

Nathu Ram and Another Vs State of Punjab and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 10, 1965

Acts Referred: Conduct of Elections Rules, 1961 " Rule 21, 29

Hon'ble Judges: P.D. Sharma, J

Bench: Single Bench

Advocate: Harbhagwan Singh, for the Appellant; D.N. Aggarwal and B.R. Aggarwal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.D. Sharma, J.

Nathu Ram and Ram Lal petitioners in their petition under Article 226 of the Constitution have prayed that the election of

Telu Ram and Ram Singh respondents Nos. 3 and 4 as members of the Panchayat Samiti Pundri by the representatives of the Co-operative

Societies under the provisions of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, and the Rules made there under be quashed.

2. Nathu Ram petitioner No. 1 and respondents Nos. 3 and 4 were the only contesting candidates for the membership of Panchayat Samiti for

Pundri Block as representatives of the Co-operative Societies in the Block. The first of them received 18 votes, the second 22 and the last 21, as

a result the latter two were declared successful. The Assistant Registrar, Co-operative Societies, Kaithal, as provided in Part II, rules 21 to 29 of

the (Primary Members) Election Rules, 1961 (hereinafter referred to as the Rules) issued a circular letter under rule 22 (1) on 19th May, 1964,

calling upon the Chairman or President of every Co-operative Society in Pundri Block to elect two representatives on 22nd June, 1964 (copy

annexure A). The rule required the Chairman or President of each Society to (a) convene within 20 days of the receipt of the notice a meeting of

the general body of members to elect one representative of the Society for the election of two members as required by sub-clause (ii) of clause (a)

of sub-section (2) of section 5 of the Act in the manner in which the members of the Managing Committee of that Society are elected (b) send the

name of the representative thus elected to the Assistant Registrar on the day the election is held; and (c) to direct the Society's representative to

present himself with a copy of the Society's resolution authorizing him to represent it before the Returning Officer at the time and place specified in

the programme in Form IX for election of two members to represent Co-operative Societies within the Samiti's jurisdiction. The Assistant

Registrar was further required to prepare for each Block in his district a separate list of the names of representatives of the Cooperative Societies

in that Block received by him under clause (b) of sub-rule (4) and to post a copy of this list outside his office and also to send a copy thereof to

each Returning Officer. The petitioners alleged that at the time of the impugned election representatives of six Co operative Societies as mentioned

in paragraphs 4 and 8 of the petition were not allowed to vote and representatives of the Societies enumerated in paragraph 7 although not entitled

to vote were allowed to vote. They also averred that the representatives of the Co-operatives Societies who were not allowed to vote were

deprived of their right of voting by the Sub-Inspector Co-operative Societies who was not competent to do so. In their view this irregularity

materially affected the result of the election and thus invalidated the same. The other grounds urged by them in support of their prayer for quashing

the election in question were not pressed.

3. Respondents Nos. 3 and 4 in their written statement raised a pre-liminary objection that the petitioners without filing an election petition could

not have sought the present remedy and that representatives of the Co-operative Societies mentioned in paragraphs 4 and 8 of the petition were

rightly disallowed from exercising the right because their nominations were not in accordance with law. Shri Bishan Singh, Assistant Registrar. Co-

operative Societies, Kaithal, district Karnal, respondent No, 2, in his written statement further explained that Jaspal Singh, Sub-Inspector, Co-

operative Societies, was Polling Officer, on duty at the Pundri Polling Station, and in that capacity was authorised to check the authority brought by

the representatives of the Co-operative Societies in support of their right to vote and that the final orders of rejecting the authority were passed by

the Returning Officer.

