

(2018) 05 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : CWP No. 9532 of 2014

Prem Lal Sharma

APPELLANT

Vs

Hira Lal & ors.

RESPONDENT

Date of Decision : 10-05-2018

Acts Referred:

H.P. Cooperative Societies Act, 1968 — Section 94
Himachal Pradesh Cooperative Societies Rules, 1971 — Rule 4, 4(a), 4(2), 37
Constitution of India — Article 227

Citation : (2018) 05 SHI CK 0004

Hon'ble Judges : TARLOK SINGH CHAUHAN

Bench : Single Bench

Advocate : J. L. Bhardwaj, Sanjay??Bhardwaj, Sanjeev Bhushan, Abhilasha??
Kaundal, Vinod Thakur, Bhupinder Thakur, Dy.??A.G.

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, Judge

1.Can the zones be carved out in such a manner whereby two members of the Cooperative Society residing under the same roof are made to vote in

two different wards?

2. The petitioner is the member of respondent No. 11-Society and was contesting the election from Ward No. 2 and the last date for filing the

nomination was fixed as 27.11.2014, while the election was to take place on 27.11.2014.

3. Respondents No. 10, as Assistant Registrar, Cooperative Societies, Solan, had approved the zones of election of respondent No. 11-Society vide

order dated 18.10.2014 and aggrieved thereby the petitioner alongwith certain other persons preferred revision petition under Section 94 of the H.P.

Cooperative Societies Act, 1968 (for short the "Act"), read with Rules 1971 (for short the "Rules").

4. This petition came to be allowed by the Joint Registrar, Cooperative Societies (Marketing), Shimla and respondent No. 10 was directed to ensure

that the zones are constituted in such a way that the members from contiguous area are included in the particular zone and the provision of Rule 4(2)

of Appendix-A with the Himachal Pradesh Cooperative Societies Rules, 1971 are complied with. Respondent No. 10 was further directed to take the

zones of 2009 as the base and thereafter add the newly enrolled members in a particular zone in such a way that contiguity of area is maintained as

per provisions of the law.

5. In compliance to the said order, respondent No. 10 revised the zones in respect of only zone No. 1 to zone No. 4, though total number of zones for

holding the election of respondent No. 11-Society were 11 and the Registration Officer appointed for conducting the election was directed to display

the revised voter list on the Notice Board of the Society as per order dated 10.11.2014 passed to this effect.

6. The respondent No. 10 while implementing the order dated 31.10.2014 took the voter list of 2009 as its base and accordingly respondents No. 1 to 9

were included in ward No. 4 i.e. Barsnu Ward, since all of them happened to be the resident of village Neuri and figured at serial No. 77 to 84 of the

revised list as approved by respondent No. 10 on 10.11.2014.

7. Respondent No. 11 was not satisfied with the revision of the voter list, therefore, it preferred a petition before this Court by invoking Article 227 of

the Constitution of India. However, the said petition was dismissed on 27.11.2014 by observing that Joint Registrar had only directed the authorities for

constitution of the zones in such a manner that the members from the contiguous areas are included in a particular zone and the provisions of the Act

and Rules are complied with and, thus, there was reason or occasion for the respondent No. 11 to be aggrieved.

8. However, before the aforesaid petition could be decided by this Court, the private respondents preferred a petition against the order passed by the

Assistant Registrar (Cooperative) Societies dated 10.11.2014 whereby the directions as contained in the order dated 31.10.2014 had been ordered to

be implemented.

9. The revision petition so filed was allowed by the Additional Registrar (Administration) Cooperative Societies vide order dated 03.12.2014 and

aggrieved thereby the petitioner preferred revision petition before respondent No. 13. However, the same came to be dismissed vide order dated

15.12.2014 and aggrieved thereby the petitioner has filed the instant petition claiming therein the following substantive reliefs:-

i) That the writ in the nature of certiorari may kindly be issued for quashing the orders passed by respondents No. 12 and 13 dated 03.12.2014 and

15.12.2014, respectively and justice be done.

ii) That the writ in the nature of mandamus may kindly be issued directing the respondent No. 10 to hold the election as per the order dated 10.11.2014

passed by him and justice be done.

10. The officials-respondents, save and except, respondent No. 13 have not chosen to contest the petition. As regards the reply filed on behalf of

respondent No. 13, it has only been averred that the orders impugned herein have been passed by the authorities in quasi judicial capacity and,

therefore, the name of the replying respondent be deleted from the array of the respondents.

11. However, respondents No. 1 to 9 have contested the petition by filing reply wherein various preliminary objections with regard to maintainability of

the petition as also the locus standi of the petition have been raised. It is averred that the present petition has rendered infructuous in view of the

election having taken place in the interregnum and the petitioner having lost the election is not entitled to maintain the petition and the orders impugned

herein have been sought to be justified on the ground that these orders have been passed strictly in accordance with law and, therefore, warrants no

interference.

12. On merits, It is further averred that as per the directions passed by the Joint Registrar, Cooperative (Societies), newly added members would be

kept in first two wards and further Assistant Registrar, Cooperative Societies was directed to follow Rule 4(2). It was further submitted that even

though the voter list of 2009 was taken as the base, however, with respect to only 11 members i.e. the respondents, there was clear cut directions that

since they belong to village Neuri, therefore, putting them in ward No. 4 would be clear cut violation of the orders and election rules as ward No. 2 -

Kashlog was hardly at a distance of 300 to 400 metres while ward No. 4 was around 3 kms. and accordingly all these respondents were included in ward No.2.

13. To similar effect is the reply filed on behalf of respondent No. 11 i.e. Cooperative Society. I have heard learned counsel for the parties and have gone through the records of the case.

14. It is not in dispute that the election to the Society has to be conducted in a manner prescribed under Rules. Sequally, Rule 37 of the Act postulates

that the members of the Managing Committee of Cooperative Society shall be elected in accordance with the rules given in Appendix-A.

15. Adverting to the Appendix, it would be noticed that Rule 4 thereof provides for election and it is stipulated that the Manager shall draw up a

detailed programme of election in accordance with the instructions issued by the Registrar from time to time. It is further provided that the Manager,

shall, when so required by the Registrar for the purpose of such election, divide the area of operation of the co-operative Society to such a number of

zones, as there are members to be elected, or into such lesser number as may be specified by the Registrar and communicate the zones so constituted

to the Registrar for his prior approval; however there is a proviso to this rule wherein provided that the zones shall be constituted in such a way that

members from continuous area are included in a particular zone and where such contiguity is not discernible, the zones shall be constituted as per

serial number of the members in the membership register.

16. It is more than settled that an action to be taken in a particular manner as provided by a statute, must be taken, done or performed in the manner

prescribed or not at all. More than eighty years back, the Honâ??ble Privy Council in Nazir Ahmad vs. King Emperor (AIR 1936, PC 253) held that

where a power is given to do a certain thing in a certain way, the things must be done in that way or not at all and this has been approved and further

expanded by the Honâ??ble Supreme court in catena of judgments (Refer: Rao Shiv Bahadur Singh and anr. vs. State of Vindh-P, AIR 1954, SC

322; Deep Chand vs. State of Rajasthan , AIR 1961 SC 1527; State of Uttar Pradesh vs. Singhara Singh and Ors., AIR 1964, SC 358; Chandra

Kishore Jha vs. Mahavir Prasad, 1999 (8) SCC 266; Dhananjaya Reddy vs. State of Karnataka, 2001 (4) SCC 9; State of Jharkhand & Ors. vs.

Ambay Cements and anr. (2005) 1 SCC 368; Gujarat Urja Vikas Nigam Limited vs. Essar Power Limited, 2008 (4) SCC 755; Zuari Cement Ltd. vs.

Regional Director, ESIC, Hyderabad & Ors., AIR 2015, SC 2764 ; and Uddar Gagan Properties Ltd. vs. Sant Singh and Ors. 2016 (5) JT 389.).

17. The aforesaid settled legal proposition is based on a legal maxim â??Expressio unius est exclusio alteriusâ??meaning thereby that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner and following some other course is not permissible.

18. Evidently, as per rule 4(a), the zones have to be constituted in a way that members from the contiguous areas are included in a particular zone and where contiguity is not discernible, the zone have to be constituted as per serial number in the membership register. Therefore, once the contiguity is one of the main basis for the constitution of the wards then it would not be permissible for any authority constituted under the Act to carve out the zones in such a manner that voters residing under the same roof are made to vote at a different wards.

19. The word â??contiguousâ?? has not been defined under the Act or Rules and, therefore, the word requires to be given its full dictionary meaning i.e. showing a common border or boundary, neighbouring viz. adjacent or adjoining.

20. Admittedly, all the other members of Neuri village were included in Barsnu ward/zone, whereas it is only the respondents No. 1 to 9 whose names have been included in Kashlog-II ward ostensibly for the reason that village Neuri was adjacent to Kashlog whereas Barsnu was at a quite distance.

21. It is also not in dispute that while carving out the zones in the aforesaid manner, only the respondents No. 1 to 9 though eligible to vote in Barsnu ward have been included in the Kashlog ward, whereas, the other voters of Neuri village which include close relatives of respondents No. 1 to 9 like father, mother, brother and sister etc., though residing under the same roof, have been kept in the Barsnu ward.

22. This action of working out the zones in the aforesaid manner, defies logic and reasoning because if contiguity was the main factor to be borne in mind, then in case village Neuri was adjacent or adjoining or neighbouring or bordering village Kashlog, as claimed, and village Barsnu was at a

distance, then the entire members of village Neuri, especially, the other family members of respondents No. 1 to 9 who continue to fall in Barsnu

ward, were required to be shifted to Kashlog-II ward.

23. In view of the aforesaid discussion, I find merit in this petition and the same is accordingly allowed. The order dated 03.12.2014 as passed by the

Additional Registrar (Administration) Co-operative Societies, H.P. and thereafter the order passed by the Special Secretary Corporation to the

government of Himachal Pradesh (Annexure P-10), dated 15.12.2014 are quashed and set aside.

24. However, this does not mean that the initial order passed by the Assistant Registrar Cooperative Societies, Solan on 10.11.2014 has been upheld.

Reason being that it has specifically come on record that village Neuri is adjacent or closer to Kashlog and if that be so, then obviously in terms of

Rule 4(2) it i.e. village Neuri cannot be kept in Barsnu ward. Likewise, there can be other similar discrepancies, therefore, in the given circumstances,

the matter is remanded to the Registrar, Cooperative Societies who shall personally re-determine the zones of the Cooperative Society in such a

manner so as to ensure that the same does not violate the provisions of law as have been noticed above.

25. Before parting, the Registrar, Cooperative Societies, is directed to decide the matter, as expeditiously as possible, and in no event later than

15.06.2018, that too after hearing all the stakeholders.

26. The petition is allowed in the aforesaid terms, leaving the parties to bear their own costs.