

(1993) 11 P&H CK 0019

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 11475 of 1993

Chuhar Singh President of the
Gunachaur Cooperative
Agriculture Service Society

APPELLANT

Vs

Additional Registrar, Cooperative
Societies, Punjab (Admn) and
Others

RESPONDENT

Date of Decision: Nov. 24, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Punjab Co-operative Societies Rules, 1963 - Rule 3, 5

Citation: (1994) 106 PLR 304

Hon'ble Judges: N.K. Kapoor, J; A.L. Bahri, J

Bench: Division Bench

Advocate: Sukhbir Singh, for the Appellant; H.S. Mattewal G.K. Chatrath, A.G., Anu Chatrath, R.K. Joshi, A.G. and P.S. Thiara, for the Respondent

Final Decision: Allowed

Judgement

A.L. Bahri, J.

Chuhar Singh, President of Gunachaur Cooperative Agriculture Service Society, Gunachaur, (hereinafter called "the Primary Society") challenges in this writ petition filed under Articles 226 and 227 of the Constitution order dated September 1, 1993, passed by the Additional Registrar (Administration) Co-operative Societies by which his election as Director of the Nawanshehar (Central Cooperative Bank Limited, Nawanshehar (hereinafter called "the Central Society") has been set aside. On July 31, 1991 election of the Board of Directors of the Central Society were held. As per election programme nomination papers were to be filed on July 25, 1991 before the Returning Officer, Objections thereto were to be filed on July 26, 1991 from 10.00 a.m. to 11.00 a.m. and the same were to be disposed of by affording hearing from

11.00 a.m. to 2.00 p.m. The scrutiny of the nomination papers was to take place from 2.00 p.m. to 4.00 p.m. The nomination papers could be withdrawn up to July 27,1991 and the election was scheduled to be held on July 31,1991. The petitioners contested from Zone No. 3 of the Central Society and was declared elected unopposed. Nomination paper of Mohan Singh respondent No. 4 was rejected by the Returning Officer on an objection being raised by one Phuman Singh, his proposer. The objection was that he had not proposed the name of the aforesaid Mohan Singh and that his thumb impression on the nomination papers was forged one. An election petition was filed by Mohan Singh respondent No. 4 on the ground that the Returning Officer had no jurisdiction to reject his nomination paper on the ground that the thumb impression was forged one. The Returning Officer could only hear objections with regard to the eligibility of the candidate. Annexure P.I is the copy of the election petition filed. It was not the stand taken that the thumb impression of Phuman Singh on the nomination paper was not a forged one. A reply was filed on behalf of the petitioner asserting that there was no proper nomination of Mohan Singh respondent No. 4 as the thumb impression of Phuman Singh on the nomination was forged. This objection touches the eligibility of the candidate to the election and his name was rightly rejected. An affidavit was forwarded to the Returning Officer by Phuman Singh in this respect. Copy of the reply is Annexure P.2. During the proceedings two witnesses were produced. The petitioner appeared as RW 1 and Phuman Singh as RW 2. Their stand, as already stated above, in these statements was that Phuman Singh's thumb impression was forged one. The Additional Registrar (Administration) vide order dated September 1,1993 set aside the election of the petitioner, which is impugned. According to the petitioner the Returning Officer had no jurisdiction to reject the nomination papers on the ground that thumb impression of the proposer on the nomination paper was forged one. Such an objection did not touch the eligibility of the candidate. Certain allegations of mala fides were alleged against Sh. Dilbagh Singh, Agriculture Minister, Punjab, that it was at his instance that the election of the petitioner was got set aside and no useful purpose would be served by filing an appeal or petition before the State Government against the impugned order was required under the provisions of the Punjab Cooperative Societies Act.

2. On notice of motion having been issued, reply has been filed by Dilbagh Singh respondent No. 5 by way of affidavit denying the allegations of mala fides. Dilbagh Singh contested election in February 1992 he was sworn in as Minister of Agriculture. Election to the Board of Directors of the Central Society was held in July, 1991. Respondent No. 4 had challenged the election of the petitioner as Director of the Central Society by filing an election petition in September 1991. Thus on these facts it was alleged by respondent No. 5 Dilbagh Singh that he had not exercised any pressure or influence directly or through any other person over respondent No. 1, the Additional Registrar, Cooperative Societies in the matter. The Additional Registrar took more than a year and six months to decide the election petition after

he became a minister.

