

Before A. L. Bahri, J.

SATISH MOHINDROO AND ORS.,—*Petitioners.*

versus

ASSISTANT REGISTRAR, COOPERATIVE SOCIETIES,
GURDASPUR AND ORS.,—*Respondents.*

Civil Writ Petition No. 483 of 1988

February 21, 1989.

Constitution of India, 1950—Article 226—Punjab Cooperative Societies Act (XXV of 1961)—Ss. 26(1)(d), 55, 56(1) and (3), 58, 69 and 70—Punjab Cooperative Societies Rules, 1963—Rls. 53 and 55—Existence of alternative remedy—Effect of—Election of Members to Board of Directors—Challenge to said election—Setting aside of election without recording evidence—Validity of such order—Pendency of election petition—Power of authority to stay election—Scope of S. 26.

Held, that Rule 53 of the Punjab Cooperative Societies Rules, 1964 provides a procedure to be followed by Arbitrator while deciding disputes referred to him. He is supposed to communicate the date, time and place of hearing the dispute to all the parties concerned. Manager of the Bank who was in possession of the relevant record was the concerned party to whom notice ought to have been issued for the election in dispute, moreso when he was impleaded as a party in the election dispute. (Para 8)

Further held that a bare perusal of the Rule 55 makes it clear that the arbitrator was to hear the parties and the witnesses, who attended. And this hearing should be apparent from the record, meaning thereby that what was said by them should have been recorded. Such statements were to be treated as evidence. It is on the basis of such evidence and after consideration of any documentary evidence that the arbitrator was required to pass the order on the election dispute. The impugned order does not show compliance of the above rule. It was conceded on behalf of the respondent that no evidence was recorded. Thus the findings arrived at by the arbitrator in the impugned order are based on surmises and conjectures and not on evidence. It has been argued on behalf of the respondents that the election dispute petition was verified and the facts mentioned therein could be acted upon. This contention cannot be accepted. The verification of facts mentioned in the application is not on affirmation or a affidavit. Thus, the facts could not be treated as proved. The facts stated therein are only in the

form of allegations. The impugned order, therefore, cannot be sustained in law. (Para 8)

Held, further that existence of alternative remedy is not a bar for exercising the jurisdiction under Article 226 of the Constitution of India, 1950. No useful purpose would be served by declining the relief when the facts are so apparent and the order of the Arbitrator is based upon no evidence. (Para 9)

Held, further that Section 26(1)(D) of the Act makes it clear that this is applicable where the term of the Committee had expired and no committee is holding office, and further no committee had been constituted in accordance with the provisions of the Act. In the present case the term of the previous Committee was to expire in August, 1987 and the elections were held and 7 persons were elected. Even if the election of some of the members was questioned by filing election petitions it could not be said that the Committee was not holding the office. Remaining members could certainly act as members of the Committee. (Para 11)

Held, further that arbitrator had no power to stay the election of the elected members. The petitioners were elected as members according to the procedure laid down and their election could be set aside only if the manner provided in the Act. Unless and until their election was set aside they continue to hold office. The stay order granted by the arbitrator could not be taken into consideration in the matter of appointment of administrator. (Para 13)

Petition under Articles 226 and 227 of the Constitution of India praying that the petition be accepted, records of the case sent for and;

- (a) *a writ in the nature of certiorari issued quashing the impugned orders Annexure P/5, P/6, P/8, P/10, P/12 P/14, P/15 and P/16.*
- (b) *a writ in the nature of mandamum issued directing the respondents to do their duty according to law and to permit the petitioners to assume charge of their offices to which they were duly elected as per the approved election programme.*
- (c) *any other suitable writ, order or direction issued which this Hon'ble Court deems fit and proper in the circumstances of the instant case.*
- (d) *filing of original/certified copies of Annexure P/1 to P/16 dispensed with;*
- (e) *service of notice of motion dispensed with;*

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(f) operation of the orders Annexure P/5, P/6, P/7, P/10, P/12, P/14, P/15 and P/16 stayed till the writ petition is finally disposed of by this Hon'ble Court; and

(g) costs awarded to the petitioners.

