

(1990) 05 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.P. 113/89

Rustom Singh and Another	Vs	APPELLANT
The Election Officer, Vipnan Sahkari Samiti Ltd., Lahar and Others		RESPONDENT

Date of Decision : 02-05-1990

Acts Referred:

Madhya Pradesh Co-operative Societies Act, 1960 — Section 64(2), 80
Madhya Pradesh Co-operative Societies Rules, 1962 — Rule 41
Madhya Pradesh General Clauses Act, 1957 — Section 16

Citation : AIR 1991 MP 262

Hon'ble Judges : T.N. Singh, J; S.K. Dubey, J

Bench : Division Bench

Advocate : Govindsingh, Govt., R.D. Jain, for the Appellant; Arun Mishra, Counsel, for the Respondent

Final Decision : Allowed

Judgement

T.N. Singh, J.—The fact that a midnight drama was played on the intervening night of 20-1-1989 and 21-1-1989 is projected in the order of the Election Officer. The Order (Annexure N/5) was passed in deciding the question as to whether polling could be suspended at 1.46 p.m. when a large number of votes had already been cast and there remained two more hours for the polling process to be completed.

2. Admittedly, rival contentions were raised during polling and he was required to decide whether he had to give effect to the order which was produced before him at 1.05 p.m. In that order, which the Assistant Registrar had passed in his capacity as a Deputy Registrar, it was mentioned that at about 11.00 p.m., at midnight, some antisocial elements had approached him and on undue influence being exercised by them, he had issued an order under duress for election to be continued. Earlier, he had issued an order suspending the election and that order should be deemed effective.

3. What is not disputed is that, as per Annexure P/1, an election programme was drawn up on 4-1-1989 by the Election Officer (respondent No. 1) who had been appointed by the Deputy Registrar (respondent No. 2) for the purpose of conducting election of the Board of Directors of Vipan Sahkari Samiti, Ltd., Lahar. According to that programme, polling was to take place between the hours of 8.00 a.m. and 4.00 p.m. on 21-1-1989 and immediately thereafter, counting had to take place. What is also admitted is that, as per Annexure P/2, a revision petition u/s 80, M.P. Cooperative Societies Act, 1960, for short, the "Act", was filed before the State Government (Secretary to Government, Madhya Pradesh Cooperative Department, Bhopal) on 17-1-1989 by one Rambir Singh. In support of the grievances made in that revision, he stated certain bizarre facts to indicate the serious apprehension of voters of the society about use of muscle-power and of offences committed or likely to be committed during the election. He stated categorically that two representatives who were expected to vote in the election, Sarvashri Babu Harijan and Sarman Baghel, had been abducted to prevent them from exercising their franchise and in that regard, FIR was also lodged with the Police. Another categorical allegation made was that the group led by Shri Naresh Singh Chauhan appeared to be involved in the incident and that they were terrifying voters by show offeree and guns. He prayed accordingly for the election which was due to be held on 21-1-1989, to be stayed until enquiry was held and steps were taken for conduct of free and fair election.

4. What appears clear is that at Bhopal, cognizance was taken on the revision petition and the local officer, Deputy Registrar, was instructed on the telephone to take steps for the proposed election to be stayed until the complaints made in the revision petition were investigated. That is projected in letter Annexure N/1 which the Assistant Registrar, acting as Deputy Registrar, wrote on 20-1-1989 to the Election Officer and the endorsement that appears on the document shows further that at 4-30 p.m., the letter was personally handed over to the Election Officer and he had directed the order to be complied with and affixed on the Notice Board. Annexure N/2 is the order which the Election Officer passed separately on the basis of Order Annexure N/1 and as per endorsement No. 5, that order was affixed on the Notice Board. The midnight drama noted in Election Officer's order, Annexure N5, referred in the beginning is also projected in Annexure N/3. That letter, as per endorsement thereon, appears to have been received at 11-50 p.m. on 20-1-1989 by the Election Officer. By that letter, he was informed by the same Assistant Registrar/Deputy Registrar who also dated and timed his signature. He was informed that necessary enquires were made into the complaint and those were found not substantiated and that it was, therefore, not found reasonable to postpone the election.

