

CWP No.89 of 2015

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.89 of 2015
Date of decision: 28.01.2015

Devinder Singh and others

....Petitioners

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?
- 2) To be referred to the Reporters or not ?
- 3) Whether the judgment should be reported in the Digest ?

Present: - Mr. I.S. Saggu, Advocate, for the petitioners.
Dr. Deepa Singh, Addl. A.G., Punjab.
Mr. D.V. Sharma, Sr. Advocate, with
Ms. Shivani Sharma, Advocate, for respondents No.4 to 7.
Mr. M.S. Kang, Advocate, for respondent No.8.

PARAMJEET SINGH, J.

Instant writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 22.12.2014 (Annexure P-6) passed by the Special Secretary to Government of Punjab, Cooperation Department, Chandigarh, whereby election of the Managing Committee of the Society has been stayed.

Brief facts of the case are that Bharowal Kalan Cooperative Agriculture Service Society Ltd., Bharowal Kalan, Tehsil Jagraon, District Ludhiana (for short 'the Society') is a Cooperative Society

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registered under the provisions of the Punjab Cooperative Societies Act, 1961 (for short 'the Act'). The area of operation of the Society consists of two villages, namely, Bharowal Kalan and Lihan. There are total 509 members of the Society. Since the Society is a primary society, its membership consists exclusively of individual members. As per the provisions of Chapter-IV of the Act the management of the Society vests in its elected Managing Committee. Election of the Managing Committee of the Society was held on 29.12.2009; as such the tenure of five years of the Managing Committee expired on 28.12.2014 and election for the new Managing Committee was to be held. Under Section 26(1-C) of the Act Managing Committee was required to make arrangement for the constitution of new Managing Committee 90 days before the expiry of term of existing Managing Committee as per the provisions of the Act, Rules and Bye-laws made thereunder. As per said provisions, Managing Committee of the Society prepared an election programme for holding the election of the Society on 28.10.2014 and sent the same for approval to the Assistant Registrar, Cooperative Societies and the same was approved on 01.10.2014 (Annexure P-1). Against the election programme, respondents No.4 and 5 along with 10 other members of the Society filed a revision petition before the Special Secretary, Cooperation, Punjab. Special Secretary vide impugned order dated 28.10.2014 (Annexure P-2) stayed the holding of election of the Society. Hence, this writ petition.

In pursuance of the notice of motion, respondents No.4 to 7

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filed joint written statement and respondent No.8 also filed its written statement. Other respondents did not choose to file written statement.

Respondents No.4 to 7 contested the writ petition on the ground that authority has rightly allowed the revision petition by staying the election programme. Petitioners have not approached the Court of Special Secretary for vacation of stay orders, therefore, writ petition is not maintainable without first approaching the Special Secretary. Proper procedure had not been followed to prepare the election programme. Members were never made aware about the amendment in the bye-laws. The election was not being held in accordance with the provisions of the Act, Rules and Bye-laws. The voter list was not displayed as per law. It is further averred that there is no such law that election once stayed has to be started from the stage where it is stopped. Writ petition deserved to be dismissed.

Respondent No.8 averred in the written statement that management of the Society vests in its Committee, which is elected for a term of five years. Under Section 26(1-C) each Committee shall, 90 days before the expiry of its term, make arrangements for the constitution of a new Committee. Election programme (Annexure P-1) was prepared by the Committee by passing resolution dated 01.10.2014. Stay order has been obtained by mis-stating and concealing the facts on the day when election was being held. It is further averred that writ petition deserves to be allowed and impugned orders should be set aside.

I have heard learned counsel for the parties and perused the

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record.

Learned counsel for the petitioners vehemently contended that revision against the election programme is not maintainable. Revision under Section 69 of the Act can be entertained only for the purpose of examining the legality or propriety of any decision or order passed in any proceedings under the Act. In support of his contention learned counsel for the petitioners placed reliance on the Division Bench judgment of this Court in ***Rajinder Singh v. The Registrar, Cooperative Societies, Punjab and others, 2001(1) PLJ 81***. Learned counsel has also placed reliance on the Full Bench judgment of this Court in ***Jasbir Singh and others v. Commissioner (Appeals), Jalandhar Division and others, 2011(4) RCR (Civil) 1*** to contend that revision petition against the order or resolution passed by the Society is not maintainable. Learned counsel for the petitioners further contended that election programme has wrongly been stayed by the revisional authority without examining the well-settled law and the provisions of the Act, Rules and Bye-laws. Once the election process had started same could not be stayed. The election process has been stayed mid-way when the polling of votes had started and 36 votes had been polled. Learned counsel for the petitioners contended that election process should start from the stage it was stopped.

