

(1976) 03 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 5469 of 1975

Hari Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 17-03-1976

Acts Referred:

Citation : (1976) ILR (P&H) 519 : (1976) PLJ 326 : (1984) RRR 364

Hon'ble Judges : Surinder Singh, J

Advocate : Mr. B.S. Khoji, Advocates., Advocates for appearing Parties

Judgement

Surinder Singh, J.

1. Hari Singh and two others have filed the present petition under Articles 226 and 227 of the Constitution of India for the issuance of appropriate writ, order or direction for quashing the election of Bakhshish Singh, respondent No. 11 as President of the Mahilpur Cooperative Marketing Society Ltd., Mahilpur (hereinafter referred to, for short, as the Society). A prayer has also been made for quashing the agenda issued on 5th September, 1975 for cooption of some members of the Board of Directors.

2. The allegations as contained in the petition may be briefly recapitulated. It is stated that the Society aforesaid is registered under the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as the Act). According to the constitution of the said Society, there have to be six elected Directors, three out of whom are to be from the category of Cooperative Societies and three from the category of individuals. There is no dispute that the three petitioners are elected members from the category of Cooperative Societies. Similarly, the parties are at one on the point that respondents Nos. 11, 12 and 13 are elected members from the category of Individuals. The main allegation of the petitioners is that without coopting the required number of persons under section 26A of the Act, a session was held for the offices of President and Vice-President of the Society and this was violative of the provisions of the Act and the rules framed thereunder. A further grievance was also made that Bakhshish Singh, respondent No. 11, who

had presided over the meeting in which the election was held, utilised his casting vote for electing himself as the President. This is stated to be against the principles of natural justice and fairplay. Reference has also made to certain other facts with a view to indicate that the action of the respondents was at the behest of Shri Gurmel Singh, Education Minister, Punjab, of whom Shri Bakhshish Singh, the elected President, is said to be a righthand man. The ultimate prayer in the writ petition is for quashing the proceedings of the meeting held on 29th of August, 1975, in which the office bearers were elected and the agenda dated 5th of September, 1975, issued for the subsequent meeting held on 20th of September, 1975, in which three respondents (Nos. 14, 15 and 16) were coopted as members of the Society.

3. Consequent to the admission of the writ petition, notices were issued to all the respondents arrayed in the petition. Written statements have been filed on behalf of all the concerned respondents controverting the allegations referred to above. In particular, it may be mentioned that the main contesting respondents Bakhshish Singh (No. 11) in his return, submitted in the shape of an affidavit, apart from denying the allegations relating to the illegality of the election, asserted that no directions by means of the circular letters Annexures (P. 1 and P. 2) were ever received by or communicated to the Society. He also refuted the allegation that Shri Gurmel Singh, Educational Minister, had any concern with him or had exercised any undue influence in the matter. It was further contended that after suffering a failure in the election, the petitioners had chosen to invoke the extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution which they should not be allowed to do. In the return filed by the Assistant Registrar, Cooperative Societies (on behalf of respondents 5 and 6), all that was admitted is that the cooption of the members should have been made before the election of officebearers. In regard to the issue of directions to the Society, it was neither asserted that such directions were in fact issued nor this fact was denied. As such, this written statement is hardly of any benefit to either party. Shri Gurmel Singh, respondent No. 7 has also filed a written statement denying the allegations of having exercised political influence in the matter, as also the fact that Bakhshish Singh respondent No. 11 was his right hand man.

4. Mr. B.S. Khoji, the learned counsel for the petitioners, has been at pains to take me through the allegations as detailed in the writ petition including the various documents annexed to the same, and has also referred to the returns filed by the respondents in regard to these allegations. It may be observed here that Mr. Khoji has not chosen to press the ground of exercise of political influence by Shri Gurmel Singh, respondent No. 7 in this matter but has confined his attack to the alleged illegalities occurring in the two meetings of the Society held on 29th of August, 1975 and 20th of September, 1975 respectively. He had contended, in the first instance, that it was mandatory for the elected members to coopt the other members as required under Section 26A of the Act, before holding an election for the office bearers, and this not having been done, the election of officebearers may be struck down. Let us see how far the learned

counsel can carry forward his objection.

