

CWP No.9052 of 2015

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

**CWP No.9052 of 2015
Date of decision:11.09.2015**

Smt. Saroj

...Petitioner

Versus

Registrar, Cooperative Societies, Haryana and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Bhoop Singh, Advocate,
for the petitioner.

Mr. R.N.Lohan, Advocate,
for respondent No.4.

Mr. Rajesh Sheoran, Addl. A.G., Haryana.

Rakesh Kumar Jain, J. (Oral)

The election of the Managing Committee of the Board of Directors of the Jind Cooperative Sugar Mills Limited, Jind (hereinafter referred to as the "Sugar Mill") was held on 19.04.2015, for which the Deputy Registrar, Cooperative Societies, Rohtak, was appointed as the Returning Officer. The area was divided into 9 different zones and the election programme was prepared as under:-

- | | | | |
|-----|--|---|------------|
| “1. | Filing of Nomination Paper | : | 30.3.2015 |
| 2. | Scrutiny of Nomination Paper | : | 31.3.2015 |
| 3. | Withdrawal of nomination
paper and allocation of symbols: | | 01.04.2015 |
| 4. | The poll, if necessary | : | 19.04.2015 |
| | and thereafter the counting of votes.” | | |

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The petitioner and respondent No.4, along with other candidates, contested the election of the Managing Committee of the Sugar Mill from Zone No.3-Uchana (reserved for female). After the poll, counting was held on the same day on 19.04.2015, in which the petitioner secured 939 votes as against respondent No.4, who had secured 940 votes and was declared elected.

The petitioner has challenged the election of respondent No.4 in the present writ petition as a Member/Director of the Managing Committee of the Sugar Mill from Zone No.3, on the ground that respondent No.4 was debarred from contesting the election of the Managing Committee of any of the cooperative societies for five years w.e.f. 25.07.2014 by the Deputy Registrar, Cooperative Societies, Rohtak, vide his order dated 19.09.2014, passed under Section 28(3) of the Haryana Cooperative Societies Act, 1984 (hereinafter referred to as the "Act"), against which respondent No.4 filed Appeal/Coop. No.16 of 2015 before the Registrar, Cooperative Societies, Haryana, in which order dated 19.09.2014 was stayed on 25.03.2014. Consequently, on the basis of the stay granted by the Registrar, Cooperative Societies, Haryana, respondent No.4 was allowed to contest the said election by the Returning Officer.

The petitioner has challenged the election of respondent No.4 on the ground that the Registrar, Cooperative Societies, Haryana had no jurisdiction to pass the order of stay as the appeal filed by respondent No.4 was not maintainable before him against the order dated 19.09.2014 passed by the Deputy Registrar, Cooperative Societies, Rohtak.

However, learned State counsel has produced an order of the

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Principal Secretary, Government of Haryana, Cooperation Department, passed in Revision Petition No.65 of 2015 filed by respondent No.4 on 03.09.2015, whereby the order dated 19.09.2014 debarring respondent No.4 from contesting election of the Managing Committee of any of the cooperative societies was set aside and the matter was remanded back to the Deputy Registrar, Cooperative Societies, Rohtak to pass afresh order after providing adequate opportunity of hearing to the petitioner and the other parties. The said order is taken on record. It was sought to be argued by the learned State counsel that this petition has become infructuous/redundant after the order is passed by the Principal Secretary on 03.09.2015 as the order dated 25.03.2015 does not survive because it was an interim order passed in Appeal/Coop. No.16 of 2015 preferred by respondent No.4 and the said appeal was ultimately withdrawn by her on 21.05.2015. He also argued that the petitioner, if so advised, may challenge the order dated 03.09.2015 but insofar as the present petition is concerned, the same is not maintainable until and unless the said order is challenged.

Learned counsel for respondent No.4 has also argued that the present petition is not maintainable as the petitioner has an alternative remedy under Section 102 of the Act for seeking a reference to the Registrar.

Faced with these arguments, learned counsel for the petitioner has submitted that this Court, while exercising its extra-ordinary writ jurisdiction under Article 226/227 of the Constitution of India, in order to do complete justice between the parties, may also take into consideration the order dated 03.09.2015 for the purpose of challenge as the said order is only

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an off-shoot of the order dated 25.03.2015, passed earlier in appeal, by the Registrar, Cooperative Societies, Haryana which was without jurisdiction and as a result thereof, respondent No.4 herself had withdrawn the appeal after obtaining the order of stay for the purpose of contesting the election. It is also submitted that the question of availability of alternative remedy would also not arise in this case as this Court can exercise its extraordinary jurisdiction in the peculiar facts and circumstances of the case and has relied upon two Division Bench judgments of this Court rendered in the cases of **Nachhattar Singh vs. State of Punjab**, 1993 PLR 147 and **Kuldeep Singh vs. State of Punjab**, 1994(3) PLR 468.

