
(1978) 01 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 4190 of 1977

Manjit Singh

APPELLANT

Vs

Shri Kabul Singh, Assistant Registrar, Co-Operative Societies
Sangrur and others

RESPONDENT

Date of Decision : 25-01-1978

Acts Referred:

Punjab Co-operative Societies Act, 1961 — Section 85(1)

Citation : (1978) 01 P&H CK 0006

Hon'ble Judges : S.S. Sandhawalia, J;J.M. Tandon, J

Bench : Division Bench

Advocate : M.S. Ratta with Mr. I.S. Ratta, for the Appellant; D.N. Rampal, D.A.G. Mr. B.S. Khoji Mr. B.S. Sham for the Respondents Nos. 3 and 4, for the Respondent

Final Decision : Dismissed

Judgement

J.M. Tandon, J.—The election of the Board of Directors (Managing Committee) of the Sangrur Central Cooperative Bank Ltd. Sangrur (hereinafter called the Bank), being due, the programme for the same was published on November 30, 1977, according to which nomination papers could be filed upto December 19, 1977, and objections upto 10 30 A.M. on December 23, 1977. The scrutiny of the nomination papers was to take place between 2 P.M. to 3 P.M. on December 22, 1977, and the same could be withdrawn upto 4 P.M. on that very date The poll, if necessary, was to take place on December 26, 1977, from 10 A.M. to 4 P.M. Nine Directors were to be elected and for this purpose the whole area was divided into nine zones, out of which seven were allotted to the Co-operative Agriculture Service Societies. The Societies represented by Manjit Singh petitioner and Harcharan Singh Brar, respondent No. 2, were in Zone No. 5 which contained 110 Co-operative Agriculture Service Societies, out of which the Sangrur Bank cleared only 32 societies for voting purposes as the remaing societies were defaulters.

2. Manjit Singh petitioner filed his nomination papers from Zone No. 5, and so did Harcharan Singh Brar, respondent No. 2. On December 22, 1977, the petitioner was requested to withdraw his nomination papers to enable Harcharan Singh Brar, respondent No. 2, to be declared elected unopposed but he did not agree. The Assistant Registrar, Co-operative Societies, Sangrur, respondent No. 1, called the parties for hearing of the objections at about 4 P.M. on December 22, 1977, whereas the time for such scrutiny had expired at 3 P.M. The counsel for the petitioner as also Harcharan Singh Brar, respondent No. 2, were called upon to argue and after hearing the arguments, respondent No. 2, rejected the nomination papers of the petitioner at 5.35 P.M. The petitioner could obtain a copy of the order of the Assistant Registrar, dated December 22, 1977, on the next day and he filed the present writ petition on December 24, 1977, alleging therein that the order passed was Mala fide and wrong. It was also alleged that the order was without jurisdiction inasmuch as the scrutiny of the objections was started after the expiry of the period fixed for the purpose. He, therefore, prayed that the order of the Assistant Registrar, respondent No. 1, dated December 22, 1977, rejecting his nomination papers be quashed through a writ of certiorari and for a direction to respondent No. 1 to hold the election of Zone No. 5 taking the nomination papers submitted by the petitioner as valid.

3. Harcharan Singh Brar, respondent No. 1 and the Assistant Registrar, respondent No. 1, in their separate returns denied that the hearing of the objections filed by the parties in the matter of scrutiny of nomination papers was started after the expiry of the time fixed for the same. It was specifically stated that the scrutiny was completed by 3 P.M. on December 22, 1977. It was further denied that the order rejecting the nomination papers of the petitioner was passed mala fide or it was wrong.

4. The learned counsel for respondents have raised a preliminary objection that in view of the fact that alternative remedy is available to the petitioner, the present writ petition under Article 226 of the Constitution is not maintainable in view of the provision contained in clause (3) to Article 226. The learned counsel for the petitioner has contended that no alternative remedy was available to him on December 24, 1977 when the present writ petition was filed, inasmuch as the result of election pertaining to Zone No 5 had not been declared by that date. In support of his contention, he has placed reliance on a single Bench decision of this Court in Shri Amar Singh Dosangh v. The State of Punjab 1973 P.L.J. 289, and also of a Division Bench of this Court in Narinder Singh v. The State of Punjab 1473 P.L.J. 720.