5. In this matter, joint return has come from respondents Nos. 1 to 3 and that is filed by respondent No. 1 (Election Officer) who also filed his own affidavit in support of the return. At para 5 of the return, it is admitted that the notice dated 20-1-1989 (Annexure 2), suspending the election was affixed on the Notice Board on that date. It is clear, therefore, that on 20-1-1989 the constituency had

been duly notified that the proposed election would not be held on 21-1-1989; although at para 6, it is stated that subsequent notice Annexure N/4 was also affixed. That was to the effect that the earlier notice had been withdrawn and that election would continue as originally scheduled, in view of the subsequent order of the Assistant Registrar/ Deputy Registrar. It is not stated however at what time that notice was affixed on Notice Board on 21-1-1989. It is true that in the same para, it has been stated that all 23 voters of "Ka" category had exercised their votes in the election besides 1052 voters out of 1476 of "Kha" category. The admitted position, of course, is that as per order Annexure N/5, the polling was concluded at the scheduled time and counting was only postponed.

6. Because in the writ petition reliance was placed in Ground No. (v) on a Bench decision of this Court in Radhey Shyam's case (since reported in 1989 MPLJ 208), in the return itself a laboured effort was made to counter that reliance and in this Court also, Shri Arun Mishra, appearing for the respondent, has taken the same line of defence by forcefully submitting that the order Annexure N/1 must be deemed void. Counsel contended that Deputy Registrar had no jurisdiction to direct the election to be stayed as the proviso to Section 64(2)(v) of the Act prohibited such an exercise. That we extract, along with Sub-section (3) :

Section 64(2)(v) :

"(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.

(3) If any question arises whether a dispute referred to the Registrar is a dispute, the decision thereon of the Registrar shall be final and shall not be called in question in any court."

7. Counsel also relied on this Court's Bench decision in Brij Behari Gupta Vs. L.L. Khare and Another, but that is not at loggerheads with Radhey Shyam. On facts that is distinguishable as it is the pendency of the revision in the instant case which makes all the difference. We cannot overlook the scheme of the Act and the scope and purport of the provisions contained in Sections 64 and 80. Chapter VII deals with "Disputes and Arbitration" and Chapter X with "Appeals and Revisions". The power of revision contemplated u/s 80, in our view, is independent of that contemplated u/s 64 dealing with "Disputes". We extract relevant part of Section 80:

"80. Power of State Government and the Registrar to call for proceeding of subordinate officers and to pass orders thereon. Subject to the provision of Section 77-A, the State Government or the Registrar may call for and examine the record of any inquiry or the proceedings by any subordinate officer for the

purpose of satisfying itself or himself as to legality and propriety of any decision or order passed and as to the regularity of the proceedings of such officers. If in any case, it appears to the State Government or the Registrar that any decision or order or proceedings so called for should be modified, annulled or reversed the State Government or the Registrar, as the case may be, may pass such order thereon as to it or he may deem fit."

Although the Proviso is not extracted it may be indicated that thereunder application for revision against an appellable order is barred and limitation of 45 days is prescribed for such an application. What cannot be doubted is that supervisory power of the State Government contemplated u/s 80 are of the widest amplitude and is subordinated only to Section 77-A by which appeal, revision, review in respect of certain orders regarding a cooperative bank are conditionally barred making prior sanction of Reserve Bank for that purpose a mandatory requirement. The expression "may pass such order thereon is to it or he may deem fit" evidently encompasses jurisdiction to make an interim direction in the pending revision. It is indeed trite law that when any jurisdiction is created, effective exercise of ancillary powers in regard thereto that jurisdiction is implied. (See ITO v. Mohd. Kunchi AIR 1969 SC 430).

8. There is nothing in the language of Section 80 to suggest that any "proceeding" before any "subordinate officer" (including the Election Officer) is beyond the purview of Section 80. As per Section 3(3) they are all required to "work under general guidance, supervision and control of the Registrar" who is appointed by the State Government. Legislature has advisedly provided, therefore, in Sub-section (3) of Section 64 that Registrar's decision on a question whether it is a "dispute" within the meaning of Sub-sections (1) and (2) thereof shall be final. If a revision is filed and that is heard by the Registrar u/s 80 in respect of any election matter, it would be within his jurisdiction and competence to decide whether he should exercise his power u/s 80 because of the bar contemplated under the Proviso to Section 64(2)(v). When the revision is to be heard by the State Government u/s 80, the powers are plenary as the State Government's jurisdiction is not impaired or affected by the proviso to Section 64(2)(v). State Government had the jurisdiction to advise telegraphically the local officer (Assistant/ Deputy Registrar) for staying the election proceeding until further order to be passed in the pending revision.

9. Whatever that may be, the revision petition (Annexure P/2) cannot be said to have raised a "dispute" within the meaning of the term employed in Section 64(2)(v). How can a bare expression of any general apprehension that the impending election would not be free and fair raise a "dispute"? At legal parlance, the word "dispute", according to Black's Law Dictionary, means "A conflict or controversy; a conflict of claims or rights, an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other; the subject of litigation" etc. Mere allegations in regard to apprehensions of general nature cannot raise any lis or "dispute" even if there is any prayer for steps to be taken to rectify the

situation. Although revisionist Rambir Singh stated that he was a "representative" or "delegate" who had a right to vote in the election to be held on 21-1-1989, he made no allegation that his right had in any way been infringed by any action of the Election Officer or any other candidate or voter. He had prayed for deferment of the election apprehending that the same may not be free and fair as a result of some persons using muscle-power and committing offences before or during the election. The order, Annexure N/1, passed by the Deputy Registrar, to carry out the instructions received from Bhopal cannot be regarded as void.

10. This Court, in Radhey Shyam's case observed at para 6 of the report as follows :

"We are of the view that we cannot interfere in such matters unless and until it is shown to us that the election process is so vitiated that it cannot be said to be an "election" held in accordance with the law prescribed therefore and it will not be a case of our deciding a "dispute" in any particular case but of upholding and maintaining the democratic structure of the institution in accordance with the Directive Principles of the Constitution by ensuring purity of the election process. It is only when we are satisfied that the Election Officer has done any act which is not contemplated under the Act and the Rules and he had exercised powers for which the Act does not authorise him or he acts mala fide to defeat the provision of the Act and he thereby acts without jurisdiction by exercising powers not envisaged under the Act and the Rules, then, it may be possible for us to exercise our extraordinary jurisdiction under Article 226 of the Constitution, notwithstanding the remedy provided u/s 64 of the Act."

in Brij Bihari Gupta's case (supra), the scope of proviso to Section 64(2)(v) of the Act was only considered and nothing said therein counters the view expressed above. We reiterate that there may be cases and circumstances when it can be said that the election process is vitiated and allowing the process to be completed would endanger its purity which is necessary to be maintained at all costs. If any action is taken by competent authority in that regard, that would be rightful exercise of power which would be unassailable. Although no parallel can be drawn between a general election in which the citizens elect their representatives to govern the country and an election held in a small body like a cooperative society which has commercial trappings, it may still be appropriate to refer to the decision in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, in this connection due to co-operative's democratic base. Election Commission's power contemplated under Article 324 of the Constitution were judicially enlarged by breathing life into Sections 58 and 64A of the Representation of the People Act, 1951. It was observed that when provision is made in the Act to deal with situations arising in a particular polling station, it cannot be said that if a general situation arises whereby numerous polling stations may witness serious malpractices affecting the purity of the electoral process, that power can be denied to the Election Committee to take an

appropriate decision.

11. Rules have been framed under the Act which are called, M.P. Co-operative Societies Rules, 1962. Chapter V of the Rules deals with provisions regarding "Management of Societies" and of that Rule 41 deals, in particular, with the "Procedure for election of members of the committee". Sub-rule (2) requires that not less than, ten days before the date fixed for the annual general meeting of the society, the Returning Officer shall paste a notice on the notice board of the society stating, among others, the date of election of such officers as are specified in the byelaws of the Society. The procedure which is to be followed when a poll becomes necessary are enumerated in Sub-rules (14) et. set. Sub-rule (21) requires the Returning Officer to fix the hours during which the poll will be taken and make announcement to the effect. Sub-rule (26) defines the term, "Returning Officer" to mean an Officer appointed by the Registrar by general or special order for performing the duties of a Returning Officer. It is not disputed that the Election Officer (respondent No, 1) had been appointed as the Returning Officer for the election in question by the Deputy Registrar (respondent No. 3). He was bound to act within the scope of the authority conferred on him. That follows, according to us, from Section 16 of M.P. General Clauses Act, 1957.

12. The provision of the State Act is in pari materia with that of the Central Act of which Section 16 was construed by the Federal Court in *Ravarappan v. Madhavi Amma*, AIR 1950 FC 140 wherein the question was of removal from Receivership and that had to be decided with reference to Section 16. It was observed that Section 16 has codified the well understood rule of general law that the power to terminate flows naturally and as a necessary sequence from the power to create. In other words, "It is a necessary adjunct of the power of appointment and is exercised as an incident to, or consequence of, the power; the authority to call an officer into being necessarily implies the authority to terminate his functions when their exercise is no longer necessary, or to remove the incumbent for an abuse of those functions or for other causes shown". In another case, *Dr. Bool Chand Vs. The Chancellor, Kurukshetra University*, the word "dismiss" of Section 14 of Punjab General Clauses Act, in pari materia with Section 16 of the Central Act, came to be construed. It was held that the word was of general import and its use was not limited to determination of employment as a measure of punishment.

