducted. The election results were declared on 23-9-1997. Since there was no contest, the appellants who were the candidates, were declared elected. The first respondent had also filed his nomination paper which was earlier rejected. Thereafter, the first respondent filed a Writ Petition before the Karnataka High Court challenging the rejection of his nomination paper.

3. The learned single Judge dismissed the writ petition holding that the proper remedy for the first respondent was to file an Election Petition u/s 70 of the Karnataka Cooperative Societies Act, 1959. In appeal, however, the Division Bench has set aside the order of the learned single Judge and has held that the nomination of the first respondent was wrongly rejected. It has, further, directed that a fresh calendar of events be published for holding an Election to the posts of 11 Directors of the respondent Co-operative Society.

4. It is now well settled that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and this Court will not ordinarily interfere with the elections under Article 226 of the Constitution. (See in this connection K.K. Shrivastava and Others Vs. Bhupendra Kumar Jain and Others, , 2 K.K. Shrivastava v. B.K. Jain). The Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the present case, u/s 70(2)(c) of the Karnataka Co-operative Societies Act, 1959 any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law.

5. This was, therefore, not a fit case for intervention under Article 226. Hence, the impugned judgment is set aside and the order of the leaned Single Judge is restored. The period of 6 months prescribed in the order of the learned single

Judge for the decision of the Registrar will run from the date of the raising of the dispute before him.

6. The appeal is allowed accordingly.

8. Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in Umesh Shivappa Ambi's case (supra), this Court feels no hesitation to conclude that the petitioners are not entitled to invoke the writ jurisdiction of this Court. They have got an alternative remedy of election petition. It is their own pleaded case that respondent(s) No. 7 have been declared elected. Further, to prove the election of respondent(s) No. 7 as illegal, the petitioners will have to lead evidence, which is not feasible in the writ proceedings.

9. No other argument was raised.

10. It is pertinent to note that CWP No. 9455 of 2013 (Avtar Singh and another v. State of Punjab and others), referred to the notice of motion order reproduced above, has also been decided today by a separate order, relegating the petitioner to the remedy of civil suit, as seriously disputed questions of fact were found involved therein.

11. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that both these writ petitions are misconceived, bereft of any merit and without any substance, thus, these must fail. No case for interference has been made out. Resultantly, both the writ petitions stand dismissed.