
(1996) 05 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6878 of 1993

Shyam Singh

APPELLANT

Vs

The Registrar, Cooperative Societies and Others

RESPONDENT

Date of Decision : 20-05-1996

Acts Referred:

Punjab Co-operative Societies Rules, 1963 — Rule 27(1)

Citation : (1996) 114 PLR 262 : (1996) 3 RCR(Civil) 227

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Surya Kant and Ranjit Saini, for the Appellant; N.S. Bhinder, Distt. Attorney and Rakesh Nagpal, for the Respondent

Judgement

V.K. Bali, J.—It appears to be a case which ought to have been sorted out by the authorities, failure whereof, has caused the petitioner a loss which can not be compensated. The way and manner in which Shyam Singh was kept out of office for all this while has given an undeniable impression to the Court that the petitioner has been meted out with complete injustice. The facts in the wake whereof, the petitioner, in the present writ filed by him under Article 226 of the Constitution of India, seeks quashing of order dated May 26, 1993, Annexure P-4, need a brief mention before any directions are issued in this case.

2. Petitioner was admitted as Member of the Society known as Primary Cooperative Land Mortgage Rural and Development Bank, Ballabgarh, in terms of Section 16 of the Haryana Cooperative Societies Act, 1984. Shri Kanwarpal Singh-respondent No. 4, was also a member of the said Society. The Society has governing committee consisting of given members. Whereas, six members of the Committee are elected from amongst its voters, two are nominated by way of co-option and remaining three are Government officials to be nominated by the Registrar, Cooperative Societies, Haryana. The election of the elected members of the Committee is held in accordance with the Punjab Cooperative Societies. Rules and as per Rule 1(g), a person, who is either a share-holder or an authorised

representative of members of the society is voter and is qualified to participate in the election. Election of six members of the Committee was required to be held and consequently Assistant Registrar, Cooperative Societies, vide notification dated August 30, 1985 was delegated the powers of the Registrar, Cooperative Societies, Haryana. As per the election program, the last date for receipt of nomination was July 3, 1992, scrutiny of nominations was to be done on July 4, 1992. Withdrawals were permissible upto July 5, 1992 and the poll was to be held on July 15, 1992. The election process was duly gone into and the polling took place as scheduled on July 15, 1992. However, while the votes polled at the election had been counted, respondent No.4 took up 35 valid votes, which concededly had been cast in favour of the petitioner, and threw them out. The said votes, but for three, were lost and even by the police help, the same could not be located. That being the situation, the Presiding Officer, addressed communication dated July 15, 1992, Annexure P-1, to the Assistant Registrar, Cooperative Societies, exercising the powers of the Registrar. He clearly informed the Assistant Registrar that at the time of counting when votes polled in favour of both the candidates had been separated and the counting of bundles of Shri Sham Singh was going on, 35 votes were kept on the table after counting which were in favour of Shri Sham Singh i.e. the petitioner, other candidate Shri Kanwarpal Singh-respondent No. 4 herein, who was sitting in the counting, snatched away those 35 votes and threw the same from outlet of the room. The police deputed there immediately caught Kanwarpal Singh but only three votes could be recovered with the help of police from the crowd out of the total votes which were thrown. Out of the remaining votes, there were 124 votes in favour of Shyam Singh-petitioner whereas 138 votes were in favour of Kanwarpal Singh-respondent No. 4. The Presiding Officer clearly mentioned in his report that the votes which were thrown out were cast in favour of the petitioner, out of which only three could be found out. The Presiding Officer sent the matter to the Assistant Registrar for soliciting his opinion. It is surprising to note that the Assistant Registrar, after referring to the facts, as detailed in the report, passed an order, Annexure P-3, that on account of non-availability of the valid ballot papers, result of the election could not be declared.

3. In response to the notice issued by this Court at the motion stage, whereas reply was filed by the official respondents, no reply was filed on behalf of respondent No.4, who is now being represented by counsel. In the written statement that has been filed by the official respondents, the matter has been sought to be contested on the sole ground that in a situation like this, Rule 27(1) of the Election Rules would apply and the same in terms mandates re-election. Inasmuch as the only opposition to the prayer made by the petitioner is based upon Rule 27, the same needs to be reproduced. It runs as under:-

"27. Fresh roll in case of destruction of ballot box or due to natural calamity etc.
(i) If in an election any ballot box is unlawfully taken out of the custody of the Presiding Officer or is in any way tampered with or is accidentally destroyed or lost, the polling of the zone to which the ballot box relates, shall be declared void

by the Returning Officer.

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After reading Rule 27(1), this Court is of the clear view that the same is wholly inapplicable to the facts of the present case. It was not a case where ballot box was tampered with or was accidentally destroyed or lost. It was a simple case where an interested candidate, after coming to know of the result of election, had endeavoured, of course successfully, to tamper with the election result. That apart, in view of this Court, Rule 27 would not apply even to a case which might pertain to destruction of ballot box if the votes had been counted and again put in the ballot box. It shall apply only prior to the counting of votes. The language of Rule 27 does not talk explicitly with regard to the situation where the votes have already been counted and that being so, nothing can be supplied in the Rules which is not there. Based even on common sense, it is rather natural to conclude that when the election process is over and votes have been counted and thereafter someone plays mischief with a view to avoid his non-election, a duly elected candidates should not be deprived of the result in which he has been successful. Looked from any angle, this Court is of the considered view that the authorities concerned dealt with the matter very lightly and in a casual manner. In fact, no body seems to have even gone through Rule 27 and by a process of reasoning to mention that the same applies. In a way, thus, the authorities have helped respondent No. 4 by thwarting the election result of the petitioner for as many as three years by now.

4. For the reasons recorded above, this petition deserves to succeed with costs. As mentioned above, petitioner can not be compensated for having been illegally deprived of holding an office for which he was legally elected and, therefore, it is a fit case where respondents should be burdened with heavy costs. A direction is issued to the respondents to forthwith declare result of the petitioner and if he has some tenure still to go, he shall be permitted to assume his office immediately. The writ petition shall stand allowed with costs which are quantified at Rs. 10,000/-. The costs shall be shared equally by the concerned Assistant Registrar and respondent No.4. If the concerned Assistant Registrar might have retired, the costs be recovered from his pension or other funds. However, in the first instance the State shall pay the share of costs imposed upon the concerned Assistant Registrar and it shall then be open to the State to recover it from the concerned Assistant Registrar.