
(2009) 07 P&H CK 0161
In the Punjab And Haryana At Chandigarh

Kulwant Rai Jindal and Others	Vs	APPELLANT
Ved Parkash Goyal and Others		RESPONDENT

Date of Decision : 10-07-2009

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 5, 8
Criminal Procedure Code, 1973 (CrPC) — Section 22, 23

Citation : (2009) 155 PLR 791

Hon'ble Judges : Sabina, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sabina, J.—Plaintiffs-Ved Parkash Goyal and Ors. filed a suit for declaration to the effect that the general elections of the office bearers of the Trust held on 24.8.2008 for the year 2008-2010 were void and illegal and contrary to all canons of law and principles of natural justice and were liable to be set aside; as a consequential relief of permanent injunction restraining the defendants from taking any policy/special decision to utilize the funds and for the amendment of the constitution of the Trust and also for grant of mandate, for recounting of votes of polls.

2. Notice of the suit was issued to the defendants. Defendants No. 5 and 7 moved an application u/s 8 of the Arbitration and Conciliation Act, 1996 (for short "the Act") for directing the plaintiffs to get the dispute i.e. subject matter of the suit, decided through arbitration as per Clause 12 of the Instrument of Trust. Defendant No. 4 also filed an application u/s 8 read with Section 5 of the Act for staying further proceedings in the matter and for directing the plaintiffs to approach for arbitration decision as per terms and conditions (Clause 12) of Instrument of Trust. Plaintiffs filed their reply to the said applications. Vide the impugned order dated 17.9.2008, the applications filed by the defendants were dismissed by the Additional Civil Judge (Sr. Divn.) Sirsa. Hence, the present revision petition has been filed by defendant Nos. 4, 5 and 7.

3. After hearing learned Counsel for the parties, I am of the opinion that there is no ground for interference by this Court.

4. Learned Counsel for the petitioners, in support of his argument that the applications filed by the petitioners were liable to be allowed, has placed reliance on Clause 12 of the Instrument of Trust, which reads as under:

That internal dispute between the Trustees shall be decided by the three member committee so elected by the Board of trustees and the decision of that committee shall be final, whereas, the Civil Court shall have no jurisdiction on the subject. The dispute with outside persons shall be dealt with under the provisions of Indian Trust Act.

5. A perusal of the said clause reveals that in case there is any internal dispute between the trustees then it shall be decided by a three member committee so elected by the Board of trustees. In such a case, jurisdiction of Civil Court would be barred. However, in the present case, the dispute cannot be described as internal dispute between the trustees. The plaintiffs are aggrieved by the process of election for the post of President, Vice President and Secretary of the trust, which was held on 24.8.2008. Defendant No. 4 was appointed as a Returning Officer for conducting the election. The case of the plaintiffs is that the election had not been conducted in a fair and proper manner and there had been violation of law and rules. The certain violations pleaded by the plaintiffs in para No. 3 of the plaint are as under:

i) That the Returning Officer did not allow the candidates to attend the counting of votes and only candidates of the Presidentship were admissible to attend, which is quite contrary to the rules of the elections.

ii) That the proper seal, was neither supplied nor explained that specific side of the seal had to be used, for seeing the intention of the voter though last election in 2006, no ballot paper out of 45 was cancelled as all the trustees are of educated category, but this time 10 to 13 votes were cancelled by the Returning Officer out of 45.

iii) That the Returning Officer refused to show the ballot papers and its way of cancellation to the candidates or to their representative in spite of written request when at 6.00 p.m. the Returning Officer came out of the counting hall. For declaration of result, he was given a written request to show the ballot papers but he refused to accede to the request on the plea, that he had already sealed the ballot papers.

iv) That the way of belonging folding the ballot papers was not specified by the Returning Officer, nor explained to the voters.

v) That the ballot papers were sealed and result was prepared on the back of the candidates.

vi) That the Hon'ble District Magistrate, as usual appointed an Executive

Magistrate, u/s 22(1) and 23(2) Cr.P.C. for maintaining law and order vide its order endorsed at Sr. No. 4880-82/MA dated 22.8.2008, as there was an apprehension of breach of peace, at the time of elections, but the presence of the Executive Magistrate, was neither sought or awaited by the Returning Officer.

vii) That if the rules for conducting elections were followed, the result must have been otherwise, as the difference of votes of winning and losing candidates is 2 to 3, when the ballot papers of each candidate were cancelled 10 to 13 and as per settled proposition of law for recounting of votes in such a situation, the recounting may be allowed.

6. It has also been averred by the plaintiffs in their plaint Annexure P-I/A that the voters were compelled to cast their votes in favour of specific candidates. As per rules of general elections, the Returning Officer was not competent to reject the ballot paper. The challenge made by the plaintiffs by way of present suit, thus, cannot be described as internal dispute between the trustees.

7. In these circumstances, the learned trial Court had rightly dismissed the applications filed by the petitioners u/s 8 of the Act. Hence, the impugned order does not call for any interference.

Accordingly, this petition is dismissed.