Per contra, learned counsel for respondents No.4 to 7 contended that Special Secretary is competent to pass the order as such the election process has rightly been stayed. Petitioners have not

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approached the Special Secretary for vacation of stay orders, therefore, writ petition is not maintainable. Learned counsel further contended that amendment in the bye-laws has never been brought to the notice of the respondents. Learned counsel for respondents No.4 to 7 contended that voter list was never displayed. The notices of the general body were required to be sent under registered post, which has not been done. Proper procedure was not followed in preparing the election programme. There is no provision in the Act that election process once set in motion cannot be stayed. If the election process is illegal, same can always be stayed. Writ petition is liable to be dismissed.

I have considered the contentions raised by learned counsel for the parties.

From the perusal of record it is clear that petitioners and respondents No.4 to 6 filed their nomination papers on 22.12.2014 and also attended the general body meeting along with respondent No.7 as he had put his LTI at serial No.157 in the proceedings book of the society. Therefore, the plea taken by respondents No.4 to 7 that notice of election to the members of the society was not issued, is not sustainable.

Section 69 of the Act reads as under: -

“Revision. - *The State Government and the Registrar may, suo motu or on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal under section 68 lies to the Government or the Registrar, as the case may be, for the purpose of satisfying itself or himself as to the legality or propriety of any decision*

or order passed and if in any case it appears to the Government or the Registrar that any such decision or order should be modified, annulled or revised, the Government or the Registrar, as the case may be, may, after giving persons affected thereby an opportunity of being heard, pass such order thereon as it or he may deem fit.”

Division Bench of this Court in **Rajinder Singh's** case (supra) has held as under: -

*“3. The argument of the learned Counsel for the petitioner is that the Registrar, Co-operative Societies has no jurisdiction to entertain the revision petition much less restrain the petitioner from performing his duties as a Director as he had been duly elected from Zone No. 3 in pursuance to the election programme settled by the Deputy Registrar exercising the powers of the Registrar. We find merit in this contention. It is by now well settled that an elected representative cannot be restrained from functioning till his election is set aside in an election dispute properly raised in accordance with the Rules governing such disputes. Reference in this regard can be made to a decision of this Court in **Satish Mohindroo and others v. The Assistant Registrar, Co-operative Societies, Gurdaspur and others**, 1989 PLJ 239. Moreover, the revision petition itself was not maintainable under Section 69 of the Act. A petition can be entertained by the State Government or the Registrar as the case may be for the purpose of examining legality or propriety of any decision or the order passed in any proceedings under the Act. There was no order passed by any authority which was challenged before the Registrar nor were any proceedings pending, the propriety of which could be examined by him. What was sought to be challenged in the revision petition was the election programme approved by the*

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Deputy Registrar exercising the powers of the Registrar and not the election of the petitioner as a Director. In this view of the matter, the order of the Registrar restraining the petitioner from performing his duties as an elected Director of the Bank is without jurisdiction.”

In view of above, revision petition itself was not maintainable as such impugned order passed against the election programme is against the provisions of the Act.

The impugned order is also not sustainable for the reason that the election process had already started. Even 30 votes were polled and the process has been stayed mid-way. In ***Umesh Shivappa Ambi and others v. Angadi Shekara Basappa and others, AIR 1999 SC 1566***, the Hon'ble Supreme Court has held as under: -

“3. The learned Single Judge dismissed the writ petition holding that the proper remedy for the first respondent was to file an election petition under Section 70 of the Karnataka Cooperative Societies Act, 1959. In appeal, however, the Division Bench has set aside the order of the learned Single Judge and has held that the nomination of the first respondent was wrongly rejected. It has, further, directed that a fresh calendar of events be published for holding an election to the posts of 11 Directors of the respondent Cooperative Society.

4. It is now well settled that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and this Court will not ordinarily interfere with the elections under Article 226 of the Constitution. (See in this connection AIR 1977 Supreme Court 1703, Para 4, K.K. Shrivastava v. B. K. Jain). The Court will not ordinarily interfere where there is an appropriate or

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equally efficacious remedy available, particularly in relation to election disputes.”

Hon'ble Supreme Court in ***Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others, 2001(8) SCC 509*** has held as under: -

“12. In view of our finding that preparation of the electoral roll is being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellant to challenge the election of returned candidate, if aggrieved, by means of an election petition before the election tribunal.

13. In that view of the matter, we are in agreement with the view taken by the High Court that the appellant having an alternative remedy, the writ petition deserved dismissal.”

In view of above, impugned order is set aside. Writ petition is allowed. Election shall commence in accordance with law from the stage at which it was stayed.

(Paramjeet Singh)
Judge

January 28, 2015
R.S.