

(1970) 11 MP CK 0017

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 102 of 1969

Mannoolal Deshmukh

APPELLANT

Vs

N.L. Shrivastava and Others

RESPONDENT

Date of Decision : 09-11-1970

Acts Referred:

Citation : AIR 1971 MP 206 : (1971) JLJ 127 : (1971) MPLJ 104

Hon'ble Judges : Bishambhar Dayal, C.J;S.B. Sen, J

Bench : Division Bench

Advocate : B.B.L. Shrivastava, for the Appellant; K.K. Dube, Government Advocate (for No. 1) and N.S. Kale, (for No. 3), for the Respondent

Final Decision : Partly Allowed

Judgement

Bishambhar Dayal, C.J.

This is a writ petition by Mannoolal Deshmukh challenging the programme determined for the election of the Board of Directors to respondent No. 2 Durg District Birendra Central Co-operative Bank Ltd., Durg (hereinafter referred to as the Society). Learned counsel appearing for the petitioner has raised three points on which he contends that the notice and the programme for the elections are invalid. The first contention raised by learned counsel is that the Society has not complied with the provisions of Rule 40 of the M. P. Co-operative Societies Rules, 1962, framed under the M. P. Co-operative Societies Act, 1960, inasmuch as the bye-laws of the Society do not provide as to whether all the members of the Society will vote for electing representatives of particular groups of societies or the election of a representative of a group of societies will be held on votes of the members of that group of societies alone. Rule 40 is as follows:--

"40 (1) A society may, for the purpose of election of the members to its committee divide its membership into different groups on a territorial or any other basis.

(2) The bye-laws of such a society "may specify, the number or proportion of the

members of the committee who may be elected to represent" each such group on the committee and may specify further mat such representatives may be elected--

(a) by all the members of the society; or

(b) by only that particular group of members of the society to which such representatives belong."

From the above rule it is clear that sub-rule (1) provides for grouping of societies for the purposes of representation and sub-rule (2) provides for bye-laws for voting at the election of such representatives. The relevant bye-law of the Society for this purpose is bye-law 20. The second clause of this bye-law is as follows:--

"20 (2) The other members of the Board shall be elected at a meeting of the General Body as follows:--

(i) Thirteen Directors representing the agricultural credit societies including village service societies

* * * * *

Since the contest in this case is regarding the election of these thirteen Directors only, the rest: of the bye-law is not relevant. Under this bye-law the provision is that the representatives of the thirteen societies will be elected at a meeting of the general body. Without more, the provision is quite clear that all the members attending the general meeting will have a right to vote. If there is no restriction to voting, the right of vote cannot be denied to any member. This bye-law, therefore, is in accordance with Clause (a) of Sub-rule (2) of Rule 40, and we do not agree with the contention of learned counsel for the petitioner that the bye-laws regarding the voting are not clear and do not provide for voting either by all the members of the Society or by the members of that group alone for which a representative has to be elected.

Learned counsel contended that in the past elections of representatives were held in groups and only the societies comprised in one group elected their own representative. We are not concerned with the past practice. We have to see whether the present scheme of the elections is according to the bye-law and the rules made under the M. P. Co-operative Societies Act. The notice of the meeting for electing these members is Annexure "C" to the petition. It clearly provides for a general meeting to be held on 25th February 1969 for the election of these members. There is, therefore, a clear indication that these members will be, elected by the whole body. We see no force in this contention.

The second contention raised by learned counsel for the petitioner is that the notice of the meeting was not sufficient notice as provided by bye-law 16 of this Society. Bye-law 16 provides:--

"At least a fortnight"s clear notice of the general meeting stating the place, date

and hour of the meeting"

The contention of learned counsel is that in this case the notice did not give clear 14 days. In the petition (paragraph 6 (3)) it has been stated that the notices were despatched on the 11th February 1969. In the return it has been stated that the notices were despatched on the 6th and 8th February, 1969. Since the notice itself is dated 11th January 1969, we are satisfied that the statement contained in the return is more reliable than that contained in the petition. Having drawn up the notice on 30th January, 1969, it is not understandable why it could have been delayed up to 11th February for despatch. We, therefore, see no force in this contention either.

The last contention of the petitioner is that the Returning Officer was not right in rejecting the nomination-paper of the petitioner who represented one of the member-societies. In the petition it has been contended that the nomination-paper of the petitioner was rejected on the ground that the person who had seconded his nomination paper had, on the date of scrutiny, informed the Election Officer in writing that he withdrew himself from seconding the nomination-paper and on that ground the Returning Officer held that the nomination-paper had become invalid and rejected it. These facts have not been denied in the return. But it has been contended that the Returning Officer was right in rejecting the nomination-paper when the person who had seconded it had withdrawn his act of the seconding the nomination-paper. Rule 41 of the M. P. Co-operative Societies Rules provides for the procedure for election of members. Rule 41 (3) provides for the nomination papers and is as follows:--

"Every nomination paper shall be signed by two members of the group, if any, of the society to which they belong as proposer and seconder and the candidate of that group shall sign a declaration on it expressing his willingness to stand for election."

Then, Sub-rule (9) of Rule 41 provides for the rejection of nomination papers on the date of scrutiny and it is as follows:--

"Nomination papers duly received shall be scrutinized by the Returning Officer on the date fixed for the scrutiny of nomination under Clause (c) of Sub-rule (2). It shall be open to the candidates to be present at the scrutiny. The Returning Officer shall reject a nomination paper which is not in accordance with the preceding sub-rules or if the candidate is disqualified to be chosen to the committee or the proposer or seconder is disqualified to vote under the Act, these rules or the bye-laws of the society. In case of rejection, the Returning Officer shall record the reasons therefor. The Returning Officer shall prepare a list of valid nominations and shall sign it in token of correctness. Such list shall be published on the notice board of the society."

From the above two provisions it will be seen that a valid nomination paper needs only to be signed by two members indicating that they were proposing and seconding the nomination. There is no requirement that the person proposing or

seconding the nomination should continue to do so up to the date of the scrutiny. At the time of scrutiny, all that the Returning Officer has to see that the nomination paper is according to the conditions mentioned earlier. If, therefore, the Returning Officer found that the nomination paper was signed by two persons who were authorized to propose and second the nomination paper, he was bound to take it as a valid paper. Sub-rule (9) does not authorize the rejection of a nomination paper on the ground that the person, either proposing or seconding, withdraws his act of proposing or seconding the nomination paper. The act of the Returning Officer in rejecting the nomination paper was, therefore, not supported by the relevant provisions of law and was, therefore, illegal and without jurisdiction.

Since the petitioner would have been deprived of his candidature, the ultimate election, if held, would have had to be set aside on that ground alone. As further proceedings in the election were stayed by this Court, the elections have not been held. We quash the order of the Returning Officer rejecting the nomination paper of the petitioner and as such allow the petition to that extent. Since the petition has succeeded only in part, we direct the parties to bear their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner.