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**(1973) 02 SHI CK 0001**  
**In the High Court Of Himachal Pradesh**  
**Case No : C.M.P. (Main) No. 8 of 1973**

Pritam Singh and Others

APPELLANT

Vs

Charan Dass Dogra and Others

RESPONDENT

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**Date of Decision :** 09-02-1973

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2  
Constitution of India, 1950 — Article 227

**Citation :** AIR 1973 HP 90 : (1973) 2 ILR HP 432

**Hon'ble Judges :** D.B. Lal, J

**Bench :** Single Bench

**Advocate :** H.S. Thakur and Prem Goel, for the Appellant; Chhabil Dass and Party in person, for the Respondent

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## Judgement

D.B. Lal, J.—The petitioners are defendants in a suit filed by Shri Charan Dass Dogra, Advocate, Kulu (respondent No. 1) for the reliefs of declaration that the plaintiff be declared primary and active member of the Congress organisation and of permanent injunction restraining the petitioner-defendants from holding District Congress Committee (DCC) elections and thereafter Himachal Pradesh Congress Committee (HPCC) election. The plaintiff's contention in short is that he is President of DCC Kulu and as such an active member of the Congress Organisation. He has been illegally ousted from membership and hence is not given right to vote and contest the elections. Alongwith the plaint, an application for interim injunction was given under Order 39, Rules 1 and 2 of the Civil Procedure Code, restraining the petitioner-defendants from holding the aforesaid elections. The learned Sub-Judge First Class, Kulu. granted the interim relief of injunction and has withheld the elections of the Executive at the District level and also at the provincial level with the necessary consequence that a representative of Himachal Pradesh has been debarred from sitting in the elections of the All-India Congress Committee (AICC). The petitioner-defendants have gone in appeal before the learned District Judge, Mandi, but the appeal is not yet decided and a date has been fixed in the last week of March, 1973 for the disposal of

such appeal. According to the revised programme for organisational elections of 1972 (Annexure A), the elections at the PCC level were to be completed by 10th December, 1972. The election of the members of the AICC, according to the programme, had to take place on 10th December, 1972. Similarly the election of the Congress President had to take place on 10th December, 1972. As a result to the injunction granted by the Courts below, all these elections have been held up.

2. Since the matter could not brook delay and called for immediate attention of the High Court, this petition under Article 227 of the Constitution read with Section 24 of the Civil Procedure Code, has been instituted. As observed by their Lordships of the Supreme Court in *Thakur Jugal Kishore Sinha Vs. Sitamarhi Central Co-operative Bank Ltd. and Another*, the High Court while exercising its powers of superintendence can correct errors of various kinds of the subordinate Courts in appropriate cases. Therefore, the power of High Court under Article 227 is of a wider amplitude. However, the very plenitude of power imposes a restriction namely, that the power of superintendence is to be exercised most sparingly and only in appropriate cases in order to keep the subordinate Court within the scope of its authority and not for merely correcting its errors (see: *Kailashchandra and Others Vs. District Judge and Others*, *In Bhola Hardial and Another Vs. Kurra Ram Wasu Mal and Others*, . it was observed that the powers of a High Court under Article 227 are more akin to the re-visional powers though these powers are described in the Constitution as "power of superintendence". In that case, the learned Judge did not seek to interfere under Article 227 because the order of the tribunal was revisable by a superior tribunal constituted by the statute and instead of getting reliefs from that revising tribunal, the petitioner had come direct to civil court. In a recent decision of Delhi High Court reported in *Krishan Lal Vs. Ramo Devi and Another*, the learned Judge observed that the High Court would be justified in interfering under Article 227 where a subordinate Court has acted in disregard of the requirements of a statutory provision " and the determination is opposed to law.

3. Keeping regard to the above noted pronouncements as to the scope of authority of High Court under Article 227. it would be safe for me to conclude that interference under Article 227 would, in any case, be amenable where there is a question of exercise or non-ex-ercise of jurisdiction or of an error apparent on the face of the record.

4. The petitioners have also prayed for withdrawal of the proceedings u/s 24 of the Civil Procedure Code, but I do not think any such withdrawal is at all called for. in view of the order which I propose to make in" the case.

