

CWP No.21168 of 2015

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

CWP No.21168 of 2015
Date of decision: 05.04.2016

Ashok Kumar

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

- 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. Rajesh Gupta, Advocate, for the petitioner.
Mr. R.K. Singla, AAG, Haryana.
Mr. Bhoop Singh, Advocate, respondent No.5.

PARAMJEET SINGH DHALIWAL, 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 election result of Zone 08-Hisar (Panchayat and Co-op Societies) of the Managing Committee of the Board of Directors of the Jind Co-operative Sugar Mills Limited, Jind (for short 'Sugar Mill') held on 19.04.2015 (Annexure P-1) and for quashing the order dated 03.09.2015 (Annexure P-5) passed by respondent No.1 in favour of respondent No.5.

Brief facts of the case are that the election of the Managing Committee of the Board of Directors of the Sugar Mill was held on 19.04.2015, for which the Deputy Registrar, Cooperative Societies,

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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 :
and thereafter the counting of votes.” | 19.04.2015 |

The petitioner and respondent No.5, along with two other candidates, contested the election of the Managing Committee of the Sugar Mill from Zone No.8-Hisar (Panchayat & Co-op Societies). After the poll, counting was held on the same day i.e. 19.04.2015, in which the petitioner secured 16 votes as against respondent No.5, who secured 28 votes and respondent No.5 was declared elected. Other two candidates were polled zero vote. The petitioner has challenged the election of respondent No.5 in the present writ petition on the ground that election of respondent No.5 from Zone No.8-Hisar as a member of the Managing Committee of the Sugar Mill is absolutely illegal, wrong and against the provisions of the Haryana Co-operative Societies Act, 1984 (for short 'the Act') and Haryana Co-operative Societies Rules, 1989 as he was disqualified and 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 (Annexure P-2), passed under Section 28(3)

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of the Act against which respondent No.5 along with his other aggrieved counterparts filed revision petition before the Principal Secretary, Government of Haryana, Co-operative Department, Chandigarh. The revision was listed for hearing on 02.12.2014 and following order was passed: -

“The petitioner counsel reiterated the grounds of revision petition and prayed for staying the operation of impugned order dated 19.9.2014 passed by the Deputy Registrar, Cooperative Societies, Rohtak. Heard. In view of the submissions made by the petitioner counsel the stay is granted till next date of hearing. Issue notice to respondents for appearance and production of record on 13.01.2015 at 4 P.M.”

On 13.01.2015 following order was passed: -

“None appeared for R-3. A fresh notice be issued to R-3 for appearance and production of record on 21.4.2015 at 3 P.M.”

On 21.04.2015 Presiding Officer was on leave and case was adjourned to 11.08.2015. Meaning thereby the stay operated till 13.01.2015 and no extension of stay was granted. Last date for filing of nomination papers was 31.03.2015 and on that date respondent No.5 was not eligible to contest the election. Further vide order dated 03.09.2015 (Annexure P-4) Principal Secretary to Government of Haryana set aside the order dated 19.09.2014 in revision and remitted the matter back to Deputy Registrar, Co-operative Societies for fresh order after providing adequate opportunity of hearing to the parties. One Smt. Saroj filed CWP No.9052 of 2015 challenging the same election dated 19.04.2015,

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however, for Zone No.3- Uchana (reserved female), in which Smt. Krishna was elected on the identical grounds. The said election was set aside by this Court vide order dated 11.09.2015 and directions were issued to respondent No.2 to issue fresh process for election.

Upon notice of motion, respondents No.3 and 5 filed their separate written statements, specifically stating that order of the Deputy Registrar has been set aside and issue of debarring the respondent(s) does not survive. They also prayed that initially stay was granted by the revisional authority and if it is not extended, same will cease to operate automatically.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioner vehemently contended that the case is squarely covered by the judgment of this Court in the case of ***CWP No.9052 of 2015*** titled '***Smt. Saroj v. Registrar, Cooperative Societies, Haryana and others***' decided on 11.09.2015 as well as ***LPA No.1512 of 2015*** titled '***Krishna v. Saroj and others***' decided on 22.12.2015. Learned counsel for the petitioner contended that regarding the same Sugar Mill and same very election, orders have been passed by this Court in the abovestated cases. There is no distinction of facts between these cases.

On the other hand, learned counsel for respondent No.5 vehemently contended that present petition is liable to be dismissed as alternative remedy is available, therefore, extraordinary jurisdiction

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cannot be exercised.

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

Qualification or disqualification of a candidate, contesting the election, has to be seen at the time of scrutiny of nomination papers. In this regard reference can be made to the judgment of Hon'ble Supreme Court in *K. Prabhakaran v. P. Jayarajan*, AIR 2005 (SC) 688. In the cases of *Nachhattar Singh v. State of Punjab*, 1993 PLR 147 and *Kuldeep Singh v. State of Punjab*, 1994(3) PLR 468, it has been observed by Division Benches of this Court that there is no absolute rule with regard to availing of alternative remedy. If the Court finds in the peculiar facts and circumstances of the case that interest of justice so demands, appropriate order can be passed under the writ jurisdiction also.

In the present case, it would be appropriate to refer to Section 28(3) of the Act, which reads as under: -

“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 and the elected members of the outgoing committee shall be debarred from contesting the elections of*

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the committee of any cooperative 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.5 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.

Article 243ZK of the Constitution of India specifically provides 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 term 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.5 was also a member, failed to conduct the election of its Board before expiry of the period of five years, therefore,

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respondent No.5 along with all other members of the Board of the Central Bank were 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. Though the Principal Secretary granted stay on 02.12.2014. The stay was granted for a limited period upto 13.01.2015 and thereafter it was not extended on 13.01.2015 and date for filing of nomination papers was 30.03.2015.

Learned Single Judge of this Court in CWP No.9052 of 2015 decided on 11.09.2015 regarding same very issue has held that respondent No.4 in that writ petition was not eligible to contest the election.

Learned Single Judge in CWP No.9052 of 2015 has held as under: -

“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.

*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 subsections (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 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

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25.03.2015, staying operation of the order dated 19.09.2014.”

Present matter is squarely covered by the judgments of this Court in ***CWP No.9052 of 2015*** and ***LPA No.1512 of 2015***.

Accordingly, present writ petition is allowed in same terms, election of respondent No.5 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 set aside.

(Paramjeet Singh Dhaliwal)
Judge

April 05, 2016
R.S.