

The Indian Law Reports

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

BANWARI LAL,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 1415 of 1965

April 24, 1968

Punjab Agricultural Produce Markets Act (XXIII of 1961)—S. 12—Punjab Agricultural Produce Markets (Election to Market Committees) Rules, 1961—Rules 2(6) and 19(3)—Licence of a voter subsisting on a qualifying date—Such licence expiring before date of poll—Voter—Whether can exercise right of voting—Rule 19(3) Proviso—Licence holding firm—Vote of—Who can cast vote.

Held, that whenever certain qualifications for voters are prescribed in any scheme of elections, it is open to the legislature, and (in the absence of a provision prohibiting the making of such a rule) to the Government authorised to make rules under the Act, to provide for a qualifying date on which the qualification in question should be possessed by a voter. Qualifying date has been defined in rule 2(6) of the Punjab Agricultural Produce Markets (Election to Market Committees) Rules, 1961, to mean such date as may be specified by the State Government by notification in the official Gazette in relation to the preparation or revision of every electoral roll. Hence the voter should have a valid and subsisting licence on the qualifying date fixed under rule 2(6) of the Rules and that he does not lose the right to vote if his licence has subsequently expired before the date of polling. (Para 4).

Held, that in case of licence holding firm, proviso to Rule 19(3) of the Rules bars the vote of the firm being cast by any person other than a partner of the firm having been authorised by all the partners to represent the firm. The language of the proviso is mandatory and non-compliance with the same will render the votes cast in contravention of the requirements of the proviso, invalid. (Paras 7 and 8).

Petition under Article 226 of the Constitution of India praying that a writ of Quo Warranto, mandamus or any other suitable writ, direction or order be

issued quashing the election of Respondents 4 and 5 to the Market Committee, Hansi.

R. S. MITTAL, ADVOCATE, for the Petitioner.

M. S. JAIN, ADVOCATE, FOR ADVOCATE-GENERAL (HARYANA) FOR Nos. 1 TO 3
AND S. C. SIBAL, ADVOCATE, for other Respondents.

JUDGMENT

NARULA, J.—Election to the Market Committee, Hansi (District Hissar), held on April 4, 1965, under the Punjab Agricultural Produce Markets Act, 1961, against which admittedly no election petition lay, has been called in question by Banwari Lal the writ petitioner, on various grounds, out of which only two have been pressed before me at the hearing of this petition.

(2) The first ground is contained in paragraph 13 of the petition and is to the effect that the licences of the seven firms named in that paragraph had expired on March 31, 1964, and the firms had not applied for renewal of their licences and, therefore, the representatives of those firms had no right to vote in the election in dispute. On that basis, it is argued by Mr. R. S. Mittal, learned counsel for the petitioner, that the seven votes of the firms mentioned in paragraph 13 of the petition, which were all cast in favour of Ram Niwas, respondent No. 4, should have been excluded from consideration. Since there was a difference of only two between the votes cast in favour of the petitioner on the one hand (96 votes) and those cast in favour of respondents 4 and 5 on the other (98 each), it is argued that this has materially affected the result of the election of the returned candidates. In reply to the above-said allegations, the Sub-Divisional Officer, Hansi, has stated that the qualifying date to be a voter had been fixed by the Government for the election in question as November 30, 1964, and that, therefore, it was immaterial whether the licence was got renewed or not on April 4, 1965, the date of polling. In the written statement of respondents 4 and 5, which is duly supported by an affidavit of Ram Niwas respondent No. 4, it has been deposed in this behalf that—

(i) Non-renewal of the licences after March 31, 1965, is irrelevant, because—

(a) the rules provide for renewal being made within thirty days of grace after the date of expiry of the licence; and

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(b) the relevant date on which the voters should have held licences was the qualifying date, i.e., November 30, 1964; and

(ii) on the qualifying date, i.e., on November 30, 1964, all the licensees had the licences in their names.

(3) The petitioner has not filed any counter-affidavit denying any of the facts deposed to by Ram Niwas in his above-said return. I have, therefore, to decide this particular point on the factual basis that the seven firms named in paragraph 13 of the writ petition did hold valid and subsisting licences on November 30, 1964, which licences were annual and expired on March 31, 1965, but had not, in fact, been renewed till April 4, 1965, the date of polling.

