

(1985) 01 MP CK 0021

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3142 of 1984

Rajendra Shukla

APPELLANT

Vs

A.B. Qureshi and Others

RESPONDENT

Date of Decision : 28-01-1985

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64(2)

Citation : AIR 1986 MP 29 : (1985) ILR (MP) 202 : (1985) JLJ 372 : (1985) JLJ 370 : (1985) 30 MPLJ 140 : (1985) MPLJ 140

Hon'ble Judges : G.L. Oza, C.J;B.M. Lal, J

Bench : Division Bench

Advocate : V.S. Dabir, for the Appellant; S.L. Saxena, Dy, General, for the Respondent

Final Decision : Allowed

Judgement

G.L. Oza, C.J.

This is a petition filed by the petitioner challenging an order passed by respondent No. 1 which is in the nature of an interlocutory order, staying the elections in a dispute raised by respondent No. 3 who happens to be the son of respondent No. 1.

According to the petitioner, the programme of elections of President and Vice-President of Zila Sahkari Sangh Maryadit, Bilaspur, was notified and the elections were to take place on 30-10-84. It is alleged that the programme was announced as stated in Annexure "A". It appears a few days before the date of elections, respondent No. 3 who was one of the voters in the elections, filed a dispute which was entertained by respondent No. 1 and an interlocutory order was passed on 29-10-84 restraining the holding of elections which were due to be held on 30-10-84.

Learned counsel for the petitioner contended that respondent No. 1 entertained the dispute u/s 64(2) of the M.P. Co-operative Societies Act, 1960 in direct

violation of the proviso to Section 64(2), as this proviso clearly lays down that no dispute shall be entertained after the commencement or announcement of elections till the results of elections are declared. It is also contended by the learned counsel that respondent No. 1 entertained the dispute raised by respondent No. 3, his own son and in so doing and passing an interlocutory order, he has acted in an improper manner.

In the return filed by the respondents, the facts are not in dispute. The only objection raised in the return is that the petitioner, instead of coming to this Court, should have preferred an appeal or revision, but on merits, no serious contest is raised in the return also. The fact that respondent No. 1 is the father of respondent No. 3 is also not in dispute.

Section 64(2) is as under :

"(2) For the purposes of Sub-section (1), a dispute shall include -

(i) a claim by a society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member, whether such debt or demand be admitted or not;

(ii) a claim by a surety against the principal debtor where the society has recovered from the surety any amount in respect of any debt or demand due to it from the principal debtor as a result of the default of the principal debtor whether such debt or demand be admitted or not;

(iii) a claim by a society for any loss caused to it by a member, past member or deceased member, any officer, past officer or deceased officer, any agent, past agent or deceased agent, or any servant, past servant, deceased servant, or its committee, past or present, whether such loss be admitted or not;

(iv) a question regarding rights, etc. including tenancy rights between a housing society and its tenants or members; and

(v) any dispute arising in connection with the election of any Officer of the society or representative of the society or of composite society,

Provided that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programme till the declaration of result."

This proviso clearly states that the Registrar shall not entertain any dispute under this clause during the period commencing from the announcement of the election programme till the declaration of the result.

It is not in dispute that the election programme was announced and it is also not disputed that this dispute was entertained at a stage which was before the elections were held as the elections were scheduled to be held on 30-10-1984, whereas the interlocutory order passed by respondent No. 1 admittedly is of 29-10-1984. It is, therefore, apparent that respondent No. 1 entertained the

dispute u/s 64(2) of the Act in direct contravention of the provisions contained in the proviso to Section 64(2) quoted above. In this view of the matter, therefore, this interlocutory order and all other proceedings which may have taken place before the respondent No. 1 in this dispute are apparently contrary to law and, therefore, deserve to be quashed. It is also regrettable that respondent No. 1 entertained a dispute when the person who raised the dispute was his own son.

The petition is, therefore, allowed. The order passed by the respondent No. 1 dated 29-10-84 and other proceedings in the dispute are hereby quashed. The petitioner shall be entitled to costs of this petition. Counsel's fee Rs. 250-00, if certified. It is also directed that the costs will be payable by respondent No. 1 personally and not from the State funds. In the circumstances of this case security amount be refunded to petitioner, if deposited.