

(1996) 02 P&H CK 0151

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10387 of 1995

Sukhmender Singh and Another

APPELLANT

Vs

The Dialpura Mirza and Others

RESPONDENT

Date of Decision : 15-02-1996

Acts Referred:

Citation : (1996) 113 PLR 533

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Vikas Singh, for the Appellant; D.V. Sharma, Sushma Chaudhary for Respondent Nos. 3, 5, 6, 9 and 11 and H.S. Sandhu, Assistant A.G. for Resp. No. 13, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—This writ petition is filed invoking the certiorarial jurisdiction of this Court to quash the orders of respondents No. 12 and 13 upholding the election of the Managing Committee of Dialpur Mirza Co-operative Agriculture Service Society Limited (Hereinafter referred to as the "Society"). The petitioners are the members of the said society. The elections of the management committee of the said society were held on 28.7.1993 and the election programme was issued on 20.7.1993. The Ist petitioner filed his nomination paper for election as a member of the Managing Committee of the aforesaid Society. His nomination paper was rejected by the Returning Officer on the ground that the correct Khata No. (account No.) was not given in the nomination paper. The 2nd petitioner is also a member of the said society. After rejecting the nomination paper of the Ist Petitioner, the elections took place and respondents 3 to 11 were elected as Members of the managing Committee. Challenging the election of the Members of the Managing Committee, the petitioners filed an election petition before the Deputy Registrar, Co-operative Societies, Bhathinda, Under Sections 55 and 56 of the Punjab Co-operative Societies Act, 1961. In their election petition, they challenged the election on the

ground that the rejection of the nomination paper of the Ist petitioner was illegal. They also took certain other grounds namely that the nomination papers of Ramji Singh and other candidates were illegally accepted by the Returning Officer and notice of 15 days was also not given prior to holding the election. The Deputy Registrar, Co-operative Societies, by his order dated 18.1.1994 held that the rejection of the nomination paper of the Ist petitioner was valid and that the elections were held in accordance with the Rules and accordingly rejected the election petition. Aggrieved by the said order the petitioners filed an appeal before the Joint Registrar, Ferozepur Division, Ferozepur, who by his order dated 16.6.1994 held that the rejection of the nomination paper of Sukhminder Singh was made without giving an opportunity to him and accordingly set aside the election of the society held on 28.7.1993 and directed the fresh election to be held within a period of two months. Against the said order of the Joint Registrar three members who have been elected in the election held on 28.7.1993 filed a Revision petition before the Joint Secretary, Co-operation (Appeals) Punjab, who by his order dated 27.1.1995 allowed the revision petition and set aside the order of the Joint Registrar dated 16.6.1994 and upheld the order of the Deputy Registrar dated 18.1.1994 whereby he upheld the election of the Managing Committee of the said Society.

2. Challenging this order of the Joint Secretary, Co-operation (Appeals) Punjab, confirming the order of the Deputy Registrar, Co-operative Societies dated 18.1.1994, the petitioner filed this writ petition.

3. There is no dispute that the Ist petitioner is a Member of the Society. There is also no dispute that he has filed his nomination paper within the time. The nomination paper of the Ist petitioner-Sukhminder Singh has been rejected by the Returning Officer on 28.7.1993 on the ground that he has mentioned account No. 339, whereas the correct khata (account Number) is 399; That is the sole ground on which the nomination-paper of the Ist petitioner was rejected. The only point that arises for consideration in this writ petition is whether the nomination- paper of the Ist petitioner was validly rejected at the time of scrutiny by the Returning Officer. In this context, it is useful to refer to Rules relating to the election of the Co-operative Societies. Appendix C" of the Punjab Co-operative Societies Rules, 1963 deals with the elections of the Co-operative Societies. The Appendix C" has been incorporated in pursuance of Rule 23 of the Punjab Cooperative Societies Rules, 1963, according to which the members of the committee of the Co-operative Societies shall be elected. Under clause (1) of Appendix C, "voter" means a person entitled to vote under these rules. Under clause (g) of Rule 1 of Appendix-C, "Candidate" means a voter who files his nomination papers to seek election of a member of the committee of a co-operative society. Rule 6 of appendix-C provides for the scrutiny of nomination papers. It reads as follows :-

"(1) The Returning Officer shall scrutinise the nomination papers at the place, date and time specified in this behalf, hear objections if any, presented by the

objector in person to the eligibility of any candidates and dispose of these objections after such enquiry as he may consider necessary. The decision of rejecting or accepting the nomination papers and brief statement of reason thereof shall be endorsed on the nomination papers and signed by the Returning Officer."

