

(1974) 07 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ No. 1227 of 1974

Dal Chand

APPELLANT

Vs

The State of Punjab  
and others

RESPONDENT

Date of Decision: July 22, 1974

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1976) 1 ILR (P&H) 587

Hon'ble Judges: Muni Lal Verma, J

Bench: Single Bench

Advocate: C.L. Lakhanpal, for the Appellant; P.P. Pandit for Respondents Nos. 1 to 3 and Mr. M.J.S. Sethi, for the Respondent

Final Decision: Dismissed

### Judgement

@JUDGMENTTAG-ORDER

Muni Lal Verma, J.

This writ petition arises out of an election dispute between the petitioner and Niranjn Singh (Respondent 4). Both of them along with Suraj Mal (Respondent 5) had sought election for the office of Director of the Land Mortgage Bank, Fazilka (hereinafter called the Director) from Zone No. 4, held on May 11, 1973.

2. The case, presented by the petitioner in the writ petition and stated at the bar, is that after counting votes the Returning Officer declared that the petitioner had secured 196 votes and Niranjn Singh obtained 195 votes, while 146 votes had been polled by Suraj Mal. So, he declared the petitioner as the Director. Out of the polled votes, 11 were declared invalid. Two were tendered votes. Dissatisfied with the said result Niranjn Singh filed a petition which was decided by the Deputy Registrar of the Cooperative Societies, who found that out of 11 invalid votes, 3 had been polled in favour of Niranjn Singh and 1 was polled in favour of the petitioner. Thus, he

held that Niranjn Singh had polled 198 votes, whereas the petitioner had polled 197 votes. So, he declared Niranjn Singh as the Director. The petitioner carried appeal to the Joint Registrar, Cooperative Societies, who too considered the invalid votes and found that out of the three votes, which had been considered by the Deputy Registrar to have been polled in favour of Niranjn Singh, two had, in fact, been polled in his favour, and that one out of the said 11 votes, which was considered to have been polled by the petitioner was not, in fact, polled in his favour. So, he came to the conclusion that Niranjn Singh had polled 197 votes, whereas the votes polled by the petitioner were 196. So, he maintained" the order of the Deputy Registrar, declaring Niranjn Singh to be the Director. Aggrieved by the aforesaid orders passed by the Deputy Registrar and the Joint Registrar, the petitioner approached this Court under Articles 226 and 227 of the Constitution for writ of certiorari or any other order or direction in that respect, quashing the aforesaid orders recorded by the Deputy Registrar and the joint Registrar, declaring Niranjn Singh as the Director. The said orders were impeached as illegal, void and unconstitutional for the reasons that two tendered votes had not been opened and counted, that no case for recounting of votes had been made out and 2 out of 11 invalid votes had been wrongly counted in favour of Niranjn Singh, and that the Deputy Registrar or the Joint Registrar had no jurisdiction to count the said votes in his favour. The writ petition was contested by Niranjn Singh. In the written statement filed by him he admitted the facts of the case, but pleaded that 2 out of 11 invalid votes had been rightly counted by the Deputy Registrar and the Joint Registrar, as to have been polled by him and they had jurisdiction to do so, and that two tendered votes could not be counted for him, because no petition, in the form of recriminatory had been filed by the petitioner. He took up the stand that two of the 11 invalid votes, which were counted by the Deputy Registrar and Joint Registrar to have been polled by him, were also being taken up by the Presiding. Officer to have been polled by him, but it was on unwarranted interference of the Returning Officer that he (the Presiding Officer) did not count those votes. It was also pleaded by Niranjn Singh that the writ petition was not maintainable because the petitioner had not availed of the alternative remedy of revision provided under the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as the Act).

3. Shri C.L. Lakhanpal, learned counsel for the petitioner, relying on certain rules contained in the Conduct of Election Rules 1961, framed under the Representation of the People Act 1961, and on the judgment recorded in [Dr. Jagjit Singh Vs. Giani Kartar Singh and Others](#), , has argued that the Deputy Registrar or the Joint Registrar could not look into the invalid votes since no case for recounting had been made out, and Niranjn Singh had not mentioned the particulars (i.e., numbers etc.) of the invalid votes, which should have been counted in his favour, in the petition which he had made before the Deputy Registrar. I am unable to accept this argument. The application which had been moved by Niranjn Singh and which was decided by the Deputy Registrar was not an election petition against the declaration

of Director in favour of the petitioner. I have not been referred to any rule, and indeed it has been conceded by the learned counsel for the petitioner that there is no rule, which provides for an election petition against the declaration of the petitioner being a Director. In the absence of any provision prescribing a petition against the election of the petitioner as Director, it would in my opinion, neither be proper nor legal to import the rules governing an election petition, as provided by the Conduct of Election Rules, 1961 for deciding the instant case. Therefore, neither any rule contained in the Conduct of Election Rules 1961, nor the judgment in Dr. Jagjit Singh's case (*supra*) can render any help to the petitioner.