13. In the instant case, therefore, the Deputy Registrar's order, Annexure N/1, being passed on a direction made in the pending revision petition (Annexure P/2), that was binding on the "Election Officer" in terms of Rule 41(26) read with Section 16 of the M.P. General Clauses Act. As soon as he had given effect to that order by pasting on Notice Board Annexure N/2 on 20-1-1989 postponing the election, he became *functus officio*. His functional competence stood terminated in terms of Section 16 as his power to proceed further with the election became suspended thereunder. He ought to have stayed his hands then and there and should have departed from the scene by packing off. Even if the

Assistant Registrar acting in the same capacity of Deputy Registrar had passed any subsequent order, those had no force of law as those orders were passed by him without any valid ground or jurisdictional basis. If the Election Officer (respondent No. 1) was bound by his diktat, the latter, in turn, was similarly bound by the order passed in the pending revision according to which he had already acted by passing the order, Annexure N/I, staying the election as directed from Bhopal. Indeed, the election process could be resumed only when green signal was shown from Bhopal; not before that. State Government was in seisin of the matter in the pending revision and jurisdiction vested only in the State Government to give further direction in regard to progress of the election. Election Officer's order (Annexure N/5) and the election he held are petently void.

14. We also have no doubt that when the election had been once postponed, the election programme in regard to the polling had to be reviewed and modified to suit the changed circumstances. It was necessary for the Election Officer to fix fresh hours of poll and also a fresh date for the election following the mandate of Sub-rules (2)(e) and (21) of Rule 41. In the instant case, without doing that, the Election Officer proceeded to continue the poll and if a large number of votes were polled, there could be read in that situation support for the complaint made in the revision petition that there were certain groups interested in holding the election on the proposed date by using muscle-power and terrifying the voters. We do not think if that position could be altered by the result of the enquiry held subsequently on which Shri Arun Mishra has laid much stress. He had drawn our attention to Annexure R/4 by which the Deputy Registrar wrote on 20-1-1989 at 11-30 p.m. to Director of Co-operation-cum-Registrar, Bhopal that he had enquired into the complaint and found no substance in those and had recommended that it was not reasonable to stay the election. It may be noted that Annexure R/4 is the same letter as Annexure N/3.

15. It is very clear, indeed, that the Assistant Registrar acted illegally and without jurisdiction in making simultaneously the direction to the Election Officer to continue the election as per endorsement made to him in that regard on the same letter. We ought to have awaited instructions from Bhopal and this is what we read in Annexure R/ 3. That is the letter dated 25-1-1989 which the Deputy Registrar had written himself and this is not the letter which the Assistant Registrar signed for the Deputy Registrar. By this letter, he wrote to the Election Officer to inform him if after the election any complaint had been received from any voter. In this letter, it was mentioned that the election had been stayed on the orders received from Bhopal on telephone. But, election having already been held on 21-1-1989, result of that had to be declared and in that regard a decision had to be taken.

16. We sum up now to reiterate that the order Annexure N/1, passed by respondent No. 2, acting as Deputy Registrar to give effect to the direction received from Bhopal made in the pending revision was a valid order which was

binding on the Election Officer (respondent No. 1). Accordingly, his order, Annexure N/5, rejecting the objection to the polling to be continued was illegal invalid and without jurisdiction. On facts, we have also found that as per Annexure R/3, the Deputy Registrar (respondent No. 3) had expressed that revision had not been disposed of and, therefore, he had called for report on complaints made in the revision for decision to be rendered on the question of declaration of result of election held on 21-1-1989. In the facts and circumstances of the case, it must be held that the election having been held despite direction for staying the same, the pending revision was rendered infructuous. Accordingly, it will not be necessary to act on the report which he had called vide his order Annexure R/3. The entire exercise undertaken by the Election Officer on 21-1-1989 by holding the poll in a manner not warranted by law has to be, and is, declared void. We accordingly direct that a fresh programme for repoll shall be drawn up within two weeks and the entire election process completed within a month.

17. In the result, the petition succeeds and is allowed. There shall, however, be no order as to costs.