3. It has been argued on behalf of the respondents that it was incumbent upon the petitioner to have recourse to the remedies available under the Punjab Cooperative Societies Act and resort to the proceedings under Articles 226 and 227 of the Constitution is not called for, moreso, when the decision depends upon disputed facts.

4. On the other hand learned counsel for the petitioner has argued that it is after respondent No. 5 became the Minister of Agriculture that the impugned order was passed under his influence and no useful purpose would be served by approaching the State Government against the order of the Additional Registrar. As far as facts are concerned, no dispute is being raised and the question of rejection or otherwise of the nomination papers and in consequence the validity of the election of the petitioner to the Central Society can be adjudicated by this Court on the interpretation of the bye-laws, Rules and the provisions of the Act.

5. After hearing counsel for the parties, we are of the view that no useful purpose will be served by directing the petitioner to avail the alternative remedy as the question debated is solely dependent upon the applicability of the bye laws or the Rules framed under the Act. No dispute is being raised on facts. Ordinarily on any matters relating to Cooperative Societies parties are expected to avail the remedies provided under the Act, as held by the Division Bench of this Court in *Joginder Singh, President, Rupar Central Cooperative Bank, Ltd. Rupar v. The Registrar Cooperative Societies, Punjab and Ors.* 1977 P.L.J. 310 as in such cases alternative remedy provided under the Act is to be treated as efficacious remedy. However, as already noticed above, present is a case of challenging the elections of the Board of Directors of the Central Society and allegations of mala fides have been alleged involving the Additional Registrar, Cooperative Societies, as well as the Agriculture Minister. Further more, keeping in view the nature of the dispute which is to be determined only on the interpretation of the statutes it is not considered appropriate to relegate the parties to the remedies available under the Act as was held by the Division Bench of this Court in [Ram Chander Singh Vs. State of Punjab and Others,](#).

6. The questions debated by the learned counsel for the parties are two which are interconnected. The first question is as to whether nomination paper of a candidate could be rejected on the ground that the thumb impression/signatures of the proposer were forged without further going into the question of eligibility of the candidate to contest. The second question is as to whether the relevant provisions of the statute or the Rules provide for nomination to be proposed if not whether such a nomination paper could be rejected on that score.

7. At the outset it may be stated that the fact that the thumb impressions of the proposer on the nomination paper of respondent No. 4 Mohan Singh were forged is

not being disputed as no written statement controverting this allegation by either of the respondents has been filed. Straightaway reference is required to be made to the provisions of the Act or the Rules and the Bylaws of the Society concerned on this subject. It may be observed that some observations made in judicial decision were also relied upon observing that in the democratic set up of the elections it is necessary that the name of the candidate should be proposed and if necessary seconded. If the statute or the Rules provide for the nomination to be proposed or seconded, such-like observations would, of course be more relevant. In Ram Chander Singh's case (supra) in para 30 the following observations were made:-

"It is a fundamental principle of law of elections that a candidate has to be proposed and/or seconded by any elector who is entitled to cast his vote at the election in the absence of any specific provision to the contrary made in the relevant statute."

The elections of the Chairman, Board of Directors, was in dispute. Nomination paper of a candidate was rejected by the Returning Officer as the person who had seconded the nomination paper was not the Director of the Society though he was a shareholder and a member of the Society. This rejection was not supported by any law or the Rules or the Byelaws of the Society. The bye-laws of the society provided that the electorate for electing Chairman/Vice-Chairman of that particular Society is the General Body of its members and not merely the Board of Directors. It is in this context that the aforesaid observations were made.

8. u/s 85 of the Punjab Cooperative Societies Act the State Government is authorised to frame rules. Under such authorisation, the Punjab Cooperative Societies Rules, 1963 were framed. Rule 23 of the Rules provides, the members of the Committee of a Cooperative Society to be elected in accordance with the rules given in Appendix "C". Such Rules are given in Part I and Part II of Appendix "C"\ Part I deals with election to the Committee of a Cooperative Society. Rule 2 prescribes qualifications of such a candidate i.e. such a person should not be subject to any disqualification mentioned in the Act, Rules and Bye-laws. Rule 5 reads as under:-

Filing of nomination papers:- The nomination papers duly completed shall reach the Returning Officer by such date, time and place as may be specified in the election programme."