4. Clause (c) of sub-section (2) of section 55 of the Act provides that any dispute arising in connection with the election of any officer of a Cooperative Society would be deemed to be dispute touching the constitution, management or the business of the said Society, and sub-section (1) of section 65 provides that any dispute touching the constitution, management or the business of such a Society shall be referred to the Registrar for decision. The term "officer", as is clear from clause (h) of section 2 of the Act, is not defined exhaustively and besides the persons mentioned in the said definition, any body else authorised to give directions in the management of the affairs of a Society will be an officer. The said definition of "officer" is, in my opinion, wide enough to include the office of Director in question. Therefore, the dispute between the petitioner and Niranjana Singh fell squarely within the ambit of section 55 of the Act and had to be dealt with according to the provisions contained therein and in section 56 of the Act. According to section 56, the Registrar, on receipt of reference of dispute u/s 55, may decide the same himself or transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or refer it for disposal to one arbitrator. It appears, and it has not been disputed before me, that the Deputy Registrar was empowered to dispose of the dispute, referred to in section 55 of the Act. It is, thus, obvious that the petition, which was moved by Niranjana Singh against the declaration of the petitioner as Director by the Presiding or Returning Officer, related to a dispute which had to be referred for arbitration u/s 55 of the Act, and the same seems to have been transferred by the Registrar to the Deputy Registrar for disposal. So, the Deputy Registrar proceeded to decide the election dispute between the petitioner and Niranjana Singh through arbitration and, as such, his power to look into the matter from all angles cannot be disputed. It is pertinent to note that during the proceedings before the Deputy Registrar, the petitioner and Niranjana Singh, as is clear from his order, copy of which is Annexure "R-I" had agreed that the 11 rejected as invalid votes should be seen and looked at and taken into consideration. After examining the said 11 ballot papers, both of them (Niranjana Singh and the petitioner) further appeared to have agreed that 6 out of those 11 ballot papers had been rightly rejected. On examining and considering the remaining five ballot papers, the Deputy Registrar, after hearing the petitioner and Niranjana Singh and their counsel at length, concluded that 3 votes with Nos. 046, 542 and 342 should be

taken to have been polled by Niranjana Singh and thereby the votes polled by him were counted as 198. He further found that even if credit for 1 out of the aforesaid 5 votes could be given to the petitioner, the number of votes polled by him would come to 197. It was on that basis that he had declared Niranjana Singh as the Director. It is further clear from, the said order that the Deputy Registrar had recorded the statement of the Presiding Officer, who had stated therein that 2 out of the alleged 11 invalid votes were considered by him to have been polled in favour of Niranjana Singh, but when he was going to count the same in his favour the Returning Officer interfered and directed the cancellation of all the 11 invalid votes. Since, as discussed above, the application made by Niranjana Singh and decided by the Deputy Registrar, was not in the nature of an election petition and the dispute between the petitioner and Niranjana Singh respecting the election of Director had been referred to for arbitration, the scope and jurisdiction of the Deputy Registrar in deciding that matter were admittedly wider than enjoyed by a Tribunal deciding an election petition. The petitioner and Niranjana Singh could agree to narrow down the dispute between them by saying that the alleged 11 invalid votes could be examined and looked into. Therefore, I do not think that the Deputy Registrar had gone beyond his jurisdiction in examining and taking into account the said invalid votes. There is no doubt, and indeed it was not disputed, that the Presiding Officer and the Returning Officer had concurrent jurisdiction in declaring one of the contestants as Director on counting the votes. When the presiding Officer was counting the votes, I think, the Returning Officer had no jurisdiction to interfere, much less to direct the Presiding Officer to treat the alleged 11 invalid votes as cancelled. Therefore, when the order of the Deputy Registrar is examined carefully, it contained sufficient matter and reasons for counting 3 of the alleged invalid votes as to have been polled by Niranjana Singh. This disposes of the contention of the learned counsel for the petitioner that the said order was not speaking one.

