

(1967) 12 P&H CK 0022
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1753 of 1967

Santokh Singh and another	Vs	APPELLANT
State of Punjab and others		RESPONDENT

Date of Decision : 07-12-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1967) 12 P&H CK 0022

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : C.L. Lakhanpal and I.S. Vimal, for the Appellant; B.S. Dhillon and Rattan Singh, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—Santokh Singh and Kirpal Singh in this, writ petition under Article 226 of the Constitution of India against (1) State of Punjab; (2) Assistant Registrar Co-operative Societies, Batala; (3) Inspector, Cooperative Societies, Batala and (4) Rattan Lal, have prayed for him of an order dated the 23rd August, 1967, annexure "D" passed by the Manager elections postponing the elections of the Board of Directors of the Dera Baba Nanak Co-operative Marketing-cum-processing Society Ltd., hereinafter referred to as the Society. A few facts relevant for the disposal thereof may be noticed here.

2. The petitioners are Members of the Society which is registered under the Punjab Co-operative Societies Act. The Assistant Registrar, respondent No. 2 issued an order calling upon the Society to hold the elections to the Board of Directors and appointed the Inspector, Co-operative Societies, respondent No. 3, as the Manager for conducting the elections under appendix (Co-operative Societies Rules, 1963,) annexure "A". Respondent No. 3 issued a circular notifying the programme of the elections. The various zones through which the elections to the Board of Directors were to take place were also specified in the said circular (Annexure "B"). The notice was despatched by his office between

the 5th and 7th of August, 1967, under postal certificate. The petitioners like many others filed nomination papers before due date. The scrutiny of the nomination papers was held on 19th August, 1967, as a result of which only one nomination paper was left in each of four zones. Consequently only two zones were left in which polling was required to be conducted. The list of validly nominated candidates for the elections is annexure "C". The date of elections as fixed in annexure "B" was 25th August, 1967, the Manager Elections on 23rd August, 1967, issued the impugned order, copy annexure "D", postponing the elections to a date to be announced later on. This is said to have been done at the instance of Shri Natha Singh M.L.A. and Rattan Lal respondent No. 4 for some ulterior motive. The petitioners allege that the aforesaid orders are absolutely arbitrary, whimsical, illegal and unjust, for the reasons as given below :

(i) That the impugned orders are mala fide because they have been passed with a political motive, to keep the supporters of the opposition party out of the Board of Directors, and also to keep the member of the ruling party., Shri Rattan Lal as Director as long as possible;

(ii) That the action is not warranted by the provision of the Act or the rules or the bye-laws. According to the rules, bye-laws and the provision of the Act the petitioners and the two others were entitled to be declared elected as soon as they were the only candidates left in the field from the constituencies;

(iii) That there is absolutely no provision either in the Act or in the rules framed thereunder or in the bye-laws for postponement of the Elections once the programme of elections is announced. In any event there is absolutely no power either in the Registrar. Co-operative Societies or in the Assistant Registrar of the Co-operative to order the Manager Elections to postpone the polling; and

(iv) That the orders are against the principles of the natural justice in as much as neither the petitioners nor the other candidates affected by the elections have been given reasonable opportunity to show cause against the impugned orders.

3. Respondent Nos. 1 to 3 in their written statement pleaded that after the scrutiny of the nomination papers it transpired that the names of a few member Societies, namely. The Harawal Gur and Khandsari Co-operative Industrial Society Ltd; The Behlolpur Agricultural Co-operative Service Society Ltd; and one individual member Mohinder Singh were not included in the list of persons to whom notices were issued and therefore no notices of the elections were sent to them. Further, notice to Kalar Co-operative Agricultural Service Society was issued on wrong address. Even the list of members also, as alleged, was not available in the registered office of the Society for supplying to the members on demand. They admitted that Shri Natha Singh M.L.A. and respondent No. 4 applied for the postponement of the elections of the Board of Directors of the Society though they were not candidates to the elections but added that the postponement of the elections, however, had nothing to do with their applications

The orders were passed in view of the fact that there was no other way to remove the above defects that had crept in the process of election to the Board of Directors of the Society. It was also maintained that the Manager Elections could postpone elections to the Board of Directors under the provisions of the Punjab Co-operative Societies Act 1961 and the rules framed thereunder. Respondent No. 4 also pleaded in similar terms.

4. The petitioners in their replication explained that the Harowal Gur and Khandsari Co-operative Industrial Society Ltd; the Behlolpur Agricultural Co-operative Service Society Ltd; and the Kalar Co-operative Agricultural Service Society had complete information about the elections as they had passed resolution to that effect.

5. The Learned Counsel for the respondents conceded and very rightly that there was no provision either in the Punjab Co-operative Societies Act or in the rules made thereunder for postponement of the election of the Board of Directors of such Societies once fixed by the Manager Elections but added that u/s 19 of the Punjab General Clauses Act the Manager Elections who had the power to fix the date of elections could also postpone it. He also relied on a decision of this Court in *Gurdial Singh v. The Registrar, Co-operative Societies etc.*, C.W. 2251 of 1966 Civil Writ No. 2251 of 1966 decided on 5th April 1967; and on a decision of the Calcutta High Court in *Bhuban Mohan Basak v. Chairman, Dacca Municipality* AIR 1967 Cal. 704.

In the former case on an appeal by a candidate whose nomination papers had been rejected, the Deputy Registrar, Co-operative Societies ordered the amendment of the electoral roll and went on to direct that the corrections should be made at the earliest possible time so that the elections could be held according to the programme on 15th and 16th September, 1966. The elections could not be held on these dates because the opposite party had come to the High Court and filed a writ petition which was admitted and fresh elections stayed. It will thus be seen that in this case the Deputy Registrar only corrected the voter's list which he could do under the law. The elections were not postponed by the Manager Elections *suomotu* and without notice to the persons who were likely to be affected thereby. In *Bhuban Mohan Basak's* case it was held that u/s 22 the power to fix a date for election must be taken to include the power to postpone any date so fixed. In this case the date of election was postponed on the ground that the final publication of the register containing the names of voters had been made less than 15 days before the date fixed for the election which was in contravention of rule 5 of the Election Rules. It was observed that the Commissioners had absolutely no power to fix or postpone the date of election but the Commissioner of the Division with whom that power vested appear to have accepted the decision of the Commissioners and notified 3rd March as the date of the election. It will thus be seen that the two cases relied upon by the Learned Counsel for the respondents proceeded on their own facts and could not be a true guide for determining the point in dispute in the

present petition. If for arguments sake it may be conceded that according to section 19 of the Punjab General Clauses Act, the Manager, Elections, who fixed the date of election could also postpone it, then also in the present case he should not have postponed the election without notice to the persons who were likely to be affected thereby including the petitioners. The correctness of the facts which prevailed with the Manager Elections in the postponement of the date of election has been strenuously contested by the petitioners as is evident from their replication. If notices had been served on them they might have succeeded in proving to the Manager Elections that the list of voters etc. did not suffer from any infirmity which required rectification at that late stage. The procedure followed by the Manager, General Elections, in passing the impugned order thus offended one of the important principles of natural justice, i.e. that nobody should be condemned unheard and as such it cannot be sustained in law.

6. For the above reasons, the writ petition is allowed and the impugned order, annexure "D" is quashed with no order as to costs.