

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

Civil Writ Petition No. 18116 of 2016  
Date of Decision: 2.9.2016

Virender Singh Duhan

.....Petitioner

Vs.

Registrar Cooperative Societies, Haryana and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK**

Present : Mr. Pardeep Solath, Advocate  
for the petitioner.

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**RAMESHWAR SINGH MALIK J. (ORAL)**

Feeling aggrieved against the impugned resolution dated 29.7.2016 (Annexure P-2), whereby respondent No.4 was declared elected as Chairman of respondent No.3-Society, petitioner has approached this Court by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of Certiorari, for quashing the impugned resolution.

Heard learned counsel for the petitioner.

When a direct and specific query was put to the learned counsel for the petitioner, as to how the present writ petition would be maintainable, in view of the fact that petitioner has got an equally efficacious alternative remedy of statutory appeal under the relevant statute itself, against the

impugned resolution Annexure P-2, he submits that this writ petition is very much maintainable. He also tried to justify the maintainability of the present writ petition, while placing reliance on a judgment of the Hon'ble Supreme Court in **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai, 1998 (8) SCC 1.**

As noticed hereinabove, petitioner has got an equally efficacious alternative remedy of statutory appeal, against the impugned resolution passed by the respondent-Society. It is also not in dispute that petitioner has not availed his said remedy of appeal, before filing present writ petition. As the matter pertains to election wherein petitioner as well as respondent No.4 contested for the post of Chairman of the respondent-Society, no fundamental right of the petitioner has been infringed.

Further, despite knowing fully well that the Registrar Cooperative Societies-respondent No.1 sent his two nominees to conduct the election, petitioner participated in the election process. He did not raise any objection to the participation of the nominees of Registrar, Cooperative Societies. However, after having been defeated in the election, where respondent No.4 was declared elected as Chairman, petitioner has tried to take a complete somersault and started finding fault with respondent No.1, while sending his two nominees to participate in the said election.

Had the petitioner been elected in the same very election, then the complete process thereof would have been fully justified and he would have not raised any objection qua the two nominees sent by respondent No.1. In such a peculiar fact situation, this Court is of the considered opinion that petitioner was not acting bonafide right from day one. Neither he approached respondent No.1 against sending two nominees for

participating in the election nor he raised any kind of objection in this regard, at the time of conducting the election proceedings, for the reasons best known to him. Thus, he is estopped, by his own abovesaid conduct, from challenging the result of same election process wherein he himself participated, took a chance, tried his luck but stand defeated. He cannot be permitted to turn around and now say that same very election process was defective and that too by way of writ petition, without availing his remedy of appeal.

The abovesaid view taken by this Court also finds support from the following judgments of the Hon'ble Supreme Court:-

- i) Madan Lal and others Vs. State of Jammu & Kashmir, 1995  
(3) SCC 486
- ii) G.N. Nayak v. Goa University, (SC) 2002(2) SCC 712
- iii) State of Bihar v. Amrendra Kumar Mishra, (SC) 2006(12)  
SCC 56
- iv) K.A. Nagamani v. Indian Airlines , (SC) 2009(5) SCC 515
- v) Manish Kumar Shahi v. State of Bihar (SC) 2010 (2) SCC  
576
- vi) Chandigarh Administration v. Jasmine Kaur (SC) 2014(10)  
SCC 521

Relevant observations made by the Hon'ble Supreme Court in para 9 and 10 of its judgment in **Madan Lal's case** (supra), which can be gainfully followed in the present case, read as under:-

*“Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned*

*respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of **Om Prakash Shukla v. Akhilesh Kumar Shukla and Ors., (AIR 1986 SC 1043)**, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner.*

*Therefore, the result of the interview test on merits cannot be successfully challenged by a candidate who takes*

*a chance to get selected at the said interview and who ultimately finds himself to be unsuccessful. It is also to be kept in view that in this petition we cannot sit as a Court of appeal and try to reassess the relevant merits of the concerned candidates who had been assessed at the oral interview nor can the petitioners successfully urge before us that they were given less marks though their performance was better. It is for the Interview Committee which amongst others consisted of a sitting High Court Judge to judge the relative merits of the candidates who were orally interviewed in the light of the guidelines laid down by the relevant rules governing such interviews. Therefore, the assessment on merits as made by such an expert committee cannot be brought in challenge only on the ground that the assessment was not proper or justified as that would be the function of an appellate body and we are certainly not acting as a court of appeal over the assessment made by such an expert committee”*

Coming to the judgment of the Hon'ble Supreme Court in **Whirlpool Corporation's case** (supra), relied upon by learned counsel for the petitioner, there cannot be any doubt about the law laid down therein. However, after close perusal of the cited judgment, the same has not been found of any help to the petitioner, being distinguishable on facts. The fact situation in the cited judgment was clearly different. It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade

law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

During the course of hearing, learned counsel for the petitioner failed to point out any reason, much less justified reasons, as to why the petitioner was not ready to avail his remedy of statutory appeal, under Haryana Cooperative Societies Act, 1984, before filing the present writ petition. No explanation, whatsoever, is forthcoming in this regard and that too for undisclosed reasons.

No doubt, availability of alternative remedy is not always an absolute bar, in entertaining a writ petition at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. However, it is equally true that wherever an equally efficacious alternative remedy is available under the relevant statute itself, as in the case in hand, this Court would always insist that every person must avail the alternative remedy, at the first instance, unless there are justified grounds, pointing out an exception to avoid alternative remedy and to approach this Court straightway. Having said that, this Court feels no hesitation to conclude that since the petitioner is having equally efficacious alternative remedy of statutory appeal under the Haryana Cooperative Societies Act, 1984, present writ petition is not maintainable, at this stage.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant writ petition is wholly misconceived, bereft of

merit and without any substance, thus, it must fail. No case for interference has been made out.

At this stage, learned counsel for the petitioner made an unreasonable and unfair request, seeking permission of this Court for withdrawing the writ petition. Request duly considered but not found worth acceptance, hence declined, owing to his demeanour in this Court. No further comments, exercising judicial restraint.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs.

**(RAMESHWAR SINGH MALIK)**  
**JUDGE**

2.9.2016  
*Ak Sharma*

*Whether speaking/reasoned Yes/No*  
*Whether reportable: Yes/No*