It is submitted by learned counsel for the petitioner that the qualification or disqualification of a candidate, contesting the election, has to be seen at the time of scrutiny of nomination papers and in this regard, he has also relied upon a Constitution Bench judgment of the Supreme Court in the case of **K. Prabhakaran vs. P. Jayarajan**, AIR 2005 (SC) 688.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The whole case revolves around the interpretation of Section 28 (3) of the Act, which read thus:

“28. Election and tenure of committees.---

(1) xxx xxx xxx xxx

(2) xxx xxx xxx xxx

(3) The committee of each society shall, before the expiry of the term of its committee arrange for the election of a committee in accordance with its bye-laws failing which the Registrar shall arrange to hold such elections within a period of ninety days after the expiry of the term of the committee at the cost of the society

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and the elected members of the outgoing committee shall be debarred from contesting the elections of the committee of any co-operative society for a period of five years from the date of the expiry of the term of the outgoing committee:

Provided that no such order shall be passed by the Registrar unless an opportunity of being heard has been given.

xxx xxx xxx xxx”

It is not disputed that respondent No.4 was a Director of the Managing Committee of the Jind Central Cooperative Bank Ltd. (hereinafter referred to as the “Central Bank”). The term of the said Board expired on 25.07.2014.

It is provided under Article 243ZK of the Constitution of India that the election of a board shall be conducted before the expiry of the term of the board so as to ensure that the newly elected members of the board assume office immediately on the expiry of the term of the office of members of the outgoing board. Thus, it was incumbent upon the Managing Committee of the Central Bank to conduct the election of its Board before the expiry of the period of five years. Section 28(3) of the Act provides that in case the elections are not held before the expiry of the committee, the elected members of the outgoing committee shall be debarred from contesting the elections of the committee of any co-operative society for a period of five years from the date of the expiry of the term of the outgoing committee.

Since the outgoing Managing Committee of the Central Bank, of which respondent No.4 was also a member, failed to conduct the election of its Board before expiry of the period of five years, therefore, respondent No.4 along with all other members of the Board of the Central Bank were

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debarred for five years from contesting election of any of the societies, vide order dated 19.09.2014 passed by the Deputy Registrar, Cooperative Societies, Rohtak.

In order to facilitate respondent No.4 to contest the election to the post of Director of the Managing Committee of the Sugar Mill, the said order dated 19.09.2014 was stayed in appeal by the Registrar, Cooperative Societies, Haryana, though no appeal was maintainable before him against the order of the Deputy Registrar, Cooperative Societies, Rohtak, under Section 114 of the Act. The Registrar, Cooperative Societies, Haryana, however, granted stay to respondent No.4 on 25.03.2015 on the basis of which she had filed her nomination papers on 30.03.2015 and her nomination paper was duly scrutinized by the Returning Officer on 31.03.2015 and held her eligible to contest the election on the basis of the order of stay. However, later on the appeal filed by respondent No.4 was withdrawn by her and she had challenged the order dated 19.09.2014 before the Government of Haryana. It is altogether different matter that the Principal Secretary to Government, Cooperation Department, Haryana, while exercising his revisional jurisdiction under Section 115 of the Act, has set aside the order dated 19.09.2014 and remanded the case back only on the ground that adequate opportunity was not given to the concerned parties.

Now the question would be as to whether respondent No.4 could have contested the election having been debarred under Section 28(3) of the Act, under an order passed by the Registrar, Cooperative Societies, Haryana, who had stayed the operation of the order dated 19.09.2014 vide his order dated 25.03.2015.

