

(1976) 05 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Company Petition No. 94 of 1975

Niranjan Singh and Others	Vs	APPELLANT
Edward Ganj Public Welfare Association and Others		RESPONDENT

Date of Decision : 07-05-1976

Acts Referred:

Companies Act, 1956 — Section 171, 257, 626A

Citation : (1977) 47 CompCas 283

Hon'ble Judges : M.R. Sharma, J

Bench : Single Bench

Advocate : J.S. Narang, for the Appellant; R.C. Dogra, for the Respondent

Final Decision : Dismissed

Judgement

M.R. Sharma, J.—Prayer has been made in this petition to the following effect;

2. The election held on September 8, 1975, be declared illegal and void being against the provisions of the Companies Act, 1956, and the memorandum and articles of association of the company. In Panipat Woollen and General Mills Co. Ltd. v R.L. Kaushik [1969] 39 Comp Cas 249 P.O. Pandit J., under similar circumstances, held that there is no provision in the Companies Act, which debars a civil court to entertain a suit for declaration that a director of the company was or was not properly elected. In particular it was observed as under :

"Under Section 9 of the Code of Civil Procedure, 1908, civil courts have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is expressly or impliedly barred. Unlike some statutes, the Companies Act does not contain any express provision barring the jurisdiction of the ordinary civil courts in matters covered by the provisions of the Act. In certain cases like winding-up of companies the jurisdiction of civil courts is impliedly barred.

Where a person objects to the election of directors and claims a decree for a

declaration that he was one of the directors, there is no provision which bars the civil court either expressly or by implication from trying such a suit.

The memorandum of association of a company provided for the retirement of one-third of the directors at the annual general meeting and fresh elections to fill the vacancies. The directors who had to retire were those who had been in office for the longest period since their last election. Where one of the directors objected to his retirement, claimed that the fresh elections were void and applied for an injunction directing the company to allow the petitioner to act as director :

Held, that the civil court had jurisdiction to try the suit."

3. Similar view was taken by Tuli J. in Company Petition No, 78 of 1972 [Edward Ganj Public Welfare Association Ltd., In re [1977] 47 Comp Cas 283.

4. In view of this I hold that this petition is not competent before me and the only remedy available to the petitioner is to file a civil suit. The petition is accordingly dismissed.