

(1994) 02 P&H CK 0093

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13512 of 1993

Kuldeep Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 17-02-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 329
Penal Code, 1860 (IPC) — Section 300

Citation : AIR 1994 P&H 242 : (1994) 108 PLR 468 : (1994) 3 RCR(Civil) 15

Hon'ble Judges : N.K. Kapoor, J;A.L. Bahri, J

Bench : Division Bench

Advocate : G.S. Doad, for the Appellant; R.K. Joshi, A.A.G., D.V. Sharma, Sikha Roy and Balwinder Singh, for the Respondent

Judgement

N. K. Kapoor, J.—Petitioners have sought issuance of a writ of certiorari seeking quashing of the election of the Managing Committee of the society respondent No. 6 whereby respondents Nos. 7 to 17 were declared elected unopposed on 21-10-1993 by respondent No. 5 and also to issue a writ of mandamus to respondents Nos. 1 to 4 not to allow respondents No. 7 to 14 to function during the pendency of the writ petition.

2. Petitioners Nos. 1 to 11 and respondents Nos. 7 to 14 are members of the Payal Cooperative Agricultural Service Society Ltd., Payal (for short "the Society")--respondent No. 6, Election of the Managing Committee of this Society to elect 9 members was fixed for 21/22-10-1993 as per election programme Annexure P-1. The petitioners, who were eligible, filed their nomination papers within the prescribed period duly proposed and seconded by the members of the society; that as per election programme Annexure P-1, the area of operation of the society comprises villages of Payal, Majri and Gobindpura and is divided into three zones for the purposes of election i.e. seven members were to be elected from Payal zone whereas one each from Majri and Gobindpura. It has further been stated by the petitioner that the petitioners Nos. 1 to 9 filed their

nomination papers from Zone 1 --Payal Zone -- whereas petitioners Nos. 10 and 11 have filed nomination papers from Zone No. 2 -- Majri. It has further been stated by the petitioner that the petitioners Nos. 1 to 6, 10 and 11 belong to Akali Party of Badal group whereas petitioners Nos. 7 to 9 are from the weaker sections of the society and belong to Bahujan Samaj Party; that the Presiding Officer/Returning Officer --respondent No. 5 -- under undue political pressure rejected the nomination papers of all the petitioners along with two others, namely, Mukhtiar Singh s/o Uttam Singh and Labh Singh s/o Raunki Singh and thus declared respondents 7 to 14 and one Mohinder Singh elected as unopposed. According to the petitioners, no opportunity was given to them and their nomination papers were rejected for no cogent reason. The reasons, if any assigned, are not in conformity with the provisions of the Act/Rules and Bye-Laws of the society. As a matter of fact, respondent No. 5 when approached to tell the reasons for rejecting their nomination papers declined to give any reply. Even otherwise, election programme is not in conformity with the rules and bye-laws of the society which envisage service upon members of the society by registered post or by circulating the register to all the members and get their signatures on the same as receipt of notice. In the instant case, such a procedure has not been adopted despite the fact that the area of operation of the society consists of three villages; and that the petitioners candidatures have been rejected by the Returning Officer solely to favour respondents Nos. 7 to 14 to see that they are elected unopposed, Hence, this petition.

3. Notice of motion Was issued by the Court in pursuance to which respondents have put in appearance and filed separate written statements. Respondent No. 5 the Returning Officer, has filed the written statement controverting the various material averments made against him and has specifically averred that the candidature of petitioners Nos. 1 to 11 were rejected as either the candidates or proposers or seconders were not qualified. Reasons for rejecting the nomination papers have been duly recorded on the nomination papers. So it was stated that the answering respondent has conducted the election strictly in accordance with the Punjab Co-operative Societies Act, 1961, and the Rules of 1963 and also as per registered Bye-Laws of the society. Allegation levelled against the respondent that he acted under political pressure of respondents Nos. 7 to 14 was emphatically denied. Respondents Nos. 6 and 15 by a short reply denied the assertions of the petitioners that there was any illegality in the election programme. In fact, according to the respondents, the same was in conformity with the Bye-Laws of the registered society.

