

(9) A copy of this order be given *dasti* to the counsel for the parties on payment of requisite charges.

J.S.T.

Before Amarjeet Chaudhary & N.K. Agrawal, JJ.

SUSHILA DEVI,—*Petitioner*

versus

STATE OF HARYANA & OTHERS, —*Respondents*

CWP No. 3046 of 1997

7th May, 1997

Constitution of India, 1950—Arts. 226/227—Haryana Co-operative Societies Act, 22 of 1984—Section 18(1) —Rejection of nomination—Petitioner by a resolution of 2/3rd majority appointed by Managing Committee of Society as its representative to participate in election of Board of Directors of Bank—Petitioner's nomination cancelled by Zonal Committee on the ground that resolution not passed by 2/3rd majority—Challenge to cancellation—Held that resolution rightly passed—6 out of 10 members attended meeting and approved of petitioner's name—Only nine authorised to vote as 10th member was an associate member and would not participate in election—Incumbent upon committee to afford opportunity to Society to pass fresh resolution in case resolution is defective.

Held, that from the facts emerging from the rival contentions, it appears from a perusal of the resolution dated 27th December, 1996 passed by the Managing Committee of the Society that 10 members had attended the meeting, one of whom was Shri Ajit Singh, Executive Officer of the Bank. He, being an associate member, did not have a right to vote. Section 18(1) of the Haryana Co-operative Societies Act lays down that a Co-operative Society may admit any person or a Co-operative Society or any other statutory body as an associate member in accordance with its bye-laws. Section 20 provides for right to vote in the affairs of the Society. Clause (b) lays down that an Associate member shall not have the right to vote. It is thus clear that Shri Ajit Singh, Executive Officer of the Bank had no right to vote because he attended the meeting as a representative of the Bank. Since he was only an associate member, he actually did not participate in the election.

(Para 6)

Further held, that six members of the Managing Committee appended their signatures and thus, although nine members, who

had participated, had voted, six members approved the name of the petitioners. It is, therefore, noticed that the petitioner's name had been approved by two-thirds of the members of the Managing Committee of the Society.

(Para 6)

Further held, that since the petitioner's nomination was approved by a resolution passed by two-thirds members of the Managing Committee of the Society, the decision of the Zonal Committee, debarring the petitioner from taking part in the election, is found to be contrary to the provisions of law and unsustainable. Even if the resolution, nominating the petitioner, was treated to be defective, it was incumbent upon the Zonal Committee to afford an opportunity to the Society to pass a fresh resolution so as to nominate the same or another representative of the Society for participating in the election.

(Para 9)

Prem Singh, Advocate, *for the Petitioner*

D.R. Trikha, D.A.G., Haryana, *for Respondents
Nos. 1 and 2*

S.S. Dalal, Advocate, *for Respondents Nos. 3 to 6*

A.P. Manchanda, Advocate, *for Respondent No. 7*

JUDGMENT

N.K. Agrawal, J.

(1) This is a petition under Articles 226/227 of the Constitution for setting aside the order dated 5th February, 1997 passed by the Zonal Committee constituted by the Mohindergarh Central Co-operative Bank Ltd., respondent No. 6 (hereinafter referred to as "the Bank") whereby petitioner's name was deleted from the voters' list by rejecting her nomination.

(2) The petitioner, Smt. Sushila Devi, was a primary member of the Kurahawala Co-operative Credit and Service Society, village Kurahawala, Tehsil and District Mohindergarh (hereinafter referred to as "the Society"). The Society was, in turn, a member of the Bank and, as such, it was entitled to send its representative to take part in the election to the Bank's Board of Directors/Managing Committee. As the present term of the Board of Directors/Managing

Committee of the Bank was expiring, a Zonal Committee was constituted by the Bank. The petitioner has alleged that Shri Narender Singh Yadav (respondent No. 4) and Shri Prem Chand Gupta, Advocate (respondent No. 5) were nominated as members of the Zonal Committee besides the Deputy Registrar of Co-operative Societies. The Society alongwith 12 other Societies was placed in Zone No. 1. The petitioner was, by a resolution dated 27th December, 1996, appointed by the Managing Committee of the Society as its representative to participate in election to the Board of Directors of the Bank. The other 12 Societies also authorized their representatives to take part in the election. Thus, there were 13 voters in the list of voters in Zone No. 1. The petitioner has alleged that Shri Ram Bilas Sharma, Education Minister, Haryana (respondent No. 7) wanted his brother Rajinder Singh to be elected unopposed as the Director of the Bank and was also unhappy with the petitioner's husband for political reasons. In the meeting of the Zonal Committee, an objection as raised by one Shri Kanwar Singh that the petitioner's name should be included in Zone No. 2 and not Zone No. 1. However, instead of considering that objection, the Zonal Committee struck off petitioner's name from the list of voters on the ground that her name was not approved by the two-third members of the Society.