N. K. Sodhi, Sr. Advocate (Nitin Kumar and S. K. Hiraji, Advocates with him), for the petitioners.

K. P. Bhandari, A.G. (Pb.), Malkiat Singh, Advocate, for respondent Nos. 9 and 10.

JUDGMENT

A. L. Bahri, J.

(1) *Vide* this judgment, five writ petitions (CWP No. 483, 3325 to 3327 and 3710 of 1988) are being disposed of together, as some of the facts involved therein are common and others are similar; the question of law arising being common to all of them.

(2) The Pathankot Hindu Cooperative Urban Bank Ltd., Pathankot (hereinafter called the Bank) is a cooperative society registered under the Punjab Cooperative Societies Act. The area of operation of the Bank is within the municipal limits of Pathankot City. The election of the members of the Board of Directors of the Bank was due, as the term of existing Directors was to expire in August, 1987. The Board of Directors passed Resolution Nos. 3 and 9 on March 23, 1987, preparing draft election programme, and dividing the operational area into seven zones wherefrom seven members of the Board of Directors were required to be elected. The draft election programme was sent to the Assistant Registrar who was exercising powers of the Registrar under the Act, for approval. On April 10, 1987, the election programme was approved. Thereafter on July 13, 1987, the election programme was notified. Annexure P1 is the election programme which was notified. August 9, 1987, was the date fixed for submitting nomination papers, scrutiny, withdrawal, and August 16, 1987 was the date fixed for election, if any. Satish Mohindroo, petitioner No. 1, along with two others namely Ram Narain and Ram Dass, filed nomination papers from Zone No. 1. The nomination paper of Ram Narain was rejected whereas Ram Dass withdrew. Only petitioner No. 1, Satish Mohindroo, remained in the field to be elected unopposed. From Zone No. 2, petitioner No. 2 Roshan Lal Khosla filed the nomination. The other candidate was Chiranji Lal. Election was held. Roshan

Lal Khosla secured 165 votes and Chiranji Lal 127. Roshan Lal Khosla was elected. From Zone No. 3, petitioner No. 3 Ramesh Kumar Sharma filed the nomination along with two others, namely Sarv Parkash and Prem Kumar. Both of them withdrew, leaving Ramesh Kumar Sharma in the field to be elected as unopposed. From Zone No. 4, Petitioner No. 4 Vinod Kumar filed the nomination along with Bishamber Dass. Since Bishamber Dass withdrew, Vinod Kumar remained in the field to be elected unopposed. From Zone No. 5, petitioner No. 5, Parshotam Arora filed the nomination along with two others namely Kamlesh Chander and Sai Dass. Out of them, Sai Dass withdrew. There was a contest between the two others. Parshotam Arora secured 322 votes while Kamlesh Chander had 181 votes. Thus, Parshotam Arora was declared elected. From Zone No. 6, petitioner No. 6, Kewal Krishan, contested the election along with two others namely Jatin Sharma and Jag Bahadur. They secured votes 134, 99 and 50, respectively. Thus, Kewal Krishan was declared elected. From Zone No. 7, Chander Parkash Jandial, petitioner No. 7, filed nomination, along with four others. While Nek Ram Saini and Khazan Chand withdrew, the nomination papers of Janak Ram Saini and Gurdeep Singh were rejected. Thus, unopposed, Chander Parkash Jandial, petitioner, was declared elected. The final result was declared on August 17/18, 1987. Annexure P2 is the result.

(3) Election disputes were raised u/s 55 of the Punjab Cooperative Societies Act, 1961 (hereinafter called the Act) for setting aside the election of the Board of Directors. Annexure P3 is the copy of the election petition relating to Zone No. 5. Annexure P4 also relates to election from Zone No. 6. These election disputes were before the Assistant Registrar, Cooperative Societies, Gurdaspur who passed stay orders on August 17, 1987. Copies of these stay orders are Annexures P5 and P6 which are to the following effect :—

“The above Election dispute (petition) presented before me today, i.e., 17th August, 1987 and following orders have been passed :—

Stay granted against the election of the abovesaid Bank dated 16th August, 1987. Parties are directed to come present before me on 14th September, 1987 at 10.00 A.M.

