

Before Jitendra Chauhan, J.

SURINDER SINGH AND ANOTHER,—Petitioner

versus

STATE OF HARYANA AND ANOTHER,—Respondents

CWP No. 10798 of 2010

3rd June, 2010

Constitution of India, 1950—Art. 226—Haryana Cooperative Societies Act, 1984—S. 28(2)—Haryana Cooperative Societies Rules, 1989—Rl.27(a)—Election to Board of Directors of Cooperative Bank—Repayment of loan to Society—No arrears on day of filing of nomination—Rejection of nomination paper by Returning Officer without holding an inquiry—Action of respondent mala fide with a view to keep petitioner away from election process and to deprive him from his legitimate right to contest election.

Held, that as a member of the Society, the petitioner has right to vote and contest elections. This vital right has been snatched away from the petitioner through the rejection of nomination paper by the respondents, declaring him as defaulter which is patently against the record. There is nothing on record to suggest that an inquiry was ever conducted by the Returning officer before rejecting the nomination form of the petitioner, as envisaged in Rule 7 of Appendix—A, Part II of ‘Procedure for Election to the Committee of the Cooperative Societies’ under heading “Security of the nomination papers”.

(Para 16 and 17)

Further held, that the election is scheduled to be held on 6th June, 2010. There is no efficacious remedy available to the petitioner. The right of the petitioner cannot be allowed to be taken away due to the non-functional and inefficient machinery of the respondents, which itself has acted in *malafide* manner.

(Para 18)

Further held, that nomination/candidature of the petitioner has been rejected on the basis of incomplete information furnished to the Returning Officer by the Society with a *malafide* intention to help the complainants and to deprive the petitioner from exercising his vital right to contest elections as a member of the Society. The Returning Officer also conveniently ignored the documents on record.

(Para 19)

Aman Pal, Advocate, *for the petitioner*

Yash Pal Malik, DAG, Haryana.

JITENDRA CHAUHAN, J. (ORAL)

(1) The present petition has been filed for issuance of a writ in the nature of *mandamus* directing the respondents to accept the nomination form of the petitioner and allow him to contest the elections to the office of Board of Directors of the Hisar District Central Cooperative Bank Ltd. Hisar, scheduled to be held on 6th June, 2010.

(2) The brief facts of the present case are that the petitioner submitted his nomination paper on 17th May, 2010 in pursuant to the election programme of the Board of Directors of the Hisar District Central Co-operative Bank Limited, Hisar (for short as 'Bank'). Earlier, the petitioner had secured a loan of Rs. 59,960 from the Budhakhhera Primary Agriculture Co-op. Society Ltd. at Uklana Mandi (Hisar) (for short referred as 'Society'). The total loan amount with interest was calculated to be Rs. 1,04,120 which the petitioner paid on 17th May, 2010. A receipt was also issued by the Society towards the payment of said amount. The petitioner also obtained 'No Dues Certificate' (Annexure P-2) on 17th May, 2010 itself from the Society—Budhakhhera Primary Agriculture Society Limited at Uklana Mandi, Hisar i.e. from Zone No. 6 under which the society of the petitioner operates. The Society issued a No Dues Certificate categorically mentioning that neither there is any due towards the Society by the petitioner nor any repayment of loan was to be made by the petitioner. Thereafter, the petitioner filed his nomination form alongwith receipt regarding repayment of loan and No Dues Certificate.

(3) The nomination form of the petitioner was rejected by the Returning Officer with the remarks "Rejected because the candidate is defaulter and is ineligible to contest as per the provisions of Rule 27 (a) of the Haryana Co-operative Societies Rules, 1989". On 19th May, 2010, the petitioner filed a representation (Annexure P-3) before the Deputy Registrar, Cooperative Society, Hisar, with a prayer to withdraw rejection order, as the petitioner was not in arrears of any kind. It was emphatically asserted that the nomination form of the petitioner has been rejected due to political reason and the same was illegal and arbitrary.