(3) The petitioner's case is that resolution appointing her as the representative of the Society had been passed by six out of nine members of the Managing Committee of the Society and was thus a valid resolution by two-third of the members present and voting. Copy of the resolution (Annexure P-1) has been placed on record to show that 10 members had attended the meeting of the Managing Committee out of whom, Shri Ajit Singh, Executive Officer of the Bank had attended the meeting as a nominee of the Bank and, therefore, had no power to vote. Therefore, out of nine members of the Managing Committee of the Society, Six members had approved the nomination of the petitioner and was thus a valid nomination. It is further contended by the learned counsel for the petitioner that, even it was assumed that the resolution had not been passed by two-third members, it was necessary to afford an opportunity to the society to pass a fresh resolution as required under the Election Rule. Since the petitioner was deprived of her right to participate in the election, the present writ petition has been filed for setting aside the decision taken by the Zonal Committee of the Bank.

(4) Respondents Nos. 3 to 6 have filed their joint reply and respondent No. 7 has also filed a separate reply, denying most of

the allegations made by the petitioner.

(5) The plea put forward by the respondents is that a member of the Managing Committee of a Society could be authorised to participate in the election only by a resolution passed by a simple majority but a primary member of the Society, which the petitioner was, could be authorised by a resolution passed by two third members of the Managing Committee of the society. Since the resolution authorizing the petitioner was not passed by two-third majority, her name was rightly deleted from the list of voters.

(6) From the facts emerging from the rival contentions, it appears from a perusal of the resolution dated 27th December, 1996 passed by the Managing Committee of the society that 10 members had attended the meeting, one of whom was Shri Ajit Singh, Executive Officer of the Bank. He, being an associate member, did not have a right to vote. Section 18(1) of the Haryana Co-operative Societies Act lays down that a Co-operative Society may admit any person or a Co-operative Society or any other statutory body as an associate member in accordance with its bye-laws. Section 20 provides for right to vote in the affairs of the Society. Clause (b) lays down that an associate member shall not have the right to vote. It is thus clear that Shri Ajit Singh, Executive Officer of the Bank had no right to vote because he attended the meeting as a representative of the Bank. Since he was only an associate member, he actually did not participate in the election. Petitioner's name was proposed by a member, Shri Jagmal Singh, son of Bhagwan Ram and was seconded by Sarvshri Karan Singh, Ram Singh and Ratti Ram. The name of Kanwar Singh was also proposed but ultimately Smt. Sushila Devi, the petitioner, was authorised by majority vote to take part in the election to the Managing Committee of the Bank. Six members of the Managing Committee appended their signatures and thus, although nine members, who had participated, had voted, six members approved the name of the petitioner. It is, therefore noticed that the petitioner's name had been approved by two-third of the members of the Managing Committee of the Society. The Zonal Committee received two complaints from Kanwar Singh who was actually a defeated candidate. The first objection, filed by Kanwar Singh before the Zonal Committee, related to the inclusion of petitioner's name in Zone No. 2 instead of Zone No. 1. That plea was, however, rejected by the Zonal Committee. Shri Kanwar Singh had filed a second objection also, alleging that the petitioner's approval had not been given by a resolution passed by two-third majority of the members

of the Managing Committee of the Society. This objection was accepted by the Zonal Committee.

(7) From the facts discussed above, the decision taken by the Zonal Committee appears to be totally misconceived and against the facts. The respondents' plea, that the petitioner's name was supported by four persons only, does not appear to be correct. The resolution had been signed by six members of the Managing Committee of the Society. Therefore, the petitioner's contention, that her name had been approved by a valid resolution, is found to be acceptable.

(8) Reliance has been placed by the learned counsel for the petitioner on a decision of this Court in *Nawab Singh v. Registrar, Co-operative Societies, Haryana and Others* (1), in support of the proposition that an opportunity should have been given to the Society to pass a fresh resolution. In that case also, the Zonal Committee had found the resolution to be defective because it had not been attested by Inspector Incharge of the Society. It was held that the Zonal Committee was bound to afford ample opportunity to the Society to pass a fresh resolution within a specified time.

(9) Since the petitioner's nomination was approved by a resolution passed by two-third members of the Managing Committee of the Society, the decision of the Zonal Committee, debarring the petitioner from taking part in the election, is found to be contrary to the provisions of law and unsustainable. Even if the resolution, nominating the petitioner, was treated to be defective, it was incumbent upon the Zonal Committee to afford an opportunity to the Society to pass a fresh resolution so as to nominate the same or another representative of the Society for participating in the election, on both the grounds, the exclusion of the petitioner's name from the voters' list of Zone No. 1 is found to be bad in law.

(10) In the result, the petitioner succeeds. The respondents Nos. 2, 3 and 6 are directed to prepare a fresh list of voters, including the petitioner's name, to hold the election from Zone No. 1 in accordance with law. Costs, assessed at Rs. 500.

J.S.T.