

(1995) 08 P&H CK 0087
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 434 of 1995

Shamsher Singh

APPELLANT

Vs

Tika Ram Education Society (Registered) and Others

RESPONDENT

Date of Decision : 30-08-1995

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2

Citation : (1995) 111 PLR 600

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : S.C. Mohunta and S.K. Bansal, for the Appellant; S.C. Kapoor and Ashish Kapoor, for Respondent Nos. 1, 3 and 4, R.K. Malik and R.S. Mittal and S.P. Kaur, for the Respondent

Judgement

N.K. Kapoor, J.—This judgment shall dispose of Civil Revision Petition Nos. 434 and 435 of 1995 as both these arise out of the same order dated 13.1.1995 passed by the Additional District Judge, Sonapat.

2. This revision petition is against the order of the Additional District Judge dated 13.1.1995 whereby the order of the trial Court dated 23.8.1994 has been set aside with a further direction that all the applications and requests from the public, who are desirous of becoming members of the Society, received upto 25.8.1994 be heard and decided by the Administrator by the end of the month. The objections, if any, raised be also decided by the Administrator and a final list be published to hold election.

3. Plaintiff filed a suit for permanent injunction restraining the defendants from making any change in the list of life and permanent members containing the names of 3,263 persons as published on 31.8.1991 and by way of an application for interim injunction prayed that no change in the list of life and permanent members be made till the elections and that only such persons whose names has been duly approved by the governing body be only entitled to vote for the election to be held on 25.8.1994. The trial Court after carefully considering the

averments made in the plaint, reply filed by the defendants by way of written statement as well as reply to the application for interim injunction came to the prima facie conclusion that the plaintiff has a good case and that the balance of convenience is also in his favour and so restrained the defendants from making any change in the list of voters and to stick to the list which has been approved by the governing body.

4. The appellate Court instead of examining the controversy in the light of pleadings of the parties, chose to examine the issues raised in a larger prospective i.e. as to how these democratically elected bodies are supposed to work and so the Additional District Judge on its own thought it appropriate to include all such persons as voters who had been enrolled by the registered society upto 25.8.1994 subject to, however, the approval of the Administrator who was stated to have been appointed by the Governor (on the expiry of the term of the governing body).

5. Learned counsel for the petitioner assailing the order passed by the Additional District Judge has argued that the Court had, in fact, travelled beyond the ambit of the point raised in appeal and so the order deserves to be set aside on this short ground alone. Elaborating, the counsel referred to the rules and regulations governing the registered society especially the rules relating to the procedure for granting membership to a person of this society and so argued that any person who is desirous of becoming a member has to fulfil certain conditions, namely, (i) he should not be below the age of 21 years; (ii) he should made a donation of Rs. 1,000/- in lump sum to the society; (iii) the governing body should grant sanction for his becoming member of the society i.e. unless all these essential conditions are not fulfilled no member can be enrolled as a life member. Precisely put, merely for the reason that a person is 21 years of age or that he has made a donation of Rs. 1,000/-in lump sum to the society does not entitle such a person automatically to be a member of the society. According to the counsel, as per admitted facts on record there are 3,263 members as on 31.8.1991. According to the counsel, the decision to hold the election was taken by the governing body keeping in view this list of voters i.e. 3,263. It so happened that while publishing the notice in "The Daily Tribune" of May 6, 1994 an indication was given to the existence of a revised voters list and the persons concerned were asked to verify their names from 9.00 a.m. to 12.00 noon on any date upto 31.5.1994. This insertion regarding revised fresh voters list put the plaintiff on guard and so the necessity arose to file the present suit. According to the counsel, the stand taken by the defendants is divergent to their stand in the written statement.

6. Defendants No. 1 and 2 as per their joint written statement, averred that the governing body had no right to exclude the donors from becoming members without assigning any reason. Justifying the insertion in "The Daily Tribune" with regard to the revised voters list, it was stated that there were numerous errors in their names, father" names, addresses and hence the necessity for checking by

the voters arose. The defendants disputed the assertion of the plaintiff that only the members as per list which contained the names of 3,263 persons was final. According to these defendants, some other persons have also deposited the requisite sum and so had been granted membership.