4. Respondents Nos. 7 to 11 and 14 have filed reply through Jarnail Singh, respondent No. 7. Besides controverting the material averments made in the petition, preliminary objection has been taken as to the maintainability of the petition on the ground that there exists an alternative statutory remedy under S. 55/56 of the Punjab Co-operative Societies Act and Rule 12(ii) of the Punjab Cooperative Societies Rules, 1963. Besides this, writ petition involves disputed questions of fact which cannot be examined in writ jurisdiction of this Court. As

regards the material averments made in the petition, it has been stated that the nomination papers of the petitioners were rightly rejected by the Returning Officer as either the petitioners were not voters or they were disqualified to contest the election as per Act, Rules and registered Bye-Laws of the society. It has also been averred that petitioners Nos. 1 to 4, in fact, did not file any nomination papers. As regards petitioner No. 5 -- Karnail Singh -- it has been stated that though he filed nomination papers but his proposer as well as seconder have mentioned wrong voter number and Khata number i.e. against voter number they had mentioned khata number and against khata number they had mentioned voter number. Besides this, Karnail Singh, petitioner No. 5, was convicted by the competent court of jurisdiction and had undergone sentence and thus in view of Rule 25(d) and Bye-laws 33(c) of the registered Bye-Laws of the society, he was not eligible to contest the election. This precise objection was taken by the respondents, yet the Returning Officer did not consider the same. However, his nomination papers were rejected as his proposer and seconder were not eligible to cast their vote. As regards petitioner No. 10, it was stated that he did not transact any business with the society after 28-10-1992 and so he was inactive member of the society. Somewhat similar objections were raised against the other petitioners which need not be noticed as the petitioners counsel have chosen to confine this petition in respect of petitioners No. 5 and 10 only.

5. Learned counsel for the petitioners in support of his case has highlighted the fact of rejection of nomination papers of all contestants except respondents Nos. 7 to 14 and thus contended that this device was adopted by the Returning Officer solely with a view to please his political bosses who did not want that any person belonging to the opposing group should return successful on the basis of vote support. According to the counsel, the Presiding Officer/Returning Officer, in fact, acted contrary to the Act/Rules and registered Bye-Laws of the society. Sections 17, 26(1) and 26(B) of the Punjab Co-operative Societies Act, 1961 and Rules 14, 16-A, 23, 25, 26 of the Punjab Co-operative Societies Rules, 1963 and the Bye-Laws of the respondent No. 6 society deal with the qualifications and disqualifications for voters/ candidates, proposers and seconders for the managing committee of the society and the procedure for filing and scrutiny of nomination papers etc. Section 17 prescribes that no members of a co-operative society shall exercise the right of a member unless he has made such payments to the society or has acquired such interest in the society as suggested by the Bye-Laws. Rule 14 prescribes disqualification for membership which are that a person who has applied to be adjudicated an insolvent or otherwise is an undischarged insolvent or he has been sentenced for an offence other than the offence of political character or offence not involving moral turpitude and a period of five years has not elapsed from the date of expiry of the sentence. In case any such member is subject to such like disqualification, he is deemed to have ceased to be a member when this disqualification was incurred. Similarly, R. 16-A envisages that member will not exercise his right till he had made all such payments to the society as are due from him. Rule 25(f) stipulates that in case a

person has remained inactive as a member during a period of 12 months preceding the date of filing of nomination papers, he would be deemed to be disqualified. Relying upon the aforesaid provisions briefly noticed, it has been urged by the learned counsel for the petitioners that the reasons assigned for rejecting the nomination papers of petitioners Nos. 5 and 10 were not germane to the qualification/ disqualification prescribed as per Act and Rules. Pardamun Singh s/ o Karan Singh and Sukhdev Singh s/o Ram Partap who are the proposer and seconder of Karnail Singh are shown to be members of the society -- Zone No. 1 as per Annexure P-3 and so had a right to propose and second the name of Karnail Singh, the member/voter. There is no bar upon members to propose or second the name of a voter who is eligible to contest the election. Similarly, Zora Singh s/o Harnek Singh and Sawarn Singh s/o Gurdev Singh, proposer and seconder of petitioner No. 10, had not incurred any disqualification. Merely for the reason that correct voter number or Khata number and zone number were not given; it being a clerical error could not be construed so as to deprive the petitioner of his valuable right to be elected as member of the managing committee of the society. There is also no merit in the objection of the respondents that petitioner No. 10 was an inactive member of the society as he had cleared all his dues on 28-10-1992. In support of his assertions; reliance was placed upon the decision of this Court in case reported as Pala Singh and Others Vs. The State of Punjab and Others, . With regard to the objection as to the maintainability of this writ petition on account of availability of an alternate remedy, the counsel cited Nachhattar Singh and another Vs. State of Punjab and others, . On these premises it was submitted that the writ petition be accepted and the order declaring petitioners Nos. 7 to 14 be set aside.

6. Mr. D. V. Sharma, counsel for the contesting respondents has contested the various legal submissions made by the petitioners in support of his case. According to the counsel, the present petition is wholly misconceived as there exists alternative remedy of an appeal which the petitioners have designedly avoided. Even otherwise, the present petition involves disputed questions of fact and in this view of the matter this Court would not examine these disputed questions in its writ jurisdiction. Relying upon Bye-Laws 30 read with 33(j), the counsel urged that no member who is in arrears of his share of instalment of loan or any other due or did not transact business with the society in the shape of loan or deposit for at least Rs. 500/-for a minimum period of three months during the preceding 12 calendar months has no right to vote. Examined in the light of these rules, candidature of petitioners Nos. 5 and 10 had been rightly rejected by the Returning Officer. As regards Karnail Singh -- petitioner No. 5 -- he, in fact, could not be a candidate for the precise reason that he was not eligible to contest the election as he had been convicted by a competent Court of jurisdiction and had undergone a sentence.

