
(1984) 04 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5554 of 1982

Nand Singh and another

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 26-04-1984

Acts Referred:

Citation : (1984) ILR (P&H) 390 : (1984) PLJ 298 : (1984) RRR 113

Hon'ble Judges : S.S.Kang, J

Advocate : Mr. G.S. Sandhu, Advocate., Advocates for appearing Parties

Judgement

S. S. Kang, J. (Oral)

1. The petitioners are members of the Chak Sabhan Cooperative Credit and Service Society Ltd., respondent No. 3 (for short 'the Society') a Society registered under the Punjab Cooperative Societies Act, 1961 (hereinafter called 'the Act'). The executive powers of a Society vest in a managing committee elected out of the members of the Society. The term of the managing committee under Section 26 of the Act is three years. The term of the managing committee of the Society expired at the end of March, 1982. No arrangement was made for the election of a new managing committee. A Board of Administrators, consisting of Shri Ram Chander, Executive Officer, Sirsa Central Cooperative Bank Ltd., Sirsa and Shri Ram Sarup, Inspector, Cooperative Societies, Rania, was appointed by the Assistant Registrar, Cooperative Societies, Sirsa (respondent No. 2).

2. The Assistant Registrar, Cooperative Societies, Sirsa, issued directions to the societies and Inspectors of Cooperative Societies within his jurisdiction to hold the elections of the managing committees of the cooperative societies where such elections had not been held. In compliance with this direction, the Board of Administrators passed a resolution on November 4, 1982 to the effect that elections of the managing committee of the Society shall take place in the building of the Government Primary School, Chak Sabhan, at 11.00 a.m. on 24th November, 1982. It was further resolved that this information should be given to all the members through a proclamation. In those days, there were 175

members of the Society. They were entitled to participate in the election and elect the members of the managing committee.

3. Rule 38 in Part 4 of Appendix 'C' to the Rules regarding election in the Primary Cooperative Societies (for short 'the Rules') framed under the Act provides that a special meeting of the election of members of the managing committee of a cooperative society having not more than 300 members shall be convened by the Manager of the cooperative society and at least fifteen days' clear notice, specifying the date, time and place of the meeting shall be given to all the members. Under Rule 40 of the Rules, the names of the candidates shall be proposed and seconded by any of the voters present in the meeting provided the candidate fulfills the qualifications laid down under the Act, the Rules framed thereunder and the Byelaws of the Society concerned. The Presiding Officer shall ask and permit the candidates to withdraw their names immediately after such proposals have been made. Under Rule 41, if the number of candidates left after withdrawal happens to be equal or less than the number of members to be elected for the committee, all the candidates shall be declared elected by the Presiding Officer. In case, however, the number of candidates is larger than the number of members required to be elected then the election shall take place by show of hands. Under Rule 42, the candidates found to have obtained the largest number of votes in order of merit shall be declared elected by the presiding officer.

4. On 22nd November, 1982, on receipt of a complaint, the Assistant Registrar directed the Inspector, Cooperative Societies, Rania to postpone the elections to the Society. This order reads as under :

``You are informed on the subject mentioned above that an application has been received from the members of the Society complaining that some minor persons have been enrolled in the Society and some members are also enrolled in some other societies. There are 105 loanees in the Society whereas 48 out of them are defaulters. Therefore, the election of the Society be postponed. The enquiry report in this respect be sent within a week. Copy of the complaint is enclosed'''.

On receipt of this order, the election to the Society were postponed. Aggrieved by this order, the petitioners have filed the present writ petition and assailed the order of postponement and prayed for directions for the holding of fresh elections. It is also prayed that the respondents be directed to hold the elections from the stage these were postponed by the Assistant Registrar.

5. In the Written Statement filed by the Society (respondent No. 3 it is averred inter alia that a complaint was made by residents of the village to the Assistant Registrar the most of the members were living outside the area of operation of the Society and that a few members had taken loans from other societies. An enquiry was held by the Inspector, Cooperative Societies, Rania, who submitted his report on 27th November, 1982. He reported that 24 members enrolled on the list of the Society were living outside the area of the operation of the Society

and Balbir Singh, a member of the Society, had taken loans from another cooperative society of a different village and Nand Singh was a member of another society in a different village. It was asserted that the Assistant Registrar had the power to postpone the elections keeping in view the prevailing circumstances.

6. Mr. G. S. Sandhu, learned counsel for the petitioners, has argued that the Board of Administrators exercising the powers of the managing committee of the Society had called for the elections of the members of the managing committee of the Society on 24th November, 1982; that the process of elections had been set in motion; that a proclamation has been made in the village informing the members of the Society regarding the impending elections. The Assistant Registrar has no power or jurisdiction to order the postponement of the elections and that there is no provision in the Act or the Rules authorising the Assistant Registrar to interfere in the process of elections and postpone the elections indefinitely. There is merit in this contention. A perusal of the Act and the Rules framed thereunder reveals that there is no power or jurisdiction with the Assistant Registrar to interfere with the process of elections. It is only on the completion of the elections, if any dispute arises regarding thereto that a reference can be made to the Registrar or the Assistant Registrar exercising the powers of the Registrar. It is not necessary to dilate upon the matter any further because the matter stands concluded by two Division Bench decisions of this Court in *Narinder Singh v. The State of Punjab*, 1973 PLJ 720 and *Sardar Mohammad v. The State of Haryana*, 1977 PLJ 12 : 1984 R.R.R. 299 : 1984 R.R.R. 306.

