

allow the petitioner to have his suit converted into an execution proceeding.

(6) The parties through their counsel are directed to appear before the learned trial Court on April, 24, 1978.

N. K. S.

Before R. N. Mittal, J.

BATALA POPULAR WOOD WORKS CO-OPERATIVE INDUSTRIAL SOCIETY LTD. AND OTHERS—*Petitioners.*

versus

THE REGISTRAR CO-OPERATIVE SOCIETIES, PUNJAB, CHANDIGARH, ETC.,—*Respondents.*

Civil Writ No. 436 of 1978

March 23, 1978.

Punjab Co-operative Societies Act (XXV of 1961)—Sections 18 and 26(1A)—Punjab Co-operative Societies Rules 1963—Rules 20, 23, Appendix 'C', Clause (1) & (4)—Elections to the Managing Committee of a Central Society—Zonal lists changed without notice to voters—Election on the basis of such lists—Whether liable to be set aside.

Held that preparing of proper electoral rolls is necessary for holding elections. Clause 4(2) of Appendix 'C' to the Punjab Co-operative Societies Rules 1963 says that the zonal lists of the voters shall be prepared if necessary by the Manager in accordance with the directions issued by the Registrar from time to time. For constituting zones and preparing the zonal lists it is desirable that notices should be issued to all members of the Central Society and citation published in at least two newspapers having large circulation in the area. If any member has any grievance against the proposed zonal list he can raise objections before the officer concerned and the mistake can be rectified. If this is done, then the result of the lapse on the part of the Officer can be that proper list of voters may not be prepared and a large number of societies may not be able to exercise the right to vote. In case any representative of such societies wants to contest the election, he is deprived of it. An election held on the basis of incomplete voters lists cannot be said to be a proper election and is liable to be set aside.

(Paras 5 and 6)

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*Petition under Articles 226/227 of the Constitution of India
praying that:—*

- (i) *a writ in the nature of Certiorari quashing the election programme and holding of the election to the Managing Committee of the Batala Central Cooperative Bank Limited, Batala, be issued,*
- (ii) *a writ in the nature of Mandamus directing the respondents to hold the election after including the names of the petitioners and other societies which are members of the Batala Central Cooperative Bank Limited in the voters list, be issued,*
- (iii) *any other writ, order or direction which this Hon'ble Court may deem fit in the circumstances of the case.*
- (iv) *costs of the petition be awarded to the petitioners.*
- (v) *condition of issuing notice of motion to the respondents before hand, be dispensed with.*

It is further prayed that during the pendency of the writ petition, the election to the Managing Committee of the Bank be stayed.

Kuldip Singh Bar-at-law with Mr. H. S. Mattewal, Advocate, for the petitioner.

P. S. Mann Sr. Advocate with H. S. Nagra, for respondent Nos. 1 to 4.

O. P. Goyal, for respondents Nos. 5 to 9.

JUDGMENT

Rajendra Nath Mittal, J.—(1) The petitioners are primary societies registered under the Punjab Co-operative Societies Act, 1961, (hereinafter referred to as the Act), Batala Central Co-operative Bank Limited, Batala, respondent No. 4 (hereinafter referred to as the Bank) is a central society of which the petitioners and other co-operative societies are members. The Bank has a Managing Committee consisting of nine members to administer it. For the purpose of electing members to the Managing Committee, the area in which the bank operates is divided into nine zones and one member is returned from each zone. Thereafter election programme is drawn by the Manager according to clause (4) of Appendix 'C' to the Punjab Co-operative Societies Rules, 1963 (hereinafter referred

to as the Rules). The programme for electing nine members was framed by the Manager according to which last date for filing the nomination papers was fixed as January 27, 1978 and for holding elections and declaration of results as February 5, 1978. It is alleged that the names of the petitioners did not find place in the zonal lists, and consequently they were unable to exercise their right to vote and contest the elections. The petitioners challenged the zonal lists on the ground that their names and the names of other 49 member-societies were not included in them.