4. The procedure adopted by the Polling Officer and the Returning Officer for accepting or rejecting the authority of a representative of the Co-

operative Society to vote was not clear from the written statements filed by the respondents. Therefore, Shri Mahinder Singh, who was Assistant

Registrar, Co-operative Societies, Kaithal, at the crucial time was examined in the Court. He said that 54 names of voters in three lots were sent

by him to the Returning Officer; 47 such names were included in the first list, five in the second and two in the third list and that all these three lists

were rightly displayed outside his office. He admitted that the third list was sent by him on the date of the polling early in the morning at 7-00 A.M.

and that a copy of the same was pasted by him outside his office at the same time. He further admitted that the total number of polled votes came

to sixty-one, a fact admitted by both the parties. The Returning Officer allowed seven voters to vote in addition, the names of whom were not

included in the three lists sent by him. The Returning Officer is said to have done so in the exercise of the powers given to him by the Commissioner

for Agricultural Production and Rural Development by his letter dated 3rd April, 1964, a copy of the relevant part of which was placed by the

witness on the record. Thus it is abundantly clear from his statement that seven voters were allowed to vote whose names had not been sent to him

by the Chairman or President of the Societies concerned and further that a copy of the list containing these names was not sent by him to the

Returning Officer or displayed outside his office, as was necessary under rule 22(l)(b) and rule 22 (4) of the Rules. The Returning Officer un-

doubtedly in allowing those seven voters to vote contravened the mandatory provisions of the statutory rule which indeed could not have been

modified by any executive instructions by the Commissioner for agricultural Production and Rural Development.

5. The learned counsel for the respondents, however, contended that it was not incumbent on the Returning Officer to allow those representatives

of the Co operative Societies only to vote whose names had been sent by the Chairman or President of the Societies concerned to the Assistant

Registrar etc. etc. as incorporated in rule 22. In this connection he referred me to sub-rule (3) of rule 28 which provides:

28(3) If the number of such candidates exceeds the number of persons to be elected, an election shall be held by secret ballot Votes of such

electors who bring with them a copy of the resolution of the Society, duly attested by the Chairman or President, as the case may be, of that

Society, authorizing the elector to represent the Society shall only be taken.

I am not in agreement with him. Sub-rule (3) of rule 28 has to be read in conjunction with rule 22, otherwise the provisions made in the latter rule

become superfluous which could not have been the intention of the framers of the Rules. It is an accepted canon of interpretation of Statutes that

one should not without necessity or sound reason impute to its language any superfluity. Every portion of a Statute must be given effect to unless

the construction leads to an absurdity which is not the case here. The fact remains the Returning Officer did commit an irregularity in conducting the

election which materially affected the result thereof and thus invalidated the same. In similar circumstances Pandit, J. in Civil Writ No. 2056 of

1964 (Puran Chand v. The Assistant Registrar, Co-operative Societies) decided on 9th February, 1965, quashed a like election.

6. The mere fact that the petitioners did not file the election petition is not enough to debar them from seeking the appropriate remedy in this Court

because the irregularity committed by the Returning Officer went to the very root of the matter. For this proposition, reference may be made to

Devi Ram v. State of Punjab and other (1964) 66 P.L.R 1185, which lays down:

Article 226 of the Constitution of India is couched in wide terms and the exercise thereof is not subject to any restriction save the territorial

jurisdiction which is in express terms contained therein. It is well-settled that the existence of an alternative remedy, though an extremely important

factor, and more particularly so in those election contests in which the Legislature has provided remedy by way of election petition, does by no

means per se affect, curtail or impinge upon the jurisdiction of the High Court under Article 226 which can legitimately be invoked by an aggrieved

party in a fit case, when the true dictates of justice so demand. One of the basic and fundamental considerations which largely influence the judicial

mind of writ Court inducing it to interfere is when manifest injustice resulting from jurisdictional or grave material legal infirmity, patent on the face of

the record, is plainly discernable without requiring deep probe into conflicting facts, and the alternative remedy, if any, is not equally effective. The

matter being pre-eminently one of judicial discretion, no inflexible and rigid rule can or should be formulated to serve as a straight jacket in all

cases. Each case would accordingly have to be dealt with in its own peculiar setting and circumstances and the mere existence of an alternative

remedy does not of itself impose an obligation on the High Court to relegate the aggrieved party to such remedy.

7. In the result, the civil writ petition is allowed and the impugned election is set aside. The parties will bear their own costs.