7. In *Narinder Singh's* case (supra), elections to the managing committee of a society were announced. The returning officer accepted the nomination papers of all the three candidates. One Bir Singh filed an application before the Deputy Registrar, Cooperative Societies, Amritsar alleging that the nomination papers of Narinder Singh had been wrongly accepted because he was a defaulter of the cooperative bank. The Deputy Registrar entertained this application and thinking that a dispute had arisen about the election in accordance with Section 55 of the Act assumed jurisdiction to arbitrate in the matter under Section 56 of the Act and stayed election from Zone No. 2 during the pendency of the reference. This order was challenged and it was held :

``The Registrar Cooperative Societies has no jurisdiction to entertain any reference with regard to the dispute to the election of the Managing Committee of the Society till after the declaration of the result of the election.'''

The order of the Deputy Registrar was quashed.

8. In *Sardar Mohammad's* case (supra), in compliance with the election programme published, a voters list was prepared and objection thereto were invited. The electoral process was on. Suddenly, the Registrar, Cooperative Societies, stayed the elections. It was observed :

``Under subrule (4) of Rule 4 the objections could only be filed before the Returning Officer and not the Registrar. The election process is a democratic process and it cannot be stayed or postponed arbitrarily. In democracy there is Government of laws and not of men. Each authority, however, high it may be, is enjoined upon to perform its duty in accordance with law. If a certain thing is required to be dealt with in a certain manner under the Rules, it must be done in that manner alone and not otherwise.'''

In view of these authoritative pronouncements of law, it is now clearly settled that the Assistant Registrar had no power to postpone the elections. The order dated 22nd November, 1982, of the Assistant Registrar, Sirsa, to this effect is wholly without jurisdiction and liable to be quashed.

9. Mr. G. S. Sandhu, learned counsel for the petitioners, then contended that after the elections had been postponed the Board of Administrators enrolled 264 new members to the Society on 29th November, 1982. The election was postponed and the new members were enrolled solely with the object of helping the minority group in the Society to capture the managing committee. Therefore, he argued that in this situation, the respondents should be directed to hold the elections from the stage they were postponed and the 264 newlyenrolled members of the Society should not be allowed to participate in the elections. I am afraid I cannot accept this contention. The allegation is extremely vague. It has not been stated as to who are the persons who are the members of this minority group who are sought to be benefitted. They or the newlyenrolled members have not been made parties to this writ petition. No allegations of mala fide have been made against the Assistant Registrar nor has he been even impleaded by name so that he could be required to rebut these allegations personally. There is no allegation in the petition nor is there any evidence on the file to conclude that these 264 members were not eligible to be enrolled. There is no material to hold that they were not interested in the cooperative movement and their names had been brought on the registrar of members only for the purpose of enabling some members to control the managing committee. Mr. Ganeriwala, learned counsel for the respondents, has contended that after their enrolment all these newlyenrolled members have been enjoying the benefits of the Society. They have been fullfledged members for the last about 11/2 years and are equally interested in the management of the affairs of the Society. They should be allowed to participate in the electoral process. This submission of his is genuine. Even if we accept Mr. Sandhu's contention that the previous 175 members of the Society had worked hard to make the Society an economically viable institution these people cannot block the entry of other residents of the village who are interested in becoming the members of the Society and once these persons have become members there is no reason to prohibit them from exercising their statutory rights. It is true that in Sardar Mohammad's case (supra) the Division Bench had quashed the orders of the Registrar postponing the elections indefinitely and had directed the respondents to complete the election process from the stage it was postponed but the same direction cannot

be given in the instant case. In that case no new members had been enrolled. The election process was in motion. Voters list and Zones had been prepared and objections thereto invited. At that stage, the Registrar had postponed the elections. In that situation, it was ordered that the elections shall take place from the stage they were postponed. The facts of the present case are clearly distinguishable. The prayer of Shri Sandhu that the newly added 264 members should not participate in the elections is unjustified and cannot be accepted.

10. In the result this writ petition is allowed and the order dated 22nd November, 1982 of the Assistant Registrar, postponing the elections is quashed. The respondents are directed to hold the elections to the managing committee of the Society in accordance with the rules which may be applicable to it now after the enrolment of the new members. These new members shall be entitled to participate in the elections. The elections shall be completed within two months from today. No order as to costs. A copy of this order be given to Mr. P. S. Kadian, Advocate, immediately.