

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

CWP No. 26483 of 2019
Date of decision: 06.02.2020

Harsimranjit Singh and others

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present:- Mr. SPS Aulakh, Advocate,
for the petitioners.

Ms. Kanica Sachdeva, AAG, Punjab.

Mr. Harbans Lal Sharma, Advocate,
for respondent no. 4.

G.S.SANDHAWALIA, J. (Oral)

The prayer made in the present writ petition filed under Article 226 of the Constitution of India is for rectification of the voters' list prepared for the elections conducted from 26.09.2019 to 27.09.2019 by respondent no. 4-Society.

Admittedly, during the pendency of the writ petition, the elections have been held on 08.11.2019, as per the reply filed by the State which claims that the writ petition has become infructuous.

It is not disputed that the petitioners had raised their grievance on 13.09.2019 vide Annexure P-4 addressed to the Assistant Registrar regarding correction of voters' list and for adding the names of the members in the voters' list. The response of the State, as such, is that the newly enrolled members shown in the voters' list (Annexure P-3) from Sr. No. 575 to 788 (Account No. 1062 to 1275) have not completed the required period of 9 months since their enrollment. Thus, they were stated not to be

eligible to participate in the general body meeting for holding election and having no right to vote. Reliance has been placed upon Section 18 of the Punjab Co-operative Societies Act, 1961 as such. The said Section reads thus:-

“Section 18. Votes of members :- Every member of a co-operative society shall have one vote in the affairs of the society.

Provided that:

(a) a member who has attended less than two general meetings out of the last five general meetings; or

(b) a member who has failed to utilize such minimum services, as may be specified in the by laws; or

(c) a person who has been a member of the cooperative society for a period of less than nine months;

shall not be eligible to participate in the general meeting of the cooperative society for election to the committee of the cooperative society;

Provided further that:

(a) in the case of an equality of votes, the chairman shall have a second or casting vote;

(b) a nominal or associate member shall not have the right of vote; and

(c) where the Government is a member of the co-operative society, each person nominated by the Government on the committee shall have one vote.”

Mr. Sharma appearing for the respondent no. 4-Society has also referred to Rule 51 of the Punjab Co-operative Societies Rules, 1963, which provides to submit that a party can apply to the Registrar in the form given in Appendix 'F' when a dispute is to be referred to under Section 55(1) and a party desires to have that dispute determined in accordance with the provisions of the said Section. Section 55(2)(c) also provides that any dispute arising in connection with the election of any officer of the society can be referred to arbitration.

Keeping in view the fact that issues of fact are involved as to

when the petitioners were appointed and it is settled principle that the writ Court will not enter into the array of disputed questions and in view of the alternative remedy available, this Court is of the opinion that it is open to the petitioners as such to challenge the said election on the ground that the voters' list as such needed a rectification and they have been wrongly precluded from voting and standing in elections.

Counsel has submitted that vide interim order dated 31.10.2019, this Court had directed that any decision will be subject to the outcome of the writ petition.

Keeping in view the above, this Court is of the opinion that if the petition is filed before the competent authority challenging the election within a period of 2 weeks from today, the competent authority shall take steps to ensure that the petition is decided within a period of 3 months from the date of receipt of the petition. Needless to say in view of the interim order passed by this Court on an earlier occasion, the authority would take a call on as to whether the election was justified on the basis of the voters' list or not.

Writ petition stands disposed of accordingly.

06.02.2020
shivani

(G.S. SANDHAWALIA)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No