(4) Section 12 (2) (a) (ii), read with section 12 (2) (b) — as this particular Committee consisted of ten members — provides that two members have to be elected from persons licensed under section 10 of the Act for the notified market area concerned “by the persons holding licences under that section”. It is clear from the above-mentioned provisions that the electorate, which has to return, the two members under section 12(2)(a)(ii), consists of only those persons who actually hold licences under section 10. This is indeed not disputed. The only disputed question is as to which is the date on which they should be holding such licences, i.e., whether they should be holding licences on the qualifying date or on the date of polling and in the latter case whether the non-renewal during the period of grace amounts to rendering the relevant dealer a non-licensee. Qualifying date has been defined in rule 2(6) of the Punjab Agricultural Produce Markets (Election to Market Committees) Rules, 1961, hereinafter called the 1961 Rules, to mean such date as may be specified by the State Government by notification in the official Gazette in relation to the preparation or revision of every electoral roll. The argument of Mr. Mittal is that rule 2(6), referred to above, is *ultra vires* section 12(2) (a) (ii). No law has been cited in support of this proposition. I do not consider this argument of Mr. Mittal to be correct. Whenever certain qualifications for voters are prescribed in any scheme of elections, it is open to the legislature, and (in the absence of a provision prohibiting the making of such a rule) to the Government authorised to make rules under the Act, to provide for a qualifying date on which the qualification in question should be possessed by a voter. I would,

therefore, hold that the voter in question should have a valid and subsisting licence on the qualifying date fixed under rule 2(6) of the 1961 Rules, and that such a firm does not lose the right to vote if its licence has subsequently expired before the date of polling. Since in view of the unrebutted statement of facts available on the record before me, the firms in question did hold valid licences on the qualifying date, i.e., on 30th November, 1964, this objection of Mr. Mittal cannot be accepted. In this view of the matter, it is not necessary to decide as to whether non-renewal of a licence after the date of its expiry within the period of grace allowed for renewal (thirty days in this case by rule 21 of the General Rules of 1962) amounts to depriving the dealer concerned of the status of a licensee and of his right to vote or not. Moreover, it is not disputed that the names of the seven firms in question were borne on the electoral roll prepared for the election in question. That being so, this point cannot be allowed to be urged for setting aside the election because of the authoritative pronouncement of a Full Bench of this Court in *Roop Lal Mehta v. Dhan Singh and others* (1), wherein it was held that once the electoral rolls have been finalised the vote of a person whose name is on the electoral roll cannot be challenged as being void on the ground that he was not qualified to be a voter because of his having been under 21 years of age on the qualifying date. The first submission advanced on behalf of the petitioner, therefore, fails.

(5) The second and the only other argument advanced on behalf of the petitioner is that the seven votes mentioned in paragraph 11 of the writ petition were not valid because they were not cast by any partner of the licensee firms named in that paragraph.

(6) Once again it is emphasised that in view of the difference of only two votes between the votes obtained by the petitioner and those cast in favour of the respondents, if the petitioner is able to show that the seven votes were cast in favour of any of the respondents, which should have been excluded from consideration, the election is liable to be set aside. Before entering into the legal aspect of this controversy, it is necessary to decide (i) as to whether the votes in question were really cast in favour of respondent No. 4 or in favour of the petitioner himself and (ii) whether those votes were really not cast by the partners of the licensee firms. So far

(1) I.L.R. (1968) 1 Pb. & Hry. 651=1967 P.L.R. 618.

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as the first of these two questions is concerned, the petitioner has categorically stated that all the seven unauthorised persons on behalf of the firms named in paragraph 11 of the writ petition had "voted for Ram Niwas (respondent No. 4)". In the return of the Sub-Divisional Officer, it is stated that "this cannot be ascertained as the votes were cast secretly and record of election was sealed under the rules." In the written statement of respondents 4 and 5, all that is stated in this behalf is that "probably the voters whose names have been given in paragraph 11 of the petition, voted for Banwari Lal himself As far as Ram Niwas respondent is concerned, these persons have voted for Banwari Lal." The situation, therefore, is that whereas the petitioner has made a categorical statement supported by his affidavit that the disputed votes were cast in favour of respondent No. 4 neither the said respondent nor the State has denied this fact in unequivocal terms. For the purpose of deciding this case, I will assume the allegation made by the petitioner in this behalf to be correct. Regarding the second question, i.e., about the persons who cast the votes on behalf of the firms named in paragraph 11 of the writ petition being partners or not, it is again significant that the petitioner has made a categorical statement that the persons whose names have been given in column 3 against the names of the firms in paragraph 11 of the petition 'were not partners of the licensee firms.' As already stated, the names of the firms as well as the names of the persons who cast their votes and their status (Munim in case of five firms and father of the proprietor in case of the sixth firm) have been mentioned by the petitioner. The State has not given any reply to this part of the allegation. The reply to this allegation contained in the return of respondents 4 and 5 is that the "answering respondents do not know whether the persons authorised to vote on behalf of the firms were partners or not". This fact has also, therefore, to be presumed to be in favour of the petitioner. It is on this factual basis that I have to decide whether the seven votes in question were validly cast or not. Relevant part of sub-rule (3) of rule 19 of the 1961 Rules provides that "every person licensed under section 10 wishing to vote shall bring with him a certificate of identity in Form H from the Chairman of the Committee of the Notified Market Area." The proviso to that sub-rule, on which the whole argument of Mr. Mittal is based, is in these terms—

