

(1993) 12 P&H CK 0095
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 11512 of 1993

Ram Singh

APPELLANT

Vs

Additional Registrar, Co-operative Societies, Punjab and
others

RESPONDENT

Date of Decision : 17-12-1993

Acts Referred:

Citation : AIR 1994 P&H 180

Hon'ble Judges : N.K. Kapoor, J;A.L. Behari, J

Bench : Division Bench

Advocate : H.S. Mattewal, Sukhbir Singh and Gurinderpal Singh, for the Appellant; G.K. Chatrath, A.G., R.K. Joshi, Addl. A.G. and Ms. Alka Chatrath, for the Respondent

Judgement

N. K. Kapoor, J.—The petitioner has sought issuance of a writ of certiorari for quashing the order of the Additional Registrar, Co-operative Societies, dated 1-9-1993 by which the election of the petitioner was set aside.

2. The Election of the Board of Directors of the Nawanshehar Co-operative Bank Ltd., Nawanshehar was held on July 31, 1991 in which petitioner and Kartar Singh, respondent No. 4, were the candidates. The petitioner polled 8 votes whereas respondent No. 4 polled 7 votes and thus the petitioner was declared to be elected. Respondent No. 4 challenged the election of the petitioner on two grounds, firstly, that Karimpur Agricultural Co-operative Service Society and Jalwahn Co-operative Agricultural Service Society were, in fact, defaulters and so could not cast vote; and, secondly, Pritam Singh's election as President of Shchbazpur Cooperative Agricultural Service Society was set aside by the Deputy Registrar, Co-operative Societies, vide order dated July 29, 1993, and in this way he too was not eligible to cast vote. This matter came up before the Additional Registrar (Administration), Co-operative Societies, Punjab. Pursuance to the notice issued by the Additional Registrar, petitioner put in appearance and filed written reply controverting to various averments made by respondent No. 4

seeking setting aside the election of the petitioner. The petitioner specifically denied the averment made by the respondent No. 4 as regards societies of Karimpur and Jalwaha being defaulters as well as assertion of respondent No. 4 that Pritam Singh could not cast vote. Additional Registrar, however, found merit in the contention raised by respondent No. 4 and thus set aside the election of the petitioner which is now being challenged.

3. Pursuance to the notice of motion issued by the Court, the respondents have put in appearance. Sh. Dilbag Singh, Agriculture Minister, Punab, has filed written reply by way of affidavit controverting the various allegations levelled against him. Reply has also been filed by the Nawanshahar, which, in fact, supports the contention of the petitioner that Karimpur as well as Jalwaha societies were not defaulters on the date of election i.e. 31-7-1991. According to respondent No. 5, Sarv Sh, M. S. Chaura, Senior Accountant and Rajwant Singh, Junior Accountant, of the Bank produced the record of the Bank before the Additional Registrar (Admn.), Cooperative Societies, Punjab. It has further been explained how the abovementioned both the societies were not defaulters on the crucial date i.e. 31-7-1991. No reply has been filed by respondent No. 4 Kartar Singh.

4. Since the election of the petitioner has been set aside vide order Annexure P-4, it was thought appropriate to decide the matter at the motion hearing and thus the counsel were directed to address on the merits of the whole controversy.

5. Counsel for the petitioner has challenged the order of the Additional Registrar (Admn.) on the ground that the same is based on no evidence. Elaborating, the counsel urged that there was no material on record by which the Additional Registrar could even remotely come to a conclusion that the societies of Karimpur and Jaiwaha were defaulters on the date of election. This conclusion by the Additional Registrar is purely conjetural. Referring to the reply filed by respondent No. 5, the counsel highlighted that as per record of the Bank both the societies mentioned aforesaid were not defaulters. Reference made by the Additional Registrar with regard to non-payment of interest on the amount found due from 1-7-1991 to the date of deposit and thus holding that the societies were defaulter is, in fact, unsupported on facts as well as the relevant provisions contained in the Co-operative Societies Act/Rules. Reference to para No. 10 of the short affidavit filed by the Manager. The Nawanshahar Central Co-operative Bank Limited, Nawanshahar, wherein details have been mentioned as to the amount which was found due against the society, interest payable there upon and the manner in which the interest is to be calculated. Since the concerned authority did not care to examine the record of the Bank which was produced, the conclusion so arrived is unsustainable in law. Similarly, there was no valid ground for the Additional Registrar to hold that Pritam Singh was not entitled to cast his vote. Pritam Singh whose election was declared null and void on 29-7-1991, in fact, had approached this Court seeking stay of the pending proceedings before D.R.C.S. Jalandhar, perhaps apprehending from adverse action and this Court was pleased to stay pending proceedings on 29-7-1991.

Additional Registrar for reasons best known to him preferred to reply upon the order declaring the election of Pritam Singh to be null and void as compared to the stay order passed by this Court. According to the Counsel, even if it be taken that neither the two societies nor Pritam Singh could cast vote, yet the election of the petitioner could not be set aside till it could be held that on account of participation- by these persons the result of the election has materially affected. Election being secret it could not be held that all these three votes were cast in favour of the petitioner. In fact, no evidence has been led by the respondent in this regard.

6. Learned counsel for the contesting respondent made sincere attempt to justify the order of the Additional Registrar. According to the counsel, records of the bank were produced before, the Additional Registrar who scrutinised the same in the presence of the parties and thus came to the conclusion that the interest on the amount due has not been paid by the defaulting society from 1-7-1991 till the date of payment which they were in law required to pay and thus the learned Additional Registrar rightly came to the conclusion that both these societies were defaulters. Similarly the election of Pritam Singh as member of Shehbaz-pur society was declared null and void and thus the subsequent order passed by the High Court i.e. on 29-7-1991 wherein only the proceedings were stayed could not be construed as amounting to staying the order vide which the election of Pritam Singh was declared as null and void. As regards objection of the petitioner as to whether the result of the election has materially affected in view of the participation by Pritam Singh and representatives of the two defaulting societies, the counsel urged that it was specifically asserted by the respondents that all these persons cast their votes in favour of the petitioner and so the Additional Registrar came to the conclusion that in case the three votes are excluded the petitioner could not be declared to have been elected.

7. We have heard learned counsel for the parties and perused the relevant material referred to during the course of arguments. The basis for setting aside the election of the petitioner is the participation by two allegedly defaulting societies and Pritam Singh whose election as President of Shehbazpur society was stated to have been set aside. Additional Registrar held the societies to be defaulters on the solitary ground that these societies did not make payment of interest due from them for the period from 1-7-1991 to the date of deposit. How and in what manner the Additional Registrar has come to the conclusion is no discernible on reading of the impugned order ? Reference to Rule 25-A of the Punjab Co-operative Societies Rules, 1963, by the Additional Registrar is, in fact, not attracted to the point in controversy. The aforesaid Rule 25-A reads as under :--

"25. Disqualification for membership of committee : No person shall be eligible for election as a member of the committee if--

(a) he is in default to any Co-operative Society in respect of any sum due from him to the Co-op. Society or owes to any co-operative society an amount

exceeding his maximum credit limit;"

8. A bare perusal of the aforesaid rule clearly reveals that the same relates with regard to the eligibility for election as a member of the Committee. Whether, the defaulting society/societies have no right to participate i.e. to cast vote is not covered by the aforementioned provision. Even on facts this conclusion is highly conjectural. Short affidavit by Sh. Rattan Chand Pangotra, Manager, The Nawanshahar Central Cooperative Bank Limited, Nawanshahar, has stated that as per record of the bank the societies of village Karipur and Jalwaha were not defaulters on the date of election i.e. 31-7-1991. Both these societies were given no due certificate by the respective Branch Office of the Bank. In support of his affidavit, he has placed on record certificate Annexure R-1 and R-2 addressed to the Presiding Officer, Zone No. 1, clearly stating therein that Karimpur as well as Jalwaha societies were not defaulters of the Bank.

9. The matter can be examined from another angle also. Even if we assume that these two societies could not participate in the election. Yet it was incumbent upon the petitioner to prove beyond some element of doubt that the result of election has been materially affected. At best, one could assume that these two votes were wasted votes. But all the same, there is no material on record by which it can be inferred that these wasted votes were cast in favour of the petitioner. Similar is the position with regard to votecast by Pritam Singh. The apex Court had the occasion to examine the expression "the result of the election has been materially affected" in case reported as Vashit Narain Sharma Vs. Dev Chandra and Others, . The relevant conclusion of the apex Court is as under (at pp. 515, 516) :--

"...that result should not be judged by the mere increase or decrease in the total number of votes secured by the returned candidate but by proof of the fact that the wasted votes would have been distributed in such a manner between the contesting candidates as would have brought about the defeat of the returned candidate..."

"...the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate..."

10. Subsequently, in case reported as Lata Devi (Mali) Vs. Haru Rajwar, , the apex Court has held that the party who wishes to get an election declared void has to establish by satisfactory evidence that the result of the poll had, in fact, been materially affected by the violation of Rule 10(5) of the Rules. For doing this, it has to be demolished that the votes would have diverted in such a way that the returned candidate would have been unsuccessful.

11. The respondent in the instant case has failed to lead any evidence in/support of his assertion that both the defaulting societies as well as Pritam Singh cast their votes in favour of the petitioner. In fact, a bare perusal of his statement in the election petition reveals that he has admitted that it cannot be said as to whom these three votes were cast (Annex.-3). Regrettably, a reading of the impugned order leaves an impression that the Additional Registrar examined the controversy with predetermined conclusion and perhaps for this reason brushed aside or failed to look into the real import of the grant of stay order by this Court in a petition filed by Pritam Singh. Similarly, it appears that he did not examine the records of the Bank nor cared to peruse the certificate issued by the Bank clearly mentioning therein that no amount is due towards the alleged defaulting societies. Additional Registrar was performing aquasi-judicial function. A quasi-judicial decision is to be supported by reasons so that on perusal of such a decision one can reasonably make out how and in what manner he has arrived at a conclusion. The impugned order is deficient in this aspect also.

12. For the aforesaid reasons, we quash the order of the Additional Registrar, Annexure P-4. No order as to costs.

13. Order accordingly.