5. Section 26A of the Act may be reproduced for facility of ready reference :

"(1) Notwithstanding anything in section 26, the Registrar may, by an order in writing, direct the committee of any cooperative society or any class of cooperative societies to coopt in the prescribed manner for serving on the committee such number of members not exceeding two as may be specified in the direction.

(2) Where a direction is issued under subsection (1), cooption shall be made from amongst members of the cooperative society belonging to scheduled castes, scheduled tribes or backward classes or from amongst members who as landowner or tenant or as both do not hold more than the prescribed area of agricultural land and fulfil the prescribed conditions.

(3) Members coopted under subsection (2) for serving on the committee of a cooperative society shall have the same rights and privileges and shall be subject to the same liabilities as elected members of the committee of that society."

6. A bare perusal of the aforesaid provision makes it obvious that the Registrar of the Cooperative Societies has been empowered under this provision to issue an order in writing, directing the committee of a Cooperative Societies or any class of Cooperative Societies to coopt in the prescribed manner such number of members not exceeding two, for serving on the committee and these members, when so coopt could possess the same rights and privileges and be subject to the same liabilities as elected members of the committee of that Society. Apparently, this cooption is a must when the necessary direction is issued by the Registrar to the Cooperative Societies. In the case in hand, for reasons best known to the State Government, no specific allegation was made that any such directions, as contemplated under section 26A (supra) were issued to the Society. The reference to the documents which was made in the writ petition are two circular letters, Annexures P. 1 and P. 2, but these are only letters issued by the Registrar to all the Deputy Registrars apprising them about the relevant provisions of the Act and asking them to take necessary action in regard to the cooption of members in the committees of the various Cooperative Societies. It is nowhere alleged that in pursuance of these letters the Deputy Registrar had ever issued any directions to the Society under section 26A. Naturally, no confirmation or denial on this point could be expected from the official respondent, i.e., the Assistant Registrar. On the other hand, the contesting respondent Bakhshish Singh made a categorical averment in his return that no directions for the cooption of members had been communicated to the Society. Mr. Khoji, however, sought to refer to the copy of the proceedings of the meeting held on 20th of September, 1975 (Annexure P.5) wherein there is some mention about a circular having been issued by the Registrar Cooperative Societies. What the circular contained is not known to any one.. In any case, there is to indicate, conclusively that a direction, as required under section 26A, whether in the shape of a circular

or otherwise, was ever served upon the Society before the impugned election of the President and the VicePresident, which was held on 19th August, 1975. For that matter even the possibility of such a circular having come to the notice of the Society after the holding of the elections on 29th of August, 1975, cannot be excluded.

7. While we are on this subject, it may be observed at this stage that the copy of the proceedings of the meeting held on 20th of September 1975 (Annexure P. 5) has been found to be wrongly prepared inasmuch as the objection referred to in those proceedings was never made by Kabal Singh and Raghbir Singh, as shown in the copy. The original proceedings, on the other hand, show that this objection was put forth by Pargat Singh petitioner and not any of the respondents. The meetings of the Society held on 29th of August, 1975 and 20th of September, 1975, have thus not been from to suffer from any illegality or impropriety.

8. The above considerations apart, the petitioners are precluded (sic) any relief under the extraordinary jurisdiction of this Court on account of the fact that they had not taken recourse to the remedy provided under the Act itself. Under section 5(2)(c) of the Act, a dispute arising in connection with the election of any officer of the society had to be referred to the Registrar for decision, against whose verdict a revision was available before the State Government. These remedies, which were evidently more efficacious were, however, not utilised and no reasons had been shown as to why they were bypassed.

9. No merit has emerged as a result of the screening of this petition. The same is consequently dismissed but with the order that the parties to bear their own costs.