

(2018) 03 CHH CK 0083
In the Chhattisgarh High Court
Case No : Writ Petition (C) No.43 of 2018

MOHAMMAD NAUSHAD

APPELLANT

Vs

STATE OF CHHATTISGARH

RESPONDENT

Date of Decision : 19-03-2018

Acts Referred:

Chhattisgarh Co-operative Societies Act, 1960 — Section 50B, 50(10), 64, 64(2), 64(2)(v), 73G, 144X
Constitution of India, 1950 — Article 226, 227, 243ZH(c), 243-ZH(b), 243ZK, 243-ZK(2), 329(b)

Citation : (2018) 03 CHH CK 0083

Hon'ble Judges : SANJAY K. AGRAWAL

Bench : Single Bench

Advocate : Ashish Shrivastava, Medha??Shrivastava, Arun Sao, Deputy, Rajeev Shrivastava, Shiksha Verma, Shailja Shukla

Final Decision : Allowed

Judgement

1. The short but crisp question that emanates for consideration is whether the State Co-operative Election Commission constituted under Section 50-B

of the Chhattisgarh Co-operative Societies Act, 1960 (for short, 'the Act of 1960') has power and jurisdiction to consider the validity of rejection of

nomination paper and / or to thereby interfere with the process of election of the members of the Board of Directors of a primary co-operative society.

2. The aforesaid question arises for consideration in the following factual backdrop: -

3. In compliance with the instruction issued by the Chhattisgarh State Cooperative Election Commission dated 21-11-2017 appointing respondent No.3

as Returning Officer, the said Returning Officer issued Election Programme on

4-12-2017 of the election of Vipanani Sahkari Samiti Maryadit, Gurur

â?" a primary co-operative society and final date was fixed for declaration of result on 31-12-2017. Before that, final voter list was already finalized

and date of filing of nomination paper was 13-12-2017 and date of scrutiny of the said paper was 14-12-2017. Respondents No.4 and 5 also submitted

their nomination paper as members of the Board of Directors. Their nomination papers were rejected by the Returning Officer finding not in

accordance with law.

Being aggrieved against rejection of nomination paper by the Returning Officer, respondents No.4 and 5 made a complaint before respondent No.2

â?" State Co-operative Election Commission (SCEC). The said complaint was entertained by the said Commission and by order dated 19-12-2017,

interim order was passed staying the operation of the said order of rejection of nomination paper and ultimately, on 23-12-2017 fixing the date of

hearing on 5-1-2018, notice was issued to the petitioners and respondents No.4 and 5. Feeling aggrieved and dissatisfied with the order passed by the

SCEC entertaining the dispute to consider the validity of rejection of nomination paper and questioning the further proceeding, this writ petition has

been filed primarily on the ground that the SCEC has no power and jurisdiction to consider the rejection of validity of nomination paper of the members

of the Board of Directors of a co-operative society as well as on the ground that against the rejection of nomination paper remedy of respondents

No.4 and 5 lies to raise co-operative dispute under the provisions of Section 64(2) of the Act of 1960, as such, the order passed by respondent No.2

SCEC is absolutely without jurisdiction and without authority of law.

4. Return has been filed mainly by SCEC opposing the writ petition on the ground that the impugned order has been passed to conduct the election

strictly in accordance with law and to pass necessary order to rectify the mistake occurred in the election. The order is strictly in accordance with

law, it neither suffers from mala fide nor arbitrariness. It has been stated in para 6 of the return that under Section 50(10) of the Act of 1960, a duty

has been cast upon the SCEC to issue instructions to the Board or its members for conducting free and fair election and such instructions are binding

upon the Board and its members, and therefore only to conduct free and fair election, the SCEC has stayed the election, as such, the order is strictly in

accordance with law and no interference is warranted in exercise of jurisdiction under Article 226 / 227 of the Constitution of India. The order of

SCEC can only be questioned in the election dispute to be raised ultimately under Section 64(2)(v) of the Act of 1960.

5. Mr. Ashish Shrivastava, learned counsel for the petitioners, ably assisted by Miss Medha Shrivastava, Advocate, would submit that the SCEC has

absolutely no jurisdiction to interfere with the election process as commenced by declaration of election programme and rejection of nomination paper

cannot be taken cognizance of by the said Commission, it is only the election tribunal that can take cognizance of the said rejection of nomination

paper after election is over, if the aggrieved candidate raises co-operative dispute within the meaning of Section 64(2)(v) of the Act of 1960. The

proceeding initiated and interference made during the continuance of election by staying rejection of nomination paper and further fixing the case for

hearing to examine the correctness of rejection of nomination paper, is absolutely without jurisdiction and without authority of law, and dehors the

provisions of the Act of 1960 and is liable to be quashed.