(Sd.)

Assistant Registrar, Coop. Soc.,
Gurdaspur.”

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Annexure P7 is the election dispute relating to Zone No. 7. On this petition, stay order was granted on August 19, 1987 (Copy Annexure P8) to the following effect :—

“Stay granted. Call the parties on 17th September, 1987.”

Annexure P9 is the election dispute relating to Zone No. 3. On this, similar stay order was passed on August 19, 1987, as reproduced above (Copy Annexure P10). Annexure P11 is the election dispute relating to Zone No. 4. Similar stay order was granted as above (Copy Annexure P12). Annexure P13 is the election dispute relating to Zone No. 1 and Annexure P14 is the stay order passed thereon.

(4) Against the aforesaid stay orders, appeals were taken to the Joint Registrar, Cooperative Societies, Jalandhar Division, Jalandhar. They were dismissed, holding that the same were not maintainable u/s 69 of the Act unless the parties invoked jurisdiction u/s 68 of the Act in the proper court. Annexure P15 is the copy of such an order. *Vide* Annexure P16, the Deputy Registrar, Cooperative Societies, exercising powers of the Registrar, appointed Gurdial Singh Dhillon, Assistant Registrar, Cooperative Societies, Gurdaspur, as Administrator of the Bank u/s 26(1) (D) of the Act. In CWP 483/1988, the challenge is to the different stay orders granted in the election disputes as well as to the order of appointment of Administrator, on different grounds as mentioned therein.

(5) Written Statement on behalf of respondents No. 3 to 8 who had raised election disputes was filed on the verification of Sh. Brahm Dev Joshi, respondent No. 5. Apart from alleging the impugned order to be good it was disclosed that the arbitrator had disposed of the election disputes,—*vide* orders, dated November 30, 1987, setting aside the election of the petitioners. Copies of those orders were piled along with the reply which are Annexures R5/1 to R5/4. Annexures R5/6 and R5/7 were also produced which are amended election disputes in respect of Zone No. 5 and Zone No. 6. Their dates are not mentioned on the annexures.

(6) On behalf of official respondents, written statement was filed by Joint Registrar, Cooperative Societies (respondent No. 2), stating therein that five revision petitions were received for disposal. Parties were summoned and heard and those revision petitions were finally disposed of on October 19, 1987.

(7) When the written statements were filed in CWP 483/1988, the petitioners came to know that the election petitions have already been disposed of on November 30, 1987, declaring their election to be illegal. Hence they filed separate writ petitions, viz., CWP No. 3325 to 3327 and 3710 of 1988, challenging those orders,— *vide* which their elections were set aside. They maintained that no notices of the election petitions were served upon them and the election disputes were disposed of without following the procedure. All the facts which have been briefly noticed above from CWP 483/1988 were incorporated in these election petitions. In these election petitions, written statements were filed on behalf of the Assistant Registrar, Cooperative Societies, *inter alia*, alleging that the petitioners refused to accept service in the election petitions and the orders were passed *ex parte* which were valid under the law.

(8) I shall first of all take up civil writ petitions No. 3325 to 3327 and 3710 of 1988, as the result of these petitions would affect the decision of CWP 483/1988. I may refer to one of the impugned orders in these four writ petitions. It is Annexure P10 in CWP 3325/88. After narrating the facts that an election dispute was raised and stay order was granted, notice was alleged to have been sent to Ramesh Chander who was respondent in the election petition. Since he refused to accept the same, he was proceeded *ex parte*. After recording arguments of counsel for the election petitioner on the day of the order, in the concluding portion of the order, it was observed as under :—

“I have heard the ld. counsel and perused the record. I am of the confirmed view that no publication was made in the vicinity through any mode of service. Record too could not satisfy me that the members were served through registered post or their signatures obtained by circulation of the Book in violation of the Appendix ‘C’ of the Rules framed under Punjab Cooperative Societies Act, 1961. The election dispute succeeds, I set aside the election of Romesh Chander Respondent No. 1 and hold that he is not an elected Director of the Board of Directors of the Bank.”

