
(2000) 12 P&H CK 0132
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15299 of 2000

Nirmal Singh

APPELLANT

Vs

Joint Registrar, Cooperative Societies, Patiala

RESPONDENT

Date of Decision : 12-12-2000

Acts Referred:

Punjab Co-operative Societies Act, 1961 — Section 103(4), 55, 56, 68

Citation : AIR 2001 P&H 151 : (2001) 2 RCR(Civil) 182

Hon'ble Judges : Mehtab S. Gill, J

Bench : Single Bench

Advocate : Mr. G.S. Sandhu, for the Appellant; Mr. K.S. Sivia, AAG and Mr. A.P.S. Guliani, for the Respondent

Judgement

Mehtab S. Gill, J.—The petitioner has prayed for issuance of a writ in the nature of certioran for quashing the orders dated March 22, 2000 (Annexure P-4) and October 16, 2000 (Annexure P-5) passed by respondent No. 1-the Joint Registrar, Co-operative Societies, Patiala.

2. The petitioner has averred that he was elected as a member of the Managing Committee of respondent No. 4, i.e, the Mohali Kalan Co-operative Agricultural Service Society Ltd., Village Mohali Kalan, Tehsil Malerkotla, District Sangrur. The Society is represented through its Secretaiy (hereinafter referred to as the "Society"). This election was held on December 10, 1999. Respondent No. 3-Charanjit Singh challenged the election under Sections 55 and 56 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act). Copy of the election petition dated December 17, 1999 has been annexed with the writ petition as Annexure P-1.

3. Respondent No. 1-the Joint Registrar. Co-operative Societies, Patiala, while hearing the election petition, restrained the present petitioner from functioning as a member of the Managing Committee vide order dated March 22, 2000 (Annexure P-4). Subsequently, this order was confirmed by respondent No. 1 (the Joint Registrar) vide order dated October 16, 2000 (Annexure P-5) and

restrained the petitioner from functioning as a member of the Managing Committee of the respondent-Society. The present petitioner has further averred that by filing an election petition, a member cannot be restrained from functioning as a member of the Managing Committee. The election petition dated December 17, 1999 (Annexure P-1) was filed by respondent No. 3-Charanjit Singh before the Deputy Registrar, Co-operative Societies, Patiala, who was at that time holding the charge of District Sangrur.

4. The Deputy Registrar, Co-operative Societies, Patiala, vide order dated December 27, 1999 stayed the elections of the office-bearers, which were to be held on December 28, 1999. Since the order of Deputy Registrar, Co-operative Societies, Patiala, dated December 27, 1999 staying the election of the office bearers was not conveyed to the elected members, the elections took place and the selections of the officebearers was made. The petitioner was elected as Vice-President and respondent No. 7-Gurmail Singh was elected as President. In a petition filed by respondent No. 3-Charanjit Singh, respondent No. 2-the Deputy Registrar, Co-operative Societies, Sangrur, vide his order dated March 6, 2000 (Annexure P-2) set aside the elections of the office-bearers, which were held on December 28, 1999. The stay order dated December 27, 1999 was also set aside vide order dated March 6, 2000 (Annexure P-2). The order dated March 6, 2000 (Annexure P-2) passed by me Deputy Registrar, Cooperative Societies, Sangrur, was further challenged in an appeal filed u/s 68 of the Act before the Joint Registrar, Co-operative Societies, Patiala, by the elected office-bearers of the respondent-Society, who were elected on December 28, 1999. Respondent No. 3-Charanjit Singh also filed an appeal before the Joint Registrar, Co-operative Societies, Patiala challenging the order dated March 6, 2000 of the Deputy Registrar on the ground that the stay order granted (Dated December 27, 1999) should not have been set aside by him. Copy of the Grounds of Appeal dated March 18, 2000 has been annexed with the petition as Annexure P-3. It has been further averred that a new ground was added by respondent No. 3-Charanjit Singh in his appeal filed before the Joint Registrar, Co-operative Societies, Patiala that the petitioner is a depot holder in Village Mohali Kalan and thus, he could not be elected as a member of the Managing Committee.