It further provides that while scrutinising the nomination papers, the Returning Officer may permit any clerical error in the nomination paper in regard to the names or numbers to be corrected in order to bring them in conformity with the corresponding entries in the list of voters.

4. A reading of Rule 6 clearly shows that a nomination paper can be rejected only if it is shown that a candidate seeking election is not eligible to contest the election. As already seen, "voter" means a person entitled to vote under the rules and a "candidate" means a voter who files his nomination papers to seek election of a member of the committee of a co-operative society. Therefore, it is the eligibility of the voter which has to be seen while scrutinising the nomination papers. It is not the case of the Returning Officer or the contesting respondents that the 1st petitioner is not eligible to contest the election. A person, who commits default in payment of the dues of the co-operative society may make himself ineligible to contest the election. There may be some other grounds which may be available for the Returning Officer to come to the conclusion that the person seeking the election of a member of the committee is ineligible. It is nowhere stated in the rules that a mere mentioning of a wrong number in the voters list makes a voter, who is otherwise eligible to contest the election ineligible. The reason given by the Returning Officer for rejecting the nomination papers of Sukhwinder Singh, the 1st petitioner, has been recorded as follows :-

"The nomination papers of Sukhminder Singh son of Gurdial Singh are rejected because he has mentioned account No. 339 whereas the correct khata (account No.) is 399."

5. From a reading of this endorsement it is clear that the Returning Officer fully knew that Sukhminder Singh was an eligible voter and was not dis-qualified to contest the election. He was also fully aware of the fact that the correct Khata No. of the petitioner Sukhminder Singh was 399. Simply because in the nomination papers, the 1st petitioner has, wrongly mentioned Khata No. 339 instead of 399 it does not make him ineligible to contest the election. Therefore, the reason given by the Returning Officer for rejection of the nomination-papers of Sukhminder Singh cannot be sustained under law. It is not supported by any of the rules. The rules do not provide if a person has given a wrong khata number in his nomination papers, his nomination paper is liable to be rejected.

6. The learned counsel appearing for the contesting respondents relied upon a decision in Mathura Prasad Vs. Ajeem Khan, , and contended that it is not the duty of the Returning Officer to peruse the entire electoral roll to find out whether the candidate's name is found in voters list. In that case the nomination

paper of Ram Parkash was rejected by the Returning Officer on the ground that the candidate is not identified as per the electoral roll but that is not the case here. Sukhminder Singh the Ist petitioner seeking the election has been identified as voter. From the endorsement made by the Returning Officer on the nomination papers filed by the Ist petitioner it is clear that Sukhwinder Singh's name was found at Sr. No. 399 and it was to the knowledge of the Returning Officer. Therefore, the Ist petitioner is eligible to contest the election to the Managing Committee of the Co-operative Society. In this view of the matter the decision of the Supreme Court in Mathura Prasad's case (supra) is not applicable to the facts of the present case as the rejection of the nomination papers of Sukhminder Singh is illegal and without any foundation or basis. The election held on the basis of illegal rejection of nomination papers is liable to be set aside. The Joint Registrar, Ferozepur Division in my view, therefore, rightly set aside the election and directed a fresh election to be held. There is no question of giving any opportunity of correcting the clerical mistake. Even if any such opportunity is given and if it is not availed of by the candidate it does not enable the Returning Officer to reject the nomination paper. It is the voter who has to contest the election and not by the khata number.

7. In view of the foregoing discussion, I allow the writ petition and set aside the order of the Deputy Registrar, Co-operative Societies, Bhathinda dated 18.1.1994 and also the order of the Joint Secretary Co-operative (Appeals) dated 27.1.1995. Consequently, the election to the Managing Committee of the Co-operative Society held on 28.7.1993 is hereby quashed and the Returning Officer is directed to hold fresh election by following the procedure in accordance with law within a period of three months from the receipt of a copy of this order. But in the circumstances of the case, there will be no order as to costs.