It has been argued on behalf of the petitioners that in fact, no notice of fixing the date of hearing the election dispute was served upon the petitioners by the Assistant Registrar, Cooperative Societies before passing the orders on November 30, 1987, and these

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orders are, therefore, liable to be quashed on that short ground. In the replies furnished in these election petitions, it is maintained that the notices were sent. However, they were received back with the report of refusal. Such reports were attested by respectable persons of the localities, such as Lambardars (Copy of the notice is Annexure P11 containing report of the process-server, etc.). Since it is a disputed question of fact, it is not considered appropriate to give a decision thereupon in the present proceedings, although learned counsel for the petitioners in this respect also argued that the despatch number on the alleged notice (Copy Annexure P11) is 119 dated November 9, 1987 whereas the despatch numbers of other letters, copies of which have been produced in CWP 483/1988, are in thousands, and Annexure P11 is alleged to have been sent later. The records should be perused to find out if Annexure P11 was fabricated or not. Again, I find that there is no need for holding such an enquiry, as merely from a look at the record wherein against Despatch No. 119, where notice P11 was entered, it could not be said whether a new register was started recently or not. This matter is left as it is. However, other legal points are being dealt with. Rule 53 of the Punjab Cooperative Societies Rules, 1963 (for short, the Rules) provides procedure to be followed by the arbitrator while deciding disputes referred to him u/s 55 of the Act. He is supposed to communicate the date, time and place of hearing the dispute to all the parties concerned. In the election petition (copy Annexure P10), apart from Romesh Chander, the other who were impleaded as parties were Jit Singh, Inspector, Cooperative Societies, Pathankot—Returning Officer, S. K. Gupta, Manager of the Bank, and Nirmal Singh, Sub-Inspector, Cooperative Societies, Pathankot. Admittedly, no notices were issued to these persons, although in the impugned order P.10, as reproduced above, it is mentioned that even the record could not satisfy him that the members were served through registered post or their signatures were obtained by circulation which was in violation of Appendix 'C' of the Rules. It is not clear as to which record was examined by him to make such observations. Such record was with the Manager of the Bank, as the election programme was published by him. He was, thus, a concerned party to whom notice ought to have been issued in the election dispute, more so, when he was impleaded as a party in the election dispute. Rule 53 was, thus, clearly violated in that respect.

Rule 55 of the Rules reads as under :—

“The Registrar or the arbitrator, as the case may be, shall hear the parties and witnesses who attend. On the basis of such evidence and after consideration of any documentary evidence that may be produced by either party, he shall give a decision or award, as the case may be, in accordance with justice, equity and good conscience. The decision or award shall be reduced to writing, announced to the parties and filed in the office of the Registrar. In the absence of any party duly summoned to attend, the dispute may be decided *ex parte*.”

A bare perusal of the aforesaid rule makes it clear that the arbitrator was to hear the parties and the witnesses who attended. And this hearing should be apparent from the record, meaning thereby that what was said by them should have been recorded. Such statements were to be treated as evidence. It is on the basis of such evidence and after consideration of any documentary evidence that the arbitrator was required to pass the order on the election dispute. The impugned order Annexure P10 does not show compliance of the above rule. It was conceded on behalf of the respondent that no evidence was recorded, and after hearing counsel the impugned order was passed. Thus, the findings arrived at by the arbitrator in the impugned order Annexure P10 are based on surmises and conjectures, and not on evidence. It has been argued on behalf of the respondents that the election dispute petition was verified and the facts mentioned therein could be acted upon. This contention can not be accepted. The verification of facts mentioned in the application is not on affirmation or affidavit, as is clear from Annexure P6. Thus, the facts mentioned in Annexure P6 could not be treated as proved. The facts stated therein are only in the form of allegations. The impugned order, therefore, can not be sustained in law.