"Provided that where the licensee under section 10 is a firm only that partner of the firm who has been duly

authorised by all the partners to represent it shall be entitled to vote."

(7) Whereas Mr. Mittal argues that the proviso contains an absolute bar against any person being authorised by a firm to vote under sub-rule (3) of rule 19, who is not a partner of the firm in question, the argument of the learned counsel for the State is that the requirement of the proviso is merely permissive and the real intention behind the provision is that the person who cast the vote should have been actually authorised by the firm and the word 'only' goes with 'authorised by all the partners' and does not qualify the word 'partner'. It appears to me that the construction sought to be placed by Mr. Mittal is correct and that the proviso absolutely bars the vote being cast by any person other than the one who possesses both the qualifications, i.e. (i) of being a partner of the firm, and (ii) having been authorised by all the partners to represent the firm.

(8) It was, however, contended by Mr. M. S. Jain, learned counsel for respondents 1 to 3, that the requirements of the proviso to sub-rule (3) of rule 19 are merely directory and that violation of directory provision in the matter of elections is immaterial. Once again I am unable to agree with this contention. It appears to me that the language of the proviso which is in the negative form, is absolutely mandatory and non-compliance with the same will render the votes cast in contravention of the requirements of the proviso invalid. In these circumstances, it is held that the election in dispute is liable to be set aside as seven votes cast in favour of respondent No. 4, referred to in paragraph 11 of the writ petition, were not cast by any authorised person and were cast in contravention of the mandatory requirements of sub-rule (3) of rule 19 of the 1961 Rules.

(9) Mr. S. C. Sibal, learned counsel for respondents 4 and 5, has besides adopting the arguments advanced on behalf of the State, further added that this writ petition should in any case be dismissed as infructuous because respondents 4 and 5 were to hold the office only for three years and since three years from the date of their election have already expired, there is no point in granting this writ petition. On the other hand, Mr. Mittal contends that no fresh elections having been held and no election programme for any fresh election having yet been published, the respondents are

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still holding office and it is, therefore, necessary to decide this case. Moreover, it cannot be presumed that respondents 4 and 5 assumed office on the date of polling itself. Section 12(3) of the Act provides that election of members referred to in sub-section (2) of that section, has to be communicated to the State Government within the prescribed period which has not to be less than two months and it is only after such results are communicated that thereupon the State Government has to notify such election in the official Gazette. It is not disputed that the elected members do not assume office till the publication of the Gazette notification. In these circumstances, I find myself constrained to pronounce upon the invalidity and illegality of the election in question and I do not find myself in a position to dismiss this writ petition.

(10) For the foregoing reasons, this writ petition is allowed and the election of respondent No. 4 is set aside, as all the seven disputed votes are said to have been cast in favour of respondent No. 4. No vote cast in favour of respondent No. 5 having been questioned, he will be deemed to have got ninety-eight votes. In the circumstances of the case, there is no order as to costs.

R. N. M.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

M/S. DALMIA DADRI CEMENT LTD.—*Petitioner.*

versus

ITS WORKMEN AS REPRESENTED BY THE MAZDOOR EKTA
SAMITI AND OTHERS,—*Respondents.*

Civil Writ No. 323 of 1968

April 30, 1968

Industrial Disputes Act (XIV of 1947)—Ss. 2(k) and 11—Code of Civil Procedure (Act V of 1908)—Order 14, Rule 2—Objection regarding existence of an industrial dispute raised before an Industrial Tribunal—Issue framed—Such issue—Whether should be treated as preliminary—Tribunal ordering some issues