6. Mr. Rajeev Shrivastava, learned counsel for respondents No.2 and 3, would submit that the order passed by the SCEC is strictly in accordance with

law. In order to conduct free and fair election, the SCEC has interfered with the illegal rejection of nomination paper by the Returning Officer and the

matter is being examined by the SCEC so that the election can be conducted freely and fairly, as such, the order is strictly in accordance with law and

the writ petition deserves to be dismissed.

7. Mr. Arun Sao, learned Deputy Advocate General appearing for the State / respondent No.1 and Mr. Shailja Shukla, learned counsel appearing for

respondents No.4 and 5 would adopt the argument of Mr. Rajeev Shrivastava, learned counsel appearing for respondents No.2 and 3 to submit that

the order passed by the SCEC is strictly in accordance with law.

8. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost

circumspection.

9. Part IX-B has been inserted in the Constitution of India by the Constitution (Ninety-seventh Amendment) Act, 2011 with effect from 15-2-2012.

Article 243-ZH(b) of the Constitution of India defines 'board' and Article

243-ZH(c) defines "co-operative society" as under:-

"(b) "board" means the board of directors or the governing body of a co-operative society, by whatever name called, to which the direction

and control of the management of the affairs of a society is entrusted to;

(c) "co-operative society" means a society registered or deemed to be registered under any law relating to cooperative societies for the time

being in force in any State;"

10. Article 243-ZK of the Constitution of India provides for election of members of board and further provides that the superintendence, direction and

control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative society shall vest in such an authority or body, as may

be provided by the Legislature of a State, by law. In consonance with the provision contained in Article 243-ZK(2) of the Constitution, the State Co-

operative Act as the Chhattisgarh Cooperative Societies Act, 1960, has been enacted, Section 50-B of which provides for State Co-operative Election

Commission and it provides that the State Government shall, by notification in the Official Gazette, constitute a State Co-operative Election

Commission for the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to a co-operative

society under the provision of this Act and rules made thereunder.

11. Thus, in accordance with the provision contained in the constitutional provision and Section 50-B of the Act of 1960, the State Co-operative

Election Commission has been constituted. Section 50-B(10) of the Act of 1960 provides the power of the Commission to issue instructions to the

Board or its members for conducting free and fair election and such instructions having been issued are binding on the Board or its members. Section

50-B(10) of the Act of 1960 provides as under: -

"(10) The Commission may issue such instructions to the Board or its members, which it may consider reasonable for conducting free and fair

election and such instructions issued under this Section shall be binding on Board or its members."

12. The phrase "free and fair election" has been considered by the Supreme Court in the matter of S. Raghbir Singh Gill v. S. Gurcharan Singh

Tohra and others and it has been held that free and fair election is the life-blood of constitutional democracy and Their Lordships pleased to observe

as under: -

16. Free and fair elections are the main spring of a healthy democratic life and a barometer of its strength and vitality. Electoral administration

must, therefore, be free from pressure and interference of the executive and legislature. It should be able to secure fairness to all parties and

candidates. An awareness by the people of the significance of their vote and the need for them to exercise it responsibly and an assurance that the

voter would be able to exercise the franchise untrammelled by any fear and apprehension of any adverse consequence flowing therefrom are the main

ingredients of a truly democratic and successful electoral system (see Elections in India by R. P. Bhalla). If free and fair election is the life-blood of

constitutional democracy and if secrecy of ballot was ensured to achieve the larger public purpose of free and fair elections either both must be

complimentary to each other and co-exist or one must yield to the other to serve the larger public interest.

13. The aforesaid prefatory note would bring me to the question for consideration as to whether the SCEC has power and jurisdiction to interfere with

rejection of nomination paper during the continuation of election.

14. Section 50-B(8) of the Act of 1960 provides that the Commission shall conduct election of all co-operative societies registered under the Act of

1960 in the manner as may be prescribed in clauses (a) to (f).

15. The Chhattisgarh Co-operative Societies Rules, 1962 (for short, 'the Rules of 1962') has been framed in which Chapter V-AA has been inserted

which prescribes procedure for conduct of elections in cooperative societies. Rule 49-CC of the Rules of 1962 provides for preparation of list of

members for election and further provides for appointment of Registration Officer, publication of list of membership, presentation of objections and

disposal of objection. Rule 49-D provides for appointment of Returning Officer. Rule 49-E provides procedure for election of members of the Board.