(9) It has been argued on behalf of the respondents that alternative remedy of filing an appeal under section 68 of the Act was available to the petitioners, and, thus, this court should not interfere in exercise of jurisdiction under Article 226 of the Constitution, in this matter. This contention, in the facts and circumstances of the present case, can not be accepted. Firstly, as per allegations of the petitioner they were never served with the notice of the election petition and they came to know of the impugned order P10 only when reply in the earlier writ petition was filed. By that

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time, the period of six months for filing the appeal u/s 68(2) of the Act had expired. The Act does not provide for condonation of delay in filing the appeal. Assuming for the sake of argument that the provisions of section 5 of the Limitation Act could be applied to the appeals, no useful purpose would be served by declining the relief when the facts are so apparent as discussed above, that the order of the arbitrator is based upon no evidence. Existence of alternative remedy is not a bar for exercising the jurisdiction under Article 226 of the Constitution. In the facts and circumstances of the case, I do not find it just to decline the relief to the petitioner on that ground.

(10) The four writ petitions, as mentioned above, on which similar impugned orders were passed, accepting the election petitions and declaring the election of the present petitioners as illegal, are allowed and such orders like Annexure P10 in those cases are quashed.

(11) Reverting to CWP 483/1988, two questions have been argued, firstly, that the arbitrator while deciding the election disputes had no power to grant stay of elections held, and, secondly, that by merely filing an election petition (election dispute), the committee did not cease to function to bestow jurisdiction on the Deputy Registrar, Cooperative Societies, exercising the powers of the Registrar under the Act, to appoint administrator u/s 26(1) (D) of the Act. There is force in these contentions. The extract of section 26(1) (D) is as follows :—

“Where any committee has ceased to hold office and no committee has been constituted, in accordance with the provisions of this Act and rules and bye-laws made thereunder, the Registrar may, by an order in writing, appoint a Government employee as an Administrator for such period as may, from time to time, be specified in the order and the Administrator shall, before the expiry of the period of his appointment, arrange for the constitution of a new committee in accordance with the provisions of this Act and rules and bye-laws made thereunder.”

As the admitted facts are that seven members were elected from seven zones, out of them election of all the members was not questioned by filing the election disputes. That being the position, it cannot be said that the committee had ceased to hold office as

provided u/s 26(1) (D) of the Act, as reproduced above. A reading of the section aforesaid further makes it clear that this is applicable where the term of the committee had expired, and no committee is holding office, and further no committee had been constituted in accordance with the provisions of the Act, that the arbitrator could be appointed. In the present case, the term of previous committee was to expire in August, 1987; that the elections were held and seven persons were elected. Even if the election of some of the members was questioned by filing the election petitions, it could not be said that the committee was not holding the office. Remaining members could certainly act as members of the committee.

(12) In the matter of election of members by merely filing election they do not cease to be members unless and until their election is held to be illegal or void. Section 56 of the Act provides that on a reference of dispute u/s 55 of the Act, the Registrar may decide the dispute himself or transfer it for disposal to any other person invested by the Government with powers in that behalf, or refer it for disposal to one arbitrator. Sub-section (3) of section 56 reads as under :—

“The Registrar or any other person to whom a dispute is referred for decision under this section may, pending the decision of the dispute, make such interlocutory orders as he may deem necessary in the interest of justice.”

The above provision contemplates passing of interlocutory orders in disputes referred u/s 55 of the Act, as the Registrar or the arbitrator may deem fit in the interest of justice. On behalf of the respondents, reliance is placed on this provision of law that the arbitrator could pass stay orders in the election disputes as have been reproduced above. Section 56(3) is to be read along with section 70 of the Act which is reproduced below :—

“Where an appeal is made under section 68 or where the Government or the Registrar calls for the record of a case under section 69, the appellate authority or the Government or the Registrar as the case may be, may, in order to prevent the ends of justice being defeated, make such interlocutory orders, including an order of stay, pending the decision of the appeal or revision as such authority or the Government or the Registrar may deem fit.”