Rule 6 provides for the scrutiny of nomination papers. Sub-rule (a) of Rule (1) of Rule 6 reads as under:-

"While scrutinising the nomination papers, the Returning Officer may :-

(a) Permit" any clerical error in the nomination papers in regard to the names or numbers to be corrected in order to bring them in confirmity with the corresponding entries in the list of voters."

9. Since argument was addressed with respect to Rule 3 of Part II Appendix "C", the same is reproduced below:-

"3. Proposals of candidates for contesting election :- (1) The names of the candidates shall be proposed and seconded by any of the members present in the meeting."

If Rules 5 and 6 (1) (a) of Part 1 are read together no manner of doubt is left that nomination papers are required to be filed nominating a candidate for the election of members of a Committee and if there is some clerical error in any such nomination papers in regard to the names, the same can be corrected. The nomination paper thus is required to contain the name of the candidate and the name of the person nominating. If the candidate himself was to file his own nomination papers, the use of the words "the names" in Rule 6(l)(a) would become redundant. If the nomination papers contained the names of the proposer as well as the candidate, Rule 6(l)(a) would come into play and if there is any mistake/error in such names the same could be corrected. Apart from the above, the ordinary meaning of the word "nominate" would also indicate that there has to be a proposer and a nominee. The word nominate as defined in Chambers 20th Century Dictionary 1982 New Edition means:" to name, to mention by name, to appoint, to propose formally for election." The word "nomination" means the act or power of nomination, state of being nominated, the nominee. The word "nominee" means: one who is nominated by another. Attaching the aforesaid simple dictionary meanings to the Rules 5 and 6(1)(a) of Part I of Appendix "C" no manner of doubt is left in coming to a conclusion that these Rules require a proposer and a person to be nominated i.e. a candidate. The nomination paper has to be by the proposer nominating the candidate.

10. The contention of learned counsel for the respondent was that since in Part II in Rule 3 it was specifically provided that the names of the candidates shall be proposed and seconded by any of the members present in the meeting, by not providing similar provision in part I it should be taken that intention was that there should not be any proposer. The nomination papers submitted by the candidate himself offering for election should be treated as sufficient compliance of Rule 5 of Part I. This contention is devoid of merit. Part II of Appendix "C" deals with election in Primary Cooperative Societies to be held in the general meeting. It requires that the proposal should also be seconded whereas in Part I of the Rules it was not considered necessary that the proposal should be seconded by any one. Otherwise one proposer is necessary and inherent in the case of nomination. We fully agree with the view expressed in Ram Chander Singh's case (supra).

11. The other contention of learned counsel for the respondents was that while scrutinising of the nomination paper as provided under Rule 6 of Part I, objections, if any, to the eligibility of any candidate could be gone into and other matters of defects, if any, in the nomination papers could be ignored. Rule 6, no doubt, provides for hearing objections with regard to the eligibility of any candidate but that pre-supposes filing of valid nomination papers. It cannot be held that nomination papers could not be rejected if otherwise it was invalid. If there was no

proposer or thumb impression or the signatures of the proposer were forged there was no valid nomination as required under Rule 5 of Part I.

12. Annexure P.5, one of the proforma of nomination papers prepared by Nawanshehar Cooperative Bank, respondent No. 2, was produced, which provides for the signatures of the proposer. Another proforma prepared by another Cooperative Society was otherwise produced during arguments that only candidate was himself to submit the nomination papers and there was no provision for the proposer to sign the same. In view of the legal position explained above, it may be pointed out that no importance can be attached to the proforma produced by some of the Cooperative Societies not providing for signature of the proposer. The interpretation of the Rules referred to above indicates that there has to be a proposer of a candidate and it is taken that in future all the Go-operative Societies would frame such proformas complying with the provisions of law as stated above.

13. From the discussion of the relevant Rules and their application to the facts of the present case leaves no manner of doubt that the Returning Officer was justified under the law in rejecting the nomination papers of Mohan Singh which bear forged thumb impression of the proposer. There remained only one duly nominated candidate namely Chuhar Singh petitioner. He was rightly declared elected. The Additional Registrar vide the impugned order dated September 1, 1992-Annexure P.4 was legally not justified in setting aside election of the petitioner. The present writ petition is allowed and the impugned order Annexure P.4 is quashed. There will be no order as to costs.