Sub-rule (3) of Rule 49-E provides for issuing election programme and sub-rule (4) provides for presentation of nomination papers. Sub-rule (8) of

Rule 49-E prescribes that if the number of duly nominated candidates for election as members of Board is equal to or less than the number of seats to

be filled, the Returning Officer shall declare in Form G-17 that there is no need for polling for such members and he shall intimate this fact to the

society. Sub-rule (21) of Rule 49-E provides for recounting. Rule 49-F provides for the election of chairman, vice chairman and representatives by the

members of Board. Rule 49-G provides that in situations like in contingent situation and in case of destruction of ballot box or any wrong doing with

ballot paper, postponement of voting and giving the power to the Presiding Officer / Returning Officer. Rule 49-G(1)(i) provides as under: -

49-G. In contingent situation and in case of destruction of ballot box or any wrong doing with ballot paper the postponement of voting"(1) (i) If

in any election, proceeding for the poll are interrupted or obstructed by any riot or open violence or if at an election, it is not possible to take the poll at

any polling booth on account of any natural calamity or any other sufficient reason, or ballot box used on polling booth is taken away unlawfully from

custody of the Presiding Officer or the Returning Officer or eventually or intentionally destroyed, or ballot papers are torn off or destroyed, or it is

damaged to the extent that its originality is spoiled and because of which the result of the election of that polling booth cannot be decided, then the

Returning Officer or the Presiding Officers shall declare to postpone the polling to be held on other date and where the Presiding Officer postpones

the polling for aforesaid reasons, he shall immediately inform the Returning Officer.

16.Sub-rule (9) of Rule 49-J of the Rules of 1962 provides that all officers and employees in the office of the Commission will be under control and

supervision of the Commission. Rule 49-K(2) provides that Returning Officer, Presiding Officer etc. shall be deemed to be on deputation of the

Commission. Rule 49-K(3) is extremely important defining the role of Collector in the election which states as under: -

(3) Role of Collector in the election " Under the direction of the Commission Collector shall make necessary arrangement for the smooth

conduct of election of a cooperative society in different phases such as filing of nomination papers, scrutiny, polling, counting etc, and also ensure

supervision & maintenance of law & order. Collector shall also requisite government vehicles and buildings at the expenses of the concerned

society.

17.Rule 49-K(5) of the Rules of 1962 provides for issuing of direction by Commission for free, fair and transparent election which states as under: -

“(5) Issuing of direction by Commission” Commission will issue general or specific directions from time to time for free fair and transparent

election regarding Identity cards of voters, election requisite directives and for posting of officers/ employees in election work.

18.The aforesaid statutory rules would clearly show that complete mechanism has been provided in the rules for conducting election by the State Co-operative Election Commission.

19.Likewise, Section 64 of the Act of 1960 makes a provision for raising a co-operative election dispute. The proviso to clause (v) of sub-section (2)

of Section 64 of the Act of 1960 prohibits entertainment of any dispute during the period commencing from the announcement of the election

programme till the declaration of the results, which states as under: -

“64. Disputes” (1) xxx xxx xxx

(a) to (f) xxx xxx xxx

(2) For the purposes of sub-section (1), a dispute shall include

Â (i) to (iv) xxx xxx xxx

(v) any dispute arising in connection with the election of any officer of the society or representative of the society or of composite society :

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election

programme till the declaration of the results.

(3) xxx xxx xxx

20.Thus, the proviso to clause (v) of sub-section (2) of Section 64 of the Act of 1960 prohibits any interference by election tribunal being made once

the election programme is announced till the declaration of result.

21.It is well settled law that election once started should be allowed to be completed without any hindrance or interruption from any forum, no

interference would be made by forum in the process of election. In the matter of Radheshyam v. Chairman, Sahkari Samiti², the M.P. High Court has

held that election should be allowed to be completed unhindered. Similarly, in the matter of Radheshyam v. Chairman, Sewa Sahkari Samiti³, the M.P.

High Court again emphasized that dispute as to the voter list should be raised in election dispute under Section 64 of the Act of 1960 after election is

over and not in the writ petition. Similar proposition has held by the M.P. High

Court in the matter of Ramdeo Sharma v. Dy. Registrar, Gwalior⁴ and also in the matters of Ram Swaroop Dohare v. Ayukta Sahkarita⁵, Jagdish Sharma v. State of M.P.⁶ and Suresh Chandra Jain v. State of M.P.⁷. In the matter of Bhawani Shankar Sharma v. State of M.P. and others⁸, the M.P. High Court has stressed the need of raising cooperative election dispute under Section 64(2) of the Act of 1960 after completion of the election.

22. In the matter of Ramchandra Ganpat Shinde and another v. State of Maharashtra and others⁹, the Supreme Court has clearly held that election should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

23. In the matter of Election Commission of India Through Secretary v.

2 AIR 1976 MP 156 3 1989 MPLJ 208 4 1993 RN 18 5 AIR 1996 M.P. 187 6 1996 RN 60 7 1996 RN 131 8 1998 (2) MPLJ 20 9 (1993) 4 SCC 216

Ashok Kumar and others, the Supreme Court has indicated guidelines when interference with the election process should be made and observed as

under: -

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already

said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

(1) If an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification

of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or

protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in

elections.