(4) Aggrieved by the order of rejection dated 18th May, 2010, the petitioner filed an arbitration petition under Section 102 of the Haryana Co-operative Societies Act, 1984, (for short as 'the Act') before the Registrar, Cooperative Societies. The arbitration petition of the petitioner was dismissed in limine on the ground of its being premature and not maintainable while invoking Section 28(2) of the Act.

(5) Notice of motion was issued on 1st June, 2010 for 3rd June, 2010. No written statement has been filed by the State. However, the original record has been produced by the learned counsel for the State before the Court.

(6) It has been argued by the learned counsel for the petitioner that the petitioner was not defaulter on the day of nomination form was filed and the scrutiny was carried out. The petitioner had deposited the entire amount of loan alongwith interest on 17th May, 2010 with the Society in token of which the Cashier of Society issued receipt No. 13842, dated 17th May, 2010 (Annexure P-1). Thereafter the petitioner filed nomination form and scrutiny was conducted by the Returning Officer on the next date i.e. 18th May, 2010. However, on account of negligence of the Cashier of the Society, the amount deposited by the petitioner on 17th May, 2010 was not entered into the Ledger Book of the Society on the same day and the incomplete Ledger Books and other records were produced before the Returning Officer. The petitioner came to know that a complaint was made by one Tek Ram and one Jagbir Singh against the petitioner to the Returning Officer and it was at the behest of these two persons, the incomplete record was submitted by the Society with a *mala fide* intention to deprive the petitioner from participating in the election process. Although, the petitioner

as an abundant precautions had appended the receipt (Annexure P-1) of the payment made on 17th May, 2010 and also the No Dues Certificate (Annexure P-2) alongwith his nomination form yet the Returning Officer ignored the said documents and rejected the nomination papers of the petitioner. The learned counsel emphatically states that the Society as well as the Returning Officer with *mala fide* intention at the behest of the complainants have wrongly deprived the petitioner from exercising his right of participation in the election process.

(7) The learned counsel further refers to Rule 7 of Appendix-A, Part-II of 'Procedure for Election to the Committee of the Cooperative Societies' under heading "Security of the nomination papers" and submitted that if any objections were filed against the petitioner in that eventuality the Returning Officer before rejecting or accepting the nomination papers was ought to have given a brief statement of reasons in the matter.

(8) The learned counsel further argues that the petitioner does not suffer any disqualification under the Act. He has further referred to Article 243 (O), Article 243 (ZG) and Article 329 (B) of the Constitution of India in order to buttress his arguments to the effect that there is no bar to the petitioner in contesting the elections. He has further stated that there is no other alternative efficacious remedy available to the petitioner in the given facts and circumstances. The nomination paper of the petitioner has been rejected under a conspiracy hatched against him by the complainants Tek Ram and Jagbir Singh in collusion with the Society employees and also the Returning Officer. The non-consideration of documents on record by the Returning Officer speaks volume about the *mala fide* on his part.

(9) The learned counsel for the respondents states that the nomination papers of the petitioner have been rightly rejected as the election process has started and it cannot be postponed and the dispute, if any, pertaining to the elections, case be entertained only after the completion of the election process. In this regard, he has referred to Section 28(2) of the Act, which is reproduced as under :—

"The election process once started shall not be postponed and dispute, is any, pertaining to the election, shall be entertained after the completion of the election in accordance with the provisions of this Act.

Explanation.—The election process shall be deemed to have stated from the date of the order of the Registrar fixing the date of election.”

(10) I have heard the learned counsel for the parties and perused the record.

(11) The questions that emerge for consideration in the present writ petition are; whether the Returning Officer was under obligation to hold an inquiry before rejecting the nomination paper and whether the petitioner was defaulter on the day of filing of nomination. Further, whether the Society and the Returning Officer acted in an arbitrary and *mala fide* manner and whether there is any efficacious remedy available to the petitioner or not.

