

87(1)(b) of the Act and not in accordance with Article 79 of the Articles of Association of the Company. If the voting has already been held and a poll has been demanded at the meeting and the right of voting has been exercised contrary to section 87 of the Act, it would be for the petitioner to take appropriate proceedings for getting those proceedings annulled, if it is open to the petitioners to do so. No question of staying the holding of the meeting arises as Mr. Anand Sarup states that nobody has demanded a poll before the argument in the case started today and that even if a poll is demanded nobody had decided till the commencement of arguments in this case whether voting would be in accordance with section 87(1)(b) of the Act or Article 79. I find force in the argument and, therefore, do not stay the holding of the meeting but merely direct that the meeting shall be held (unless already held as stated above) subject to the condition that the right of voting shall be exercised under section 87 of the Act and not under Article 79. The costs of these proceedings shall abide the result of the main petition.

N. K. S.

MISCELLANEOUS CIVIL

*Before A. D. Koshal, J.*

DILBAGH RAI—*Petitioner.*

*versus*

BRAHM DATT AND OTHERS—*Respondents.*

Civil Writ No. 522 of 1969.

November 8, 1971.

*Punjab Agricultural Produce Markets (Election to Market Committees) Rules, 1961—Rules 3 and 19—Person duly registered as voter in the final electoral roll—Presiding Officer—Whether can debar such voter from casting his vote on the ground of minority.*

*Held, that the duties of the presiding officer as detailed in rule 19 of the Punjab Agricultural Produce Markets (Election to Market Committees) Rules, 1961 include ascertainment of the identity of an elector and the maintenance of secrecy of the ballot. The Rules do not confer any power*

Dilbagh Rai v. Brahm Datt and others (Koshal, J.)

on the presiding officer of debaring an elector named in the final electoral roll, which is prepared by the Deputy Commissioner under rule 3 of the Rules after inviting, hearing and deciding objections to the inclusion of any name therein, from casting his vote on any ground. The provisions contained in the Rules are comprehensive and envisage that once the presiding officer has satisfied himself about the identity of any elector, he must allow that elector to cast his vote. He cannot entertain or decide any objection as to whether the person claiming to be an elector was registered as such in the final electoral roll without justification or in spite of lack of qualification in that behalf. The entertainment and decision of such an objection is the function of the Deputy Commissioner acting under rule 3 of the Rules. The functions of the two authorities are well defined and lie in a separate compartments so that they do not overlap. Hence the action of a presiding officer in debaring an elector duly registered in the final electoral roll from casting his vote on the ground that the elector is a minor is illegal; and if such an illegality materially affects the result of the election, the same is liable to be set aside. (Paras 5 & 6)

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or quo-warranto or any other appropriate writ order or direction be issued, declaring the Election of Respondents Nos. 1 and 2 as members of the Market Committee Adampur Doaba, Tehsil and District Jullundur and also issuing a quo-warranto calling upon them to show by what authority purport to act as Members quashing the result of the Election of a Market Committee Adampur in so far as it declared Respondents Nos. 1 and 2 elected from persons licenced under section 10 of the Act, and directing the Respondents Nos. 3 and 4 to declare the petitioner elected in place of Respondent No. 1, and also directing the respondents Nos. 3 and 4 to hold fresh elections for two seats from dealers Licensees under Section 10.*

M. J. S. Sethi, Advocate, for the Petitioner.

H. L. Mittal, Advocate, for respondent No. 2.

JUDGMENT

KOSHAL, J.—(1) By this judgment I shall dispose of two petitions under Articles 226 and 227 of the Constitution of India, being Civil Writs Nos. 522 and 638 of 1969, the facts giving rise to which are these. The Market Committee, Adampur (hereinafter called the Committee) was constituted under the Punjab Agricultural Produce Markets Act, 1961, (hereinafter referred to as the Act). It was to

consist of nine members of whom two were to be elected by persons holding licences under section 10 of the Act (hereinafter mentioned as Licensees) from amongst themselves in accordance with the provisions of sub-section (2) of section 12 of the Act.

(2) For the two seats reserved for the licensees the candidates were Dilbagh Rai (petitioner in Civil Writ No. 522 of 1969) and Brahm Datt and Hari Kishan (respondents Nos. 1 and 2, respectively in both the petitions). The electors whose names were recorded in the electoral roll prepared by the Deputy Commissioner under the powers conferred on him by rule 3 of the Punjab Agricultural Produce Markets (Election to Market Committee) Rules, 1961 (hereinafter called the Rules) included "Messrs Ashok Kumar" (serial No. 47) and "Messrs Naresh Kumar Mohinder Pal" (serial No. 43), the former being a one-man concern run by Ashok Kumar, petitioner No. 2 in Civil Writ No. 638 of 1969, and the latter being a partnership concern with Naresh Kumar Aggarwal, petitioner No. 1 in Civil Writ No. 638 of 1969, as one of the partners.