5. Section 85(1) of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act), provides that the Government may, for any co operative society or class of such societies, make rules to carry out the purposes of the Act. Rule 23 of the Co-operative Societies (hereinafter referred to as the Rules), made u/s 85 (1) of the Act, lays down that the members of the committee of a Co operative Society shall be elected in accordance with the rules given in

Appendix C. Sub-clause (3) of clause 6 to Appendix C, which pertains to the scrutiny of the nomination papers, read as under:--

6 (3) The Returning Officer shall, after scrutiny of nomination papers, prepare and announce a list of validly nominated candidates and the same shall be exhibited at the registered office of the society and at other common places in the area of operation of the nominated society. The Returning Officer after preparing the list of validly candidates shall declare such candidate as elected if there is no contest about his election and communicate the same to the Presiding Officer and the Manager of the society.

11. (2) When the result of the election has been declared, the Returning officer, or the Presiding Officer, as the case may be, shall prepare a consolidated list of candidates, including those declared elected unopposed, and communicate the names of persons elected under his signatures to the Assistant Registrar and the Deputy Registrar concerned and in the case of the central and apex societies, such a list shall also be sent to the Registrar, Co-operative Societies. The Returning Officer, as the case may be, shall also direct the Manager to exhibit a list of the names of persons elected at some conspicuous place at the registered office of the society for a minimum period of 7 days after a declaration of the result of the election.

6. The contention of the learned counsel for the petitioner is that the election of Zone No 5 was not complete on December 22, 1977, with the declaration of unopposed election of Harcharan Singh Brar, respondent No 2 because : it shall be taken to have completed after the compliance of the provision contained in sub-clause 11, reproduced above, which had admittedly not been done till December 24, 1977. This contention is thoroughly misconceived. The election vis-a-vis the declaration of an unopposed candidate under sub clause (3) of clause 6 of Appendix C becomes complete and it is incorrect to say that it remains incomplete till the completion of formalities provided in sub-clause (2) of clause 11 of Appendix C. The formalities contained in Sub-clause (2) of clause 11 being procedural have no bearing on the declaration of unopposed candidates under sub clause (3) of clause 6. If the contention of the learned counsel for the petitioner were to prevail then the declaration shall become effective after seven days of the exhibition of a list of the names of the persons elected at some conspicuous place at the registered office after a formal declaration of the result of the election, which can never be. We, therefore, hold that the election of Harcharan Singh Brar, respondent No. 2 as unopposed candidate as a Director under sub-clause (3) of clause 6 of Appendix C became complete consequent upon its declaration on December 22, 1977.

7. In *Shri Amor Singh Dosangh v. The State of Punjab* (supra), it was held that it was the intention of the authorities that no objection shall be raised regarding the election till the result of the election had been declared. The same view was reiterated in *Narinder Singh v. The State of Punjab* (supra). The learned counsel for the petitioner meant to take advantage of the ratio of these rulings by

treating the election of Zone No. 5 having not been declared by December 24, 1977, when the present writ petition was filed. In view of the finding above, that the election of Harcharan Singh Brar, respondent No. 2 from Zone No. 5 became complete with his declaration as Director, under sub-clause (3) of clause 6 of Appendix C, there remains nothing in the two rulings, referred to above, which supports the case of the petitioner.

8. Sub-clause (2) of clause 12 of Appendix C provides that if any dispute arises in connection with the election of any officer of the society, it shall be referred within 90 days of the date of declaration of the result of such election, to the Registrar in the same manner as provided in rule 51 of the Rules. u/s 55 (2) (c) of the Act, a dispute arising in connection with the election of any officer of the society is referable to arbitration. It is, therefore, clear that the dispute raised by the petitioner in the matter of election of a Director from Zone No. 5 became referable to arbitration immediately after the declaration of Harcharan Singh Brar, as unopposed candidate on December 22, 1977. An alternative remedy was, therefore, available to the petitioner on December 24, 1977, when the present writ petition was filed.

9. Clause (3) of Article 226 of the Constitution lays down that no petition for the redress of any injury referred to in sub clause (b) or of clause 1) of the same article shall be entertained if any other remedy for such redress is provided for by or under any other law for the time being in force. As an alternative remedy is available to the petitioner, the present writ petition under Article 226 of the Constitution filed by him is not maintainable.

10. In view of the above discussion, the preliminary objection raised by the learned counsel for the respondents must hold good and the writ petition is consequently dismissed. No order as to costs.

S.S. Sandhawalia, J.

11. I agree.