(2) It is contended by Mr Kuldip Singh, learned counsel for the petitioners, that petitioners were members of the Bank and their representatives were entitled to exercise their right to vote and contest the election. The zonal lists were prepared without any intimation to the petitioners and names of the petitioners were not incorporated therein. He urges that the result was that the petitioners were deprived of their right to vote and contest the elections through their representatives. According to him, the elections held on the basis of such electoral rolls were void and liable to be set aside.

(3) I have given a thoughtful consideration to the argument of the learned counsel. It cannot be disputed that framing of the proper electoral rolls is necessary for holding the elections. Reference in this connection may be made to the observations of the Supreme Court in *Chief Commissioner, Ajmer v. Radhey Shyam Dani*, (1), Bhagwati, J., speaking for the Bench observed as follows:

“It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be

(1) (1957) S.C.R. 68.

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liable to be challenged at the instance of the parties concerned. It was in our opinion, therefore, necessary for the Chief Commissioner to frame rules in this behalf, and in so far as the rules which were thus framed omitted these provisions they were defective."

From the above observations, it is clear that unless proper electoral rolls are prepared, the election would be liable to be challenged on that ground. It is further clear that the learned Judge was of the view that the Chief Commissioner should have framed rules in this regard. It will be relevant to point out that no rules under the Act have been made by the Punjab Government for framing electoral rolls. The Haryana Government has, however, taken a lead in doing so. It will, in my view, be proper that the Punjab Government should also make rules to frame electoral rolls as has been done by the Haryana Government.

(4) Now I shall advert to some of the provisions of the Act and the Rules. Under section 18, every member of a co-operative society has one vote in the affairs of the society. The Committee of a co-operative society is required to divide the area of operation of the society into zones for the purpose of election of members of the committee under section 26(1A). Rule 20 of the Rules, makes it incumbent on a co-operative society to maintain a register of members showing *inter alia* name, address and occupation of each member. Rule 23 provides that the members of the committee of a co-operative society shall be elected in accordance with rules given in Appendix 'C' Clause (1) of Appendix 'C' contains definition of various words. Sub-clause (e) defines the word 'voter' and according to the definition, 'voter' means a person entitled to vote under the rules. Clause (4) deals with election programme.

(5) It is admitted case of the parties that the Bank is a central society and all its members are cooperative societies. According to Section 18, every cooperative society has got a vote for electing the members of the Committee of the Bank. Under Rule 20 the Bank has to maintain a register of its members. Under clause 4(2) of Appendix 'C', the Bank constituted zones and framed zonal lists in August, 1977. This sub-clause says that the zonal lists of the voters shall be prepared if necessary by the Manager in accordance with directions issued by the Registrar from time to time. No directions

have been brought to my notice by the counsel in accordance with which the zonal lists had to be prepared. It may be relevant to point out that Haryana Government as stated above has amended Appendix 'C' and framed detailed rules as to how the lists of voters are to be prepared. For constituting the zones and preparing of the zonal lists, it would have been proper that notices should have been issued to all members of the Bank, and citation published in atleast two newspapers having large circulation in that area. If any members had any grievance against the proposed zonal list, he could raise objection before the officer concerned and the mistake could be rectified. It was not difficult for the Manager to give citation in 2 papers and issue individual notices to the societies as their list was with him.

(6) In the present case, zones and zonal lists were framed in August, 1977. The Assistant Registrar, Cooperative Societies did not issue any notices to the individual members. He got published one citation in the daily 'Ajit' to the effect that zones were being framed for election of the managing committee of Batala Central Co-operative Bank Limited and in case anybody had any objections, he could send the same in writing to him upto August 20, 1977. It was further stated that the list of the zones had been displayed on the notice board of the Bank. In my view, the citation in that newspaper was not sufficient for inviting objections. In case the petitioners and other cooperative societies had come to know about preparation of zonal lists, they would have brought it to the notice of the Assistant Registrar that their names had not been included in the list. They could raise further objections regarding the framing of the zones. The result of this lapse on the part of the Assistant Registrar is that proper list of voters has not been prepared and a large number of societies have not been able to exercise right to vote. In case any representative of such societies wanted to contest the election, he has also been deprived of it. After taking into consideration all the aforesaid circumstances, I am of the view that election held on the basis of incomplete voters list cannot be said to be a proper election and is liable to be set aside.