(3) The elections to the Committee were held on the 12th of December, 1968, according to the programme framed by the Deputy Commissioner, Jullundur, under rule 5 of the Rules. Naresh Kumar and Ashok Kumar above-mentioned appeared at the polling station to cast their votes but were not allowed to do so by the presiding officer who accepted an objection made by Hari Kishan above-mentioned that they were both minors.

Polling being over, counting of votes took place. The three candidates secured votes as under:—

Dilbagh Rai	..	13
Brahm Datt	..	13
Hari Kishan	..	15

(4) It is the case of the petitioners in the two petitions that the presiding officer acted illegally in not allowing Naresh Kumar and Ashok Kumar to poll their votes, that in consequence the result of the election has been materially affected and that the election is liable to be quashed on that account.

(5) As already stated, the names of the business concerns of Naresh Kumar and Ashok Kumar figured in the electoral roll. The proviso to sub-rule (3) of rule 19 of the Rules states that where the elector, being a licensee under section 10, happens to be a firm, that partner of the firm who has been duly authorised by all its partners to represent it, and that partner alone, shall be entitled to vote. It is not disputed before me that Naresh Kumar was duly authorised by his only other partner Mohinder Pal to vote on behalf of his firm. Ashok Kumar had the right to vote being the sole proprietor of his concern known as Messrs Ashok Kumar. The question has arisen as to whether the presiding officer was competent to refuse permission to Naresh Kumar and Ashok Kumar to vote at the election when they duly represented electors entered in the final electoral roll which, according to the provisions of rule 3 of the Rules, is prepared by the Deputy Commissioner after inviting, hearing and deciding objections to the inclusion of any name therein. It appears to me that the question must be answered in the negative. The duties of the presiding officer at the polling are detailed in rule 19 of the Rules. They include ascertainment of the identity of an elector and the maintenance of secrecy of the ballot. No mention is made of the conferment of any power on the presiding officer of debarring an elector named in the final electoral roll from casting his vote on any ground. The provisions contained in the Rules are comprehensive and envisage that once the presiding officer has satisfied himself about the identity of any elector, he must allow that elector to cast his vote and that he cannot entertain or decide any objection as to whether the person claiming to be an elector was registered as such in the final electoral roll without justification or in spite of lack of qualification in that behalf. The entertainment and decision of such an objection is the function of the Deputy Commissioner acting under rule 3 of the Rules. It is obvious that a function which the Deputy Commissioner is enjoined to perform cannot be one, the performance of which a presiding officer may take upon himself, in the absence of a specific provision in that behalf. The functions of the two authorities (the Deputy Commissioner and the presiding officer) are well defined and lie in separate compartments so that they do not overlap. That is the only harmonious interpretation which may be placed on rules 3 and 19 of the Rules.

(6) The refusal of the presiding officer in debarring Naresh Kumar and Ashok Kumar from casting their votes, must be held to

be illegal in view of the interpretation placed by me on rule 3 and 19 of the Rules. It is not disputed that if that be so, the result of the election must be held to have been materially affected in consequence. Accepting the two petitions, therefore, I set aside the election. There will be no order as to costs.

**B.S.G.**

APPELLATE CIVIL

*Before Man Mohan Singh Gujral, J.*

**RANJIT KAUR—Appellant.**

*versus*

**SUKHDEV SINGH—Respondent.**

**First Appeal from Order No. 49-M of 1971.**

November 9, 1971.

*Hindu Marriage Act (XXV of 1955)—Sections 13(1A) and 23(1) (a)—Decree for judicial separation obtained by the wife—Refusal of the husband to co-habit within two years of the decree—Whether amounts to the husband's taking advantage of his own wrong—Petition for divorce by the husband after lapse of two years of the decree—Whether maintainable.*

*Held*, that a bare perusal of sub-section (1A) of section 13 of the Hindu Marriage Act, 1955 shows that a right to claim divorce has been conferred on both the parties to the marriage and not only to the party which has obtained a decree for judicial separation or restitution of conjugal rights. Section 23 of the Act no doubt provides that before a Court grants relief it must be satisfied that any of the grounds for granting relief exists and none of the bars mentioned in this section is present for refusing the relief. One of the grounds of refusal of relief is the petitioner's taking advantage of his own wrong or disability for the purpose of obtaining relief. In order that this bar imposed by section 23(1) comes into operation it is necessary that the advantage taken must relate to the ground on which the relief is claimed. A party can only be refused relief where advantage has been taken by the party after the ground on the basis of which relief is claimed has arisen. Where a wife obtains a decree for judicial separation, the refusal of the husband to co-habit with the wife within two years of the decree cannot give rise to an inference that the husband is taking advantage