7. We have heard learned counsel for the parties and perused the relevant material referred to by the respective counsel during their submissions. Before dealing with the merits of the controversy raised, it would be appropriate to deal

with the preliminary objections raised with regard to the maintainability of the writ petition. Factual aspects are not in dispute i.e. the petitioners as well as respondents Nos. 7 to 14 were proposed and seconded by their respective supporters who were members of the society for all the three zones, namely, Payal, Majri and Gobindpura. It is also not disputed that the petitioners candidature were rejected by the Returning Officer and so the private respondents were declared unopposed. The precise objection as regards availability of alternative remedy was raised before this Court in Nachhattar Singh and another Vs. State of Punjab and others, wherein it was held as under (at page 310 of AIR) :--

"On a consideration of the judgments quoted above, it is clear that while the remedy for the purpose of challenging the result of the election by way of an election petition under S. 13-B of the Act may be available yet in the facts and circumstances of a particular case the High Court could interfere under Art. 226 of the Constitution. The mere availability of an alternative remedy is not the solitary test; such a remedy must, in addition, be adequate and efficacious. It bears repetition that there is no constitutional bar to the maintainability of such a writ petition with respect to local bodies such as Municipal Committees, District Boards or Gram Panchayats in the manner indicated by the Constitution under Art. 329(b) with respect to elections held to the State Assemblies or Parliament, and, in the absence of such a restraint, the scope of Art. 226 is all pervasive and wide enough to reach and remove an injustice suffered. This Court would not, therefore, throw out the writ petition at the very threshold and compound the sense of injury, and injustice inflicted on the petitioners with another one at the hands of the Court by circumscribing artificially the scope of Art. 226. The court in exercising restraint must not clip its wings, though interference should be made, to use the oft repeated words, in the "rarest of rare" cases. We, therefore, hold that though an alternative remedy by way of an election petition is available to the petitioners yet we find that it is not an efficacious one in the facts and circumstances of the present case which we now proceed to enumerate."

8. Almost identical position exists in the present case i.e. there is no dispute about the fact and no evidence is to be led. Thus, the matter is to be examined in the light of the provisions of the Act/Rules and the Registered Bye-Laws of the society to find out whether the proposer, seconder or the candidate had incurred any such disqualification. Following the judgment of the Division Bench, we find no merit in this contention of the counsel for the respondents.

9. Coming to the second objection raised, it may be noticed in case of Karnail Singh it has been stated that Pardamun Singh, his proposer, is a defaulter whereas Sukhdev Singh, his seconder, was not a voter. This second objection is per se wrong as name of Sukhdev Singh finds mention in the voter list Annexure P-3. As regards the objection that Pardamun Singh is a defaulter too is without merit. Under Rule 25 of the Rules framed under the Act a person in default of any cooperative society is ineligible for election as member of the managing

committee. Neither the Act nor the Rules stipulate that nomination papers must be accompanied by a clearance certificate. Thus, this disqualification is to a voter and not to a proposer. This is amply clear as per Appendix C, Part I and Part II under Rule 23 of the Rules. Since both proposer as well as seconder are amongst the list of members as per zonal list of voters, they could propose or second the names of such a candidate who intended to seek election. It is only for a candidate who is seeking election to be a member of the Managing Committee that he must be a voter who is defined to be a person who is entitled to vote. Reply filed by respondent No. 5 to the material averments made by the petitioners is rather vague. In response to the averments made by the petitioner that nomination papers were rejected without any valid reasons and for extraneous considerations, respondent No. 5 has chosen merely to deny the same and further stated that he acted in accordance with the provisions of the Act and the Rules. The reply filed by the returning candidates is only to the effect that the proposer and the seconder had mentioned wrong khata and voter number i.e. in place of voter number khata number was mentioned and against khata number voter number had been mentioned and that the proposer and the seconder were not eligible to cast their votes. Even otherwise, they were inactive members. None of the objections raised have any merit. Admittedly, Pardamun Singh and Sukhdev Singh had repaid their loans before the date of election. The returned candidates objection that the proposer/ seconder was inactive and so could not cast ,vote at the election too is devoid of merit. No such disqualification is attached to a proposer or seconder. During the course of arguments, the objection was sought to be raised that both the petitioners were, in fact, inactive members as they had not transacted any business during the past 12 months preceding the date of filing of nomination papers. Neither the returning officer nor the returned candidates have made any averment in their respective written statements. This objection too is without any merit.