(7) The learned counsel for the respondents contended that the petitioner societies which are in the process of winding up, have no right to vote. It is not necessary to go into this matter at this stage as I find from the zonal lists that various societies under winding up have been shown as voters. In case, the societies under

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winding up have got no right to vote, they should not have been included in the voters list. Ultimately, the elections may have to be set aside inter-alia on the ground that the societies who had no right to vote had exercised the said right. In the circumstances, I do not find any force in the contention of the learned counsel.

(8) It is next argued by the learned counsel for the respondents that results of some of the societies have been declared, and in case the writ petition is accepted, their elections will also be set aside. They further submitted that a procedure has been given in the rules for challenging the elections to the Committee. According to the learned counsel, the petitioners can challenge the election in the manner prescribed. I have given a thoughtful consideration to the argument, but do not find any merit in it. The writ petition was filed on January 24, 1978. It was ultimately admitted on February 2, 1978. On that day, it was ordered that the election may be held but its result be not announced. The election took place on January 28, 1978, i.e. after the filing of the writ petition. As the writ petition was filed prior to the date of election and the ground of challenge was improper preparation of electoral rolls, therefore, I am of the view that the elections which have been held on the basis of such electoral rolls were not proper. This Court can always interfere where it sees that great injustice has been done to the parties.

(9) In all fairness to the learned counsel for the respondents, an objection raised by them may be noticed. It is that the petition was not maintainable because out of five petitioners, four namely Chit Co-operative Poultry Society, Nanak Nangal Co-operative Agricultural Service Society, Balewal Co-operative Agricultural Service Society and Sarwali Co-operative Agricultural Service Society were under the process of winding up and the fifth namely Shukarpura Co-operative Agricultural Service Society, was entered at serial No. 24 in Zone No. 4. He submits that the societies which are under the process of winding up cannot institute the writ petition and as the name of Shukarpura Society appears in the electoral rolls therefore, it can make no grievance. The learned counsel for the petitioner has fairly conceded that in view of the fact that the four petitioners were under the process of winding up, they had no right to file the petition. He, however,

submits that Shukarpura Society was not entered as a voter in the electoral rolls and consequently, it had a right to file the petition.

(10) I have given a deep thought to the arguments of the learned counsel, but regret my inability to accept the contention of the learned counsel for the respondents.

(11) It has been conceded by Mr. Kuldip Singh, learned counsel for the petitioners that the four Societies which are under liquidation, have no right to file the writ. It is to be seen now whether the name of Shukarpura Society appears in the electoral rolls or not. The counsel for the respondents referred to the electoral rolls of Zone No. 4 (Annexure P/2/3) and submitted that at serial No. 24, the name of the Society is shown. It reads Shankerpura, Post Office Shankerpur, Tehsil Batala. The relevant entry is as follows:—

| S. No. | Name of the Society | Post Office | Teh. Batala |
|--------|---------------------|-------------|-------------|
| 24 | Shankerpura | Shankerpur | do |

The Society has been shown as Shankerpura Co-operative Agricultural Service Society and not Shukarpura Co-operative Agricultural Service Society. From the perusal of the entry in the electoral rolls, it is evidence that the society shown at serial No. 24 does not appear to be the same as the petitioner. From the spellings of the two societies, it is further clear that it does not appear to be a printing mistake. The societies are normally named after the name of the respective villages. Against serial No. 24, the name of the society as well as the village where it is functioning, has been mentioned as Shankerpura. If there was a printing mistake, then the word 'Shukarpura' would have appeared at least at one place. In the aforesaid circumstances, it cannot be held that the entry at serial No. 24 relates to Shukarpura Society. The contention of the learned counsel for the respondents is, therefore, rejected.

(12) For the reasons recorded above, I accept the petition with costs, quash the election and direct that fresh elections may be held in accordance with the Act and the Rules after preparing fresh electoral rolls. Counsel fee Rs. 150.

N.K.S.