5. Section 68 of the Act provides an appeal against the aforesaid order passed by the Deputy Registrar to the Registrar or such Additional Registrar or Joint Registrar as may be authorised by the Registrar in that behalf. Since the order was passed by the Joint Registrar in the appeal preferred against the aforesaid order of the Deputy Registrar, it will be presumed that he was authorised by the Registrar to hear that appeal. He gave due consideration to the order of the Deputy Registrar and further examined the alleged 11 invalid votes. He found that 2 votes bearing No. 342 and 542 out of the said 11 votes had, in fact, been polled in favour of Niranjana Singh. He, however, disallowed the other ballot No. 046, which was counted by the Deputy Registrar in his favour, and he also came to the conclusion that none of the invalid votes had been polled in favour of the petitioner. So, he concluded that votes polled by Niranjana Singh were 197, whereas the votes polled by the petitioner were 196. Therefore he maintained the order of the Deputy Registry, declaring Niranjana Singh as the Director. The said order of the Joint Registrar, in my opinion, contains reasons for maintaining the order of the Deputy Registrar and the same cannot be assailed

as non-speaking order and the argument of the learned counsel for the petitioner in that respect is not well-founded.

6. The contention of the learned counsel for the petitioner that particulars (i.e. numbers etc.) of the 2 out of the invalid votes, which had been ultimately counted in favour of Niranjana Singh had not been mentioned by him in the application which he made u/s 55 of the Act, is not acceptable for the reason that the said numbers etc., could not be known to him since the voting had been by secret ballot.

7. The learned counsel for the petitioner argued that 2 of the tendered votes were not taken into consideration. In view of the compromise between the petitioner and Niranjana Singh before the Deputy Registrar that only 11 votes alleged to be invalid, should be looked at it does not lie with the petitioner now to contend that the tendered votes had not been taken into consideration. Further, nothing has been shown that the two tendered votes had been polled in favour of the petitioner. Further more, it has not been shown that the tendered votes relate to the ballot papers, which had been polled in favour of Niranjana Singh. Without any material on the record, it cannot be said that the ballot papers, to which the two tendered votes related, had, in fact, been polled in favour of Niranjana Singh by some imposter. It cannot be said that any prejudice had been caused to the petitioner in the matter of the declaration of Director having been recorded by the Deputy Registrar and the Joint Registrar in favour of Niranjana Singh.

8. Therefore, on giving may careful consideration to all what was said by the learned counsel for the petitioner, I find that the orders recorded by the Deputy Registrar or the Joint Registrar were passed by them within the ambit of jurisdiction available to them, and the same do not suffer from any infirmity, which had materially affected the result of the election. The impugned orders by the Deputy Registrar and the Joint Registrar being unassailable passed on merits or in law, this writ petition is without merit

9. Power of revision has been given under S. 69 of the Act to the State Government and the Registrar to, suo motu or on the application of a party to a reference, call and examine the record or any proceeding, in which no appeal lies, u/s 68 of the Act. So, the Government and the Registrar could pass any order, as they thought fit if the matter had been taken to them on revisional side. It may be noted that sub-section (3) of section 63 of the Act provides that no second appeal shall lie. So, there could not be any appeal against the order of the Joint Registrar, and as such, the order of the Joint Registrar could be subjected to revision by the Registrar or the High Court u/s 69 of the Act. So, an alternative remedy of revision was admittedly available to the petitioner. No doubt, existence of an alternative remedy cannot be an absolute bar to the exercise of extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution. In an appropriate case, this Court may interfere in spite of an alternative remedy being available to the petitioner. Every case has to be decided on its own facts and circumstances, Since in the present case, there was no inherent

lack of jurisdiction with the Deputy Registrar or the Joint Registrar, who decided the case, it seems that it would have been better if the petitioner had approached the Registrar or the Government for reconsideration of the matter on original side before coming to this Court. Therefore, the writ petition merits dismissal on the ground that the petitioner did not pursue the alternative legal remedy available to him, which could be quite efficacious. Similar view was taken in *Watan Singh Giant v. State of Punjab* etc. 1971 Cur LJ 486.

10. In fine, from whatever angle the case may be viewed, the petitioner can have no luck and the writ petition must fail. So, I dismiss it, but with no order as to costs.