10. Counsel for the respondents laid much stress upon the Bye-Laws 30 read with 30(j) for the view that petitioner No. 5 as well as 10 were, in fact, not qualified to be candidate for the election. These rules reads as under :--

"30. Each member present at the general meeting shall be entitled to exercise one vote only. The President shall have an additional or a casting vote in case of equality of votes. No member who is in arrears of his share instalment of loan, or any other due or did not transact business with the co-operative society in the shape of loan or deposit for at least Rs. 500/- for a minimum period of three months during the preceding twelve calendar months, shall be entitled to vote."

"33. No person shall be eligible for election as a member of the Managing Committee of the society if he :--

(j) is disqualified to vote according to the provisions of bye-law 30 of the Bye-Laws."

11. It is not the case of the respondents that petitioners had incurred

disqualification. They had merely objected to the eligibility of proposer and seconder only; which objections are contrary to the rules and Bye-Laws. Nomination papers of petitioner Nos. 5 and 10 could not be rejected on these grounds. Somewhat identical point came up for consideration in *Pala Singh and Others Vs. The State of Punjab and Others*, wherein it was held as under (at page 129 of AIR) :--

"The relevant part of the instructions abovementioned states :

"Zonal lists of voters shall be prepared by the manager in the following forms separately for each zone The candidate for election and the proposer shall be from the zone" concerned."

Sub-clause (e) of clause 1 of the Appendix "C" states :

"(e) "Voter" means a person entitled to vote under these rules."

"It is not disputed that a person who is a defaulter on the date of the poll is disqualified from casting his vote and that the disqualification ceases to operate if he pays up the arrears due from him to the concerned society immediately before claiming the right to vote. The disqualification earned by a default has relevance, therefore, only to the point of time when a poll is held and to no earlier stage. It follows that if a proposer has to be a voter, his status as such will have to be determined without reference to the disqualification of default, for earning which the stage cannot be said to have been reached before the date of the poll. As it is, however, the instructions do not state that a proposer has to be a "voter" as defined in sub-clause (e) reproduced above. In the context in which the word "proposer" is mentioned in the instructions, all that appears to be meant is that he shall be a person whose name is borne on the list of members of the society, although the same is designated as "zonal list of voters" which expression can mean nothing more or less than a list of members of the Society pertaining to a particular zone without reference to the disqualification, if any, that such member may earn or may have earned by reason of a default in so far as his right to vote at the poll to be held later on is concerned. Obviously a disqualification which would vanish on the person concerned making a payment at any time before the date of the poll cannot be said to subsist at any time prior to that when the right to vote becomes exercisable. In this view of the matter the disqualification of default has nothing to do with a person who proposes the name of another as a candidate. Apart from the instructions, no provision of law is relied upon in support of the view of respondent No. 5 that a proposer must be a person who is not in default to a society."

12. Shri D. V. Sharma, learned counsel for respondents 3 and 4, during his arguments laid much stress upon the conviction of Karnail Singh in a murder case and so urged that this offence amounts to "moral turpitude". According to the counsel, this precise objection, even if not taken at the time of scrutiny of nomination papers yet can be pressed for in justification of the order rejecting their nomination papers.

13. Whether an offence involves moral delinquency is a question of fact depending on the public morals of the time; common sense of community and context and purpose for which the character of offence is to be determined. In common parlance "moral turpitude" means baseness of character. Concise Oxford Dictionary defines "moral" -- "concerned with goodness or badness of character or disposition or with distinction between right and wrong..... virtuous in general conduct...." "Turpitude" means "baseness, depravity, wickedness". Thus any act which is contrary to good morals from society's point of view will come within the ambit of "moral turpitude". Dealing with the term "moral turpitude" this Court in case reported as Durga Singh Vs. The State of Punjab, , held as under :--

"The term "moral turpitude" is rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow-man or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not."

14. Act of killing a person is normally attributed to a feeling of hurt or revenge; an act of personal vendetta. Per se an act of murder will not come within the broad concept of "moral turpitude" as interpreted by Courts. Even otherwise, nomination papers of petitioners No. 5 and 10 were not rejected on this ground. Thus we find no merit in this plea also.

15. Thus, we are of the view that the Returning Officer had no valid basis to reject the nomination papers of petitioners Nos. 5 and 10 and was influenced by some extraneous considerations. It appears that this course was adopted so as to facilitate the election of respondents Nos. 7 to 14 (unopposed).

16. Resultantly, this petition succeeds and is thus accepted. Consequently, the election of Zone I and II of the society held on 21-10-1993 is hereby set aside. The authorities will fix a fresh date of election in respect of the aforesaid zones of the society. No order as to costs.

17. Petition allowed.