

Sr.No.789

HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.28775-2013(O&M)

Date of decision:07.11.2016

Puran Singh and others

...Petitioners

Versus

Registrar Cooperative Societies, Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. R.D.Bawa, Advocate for the petitioners.
Mr. Yatinder Sharma, Addl. A. G. Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned resolutions dated 06.11.2013 (Annexure P-2) and dated 13.12.2013 (Annexure P-8) and also the Voter Lists contained in Annexures P3 to P7, petitioners have approached this Court by way of present writ petition under Article 226 and 227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned resolutions, as well as the voter lists.

Notice of motion was issued to respondents no.1 to 3 and in compliance thereof, reply was filed on behalf of respondents no.1 and 2. Thereafter, writ petition was admitted for regular hearing vide order dated 12.12.2014. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

Before proceeding further, it deserves to be noticed that election of respondent no.3 society was held on 31.12.2013. This case came up for hearing for the first time on 31.12.2013 itself. However, on the request made by learned counsel for the petitioners, hearing of the case was deferred to

conduct of election of respondent no.3 society on 31.12.2013 was not noticed. Similarly, at the time of admission of the writ petition, above said fact regarding conduct of election of respondent no.3 society on 31.12.2013 was not noticed.

Respondents no.1 and 2, while filing their written statement, raised two preliminary objections and the same read as under:-

“1. That the elections of the respondent no.3, the Tanda Ram Sahai Multipurpose Cooperative Agriculture Service Society Ltd., Tanda Ram Sahai, Tehsil Mukerian District Hoshiarpur; have been held on 31.12.2013. The petitioners have the alternative remedy of filing the election dispute, before the Deputy Registrar Co-operative Societies, Hoshiarpur; as provided in Section 55/56 of the Punjab Co-operative Societies Act, 1961. So, the present writ petition is misuse of the process of law and as such the petitioners should be relegated to the remedies as provided under the Provisions of the Punjab Co-operative Societies Act, 1961.

2. That the procedure provided under the provisions of the Punjab Co-operative Societies Act, 1961, hereinafter known as “Act” and as provided in the Punjab Co-operative Societies Rules, 1963, hereinafter known as “Rules” and as provided in Appendix “C” attached with the Rules 1963; was followed

before framing the zones as well as holding the elections of the Managing Committee of the respondent no.3 society and there is no illegality of any sort.”

Learned counsel for the petitioners submits that if the election of respondent no.3 - society took place during the pendency of the writ petition, it will not be rendered infructuous inspite of the fact that result of said election was not challenged by the petitioners, either by amending the writ petition or otherwise bringing the said fact to the notice of this Court. In this regard, he places reliance on three judgments of this Court in **Rajinder Singh Brar and others v. State of Punjab and others 2012(5) RCR (Civil) 547, The Sotal Patti Harbans Singh Lambardar Cooperative Agricultural Service Society Ltd. Sotal v. The Assistant Registrar, Cooperative Societies and others 1974 PLJ 46 and Sh.Munshi Ram and others v. The State of Punjab and others 1974 PLJ 22.** He concluded by submitting that the election was held in arbitrary manner and without following the mandatory procedure. He prays for allowing the present writ petition.

Per contra, learned counsel for the State, while placing heavy reliance on the preliminary objections raised in the written statement, submits that once petitioners have not challenged the result of election nor they have impleaded the elected persons as parties, present writ petition does not survive and the election cannot be set aside. He further submits that the writ petition has already been rendered infructuous, which is liable to be disposed of, as such.

Having heard the learned counsel for the parties at considerable

consideration to the rival contentions raised, this Court is of the considered opinion that in the given fact situation of the instant case, present writ petition has been rendered infructuous, because during the pendency of instant writ petition, election of respondent no.3 society has already been conducted and result thereof, has not been challenged by the petitioners.

So far as the above-said three judgments relied upon by the learned counsel for the petitioners are concerned, there is no doubt about the observations made therein. However, a close perusal of the cited judgments would make it crystal clear that none of them is of any help to the petitioners, being distinguishable on facts. 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 **Padmasundara Rao (Dead) Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

It goes without saying that if the petitioners were feeling aggrieved against the result of election of respondent no.3 society, they were under legal obligation to challenge the result of election, before the appropriate forum, in accordance with law. Learned counsel for the petitioners is not even aware whether the petitioners have challenged the election result or not. Who are those elected persons, is also not known to either of the parties. None of the elected persons has been impleaded as party-respondent in the instant writ petition.

Having said that, this Court feels no hesitation to conclude that election result of the respondent no.3 society cannot be set aside, at the hands of this Court, while exercising its writ jurisdiction under Article 226

and 227 of the Constitution of India, particularly when result of said election is not even challenged before this Court nor the elected persons have been impleaded as party - respondents. Once the election is held and result thereof is declared, a vested right accrues in favour of the elected persons. Said vested right cannot be taken away by any Court of law unless the result of said election is challenged, in accordance with law and by impleading the elected persons as party – respondents.

The contention raised by learned counsel for the petitioners that such an election would be void *ab-initio* has been duly considered but found wholly misplaced and the same cannot be accepted.

No other argument was raised.

Considering the peculiar facts and circumstances of the case, coupled with the reasons aforementioned, this Court is of the considered view that since the election of respondent no.3 society had already been conducted, which is not under challenge, nothing is left to be decided at the hands of this Court. The writ petition has already been rendered infructuous and the same is disposed of as such.

However, petitioners shall be at liberty to challenge the result of election of respondent no.3 society, before the appropriate forum, in accordance with law.

Resultantly, with the above said observations made, the present writ petition stands disposed of, however, with no order as to costs.

07.11.2016
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No