

## **Rameshwar Singh Vs Financial Commissioner & Sec. to Govt. of Haryana, Coop. Deptt.**

**Court:** High Court Of Punjab And Haryana At Chandigarh

**Date of Decision:** May 8, 1996

**Citation:** (1997) 1 ICC 757 : (1997) 4 LLR 160 : (1997) 1 PLJ 12 : (1997) 2 PLR 195 : (1997) 3 RCR(Civil) 162

**Hon'ble Judges:** R.P.Sethi;A.C.J., J and R.L.Anand, J

**Advocate:** Mr. S.S. Dalal, Advocate, S.S. Dinarpur, Advocate., Advocates for appearing Parties

### **Judgement**

R.L. Anand, J.

Rameshwar Singh has filed the present writ petition under Articles 226/227 of the Constitution of India for the issuance of

a writ in the nature of certiorari, praying that the orders dated 16.1.1995 and 22.12.1995, Annexures P3 and P4, respectively, by which the

election of the petitioner as Director of Radaur Cane Grower Cooperative Society Ltd., Radaur, was set aside, be quashed with a direction to the

respondents to act according to law.

2. It is stated by the petitioner that election to the Radaur Cane Grower Cooperative Society Ltd., Radaur, District Kurukshetra (hereinafter

referred to as the 'Radaur Society') was held on 12.5.1993 in accordance with Rule 25 of the Haryana Cooperative Societies Rules, 1989

(hereinafter referred to as 'the Rules'). The area of operation of the Radaur Society was divided into seven zones and the petitioner along with

respondent No. 6 contested the election from Zone No. 5 in which the petitioner was declared elected by defeating respondent No. 6 by heavy

margin. The petitioner secured 155 votes whereas respondent No. 6 secured only 77 votes. The petitioner alleges that at the time of the filing of

the nomination papers, respondent No. 6 did not raise any objection regarding the candidature of the petitioner to the effect that he was a defaulter

(though the petitioner was not at default). The nomination papers of the petitioner were found in order after scrutiny by the Presiding Officer.

3. The petitioner is also a member of the Yara Cooperative Credit and Service Society Ltd., Yara, District Kurukshetra (hereinafter referred to as

'the Yara Society') and took a loan of Rs. 25,500/ and returned the same on 4.5.1993, i.e., one day prior to the filing of the nomination vide

receipt dated 4.5.1993 (Annexure P1). However, respondent No. 6 filed a timebarred election petition before respondent No. 2, i.e., the Cane

Commissioner, Haryana, challenging the election of the petitioner. Ultimately vide order dated 27.10.1993 (Annexure P2) respondent No. 2

accepted the election petition of respondent No. 6 and set aside the election of the petitioner as Director in an illegal manner.

4. Aggrieved by the order dated 27.10.1993 (Annexure P2) the petitioner filed a Civil Writ Petition No. 13844 of 1993 in this Court, which was

disposed of on 4.5.1994 with the observation that the petitioner may approach the Appellate Authority at the first instance. The respondents also

undertook that they would not raise the plea of limitation. The petitioner filed an appeal before respondent No. 1 on 12.5.1994, who after hearing

both the parties set aside the order dated 27.10.1993 and remanded the case to the Cane Commissioner (respondent No. 2), who again set aside

the election of the petitioner vide order dated 16.1.1995 (Annexure P3). The petitioner filed an appeal before respondent No. 1, which was

dismissed on 22.12.1995 vide Annexure P4. Both the authorities held that the petitioner was a defaulter before he filed the nomination papers and

was not eligible to seek election to the Radaur Society.

5. The petitioner has given challenge to the orders Annexures P3 and P4 mainly on the ground that he was not a defaulter as he had already paid

the amount of Rs. 25,500/ to Shri Jai Ram, Secretary of the Yara Society vide receipt dated 4.5.1993 (Annexure P1) and this aspect of the case

has not been rightly considered by respondents No. 1 and 2, who ignored the statements of Baljit Singh, Arjan Singh and Sawan Ram to the effect

that the petitioner had paid the loan amount to the Secretary of the Yara Society on 4.5.1993 vide receipt dated 4.5.1993 (Annexure P1) so much

so Shri Jai Ram also deposed during the course of proceedings that he was supposed to make a statement under coercion by respondent No. 6

and for that reason he denied the signature on the receipt (Annexure P1). The petitioner further alleged that the opinion evidence of the handwriting

expert cannot supersede the direct statements of the aforesaid persons and ultimately Shri Jai Ram, Secretary of the Yara Society also admitted his

signatures on Annexure P1. In short the petitioner stated that he was not a defaulter within the meaning of Rule 27 of the Rules. It was pleaded in

the alternative that if it is assumed for the sake of arguments that the petitioner was a defaulter of Yara Society, still his election could not be set

aside and he could not be debarred from contesting the election as Yara Society was not a member of the Radaur Society and that the petitioner

contested the election of the Radaur Society in his personal capacity and not in representative capacity of the Yara Society. Admittedly the

petitioner was not a defaulter of the Radaur Society at the time of the filing of the nomination papers and moreover no such plea was ever taken by

respondent No. 6 before the Presiding Officer and once a person has been elected, his election could not be challenged. Respondent No. 1 has

wrongly set aside the election of the petitioner under political pressure.