5. The Joint Registrar, Co-operative Societies, Patiala, after hearing the appeal, restrained the petitioner from functioning as a member of the Managing Committee of the Society vide his order dated March 22, 2000, a copy of which has been annexed with the petition as Annexure P-4. It has been further averred that since the respondent-Society had fixed the date for the new elections of the office-bearers for March 24, 2000, respondent No. 3-Charanjit Singh stalled the fresh election and obtained stay from the joint Registrar, Co-operative Societies, Patiala, which is dated March 22, 2000. Both the appeals filed by the Society and respondent No. 3 were dismissed and further the Joint Registrar ordered that the stay granted by him vide order dated March 22, 2000 (Annexure P-4) restraining the petitioner from functioning as a member of the Managing Committee would continue till the election petition filed by respondent No. 3-Charanjit Singh is

decided by the Deputy Registrar, Co-operative Societies, Sangrur.

6. Notice of motion was issued to the respondents, Respondent Nos. 1 and 2 filed their written statement. Respondent Nos. 3, 11, 12, 13 and 14 also filed their joint written statement.

7. In the written statements filed by the respondents, they have contended that the orders passed by the official respondents were correct and the petitioner has not come to the Court with clean hands. Further, it has been stated in the written statements that as per the provisions of Rule 25 of the Punjab Co-operative Societies Rules, 1963, the petitioner could not have been allowed to participate in the elections of the Managing Committee. Objections to this effect were also raised by the respondents on December 9, 1999 at the time of filing of nomination papers before the Returning Officer.

8. I have heard learned counsel for the parties, perused the petition and the annexures attached therewith.

9. The plea taken to restrain the petitioner from functioning as a member of the Society, which has been challenged in the election petition filed by respondent No. 3-Charanjit Singh, and though as yet no decision has been taken in the election petition, the Joint Registrar, co-operative Societies, Patiala, has overstretched his authority and wrongfully restrained the petitioner from participating in the Managing Committee. He has also come to the conclusion that the petitioner cannot function as a duly elected member of the Managing Committee. This being an interlocutory order, the Joint Registrar, Co-operative Societies, Patiala cannot take away the right of an elected member from functioning till his election is set aside after adjudication by the Deputy Registrar, Co-operative Societies, Patiala in the election petition filed by respondent No. 3-Charanjit Singh. The petitioner has every right to function as a duly elected member of the Managing Committee.

10. Learned Assistant Advocate General Mr. K.S. Sivia, appearing for the State of Punjab and Mr. A.P.S. Guliani, Advocate, appearing for private respondents have contended that at the time of filing of nomination papers, the same objection was taken that the petitioner cannot contest the election as he is a depot holder. But the Returning Officer in his wisdom did not accept it. The petitioner was, thus, elected. The election of the petitioner can only be set aside through the election petition, but he cannot be restrained from functioning as a member of the Managing Committee till the matter is finally adjudicated.

11. In support of his contention, learned counsel for the petitioner has placed reliance on a decision in the case of Ram Kishan v. The Registrar, Co-operative Societies, Haryana and others 1989 P.L.J. 437, wherein a Division Bench of this Court has held that whether during the pendency of an election petition, the Registrar Co-operative Societies can restrain elected Director (member in this case) from taking part in the proceedings of the Bank (Society in this case) and an interlocutory order u/s 103(4) of the Act can not take away the fundamental

right of elected Director to participate in the proceedings of the Bank or in election of the office-bearers. There is no legal justification for debarring a duly elected Director from taking part in the proceedings of Bank as that will amount to negating mandate of electorate.

12. Learned counsel for the petitioner, in support of his contention, has further relied on a decision in the case of Sukhdev v. Executive Magistrate, Samana, District Patiala and others 1994(1) P.L.R. 671, wherein a Division Bench of this Court has held that in an election petition before the Election Tribunal, the Tribunal has got no authority in passing any interim order restraining a successful candidate from participating in the proceedings of the Gram Panchayat, It has been further held that no injunction can be passed by the Tribunal against a successful candidate.

13. Both these authorities cited above are fully applicable to the facts of the present case.

14. For the reasons recorded above, this writ petition is partly allowed. The impugned order dated March 22, 2000 (annexure P-4) passed by Joint Registrar, Cooperative Societies, Patiala is quashed. The impugned order dated October 16, 2000 (annexure P-5) passed by Joint Registrar, Co-operative Societies, Patiala to the extent that the stay order passed against petitioner - Nirmal Singh from functioning as a member of the Managing Committee is partly quashed. It is further directed that respondent No. 2 - the Deputy Registrar, Co-operative Societies, Sangrur, is directed to hold the elections of respondent-Society within a period of one month from the date of receipt of a certified copy of this order.

15. Petition partly allowed.