7. Similarly, defendants No. 3 and 4 in the written statement took up a specific plea that besides the members list of 3,263 members, another 120 new members have been added in this list upto 31.5.1994 and so all these members are entitled to exercise their right of franchise.

8. According to the counsel, even if it be taken that these 120 members have also been validly enrolled, at best the election should be held on the basis of such a list alone and so the direction given by the Additional District Judge being against the admitted position of the parties is legally unsustainable and so the impugned order deserves to be set aside.

9. Learned counsel for the respondents, on the other hand, argued that the registered society was not intended to be a static body. Various rules and regulations governing the functioning of the society envisages enrollment of life members and ordinary members provide they fulfil certain conditions and their membership is approved by the governing body. The society has also honorary members and ex-officio members. According to the counsel, there is no denying the fact that the governing body on 22.4.1994 decided that election to the governing body of the society should be held on 25.8.1994 as per list of the members and it is in pursuance to this resolution that notice was published in "The Daily Tribune" of 6.5.1994 regarding holding of election on 25.8.1994. However, the counsel disputes the plaintiffs assertion that such an election was to be held upon the list already approved by the governing body which contained the names of 3,263 members only. However, the counsel in all fairness conceded that besides the original members i.e. 3,263 only 120 members had been enrolled by 31.5.1994. Justifying the inclusion of few. Hundred more members, the counsel explained that the same is as per the desire of the majority of the members of the governing body. Vide various subsequent resolutions passed on 2.7.1994 and 26.7.1994 the members enrolled from 1.6.1994 onwards have also been approved and since the election was stopped on account of the order of the Court, as and when the election is ordered, these newly added persons too had become entitled to cast their votes and it is precisely for this reason that the Additional District Judge thought it appropriate that the objections, if any, which may be raised with regard to enrollment of these members be decided by the Administrator.

10. On perusal of the judgments of the Courts below, the following admitted facts can be stated:-

(i) that the governing body elected on 25.8.1991 completed its term on 25.8.1994;

(ii) the term of the governing body is three years;

(iii) the date of election was originally fixed for 25.8.1994; and

(iv) that the publication inviting objections to the list of members was made on 6.5.1994.

11. Whether the election originally fixed for 25.8.1994 was to be held as per list containing 3,263 members only or it was to be held on the basis of 3,383 members (120 newly added members by 31.5.1994) is the dispute which it to be resolved by the Court. As per written statement filed by defendants No. 3 and 4, it makes out a case for inclusion of 120 members only. This way the Additional District Judge erred in enlarging the scope of conflict and so such an order is unsustainable in law. During the course of arguments, it was put to the respective counsel whether the parties agree to holding of fresh election on the basis of revised voters list upto 31.5.1994 i.e. consisting of 3,383 members only. Learned counsel for the petitioner in all fairness agreed to this partial modification of the list approved by the governing body provided these 120 members fulfil all essential conditions as per rules. However, counsel for the respondents did not agree to this suggestion. When confronted with the written statement filed by respondents No. 3 and 4 were they laid claim to the inclusion of 120 members only, the counsel had no plausible explanation to offer.

12. Similar arguments were advanced by Shri R.K. Malik, Advocate, learned counsel for the respondent No. 2.

13. Since there is not agreed solution, it is left to the trial Court to decide the matter in the light of material the parties will adduce in evidence. Prima facie, the case of the petitioner has merit especially with regard to the resolution which the governing body passed for holding fresh election and their plea with regard to the original list approved by the governing body. Whether 120 members have been validly inducted will be examined by the trial Court in the light of rules governing such membership?

14. Thus, without going into the other points, namely, appointment of Administrator, enrollment of new members during the pendency of the suit and other related objections which will be appropriately examined by the trial Court during the trial of the suit; I accept both the revision petitions, set aside the impugned order of the Additional District Judge and affirm the order passed by the trial Court. In view of the urgent of the matter, the trial Court is directed to decide the suit expeditiously, preferably within six months.