
(2012) 10 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3774 of 2011

Mohinder Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 31-10-2012

Acts Referred:

Citation : (2013) 169 PLR 450

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Advocate : R.S. Tacoria, for the Appellant; Kirti Singh, DAG, Haryana for the State and Mr. S.S. Dalal, for the Respondent

Final Decision : Allowed

Judgement

Ranjit Singh, J.—The petitioner is an elected Member of Managing Committee of respondent No. 4-Society, The election to the Managing Committee of the Society was held on 25.11.2007. As per the averments made in the petition, 7 Members came present and elected the petitioner as President. The Committee consisted of 9 Members in all, out of which 7 came present on the date of election. After the election of the Managing Committee, the election of the officer bearers of the Society was to be held in accordance with the bye-laws of the Society. The Presiding Officer issued notice to all the Members of the Managing Committee and scheduled the meeting for 12.3.2008. In terms of bye-law No. 38, quorum to hold the election is 7 members. The petitioner claimed that 7 members came present and, thus, the quorum was complete. The name of the petitioner was proposed by Smt. Bimla Devi, one of the Members and was seconded by Sh. Tek Chand. No other name was proposed for the post of President. The petitioner accordingly was declared elected as President of respondent No. 4-Society. Respondent No. 5 is one of the Member of the Managing Committee but he did not come present during the meeting held on 12.3.2008. He subsequently challenged the election of the petitioner by filing election petition before respondent No. 3 on 2.4.2008. Respondent No. 3 issued notice to the petitioner

and passed an order setting-aside the election of the petitioner. The petitioner claims that the impugned order was passed without affording due and proper opportunity of hearing to him and without following due process of law. The petitioner accordingly filed an appeal against this order on 24.4.2008: The appeal was also dismissed and directions were issued to Assistant Registrar, Cooperative Society, to hold fresh election for the post of President and Vice President of the Society within one month. Subsequently, the petitioner also filed a revision petition, which was dismissed on 1.12.2010. In fact, the petitioner had earlier approached this Court by way of Civil Writ Petition No. 11271 of 2008, praying for grant of stay during the pendency of revision petition before respondent No. 1. The election of the petitioner, which was set-aside, however, was stayed and the writ petition was accordingly dismissed as having been rendered infructuous. After dismissal of the revision petition, the petitioner has filed the present writ petition to impugn the said orders. Notice of motion was issued and reply is filed. The official respondents as well as private respondent No. 5 have justified the impugned order on various grounds.

2. The main submission, however, is that initially 7 members may have come present but subsequently during the election, only 5 members had signed, which will indicate that quorum was not complete. This seems to have weighed with respondent authorities while setting-aside the election of the petitioner as President of the Society. Counsel for the petitioner has referred to bye-law 38, reproduced in the petition, which regulates the election to the office of President and Vice President from amongst the Managing Committee members. For the said election, quorum is 7 members. If the quorum is not complete within half an hour of the start of the meeting, then the meeting is required to be postponed for the same day in the next week and the present members in the adjourned meeting shall constitute the quorum. That being the legal position, it is to be seen whether in the meeting, which was held on 12.3.2008, quorum was complete or not.

3. Counsel for the petitioner as well as respondent No. 5 have drawn my attention to Annexure P-1 to show that at the start of meeting, Madan Lal, Secretary, who was authorised to write down the proceedings, has clearly recorded and obtained signatures of 7 members, who came present. Thereafter the agenda to consider the election to the post of President was taken up. The name of the petitioner was proposed by Smt. Bimla Devi and seconded by Sh. Tek Chand. The sole submission on the basis of which the election has been set-aside is that in this election, the petitioner was elected as President unanimously but the proceedings were signed by 5 Members and not by 7 members, who were present. Learned counsel for respondent No. 5, thus, would contend that quorum was not complete as otherwise there is no reason for 2 members not to endorse their signatures at the relevant place. One of these person is the one who had seconded the name of the petitioner, He had not signed subsequently, where the petitioner was shown being elected. In my view, the requirement of bye-law 38 is presence of 7 members to complete the quorum. Once 7 members

had come present and marked their presence, obviously the quorum was complete. Even if it is taken that 2 of the members did not vote in the election, 5 members have definitely elected the petitioner as President, which constitutes the majority of 7 members, who came present. Otherwise also, no other name was proposed. Respondent No. 5 had not come present despite the notice issued to him. He would have locus to challenge the election on all the grounds but certainly he would not be in a position to make averments as to what transpired during the meeting and election because of his non-presence. Learned counsel for the petitioner, therefore, is justified in pointing out that Sh. Tek Chand or any other member who was present, has not come forward to challenge the election of the petitioner on any ground, which may be available. Counsel further submits that the election of the petitioner as President was not materially effected in any manner, for which the Deputy Registrar could have interfered in the same. I am of the considered view that having regard to the factual position, the Deputy Registrar, Cooperative Societies, certainly has exceeded his jurisdiction to interfere and set-aside the election of the petitioner as President. I do not find any violation of any of the rule whereby Sh. Tek Chand, who had seconded the name of the petitioner after it having been proposed, was required to sign after the election as well. Once the proceedings are recorded by a person who was detailed to record the proceedings and he has noticed the names of the persons who had proposed the name of the petitioner and the one who had seconded the same, mere fact that he did not sign thereafter, would not mean that the name was not proposed or was not so seconded. Even if the proposer or seconder do not vote, the election of the petitioner as President is by majority of the members as 5 members definitely have voted for him. There was no other contestant and, thus, the election was held to be unanimous. Taking the totality of the facts and circumstances in view, the order passed by the Deputy Registrar and subsequently upheld by various authorities in appeal and revision can not be sustained.

The writ petition is accordingly allowed. The impugned orders are set-aside. The petitioner shall be declared elected as President of the Society with all consequential benefits.