
(2009) 12 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12014 of 2009

Surinder Pal Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 02-12-2009

Acts Referred:

Punjab Co-operative Societies Act, 1961 — Section 17, 18

Citation : (2010) 2 RCR(Civil) 793

Hon'ble Judges : K.Kannan, J

Judgement

K.Kannan, J.

1 The writ petition seeks for a direction that the election shall be conducted in consonance with law and/fair play, without obstructing the members of the Society from exercising their franchise to vote or to deprive the petitioner to contest the election of the President of the Society. The election to the managing committee of the Society was scheduled to take place on 13.08.2009 and the schedule of the election program had been drawn up through a resolution of the Committee which was alleged to have been on 15.06.2009. The grievance of the petitioner was that on applying for copy of the voters list on 28.07.2009, he found out of 624 members in the Society only 351 had been listed as eligible to vote. He gave representation to the Registrar Cooperative Societies that the Society had a rival faction which had with mala fides cancelled the membership of some of the persons to deprive them from casting their votes in the poll. Subsequently the present writ petition had been filed and at the stage when the Court ordered notice of motion, it also observed that the election of the management committee could be held subject to the outcome of the writ petition.

2 Subsequent to the filing of the writ petition, having regard to the fact that the election was permitted to be proceeded with, the election appears to have been held on 15.10.2009. The grievance of the petitioner is that the election was not held properly and there had been violation of the salutary rules, having not followed the due procedure for election set out in part II of AppendixC of the

Punjab Cooperative Societies Rules, 1963 (called the 1963 Rules). Part11 of the AppendixC details the rules for election in primary, cooperative societies if it is held in general meeting. Rule 1 states as follows

"1. Calling of General Meeting The meeting for the election shall be convened by the Manager or the Secretary of the Cooperative Society, as the case may be, under the directions of the committee in the manner prescribed in the byelaws of the society and at least 15 days notice specifying the date, time and place of the meeting shall be given to all members.

2. The notice of the meeting shall be given by affixing a copy of the notice at the Cooperative Societys Office and by the circulation of the notice book and getting the signatures of the members on it and by beat of drums in the area of operation of the Cooperative Society.

3. The notice of the meeting shall be given i) by affixing a copy of the notice at the office of the Cooperative Society; and

ii) (a) by circulation of the noticebook and getting the signatures of members on it; or

(b) by sending the notice to the members by Registered post; or

(c) by beat of drum in the area of operation of the Cooperative Society; provided the area of operation consists of one village only."

3 The contention of the petitioner is that no such notice had been given and the meeting which was alleged to have been held determining the election program had been held on 15,06.2009 without following the procedure.

4 It is an admitted case that in the electoral roll prepared the petitioners name is found at serial No. 400 but against him in the last column captured under the head "voteyes or no", the word "no" had been entered. Evidently the electoral roil prepared did not cancel his membership or withdraw the membership but had spell out that he was not entitled to vote. The qualification for a member to vote is spelt out in Sections 17 and 18 of the Punjab Cooperative Societies Act is as under

17. Member not to exercise rights till due payment made No member of a cooperative society shall exercise the rights of a member unless he has made such payments to the society in respect of membership or has acquired such interest in the society as may be specified to the byelaws.

18. Voles of members Every member of a cooperative society shall have one vote in the affairs of the society.

Provided that (a) in the case of an equality of votes, the chairman shall have a second or casting vote.

(b) a nominal or associate member shall not have the right of vote.

(c) where the Government is a member of the cooperative society each person nominated by the Government on the committee shall have one vote."

Corresponding to the above sections, chapter 3 in the Punjab Cooperative Societies Rules of 1963 spells out to qualification for the members of the Society, the rights and liabilities. Rule 16A sets out the circumstance when a member shall not be entitled to exercise his right till due payments are made. Rule 16A reads as follows

"16A Member not to exercise right till due payment made (1) No members of a cooperative society shall participate in the general meeting of the society or vote in the election to the committee unless he has made all such payments to the society as are due from him.

(2) At the commencement of each general meeting the Secretary of the society shall announce the names of the defaulting members which shall form part of the proceedings of the meeting."

5 Rule 18 refers to withdrawal of membership. The withdrawal shall take place only after giving notice to the affected party. It shall be borne in mind that the electoral roll did not cancel the membership as alleged in the writ petition but it had merely spelt out the persons who were entitled to vote and those who were not. A dichotomy is maintained in the Act under the relevant rules that there can be members with right to vote and they could also be members who lose the right to vote. Withdrawal or cessation of membership is completely a different matter which will have immediately no bearing to this case because the electoral roll itself contains the name of all the members including the petitioner. The contention of the petitioner is that he was not apprised of the amount due from him and he had not been informed as to why in the electoral roll prepared his name had been entered as a member but his right to vote had been denied by the expression "voteno". This objection that he had not been served with any notice to make any payment and his right to vote had been denied without affording an opportunity to make the payment is meaningless for every member ought to know what the fundamental qualification to vote is under the provisions of the Act and the relevant rules. A cliched expression that ignorance of law is of no excuse comes to fore and the petitioner has no right to demand that he ought to have been granted an opportunity to make the payment of his dues. If against his name a right had been denied in the electoral roll, the petitioner had certainly knowledge of the same even on 28.07.2009 when he had applied for copy and secured it. The election schedule itself had been drawn up to commence on a date subsequent to 28.07.2009 namely on 13.08.2009 and it was verily possible for the petitioner to have made the payment and made himself eligible to vote. If he did not avail to himself such an opportunity, it shall not be competent for him to complain that the election had been held without apprising him of the dues and that he was entitled to make the payment before making himself eligible.

6 The allegation that he had not been informed about the meeting dated.

15.06.2009 is untenable since the 1963 Rules contemplate publication through beat of drum as one of the modes of notice. It is contended that such a procedure was followed and the petitioner also knew about the meeting and he had himself filed a copy of the resolution along with the writ petition. A faint attempt is made before this Court now to contend that the amount was sought to be paid to the Society but the rival faction did not receive the payment and deliberately ensured that persons, who were not in their faction were denied their rights. If such an allegation by the petitioner is made and denied by the respondent, it shall not be possible for this Court to undertake an adjudication in a writ petition on a disputed question of fact. If the relief in the writ petition itself was that the election shall be conducted in accordance with law, prima facie it was so contended and as a matter of fact, the election process has also been completed. The petitioner can have no remedy before this Court and if he still has a grievance, he shall have other remedy to challenge the election in the process known to law as per the rules.

7 The writ petition is, under the circumstances, dismissed. No costs.