6. Notice of the petition was given to the respondents and contest was given by the respondent No. 6 Phool Singh, who submitted that the

petitioner was not eligible on the date of the filing of the nomination papers because on the relevant date he was the defaulter of the Yara Society to

the tune of Rs. 25,500/. He also submitted that it was established on the record that forged receipt was produced by the petitioner before the

prescribed authority and after seeking expert opinion, a categorical finding was recorded that the receipt (Annexure P1) was forged one. The

petitioner paid the amount on 14.5.1993 after the relevant date which was 5.5.1993. Shri Jai Ram, who was examined in the proceedings,

categorically stated that the receipt dated 4.5.1993 was forged and on the basis of the findings of the expert the election of the petitioner was

rightly set aside. The impugned orders Annexures P3 and P4 were perfectly legal. The opinion of the expert was sought on the request of the

petitioner himself. The affidavit which has been procured by the petitioner from Shri Jai Ram was an afterthought device and it went against the

opinion of the expert. According to Rule 27 of the said Rules framed under the Haryana Cooperative Societies Act, a candidate ought not be

defaulter to any cooperative society and since the petitioner was a defaulter of the Yara Society, he was not eligible to contest the election by

virtue of Rule 27 (supra). With the above stand respondent No. 6 Shri Phool Singh prayed for the dismissal of the petition.

7. We have heard Shri S.S. Dinarpur, Advocate on behalf of the petitioner, and Shri S.S. Dalal, Advocate, on behalf of the contesting respondent

No. 6 and with their assistance have gone through the record of this case.

8. This case has to be viewed from two angles.

(i) Whether the petitioner was a defaulter as on 5.5.1993 ? and

(ii) Whether he paid the amount of Rs. 25,500/ on 4.5.1993 to Shri Jai Ram ?

The petitioner though categorically alleges that he paid the amount vide receipt (P1) on 4.5.1993 to Shri Jai Ram, Secretary of the Yara Society,

yet we cannot lose sight of the fact that at the instance of the petitioner the original receipt dated 4.5.1993 (P1) was sent to the office of the

Director, Forensic Science Laboratory and it was examined by the handwriting expert, who gave the finding against the petitioner that the receipt

was forged one. We also cannot lose sight of the fact that at one point of time Shri Jai Ram denied the execution of this receipt. Later on he

submitted an affidavit at a much subsequent date before the Appellate Authority admitting the execution of the receipt and the acknowledgement of

the amount. It is a common case of the parties that in the record of the Yara Society this amount was entered after a few days on 5.5.1993.

Respondent No. 6 categorically took the stand that the petitioner was defaulter as on 5.5.1993. It is a question of fact. In these circumstances we

are not going to entertain the petition by exercising the power of the High Court under Articles 226/227 of the Constitution of India in view of the

settled law of the land. Respondents No. 1 and 2 after appreciating the rival contentions of the parties and after taking into consideration the report

of the expert, gave a positive finding against the petitioner that the receipt was a forged one and that the petitioner never deposited a sum of Rs.

25,500/ with Shri Jai Ram, Secretary of the Yara Society on 4.5.1993. Therefore we hold that on 5.5.1993 the petitioner owed a sum of Rs.

25,500/ to the Yara Society, though he cleared this amount on a subsequent date.

9. Rule 27 of the said rules is reproduced below and it reads thus;

“27. Disqualification for membership of Committee. [Section 131(2)(xiii)]

No person shall be eligible for election as member of the Committee, if any : (a) he is in default to any Cooperative Society in respect of any sum

due from him to the Society or owes to any Cooperative Society an amount exceeding his maximum credit limit.”

Now it is to be seen whether the petitioner was a defaulter and comes within the mischief of Rule 27 of the Rules or not. Learned counsel for the

petitioner argued with vehemence that since his client was not a defaulter on the relevant date of the Cooperative Society, Radaur, for which he

was contesting the election of the Director but allegedly was in arrears of the Yara Cooperative Society, to which he was not contesting the

election, therefore, he cannot be held to be a defaulter. In order to appreciate this argument we will have to interpret the word “defaulter/default”

as understood in subrule (a) of Rule 27 (supra). In our considered view default means a wilful default on the part of a person when he fails to

discharge his obligation under a contract/agreement or under any law by which he was duty bound to pay the amount to a particular person. Mere

arrears to a particular Society or institution may not come within the realm of default as understood within subrule (a) of Rule 27. In the present

case the position of the petitioner is little bit different. He was not in arrears only with respect to Yara Cooperative Society but he was in default to

the said Cooperative Society. Rule 27 is wide enough to cover for the purpose of disqualification any person who is in default to any Cooperative

Society in respect of any sum due from him to the Society concerned or owes to any other Cooperative Society an amount exceeding his

maximum credit limit. We are not in a position to agree with the argument of the learned counsel for the petitioner that his client was not defaulter

as no notice by Yara Cooperative Society was issued to him. It has been pleaded by the petitioner himself that he took a loan from the Yara

Cooperative Society and he was to discharge his contractual obligations by making repayment of the loan in two instalments. When a

debtor/borrower commits default in the repayment of the amount/interest as per stipulated debts, he will be considered to be a defaulter and he

would be deemed to have committed default in respect of the amount. The Legislature has purposely introduced the words in subrule (a) of Rule

27 of the Rules ``to any Cooperative Society''". As we have held above that on the relevant date, i.e., on 5.5.1993 the petitioner was a defaulter,

therefore, he was rightly held to be not eligible to contest the election of the Director and to that extent the orders Annexures P3 and P4 are

perfectly valid and legal.

10. Learned counsel appearing for respondent No. 6 then submitted that this Court should further pass the direction that his client will be deemed

to be considered as a Director consequent upon the disqualification of the petitioner. We do not accept this argument and hold that it has been

rightly declared by the Cane Commissioner (respondent No. 2) vide the impugned order (Annexure P3) that fresh election will be held again for

the membership of the Managing Committee of the Radaur Cane Growers Cooperative Society from Zone No. 5 in due course of time.

11. In view of our above discussion, this writ petition is devoid of any merit and the same is hereby dismissed leaving the parties to bear their own

costs.