(2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates

the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.

(5) The court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.â??

24. In the matter of K.K. Shrivastava etc. v. Bhupendra Kumar Jain and others , the Supreme Court has held that writ jurisdiction would not extend to the case where the Act and the Rules provide a special forum and efficacious remedy. It was observed as under: -

â??Where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms.â??

25. In a celebrated judgment, the Supreme Court way back in the year 1952 in the matter of N.P. Ponnuswami v. The Returning Officer, Namakkal Constituency, Namakkal, Salem Dist., and others has held that law does not contemplate two attacks on matters connected with election, one during

the process of election and the other when it is completed by election petition. It was observed as under: -

“The law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while

they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the

Courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter which has the

effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be

brought up at an intermediate stage before any Court.”

26. In the matter of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahkari Dugdha Utpadak Sanstha and another v. State of Maharashtra and

others, Their Lordships of the Supreme Court in the context of the Maharashtra Co-operative Societies Act, 1960 which is *pari materia* provision to

the M.P. Co-operative Societies Act, 1960 and Rules held that the Rules framed for election of specified societies are a complete code in itself

providing for the entire process of election beginning from the stage of preparation of the provisional voters' list, decision on the objection by the

Collectors, finalisation of electoral rolls, holding of election and declaration of result of the election. The only remedy of the person aggrieved is to

challenge the election by means of election petition. Their Lordships observed as under: -

“7. In the light of the aforesaid provisions of Chapter XI-A of the Act and the Rules, we will examine as to whether preparation of electoral rolls

is an intermediate stage in the process of election. The provisions referred to above show that Chapter XI-A was enacted and the Rules were framed

specially to deal with the election of the specified societies under Section 73-G of the Act. Section 144-X provides that various stages of election shall

also include preparation of the list of voters. Once the statute provides that the preparation of the voters' list shall be part of the election process, there

is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified society. This

matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against

the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters' list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and the Rules, the preparation of voters' list must be held to be part of the election process for constituting the Managing Committee of a specified society. ...

12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of returned candidate, if aggrieved, by means of an election petition before the Election Tribunal.â??

27. After having analysed the legal provisions and after having noticed the scope of interference in the election process, reverting to the facts of the present case, it would appear that the nomination papers of respondents No.4 and 5 were rejected by the Returning Officer and challenging the rejection of nomination papers, a complaint was made to the State Co-operative Election Commission (SCEC) and that has been entertained and interim order has been passed.

28. Mr. Rajeev Shrivastava, learned counsel appearing for the SCEC, has tried to justify the impugned order relying upon the provisions contained in Section 50-B(10) of the Act of 1960, which has been noticed in the earlier paragraph and which empowers the Commission to issue instructions to the Board or its members, which it may consider reasonable for conducting free and fair election. Here, it is not in dispute that there is no hindrance in free and fair election. Applications of respondents No.4 and 5 were rejected on

the grounds mentioned in the order rejecting nomination papers. There is no untoward circumstance or scene created towards free and fair election as explained by the Supreme Court in *S. Raghbir Singh Gill* (supra).

Even otherwise, the proviso contained in Section 64(2) of the Act of 1960 also even bars the Registrar to entertain any dispute during the period

commencing from the announcement of the election programme till the declaration of the results.

29. Thus, I am of the considered opinion that the State Co-operative Election Commission has no power and jurisdiction to entertain any dispute with

regard to validity or otherwise of the nomination paper rejected by the Returning Officer and that power cannot be pressed into under Section 50-

B(10) of the Act of 1960, the only remedy of the person aggrieved (respondents No.4 to 5) is to raise co-operative election dispute under the

provisions of Section 64(2)(v) of the Act of 1960, that too bars entertaining of such dispute during the period commencing from the announcement of

election programme till the election is concluded and SCEC has no jurisdiction to election process as such.

30. As a fallout and consequence of the aforesaid discussion, the order dated 19-12-2017 passed by the State Co-operative Election Commission

staying the rejection of nomination papers by initiating the proceeding for considering the said rejection and also the order dated

20-12-2017 as well as the entire proceeding being initiated in Nasti No.B.L.D.-95 are hereby quashed. Consequently, all the proceedings are also

quashed. The Returning Officer shall proceed at the stage where the election proceeding stood standstill and is directed to conduct election

expeditiously and conclude the same expeditiously.

Election dispute, if any, raised by respondents No.4 and 5 under Section 64(2)(v) of the Act of 1960 will be decided on its own merit, strictly in

accordance with law by the concerned Election Tribunal under the Act of 1960. It is made clear that the observations or findings recorded in the order

are only for judging the correctness of the order dated 19-12-2017 passed by the SCEC.

31. The writ petition is allowed to the extent sketched herein-above, leaving the parties to bear their own cost(s).