5. The learned counsel for the petitioners relied upon certain facts which have been narrated in the plaint and which even if uncontroverted according to the learned counsel, do not make out a cause of action in favour of the plaintiff. The learned counsel even submitted that the plaint should have been rejected straightway under Order 7 Rule 11 of the Civil Procedure Code. It is pointed out that according to Article VII of the Constitution of the Indian National Congress,

which the respondent No. 1 is as much bound to follow as any other member of the organisation, only an active member whose name "is found written in the register of active members" is eligible for election as a member of any Congress Committee. That being the position, the respondent No. 1 could not seek election unless his name as active member is found written in the register which, in fact, is not written at present. The petitioner-defendants being returning officers, have to consult the register of active members and unless the name of the respondent No. 1 is found written in such register, he cannot be permitted to contest in the election. Even if the decree is granted by the Court against the defendant-petitioners, the latter would not be able to incorporate the name of the respondent No. 1 in the register because that function is never entrusted to the petitioners who are only returning officers. The learned "counsel points out that the respondent No. 1 has not made the Congress organisation as such as one of the defendants; the relief of declaration even if granted against the defendants-petitioners would not entitle him to seek the election and that being so on the very facts alleged in the plaint and on the relief sought for against the defendants the respondent No. 1 would not be able to contest the elections. The learned counsel proceeds to argue that the relief of injunction restraining the elections could not be granted on the simple reason that the respondent No. 1, even if the suit is decreed, would not be entitled to seek the election. The learned counsel therefore, submits that necessary parties were not incorporated and the plaint itself did not disclose any cause of action and therefore a prima facie case was not made out for the relief of injunction.

6. The learned counsel for the petitioners further contended, that the Constitution of the Indian National Congress as well as the rules made thereunder provided for domestic tribunals, namely the scrutiny committee of the DCC as well as the HPCC, to hear and dispose of objections and claims regarding the exclusion of the names of primary or active members from the register. The respondent No. 1 has not appealed to these domestic tribunals or forum and has thus failed to comply with the Constitution and rules of the Indian National Congress which are as much binding upon him as upon any other member. That being the position, the decision of the DCC or the HPCC excluding the name of the respondent No. 1 does not confer upon him a civil right which could be agitated by filing a civil suit u/s 9 of the Civil P. C. The learned counsel in that connection relied upon two cases, one decided by the High Court of Bombay and the other decided on 22nd October 1972 by the High Court of Calcutta, (copies kept on the record). In the former Bombay case, the learned Judge held that a suit relating to elections of a political organisation really deals with internal affairs of that organisation and a civil Court has no jurisdiction to try such a suit, as it could not be stated to be of a civil nature. In the latter Calcutta case, a similar question arose about Kandi block congress committee and it was held by the learned Judge that the plaintiff had to prove a pecuniary or proprietary right or a personal status in his favour and only then he could claim a relief in a Civil Court. It is contended before me that in a case of like

nature, the plaintiff essentially bases his claim on contractual liability and unless a pecuniary or proprietary loss is sustained, he cannot be granted the relief. The learned counsel points out that the respondent No. 1 is unable to show any pecuniary or proprietary right which might have accrued in his favour. Similarly he has not proved any personal status because he has first to establish his right of inclusion of name in the register and only thereafter he could contest the election which would be a secondary stage. The decision regarding inclusion of his name in the register might take a considerable time, according to learned counsel, and the entire organisational elections cannot be held up for this period.

7. The elections for the HPCC had to take place at Simla and the respondent No. 1 claims a distinct cause of action for such elections. The learned counsel points out that for this distinct cause of action the jurisdiction is with the Simla Courts. The Sub-Judge First Class Kulu, could not, therefore, grant relief by restraining HPCC elections. That part of the relief, according to learned counsel, was beyond his territorial jurisdiction.

8. The respondent No. 1 has not cared to obtain the decision of the domestic tribunal set up under, the constitution of the Indian National Congress upon the question of the exclusion of his name from the register of active members and therefore, submits the learned counsel, it is rather premature for him to file the civil suit. He might have been able to question the decision of the domestic tribunals by pleading mala fide, non-observance of rules or violation of principles of natural justice. That stage has not yet arrived and what can be decided by the domestic tribunal cannot be agitated before the Court. In that connection the learned counsel pointed out Article XXVII (g) of the Constitution of the Indian National Congress which expressly excludes any such dispute from being decided in a court of law. This condition, according to learned counsel, is binding upon the respondent No. I and he cannot invoke the jurisdiction of the civil court and that the Court below has assumed jurisdiction which did not vest in it.