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In this regard, the decision of the Supreme Court in **K. Prabhakaran's case (supra)** would be handy because in that case, it was held by the Supreme Court that *“the question of qualification or disqualification of a returned candidate within the meaning of Section 100 (1)(a) of the Representation of the People Act, 1951 has to be determined by reference to the date of his election which date, as defined in Section 67-A of the Act, shall be the date on which the candidate is declared by the returning officer to be elected. Whether a nomination was improperly accepted shall have to be determined for the purpose of Section 100(1)(d)(i) by reference to the date fixed for the scrutiny of nomination, the expression, as occurring in Section 36(2)(a) of the Act. Such dates are the focal point for the purpose of determining whether the candidate is not qualified or is disqualified for being chosen to fill the seat in a House. It is by reference to such focal point dates that the question of disqualification under sub-sections (1), (2) and (3) of Section 8 shall have to be determined. The factum of pendency of an appeal against conviction is irrelevant and inconsequential. So also a subsequent decision in appeal or revision setting aside the conviction or sentence or reduction in sentence would not have the effect of wiping out the disqualification which did exist on the focal point dates referred to hereinabove. The decision dates are the date of election and the date of scrutiny of nomination and not the date of judgment in an election petition or in appeal thereagainst”*.

In the present case also, the qualification of respondent No.4 was to be considered at the time of filing of the nomination paper, its scrutiny and election i.e. 30.03.2015, 31.03.2015 and 19.04.2015

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respectively. There is no dispute that respondent No.4 was allowed to contest the election on the basis of the order dated 25.03.2015 passed by the Registrar, Cooperative Societies, Haryana, who had stayed the operation of the order dated 19.09.2014 by which the Deputy Registrar, Cooperative Societies, Rohtak had debarred respondent No.4 from contesting the election for a period of five year of any of the cooperative societies. However, the question arises as to whether the Registrar, Cooperative Societies, Haryana, was competent to pass the order dated 25.03.2015, staying operation of the order dated 19.09.2014.

Admittedly, there is no contest on this issue by the respondents that the Registrar, Cooperative Societies, Haryana, had no jurisdiction to pass that order on 25.03.2015, enabling respondent No.4 to file her nomination paper and to contest the election in which she had ultimately become successful on 19.04.2015.

Accordingly, the order dated 25.03.2015 passed by the Registrar, Cooperative Societies, Haryana, vide which operation of the order dated 19.09.2014 was stayed, is held to be illegal, null and void.

Now, taking a cue from the judgment of the Supreme Court in **K. Prabhakaran's case (supra)**, it is held that respondent No.4 was not qualified to contest the election on the date when the nomination paper was filed by her, nomination paper was scrutinized and the election was held and even any order by the Principal Secretary, Government of Haryana, Cooperation Department, passed in the revision filed by respondent No.4, would not have any effect thereon, especially when the appeal, in which the stay order was obtained by respondent No.4, was lateron withdrawn by her.

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Thus, it is held that the election of respondent No.4 as a Director of the Managing Committee of the Sugar Mill was a nullity as the order on the basis of which she had contested the election was illegal and void ab-initio.

As regards the question of availability of alternative remedy, raised by counsel for the respondents, the decision in **Kuldeep Singh's case (supra)** is squarely on the issue as it was dealing with Sections 55/56 of the Punjab Cooperative Societies Act, 1961, which is *para materia* to Section 102 of the Act and it was held that mere availability of alternative remedy is not the solitary test as such a remedy must, in addition, be adequate and efficacious and there is constitutional bar to maintainability of such a writ petition with respect to the elections of the cooperative societies.

It is submitted by learned counsel for the petitioner that he was not heard even by the Principal Secretary to Government, Cooperation Department, Haryana, though the petitioner had become a party in the said proceedings and no record was perused at the time of hearing.

Thus, the order dated 03.09.2015 passed by the Principal Secretary is also without application of mind as the order has been passed without consulting the record.

Moreover, in the order dated 03.09.2015 passed by the Principal Secretary to Government, Cooperation Department, Haryana, it is observed that the case was heard on 19.08.2015 and was reserved. In the later part of the order, it is observed that the representative of the Deputy Registrar, Cooperative Societies, Rohtak was present on 11.08.2015 during the course of hearing in other three similar cases filed against the same

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impugned order and he failed to prove that any show cause notice was served to the ex-Directors, whereas the aforementioned provisions provides that no such order shall be passed by the Registrar unless an opportunity of hearing has been given.

Keeping in view the totality of the facts and circumstances, the present writ petition is hereby allowed, the election of respondent No.4 as Director of the Managing Committee of the Sugar Mill is hereby set aside and the order dated 03.09.2015 passed by the Principal Secretary to Government, Cooperation Department, Haryana is also set aside.

It is needless to mention that since the election is to be conducted again, therefore, the Registrar, Cooperative Societies, Haryana, is directed to start the process immediately.

September 11, 2015
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(Rakesh Kumar Jain)
Judge