

(1966) 08 MP CK 0023
In the Madhya Pradesh High Court
Case No : M.P. No. 300 of 1965

Narbada Prasad

APPELLANT

Vs

Brijlal and Others

RESPONDENT

Date of Decision : 03-08-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64, 66, 67

Citation : (1966) JLI 731

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhavde, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari, for the Appellant; P.C. Pathak for Respondent No. 1 and K.K. Dubey, Government Advocate for Respondents Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

P.V. Dixit, C.J.—By this application under Articles 226 and 227 of the Constitution the applicant prays for the issue of a writ of certiorari for quashing the decision of the Sub-Divisional Officer, Bilaspur, rejecting an election petition filed by the Petitioner challenging the election of the Respondent No. 1 Brijlal as a co-opted member of Gram Panchayat. Ratanpur.

2. The election to the Gram Panchayat was held, on 4th January 1965. As no Chairman of any Co-operative Society, in the Gram Sabha, was elected as a member, it became necessary to co-opt a Chairman of a Cooperative Society functioning in the Gram Sabha as laid down in Section 11(3) (ii) of the Madhya Pradesh Panchayats Act, 1962. A meeting of the elected Panchas for making this co-option was convened on 25th January 1965. The Petitioner Narbada Prasad and the Respondent No. 1 Brijlal, each claiming himself as the Chairman of the Service Co-operative Society, Ratanpur, filed their nomination papers for co-option. One Ramjilal, who claimed that he was the President of the Goldsmiths' Association, Ratanpur, also filed his nomination paper. Krishna Sewak Lal, Vice-

President of another Co-operative Society functioning in the Gram Sabha also offered himself as a candidate for co-option. The Presiding Officer rejected the nomination of Ramjilal on the ground that the Goldsmiths' Association was not a Co-operative Society and of Krishna Sewak Lal for the reason that only a Chairman of a Co-operative Society and not a Vice-President was qualified for being co-opted. In regard to the nomination papers of the Petitioner Narbada Prasad and the Respondent Brijlal, the Presiding Officer did not decide on 25th January 1965 whether the nomination paper of Narbada Prasad as the Chairman of the Service Co-operative Society, Ratanpur, or of the Respondent Brijlal who also claimed to be the Chairman of that Co-operative Society should be accepted. He thought it proper to seek a clarification from the Assistant Registrar, Co-operative Societies, Bilaspur, on the point whether Narbada Prasad or Brijlal was the Chairman of the Service Co-operative Society, Ratanpur. The Presiding Officer postponed his decision on the point till 27th January 1965. On this date the Presiding Officer, without waiting for any clarification from the Assistant Registrar, held that the Petitioner Narbada Prasad was not the validly elected Chairman of the Service Co-operative Society and was therefore, not qualified for being co-opted. He further held that the Respondent Brijlal was the validly elected Chairman of the Society and he being the sole candidate remaining in the field was entitled to be co-opted as a Panch. The Presiding Officer arrived at the conclusion that the Petitioner Narbada Prasad was not the validly elected Chairman of the Co-operative Society after holding an enquiry into the validity of a meeting of the Co-operative Society held on 21st January 1965. Narbada Prasad claimed that this meeting had been validly convened and he was validly elected there at as the Chairman. On the other hand, the Respondent Brijlal questioned the validity of the meeting and contended that the election of Narbada Prasad as Chairman was invalid and that on 25th January 1965 he was the de jure Chairman of the Co-operative Society. The validity of the meeting of the Co-operative Society said to have been held on 21st January 1965 was challenged by Brijlal on various grounds which are not material here.

3. In the election petition which the applicant then filed against the co-option of Brijlal, the Petitioner raised the contention that the Presiding Officer had no jurisdiction to decide the dispute between him and Brijlal as regards the valid election of the Chairman of the Co-operative Society; that u/s 64 of the M. P. Co-operative Societies Act, 1960, such an election dispute could be decided by the Registrar, Co-operative Societies alone and that the meeting of the Co-operative Society held on 21st January 1965 was a valid meeting and his election as Chairman at that meeting was also valid. The Sub-Divisional Officer dismissed the election petition on finding that the meeting of the Co-operative Society held on 21st January 1965 at which Narbada Prasad was elected as the Chairman was not a valid meeting and that, therefore, he could not be regarded as having been elected as Chairman of the Co-operative Society; and as he was not the Chairman of the Co-operative Society on 25th January 1965, his nomination paper was rightly rejected by the Presiding Officer.

