

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.25598 of 2015
Date of Decision: 07.12.2017

Mohinder Singh

. . . . Petitioner

Vs.

State of Haryana and others

. . . .Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.I.S. Saggu, Advocate, for the petitioner.

Mr.Saurabh Mohunta, DAG, Haryana.

Mr.A.S. Sandhu, Advocate, for respondent No.5.

Mr.P.S. Jammu, Advocate, for respondent No.6.

Mr.Rahul Deswal, Advocate, for respondent No.7.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the order dated 04.07.2014 passed by the Deputy Registrar, Cooperative Societies, Bhiwani by which the election petition filed by respondent No.6 under Section 102/103 of the Haryana Cooperative Societies Act, 1984 [for short 'the Act'] has been allowed and the election of the petitioner has been set aside and the order dated 24.9.2015 passed by the Secretary, Department of Corporation, Haryana by which the order passed by the Additional Registrar (Admn.), Cooperative Societies, Haryana in favour of the petitioner dated 15.1.2015 has been set aside.

In brief, the petitioner and respondents No.6 & 7 are the committee members of the Rania Primary Agricultural Cooperative Societies, District Sirsa [hereinafter referred to as 'the Society'], which is registered under the Act. The managing committee of the Society comprises of 10 members who are to be elected from amongst the members in terms of bye-law 34 which read as under: -

“34. The members of the Managing Committee will be as under: -

- 1. Ten elected members, out of which seven will be from agriculturist members and three from non-agriculturist members, out of them at least one member should be from Scheduled Caste and one member will be a woman member. The candidate securing higher votes will be declared elected.*
- 2. One nominated members from the institution providing finance to the society.”*

The election of the managing committee was fixed for 8.12.2013. The nominations papers were filed on 21.11.2013. 37 members filed their nomination papers for their respective categories because out of 10 members 7 members were to be elected from the agricultural zone and three from the non-agricultural zone. After withdrawal of the nomination, 24

members remained in fray. Out of 24 members, 21 members filed their nomination papers from agricultural zone and 3 from non-agricultural zone. There were 4 candidates belonging to the Scheduled Caste category out of 24 members. 3 members out of 4 members, belonging to the Scheduled Caste category, were from the agricultural zone and one from the non-agricultural zone. The elections were held on 8.12.2013. The total votes polled were 2835 and 7 votes were cancelled. The only woman, who had filed the nomination paper, belonging to Backward Class category, for non-agricultural zone, was elected unopposed. The two other seats, left in the non-agricultural zone, which were filled with the election of Mohinder Singh (petitioner herein), belonging to General Category, who had secured 25 votes and Raja Ram (respondent No.7 herein), belonging to Scheduled Caste Category, who had secured 57 votes. Thus all the three seats of the non-agricultural zone were filled up with the following members: -

1. *Suman Devi (BC) won unopposed.*
2. *Mohinder Singh-Petitioner (General Category) secured 25 votes.*
3. *Raja Ram-respondent No.7 (Scheduled Caste) secured 57 votes.*

Six out of seven agricultural zone seats were filled up with the election of Salwant Singh (BC), Sukhpreet Singh (General), Suraj Bhan (BC), Bhupinder (General), Sitaram (General) and Avtar Singh (General).

However, the 7th seat in the agricultural zone was not been filled up because it is allegedly kept for the woman member in terms of Section 28(1) of the Act, which read as under: -

28. Election and tenure of committees --(1)

The members of the committee of a co-operative society shall be elected in the manner prescribed and no person shall be so elected unless he is a member of the society:

Provided that at least one member belonging to the Scheduled Caste and one woman member shall also be represented through election in every committee of a co-operative society in the manner prescribed:

Provided further that at least one member belonging to Backward Class shall also be represented through election in the committee, if their number is ten percentum or more of the total membership of the society, in the manner prescribed.”

The respondent No.6 challenged the election by filing an election petition under Sections 102/103 of the Act before the Deputy Registrar, Cooperative Societies, Bhiwani which was allowed and the election of the petitioner was set aside. Meaning thereby, respondent No.6 replaced the petitioner. The order dated 4.7.2014 passed by the Election Tribunal much less the Deputy Registrar was challenged by way of an

appeal. The said appeal was allowed by the Additional Registrar (Admn.), Cooperative Societies, Haryana observing that election of the petitioner cannot be set aside because he has been elected from a different zone i.e. non-agricultural zone whereas respondent No.6 has contested the election from agricultural zone and had to compete with the candidates belonging to his zone and cannot be allowed to take the seat of the non-agricultural zone. Now it was the turn of respondent No.6 to go in revision which was filed before the Secretary, Department of Corporation, Haryana. The said revision petition is allowed by the impugned order dated 24.9.2015 in which it has been observed that respondent No.6 had secured highest votes (222) amongst the candidates belonging to Scheduled Caste category therefore, he should have been declared elected in the category of Scheduled Caste.