9. It is further submitted by the learned counsel that 47 members of the DCC out of the total of 48 have been duly elected and these members have to participate in the HP CC elections. One member has to come from Kulu DCC and his election is being held up by the injunction order. Therefore. 47 duly elected members are being restrained from functioning. The entire election of HPCC has been withheld by the injunction order with the consequential withholding of the elections of the AICC because members from HPCC cannot go and participate in those elections. According to the revised time-table for organisational elections of 1972. the entire process upto the PCC stage was to be over by 10-12-1972. The respondent No. I. according to his own version, was wrongfully removed from the office of the president DCC sometime in August, 1971. He still claims to be President DCC, although he has not sought for that relief in the plaint. He has waited for so long a period and has interfered at a late stage now. when nearly all the components for the elections have been duly elected. He has sought for a contrivance of detaining the entire organisational elections so that the function of

a political organisation is bogged up to the extreme inconvenience of everybody. The learned counsel claims that balance of convenience was thus decidedly in favour of refusing the injunction rather than granting the same. The respondent No. I could very well get the relief of getting the results of such elections themselves declared ultra vires or illegal by amending his relief in the plaint. According to learned counsel, the relief of injunction was totally uncalled for in the circumstances and there is an error apparent on the face of the record.

10. All these submissions made by the learned counsel ex facie make out a case in favour of the petitioners for some interim relief and for some directions to the subordinate Court as to the disposal of the appeal. It would not be proper for this Court to give a categorical finding on these contentions raised by the learned counsel on behalf of the petitioners. I have to keep myself at guard from expressing any opinion on merit as to these questions of law and facts so urged by the learned counsel and which are the subject-matter of decision by the Courts below.

11. It is contended, and I should say rightly, that the respondent No. I is interested to delay the elections. He was expelled from the organisation in August. 1971 and has filed his present suit in November. 1972. He did not submit any objections before the DCC and HPCC scrutiny committees on the dates provided in the revised time-table for organisational elections. 1972. Instead. he has sought the relief from the Civil Court to which he may or may not be entitled. Prima facie, the defendants cannot enter his name in the register of active members and as such the respondent No. 1 may have either to amend the plaint or may have to file another suit. All this is likely to take a much longer period. The District Judge has already postponed the decision regarding injunction order for nearly two months. The elections of the Congress organisation are being withheld at the, instance of a single member, namely respondent No. 1. Even if such elections are held, the respondent No. 1 would not be deprived of his right as he can get relief by making a proper amendment in the plaint.

12. After the arguments were over on behalf of the petitioners and the respondent No. 1 who was present in person was called upon to reply, he made an oral prayer for adjournment. He submitted that a senior counsel Shri Hardyal Hardy has been engaged by him and that he would be able to appeal in Court according to his convenience. Thereafter the respondent No. I prayed for an adjournment by one day because he had to prepare the case. The time craved for was granted and when his reply was commenced today, he submitted a certificate from the Assistant Registrar of the Supreme Court of India. In this certificate, it is mentioned that a petition for transfer of this miscellaneous petition No. 8 of 1973 pending in the High Court of Simla to some other High Court of India has been submitted by the respondent No. I. It is manifest, the learned Judges of hie Supreme Court have not yet transferred this petition and, therefore, there is no legal impediment for making the interim order which I

propose to pass at this stage. The learned counsel for the petitioners submitted, rather strenuously, that the respondent No. 1 is out to delay the elections still further and another overt step has been taken by him by moving a frivolous transfer application before the Hon'ble Supreme Court.

13. Keeping regard to all these facts and circumstances and especially when a prima facie case is made out in favour of the petitioners for interference under Article. 227 when the Subordinate Court could be stated to have exercised jurisdiction not vested in him for granting interim injunction when the plaint did not disclose a cause of action for the same and proper parties were not arrayed before the Court and at any rate regarding the question relating to balance of convenience there was error apparent on the face of the record, I could have quashed the injunction order, but feel justified, in only suspending the same for a shorter period up-till the entire issues are thrashed out in appeal before the learned District Judge, Mandi. In my opinion, a prima facie case is made out for not continuing the injunction for any further period especially when the respondent No. 1 is interested to delay the decision of the appeal. In the interest of both the parties. I think it also necessary to fix a date calling upon the parties to appear before the District Judge for the hearing and decision of the appeal.

14. The appeal against the injunction order is pending before the District Judge. Mandi. Since the judicial conduct of the presiding officer of that Court has been made a subject-matter of discussion during the course of arguments inasmuch as prompt decision in appeal was not given and this important matter which could brook no delay was left pending and has been listed on 24th March. 1973 for hearing. I consider it to be in fairness of both the parties that the appeal is heard and decided not by the District Judge, Mandi before whom it is pending at present but by the Additional District Judge, Mandi. I would fix 19th February. 1973 as the date for the hearing of the appeal and both the parties are directed to appear before the learned Additional District Judge on that date for the hearing of the appeal.

15. For the reasons stated above, I suspend the operation of the orders dated 25-11-1972 and 22-12-1972 of the Sub-Judge First Class. Kulu, granting injunction to the respondent No. 1. restraining the elections of the DCC and the HPCC up-till the date of the decision of the aforesaid appeal by the learned Additional District Judge. Mandi.

16. Parties shall bear their own costs in this petition.