4. In our opinion, this petition must be granted. Section 11 (3) (ii) of the Panchayats Act and the M.P. Gram Panchayat Election and Co-option Rules, 1963, made u/s 12 of the Act do not at all contemplate the situation of two or more persons, each claiming before the Presiding Officer to be the Chairman of a Co-operative Society functioning in the Gram Sabha. The Act and the Rules made thereunder nowhere provide for determination of such a dispute between rival claimants to the office of the Chairman of the Co-operative Society. Where such a dispute arises, it would appear the proper course for the Presiding Officer to follow is to make a reference to the competent officer of the Co-operative Department and to ascertain from him as to who, on the date of the filing of the nomination paper and on the date of its scrutiny, is the Chairman of the Cooperative Society. The Presiding Officer would be perfectly justified in acting upon the report of the competent officer of the Co-operative Department and accepting only that person as the Chairman of the Co-operative Society who, according to the opinion of the competent officer, is the Chairman on the material dates. Here, the Presiding Officer first rightly decided to seek clarification from the Assistant Registrar, Co-operative Societies, on the question whether the applicant Narbada Prasad or the Respondent Brijlal was the Chairman of the Service Co-operative Society, Ratanpur. But he went altogether wrong in deciding the dispute about chairmanship between these two persons without waiting for any report from the Assistant Registrar and after holding an enquiry into the validity of the meeting of the Co-operative Society which according to Narbada Prasad was held on 21st January 1965 and at which he was elected as the Chairman.

5. The dispute between Narbada Prasad and Brijlal as to whether Narbada Prasad or Brijlal was the Chairman was an "election dispute" falling under the M. P. Co-operative Societies Act, 1960. u/s 64 of that Act the Registrar has exclusive jurisdiction to decide "any dispute arising in connection with the election of any officer of the society" Section 64, inter alia, says that "notwithstanding anything contained in any other law for the time being in force", any dispute arising in connection with the election of any officer of the Society shall be referred to the Registrar for decision by any of the parties to the dispute. On receiving the reference of a dispute u/s 64, the Registrar is required to take steps in accordance with Sections 66 and 67 of the Act for settlement of the dispute. The non-obstante clause with which Section 64 begins shows that a dispute arising in connection with the election of any officer of the Society can be decided only by the Registrar in accordance with Sections 66 and 67 and by no other authority. Therefore, neither the Presiding Officer nor the Election Tribunal had any jurisdiction to decide the question whether Narbada Prasad was or was not validly elected as the Chairman at the meeting of the Co-operative Society said to have been held on 21st January 1965, or whether on the material dates Brijlal was not Chairman of the Society. That being so, both the Presiding Officer and the Election Tribunal erred in basing their decision as regards the rejection of the Petitioner's nomination paper on an enquiry which they had no jurisdiction to

undertake and on findings arrived therein which they were not competent to give.

6. In the present case, the Respondent No. 1 Brijlal has already referred the dispute between him and Narbada Prasad on the question of the validity of Narbada Prasad's election as Chairman to the Registrar for decision u/s 64. It would have been proper for the Election Tribunal to postpone the disposal of the election petition till this dispute is decided by the Registrar. The question of the acceptance or rejection of the nomination paper of the Petitioner for co-option has to be decided on the basis of the decision that the Registrar may give in the dispute referred to him u/s 64 of the Co-operative Societies Act, 1980, on the question of the validity of the Petitioner's election as Chairman. In these circumstances, the only order that can properly be made is to quash the decision of the Election Tribunal and to direct the Tribunal to decide the election petition preferred by the applicant after the Registrar has decided the dispute arising between Narbada Prasad and Brijlal on the validity of Narbada Prasad's election as Chairman on 21st January 1965.

7. For these reasons, this petition is allowed. The decision dated 6th May 1965 of the Sub-Divisional Officer dismissing the Petitioner's election petition is quashed and that Officer is directed to decide in accordance with law the election petition after the Registrar, Co-operative Societies, has given his decision in the dispute between Narbada Prasad and Brijlal on the question of the Petitioner's election as Chairman of the Service Co-operative Society, Ratanpur. In the circumstances of the case, we leave the parties to bear their own costs. The outstanding amount of the security deposit shall be refunded to the Petitioner.