Learned counsel for the petitioner has submitted that there is a fallacy in the approach of respondents No.1 & 3 in passing the impugned orders because the election was held of the candidates contesting from different zones. Respondent No.6, though belonging to the Scheduled Caste category, had contested the election from the agricultural zone, therefore, he had to win or loose from his zone only and cannot be allowed to enter the other zone or the non-agricultural zone. It is further submitted that there is no dispute about the six members who have been elected from the agricultural zone who are having more votes than respondent No.6 but respondent No.6 has not been given 7th seat in the agricultural zone because the said seat is reserved for woman candidate. With regard to the 1st proviso to Section 28 of the Act wherein it is provided that there has to be two women member in the committee, it is submitted that already a woman

member has been elected unopposed from the non-agricultural zone, therefore, another woman has to be elected from the agricultural zone. It is further submitted that in case the order of the Secretary, Department of Corporation, Haryana, who has allowed the revision of respondent No.6, is to be accepted, though not admitted, the election of Raja Ram (respondent No.7) would be in question because he belongs to Scheduled Caste category whereas petitioner belongs to General Category.

Learned counsel for respondent No.6 has submitted that there is a misreading of bye-law 34 because it is provided therein that the candidate securing higher votes will be elected. According to him, the candidate who is securing maximum number of votes has to be elected and not the one who has got lesser vote than him in the said election, may be he/she belongs to other zone. It is also submitted that since there is no woman candidate available even in the agricultural zone and only one woman member has been elected from the non-agricultural zone, therefore, respondent No.6, who has got maximum number of votes in his category, should have been given the 7th seat.

Learned counsel for respondent No.7 has submitted that respondent No.6 has no contest with him because he belongs to different zone though he belongs to the Scheduled Caste category. In support of his submissions, he has relied upon a decision rendered by this Court in the case of *“Vijay Kumar Suri Vs. The Citizens Urban Co-operative Bank Ltd. and others” 2013(3) RCR (Civil) 810*, in which this Court has held that the petitioner being a voter could only challenge the election of a Director elected from his zone. If the petitioner is not in any competent position to get

elected from any other zone not being a voter, where he is not entitled to either get himself registered as a voter or raise an objection against the inclusion or exclusion of the name of the person from the voters list, he obviously would be lacking in locus to challenge the election from said zone. I am not prepared to read the provisions of the Act in a manner holding locus of the petitioner to challenge this election of all the zones that too through one petition without impleading the persons who are likely to be effected by any adverse order either in the election petition or in this writ petition.

It is also submitted that bye-law 34 does not prescribe that there would be only one Scheduled Caste rather it prescribes that one Scheduled Caste has to be there in the committee to represent the category. It is submitted that he has rightly been elected having secured maximum votes in his own category.

Learned counsel appearing on behalf of State/respondents No.1 to 4 has submitted that the election should have been first held for the agricultural zone and thereafter for the non-agricultural zone.

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

The issue involved in this case is very short and simple that as to whether the election of the petitioner could have been set aside on the asking of respondent No.6?

There is no doubt that bye-law 34 provides that there would be 10 elected members out of which 7 would be from the agricultural zone and 3 from the non-agricultural zone. It is also provided therein that there would

at least be one member from the Scheduled Caste and one would be a woman member. It is also provided therein that the candidate who would secure highest votes would be declared elected.

Similarly Section 28 of the Act provides that the members of the committee of the cooperative society shall be elected in the manner prescribed. The manner is prescribed in the bye-law 34. In the 1st proviso of Section 28, it is provided that at least one member belonging to the Scheduled Caste and two woman member shall be represented whereas in the bye-law it is provided that there should be at least one member from the Scheduled Caste category and one woman.

The bye-law cannot override the provision of the Act. Therefore, the other woman member should also be there in the committee. The candidates who had specifically mentioned in their nomination papers that they are contesting the election from the particular zone i.e. the petitioner has filled up his nomination paper to contest the election from the non-agricultural zone and respondent No.6 has filled up his nomination paper to contest the election from agricultural zone, their seats have to be declared only on the basis of the votes secured by them in their zones and they cannot trespass to other zone on the ground that they have secured the higher votes or they have got more votes in the similar category against the candidate contesting in other zone.

In this regard, the decision of this Court, rendered in the case of ***Vijay Kumar Suri (Supra)***, helps the petitioner to hold that respondents No.1 and 3 have committed a palpable error in setting aside the election of the petitioner without appreciating the fact that the petitioner does not belong to

the zone of respondent No.6. In this regard the decision taken by respondent No.2 appears to be justified and thus the impugned order passed by respondents No.1 & 3 are hereby set aside and the order passed by respondent No.2 is restored.

With these observations, the present petition is hereby allowed.

07.12.2017 <i>Vivek</i>		(RAKESH KUMAR JAIN) JUDGE
	<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
	<i>Whether reportable</i>	<i>Yes/No</i>