Section 70 refers to passing of interlocutory orders in appeals or revisions preferred u/ss 68 and 69 of the Act. The power of making

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interlocutory orders would include power to order stay. However, no power of stay is mentioned in section 56(3) of the Act. Apart from the above, there is no question of staying the election when members have been duly elected. This matter has been under consideration of Allahabad High Court in *Anand Prakash v. Assistant Registrar, Cooperative Societies* (1). After election of the members of a cooperative society, the election dispute was referred to the arbitrator. The arbitrator passed an *ex parte* order, holding that he was satisfied that there was a *prima facie* case to grant the stay and that it was just to pass a proper stay order. He consequently, directed the persons elected as directors and president at the annual general meeting not to function as such. He further ordered that existing directors and president would continue to function till the disposal of the arbitration case. These orders were challenged in the High Court. It was held that an arbitrator acting under the Act had no inherent, implied or incidental or consequential power, in the exercise of which he could pass an order of stay or in the nature of an injunction. Similar view was taken by the Bombay High Court in *Jagan Nath Pundlik v. Sukhdeo Onkar Wankhede* (2). The matter related to election of the Panches under the Bombay Village Panchayats Act, although the civil judge was hearing the election petition. It was observed as under :—

“The scheme of the Panchayats Act as of such similar Acts is that the person who is elected to the office continues to act in the office until his election is set aside by a tribunal entitled to do so. Section 16 supports the above conclusion. It provides for cases where a person who is elected but who was disqualified or who incurs disqualification under Section 14. Section 16(2) provides that an elected member shall not be disqualified from voting unless the Collector decides the dispute. Under the Act a person who is declared elected has statutory rights to attend the meetings of the Panchayat and vote at his meetings. The Court cannot in any manner touch his statutory rights until his election is set aside or someone else is declared elected in his place.”

(1) A.I.R. 1968 Allahabad 22.

(2) AIR 1967 Bombay 317.

(13) It has been further argued on behalf of the petitioners that the arbitrator assumes jurisdiction only after he has issued notices to the opposite party and there is no power with the arbitrator to pass even interim orders without hearing the party. In support of this contention reliance has been placed on a Full Bench decision of this Court in *Ran Singh v. The Gandhar Agricultural Cooperative Service Society, Gandhar* (3), and *The Mandi Adampur Marketing Society Ltd. v. Ram Sarup* (4). In *Ran Singh's* case (supra), the question before the Full Bench was regarding validity of an award made by the arbitrator in contravention of 1953 Rules. Since no notice of hearing was served upon the opposite party, the award was held to be a nullity and incapable of being executed as a decree of civil court. This case was followed in *The Mandi Adampur Marketing Society Ltd.* (supra). In the present case, the arbitrator had no power to stay the election of the election members. The petitioners were elected as members according to the procedure laid down and their election could be set aside only in the manner provided in the Act. Unless and until their election was set aside, they continued to hold office. The stay orders granted by the arbitrator could not be taken into consideration in the matter of appointment of the administrator. In the premises noticed above, the order appointing the administrator u/s 26(1) (D) of the Act was without jurisdiction.

(14) For the reasons stated above, CWP 483/1988 is also allowed. The different stay orders as mentioned above and order annexure P16 appointing the administrator of the committee are quashed. There will, however, be no order as to costs in these cases.

P.C.G.

Before S. S. Kang and J. S. Sekhon, JJ.

STATE OF HARYANA,—Appellant.

versus

M/S JIWAN GENERAL MILLS, KAITHAL,—Respondent.

General Sales Tax Reference No. 18 of 1982.

May 31, 1989.

Haryana General Sales Tax Act, 1973—Ss. 27(1)(a)(ii)—Registered dealer—Making sales to another registered dealer—Purchasing dealer furnishing S.T. Form 22—Challenge to the genuineness of the said sale—Power of Sales Tax authorities to tax selling dealer on such sales.

(3) A.I.R. 1976 Punjab and Haryana 94.

(4) 1978 P.L.J. 251.