
(1973) 10 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2925 of 1973

Niranjan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 29-10-1973

Acts Referred:

Citation : (1976) PLJ 81 : (1984) RRR 348

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

Advocate : Mr. Baldev Kapur, Advocate., Advocates for appearing Parties

Judgement

M.R. Sharma, J.

1. The petitioners are shareholders of two Cooperative Societies, one of them is having its place of business at Kapurthala, and the other at Jullundur. It is alleged that petitioner No. 1 being the member of the Kapurthala Society, possessed all the necessary qualifications for seeking election to the office of the Board of Directors of the Jullundur Industrial Cooperative Society. It has been averred in the petition that the respondents did not give due notices of the election programme to the member Societies, and fixed 27th August, 1973 as the last date for the receipt of nomination papers. It is submitted that petitioner No. 1 did not get timely information and so he could not file his nomination papers. The grievance of petitioner No. 2 is that he is a shareholder of the Jullundur Society. He filed his nomination papers which were rejected by the Returning Officer on illegal grounds. In the return filed on behalf of the respondents it has been mentioned that the election programme was framed in accordance with the direction issued by the Registrar. The nomination papers of the petitioner No. 2 were rightly rejected because Society of his proposer was ordered to be wound up and was being managed by a Liquidator, Shri K.K. Uppal who claimed to represent this Society for the purpose of the election, had not been authorised by the Liquidator of the Society to act on his behalf.

2. On the 3rd of September, 1973, the Board of Directors were elected but it was ordered by this Court that their election would be valid subject to the result of

this petition.

3. Shri Baldev Kapur, learned counsel for the petitioners has argued that under section 18 of the Punjab Cooperative Societies Act, 1961 ((hereinafter referred to as the Act), every member of a Cooperative Society has one vote in the affairs of the Society and under section 19(2) of the Act, the members of a Cooperative Society were entitled to appoint one of them to vote on its behalf in the affairs of another Society. According to him, even if the Registrar orders that a Society should be wound up and appoints a Liquidator to wind up its affairs, the right of the members under Sections 18 and 19(2) of the Act of having a vote in the affairs of the Society and of a right to nominate one of them to vote on its behalf for another Society, cannot be taken away. There is no merit in this submission made by the learned counsel for the petitioners. Section 58 of the Act entitles the Registrar to appoint a Liquidator who in return can carry on the business of the Society so far as if is necessary with the previous approval of the Registrar. It is the business of the primary Societies to send representatives to the Central and Apex Societies. So long as a Society is not wound up it has to participate in the affairs of the Central and Apex Societies. After the appointment of a Liquidator, these functions are performed by him and him alone. If the interpretation sought to be placed by Mr. Kapur is accepted, then the very object of Sections 58 and 59 of the Act will be frustrated. In other words, even after a Committee has been superseded and a person chosen by it is allowed to act on its behalf, then he would be in a position to frustrate the action taken by a Liquidator. This could not have been the intention of the Legislature. I am of the considered view that Sections 18 and 19 of the Act make a provision for the normal state of affair and Sections 58 and 59 consist of special provisions. As soon as a society is ordered to be wound up, all affairs of the Society come to vest in its Liquidator. In this view of the matter, Shri K.K. Uppal was not competent to represent the Jullundur Society and the name of the petitioner No. 2 was not validly nominated. The Returning Officer was justified in rejecting the same.

4. The other objection raised by the learned counsel is that under Rule 4(3) contained in appendix 'C' to the Rules, the election programme has to be notified in the office of the registered Society and also in accordance with any other mode of notice which may be specified by the Registrar. It is submitted that the Registrar did not pass any general order in this behalf. On behalf of respondent No. 5, reliance has been placed on letter dated 25th October, 1969, issued from the office of the Registrar, Cooperative Societies. alongwith this letter, instructions for holding elections to the Board of Directors of the Central 'Cooperative Societies have also been issued. These instructions contain complete procedure to be adopted for holding the elections. Since they are issued in the wake of elections which were held in the year 1969, they also contain some instructions regarding that election. Mr. Kapur submits that since there is a specific mention about the election to be held in 1969, in these instructions they should be held to have been issued for that year only. According

to him, there being no other mode of publication of the election programme, the mandatory provisions of Rule 4.3 have been violated. There again the learned counsel is not correct. The instructions issued by the Registrar are general in nature and their efficacy whittled merely because some mention is made about the election to be held in the year 1969. Furthermore, it is for the rule making authority alone to make provision for the publication of the election programme. The statutory provision is that this programme should be held in the Head Office of the Society concerned. The changed mode of publication has to be adopted when the same happens to be either laid down in the byelaws or in the resolution of the Managing Committee of a Society or specified by the Registrar by a general or special order. If the Registrar had made no order regarding the publication of the election programme in any other mode, the election could not be set aside on this point.

5. The next submission made by the learned counsel is that the election programme was put on the Notice Board of the Bank on the 18th August, 1973, and the last date for the filing of the nomination papers was 27th August, 1973. Since every voter was expected to get a letter of authority from the Cooperative Society which he represented, the time provided for the filing a nomination papers was unreasonably short. I cannot agree with this submission. The election programme was made in accordance with the instructions issued by the Registrar. If anybody has a grievance on this score, it is open to him to approach the Registrar for getting an appropriate relief. An election which has been held in accordance with law cannot be set aside only on the ground that time for filing the nomination papers was not as sufficient as a particular member of a Society desired it to be.

6. Last of all the learned counsel for the petitioners submitted that under the byelaws of the Society, the Zones for the election had to be made Tehsilwise and this provision had been violated for making the zones in the instant case. I, however, find that zonal lists of voters were prepared with the approval of the Registrar. Under Rule 4(2) of the Rules appearing in Appendix 'C' the Registrar is empowered to issue directions for making zonal lists of voters. The approval given by the Registrar under the statutory provision overrides the provisions of the byelaws of the Society. In *Cooperative Central Bank Ltd. and others etc. v. Additional Industrial Tribunal, Andhra Pradesh, Hyderabad and others etc.*, A.I.R. 1970 S.C. 245, it was held that byelaws of a Society cannot be held to have the force of law. If this is so, then the byelaws cannot supersede the statutory approval given by the Legislature.

7. For the reasons mentioned above, this petition fails and is dismissed.