

(1971) 07 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 1606 of 1971

Onkar Singh

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 12-07-1971

Acts Referred:

Punjab Agricultural Produce Markets (Haryana Amendment) Act, 1970 — Section 13(3)

Citation : (1971) 07 P&H CK 0029

Hon'ble Judges : H.R. Sodhi, J;D.K. Mahajan, J

Bench : Division Bench

Advocate : Chandra Singh, for the Appellant; H.N. Mehtani, Assistant Advocate-General, Haryana and Mr. G.C. Garg for Respondent Nos. 3, 4 and 6, for the Respondent

Final Decision : Allowed

Judgement

D.K. Mahajan, J.—This petition is by one Onkar Singh. He calls in question the election of respondents Nos. 4 and 5, Chairman and Vice-Chairman of the Market Committee, Kanina. There is no dispute that in a meeting of the Market Committee held on 20th of March 1971, respondents 4 and 5 were duly elected Chairman and Vice-Chairman. The principal dispute centres round two matters; (1) that the meeting was not properly called as clear seven days' notice was not given as required by rule 4(2) of the Punjab Market Committees Chairman and Vice-Chairman (Election) Rules, 1961. The second ground is that one of the nominated members namely Banwari Lal did not hold requisite qualifications which entitled the Government to nominate him to the Market Committee. He was nominated on the ground that he was a licence holder u/s 13(3) of the Punjab Agricultural Produce Markets (Haryana Amendment) Act, 1970. It is now admitted by the State that he, in fact, was not a person who could be so nominate". It is on this basis urged that the election of the Chairman and Vice-Chairman would be void because a non-member participated in the election. Regarding the election of the Chairman a further contention has been raised

namely, that this Banwari Lal seconded the candidature of the Chairman and, therefore, he being not a member of the Market Committee, the proposal to elect the Chairman was void ab initio as it militated against the mandatory provisions of rule 5. On the facts and the legal provisions to which reference has been made, there is no dispute. The only question to be determined is what is the legal effect thereof so far as the attack on the election of Chairman and Vice-Chairman of the said Market Committee is concerned.

2. I propose to take the question of notice first. There is no dispute that the notice was issued on the 13th March, 1971 for a meeting to be held on the 20th March, 1971. The notice was served on the 13th March, 1971, but the fact still remains that it was not a legal notice as required by rule 4. The contention of the Learned Counsel for the petitioner is that as the notice is invalid, therefore, the proceedings of the meeting held on the 20th March, 1971 are also invalid, and so also the election held on that day of the Chairman and Vice-Chairman. The matter is not res integra. A Full Bench decision of this Court in *The Northern India Caterers Private Ltd. v. The State of Punjab* ILR 1963(1) P&H. 761, at page 787 held that even if the notice was invalid, this Court will not interfere unless it was satisfied that manifest injustice had occurred. In the present case there is no manifest injustice inasmuch as the election was unanimous and even if the petitioner was not duly served and did not attend or there was no proper notice, it resulted in no injustice to him. On this short ground I would reject the first contention of the Learned Counsel for the petitioner.

3. The second contention of the Learned Counsel for the petitioner is more weighty and in my opinion must succeed. The attack to the election of the Chairman is two fold whereas to the election of the Vice-Chairman the only ground of attack is that a stranger participated in the meeting which elected the Vice-Chairman. This ground, is common to the election of the Chairman but the additional ground on which his election is challenged is that he was seconded by a stranger and not a member of the Market. Committee. Before proceeding to determine these contentions it will be proper to ascertain whether Banwari Lal was a duly nominated member of the Market Committee. Under the Act Government can only nominate those persons who answer the qualifications set out in section 12. As Banwari Lal did not answer any of the qualifications in section 12, he could not be nominated. The executive authority could not travel outside the pervue of the statute and nominate a member to the Market Committee who did not answer the requisite qualifications prescribed by the statute. Therefore, to all intents and purposes Banwari Lal must be treated as a stranger in spite of the fact that there is a notification appointing him as a member of the Market Committee. Having cleared this ground I proceed to determine the two contentions already adverted to.

4. So far as the Chairman is concerned, the position is very simple. He was seconded by a person who was not a member and who could not thus second him. Therefore, there is clear violation of rule 5 of the Punjab Market Committees

Chairman and Vice-Chairman (Election) Rules, 1961, which is in the following terms:-

5(1) As soon as the members have assembled at the appointed time and place, the Presiding Officer shall call upon the members present to propose candidates for the two offices and every proposal shall also be seconded by a member. The names of candidates, their proposers and seconders shall then be recorded in Form B and read out by the Presiding Officer to the members present.

(2) One half of the total number of members shall constitute the quorum;

Provided that if a meeting called under the preceding rule cannot be held for want of quorum, no quo rum shall be necessary at the next meeting called for that purpose.

This Rule is mandatory. On that short ground the election of the Chairman must be held to be void. The second ground of attack is common to the election of Chairman and Vice-Chairman; namely, that a non-member participated in the meeting which elected the Chairman and Vice-Chairman. On this matter also the legal position is well-settled. If a non-member is merely present in a meeting of a body but does not participate in the proceedings his presence will not vitiate the proceedings of that body. But if he participates in the proceedings then the entire proceedings will be vitiated. In this connection reference may be made to the decision of North, J. in *Lane v. Norman* (1891)66 LT 83. The learned Judge observed as follows:-

.....because another gentleman was present who ought not to have been. He took part in the discussion, and of course it is impossible to say what effect his views may have had upon the minds of the other persons who were present.

With these observations North, J. held the entire proceedings of that meeting to be vitiated. The decision of North, J. was followed by Megarry, J. in *Leary v. National Union of Vehicle Builders* 1970 All ELR 713. No decision taking contrary view has been cited.

5. For the reasons recorded above, we uphold the second contention of the Learned Counsel. In this view of the matter this petition is allowed. The election of the Chairman and Vice-Chairman is quashed and the Market Committee is directed to hold fresh election in accordance with law. There will be no order as to costs. So far as the prayer against respondent No. 6 Banwari Lal is concerned, it has been conceded by the State counsel that he has been nominated by mistake. We have already held that he could not be nominated in view of the provision of section 12. His nomination would also stand quashed.

H.R. Sodhi, J.

6. I agree.