(12) From the record it is made out that the petitioner had secured a loan from the Society. The said loan stands repaid on 17th May, 2010 as is clear from the receipt issued by the Cashier of the Society (Annexure P-1). A ‘No Dues Certificate’ dated 17th May, 2010 (Annexure P-2) was issued by the Society in view of the payment made. From the reading of Annexure P-1 and P-2, it is clearly made out that the petitioner was not in arrears on the day of nomination. Both the above certificates were on record but were not referred/considered by the Returning Officer while scrutinizing the nomination papers of the petitioner.

(13) During the course of hearing, the original record was perused. From the record, it is made out that though, the payment was made as per Annexure P-1 and No Dues Certificate was issued in response thereto on 17th May, 2010, against the payment made but, the same was not entered into the Ledger Book of the Society. The learned counsel for the respondent has failed to explain the circumstances, as to why and what circumstances, the payment received by the Society on 17th May, 2010 could not be reflected in the Ledger Book before the record passed towards the Returning Officer for scrutiny. The non-entering of the amount deposited by the petitioner in the ledger book coupled with the fact that the Returning Officer has not referred to the receipt of the payment made (Annexure P-1) and the No Dues Certificate (Annexure P-2), goes a long way to establish that the same was done with a *mala fide* intention at the behest of the complainants Tek Ram and Jagbir Singh with a view to keep the petitioner away from the election process and to deprive him from his legitimate right to contest the election in question.

(14) In the identical circumstances, the Division Bench of this Court in CWP No. 1541 of 1993 titled as **Nachhattar Singh versus State of Punjab** decided on 28th April, 1993, has observed as under :—

“On a consideration of the judgments quoted above, it is clear that while the remedy for the purpose of challenging the result of the election by way of an election petition under Section 13-B of the Act may be available yet in the facts and circumstances of a particular case the High Court would interfere under Article 226 of the Constitution. The mere availability of an alternative remedy is not the solitary test; such a remedy must, in addition, be adequate and efficacious. It bears repetition that there is no constitutional bar to the maintainability of such a writ petition with respect to local bodies such as Municipal Committees, District Boards or Gram Panchayats in the manner indicated by the Constitution under Article 329(b) with respect to the elections held to the State Assemblies or Parliament and, in the absence of such a restraint, the scope of Article 226 is all pervasive and wide enough to reach and remove an injustice suffered. This Court would not, therefore, throw out the writ petition at the very threshold and compound the sense of and injustice inflicted on the petitioners with another one at the hands of the Court by circumscribing artificially the scope of Article 26. The Court in exercising restraint must not clip its wings, though interference should be made, to use the repeated words in the “rarest of rare” cases. We, therefore, hold that though an alternative remedy by way of an election petition is available to the petitioners yet we find that is not an efficacious one in the facts and circumstances of the present case which now proceeded to enumerate.”

(15) In another case being Civil Writ Petition No. 2044 of 1974 titled as **Pala Singh versus State of Punjab** decided on 10th July, 1975, this Court has observed as under :—

“4. In order to appreciate the respective stands of the parties in relation to points canvassed before me, reference may

be made to the contents of paragraphs 9 and 10 of the petition and of a portion of paragraph 11 thereof. The same are set out below for facility of reference :—

“9. That Shri Sohan Singh Dosanjh was transferred from Faridkot to Ferozepore about 10 or 12 days before the election at the instance of Shri Balmukand M.L.A. and Shri Nasib Singh Gill, Deputy Speaker. That Shri Sohan Singh Dosanjh was the Returning Officer for Election to the Ferozepore Cantt. Primary Co-operative Land Mortgage Bank Ltd., Ferozepore Cantt. The time for scrutiny was from 9.00 A.M. to 12.30 P.M. The petitioner Dharam Singh along with Shri Mohinder Singh Sayanwala, M.L.A. went to the office of Shri Sohan Singh Dosanjh at about 10.00 A.M. and learnt from the office that Shri Sohan Singh Dosanjh had been taken by Shri Gulwant Singh, Deputy Registrar, Co-operative Societies, Ferozepore to Shri Balmukand M.L.A. and Shri Nasib Singh Gill. Shri Sohan Singh Dosanjh returned to his office alongwith Shri Balmukand, M.L.A. at about 12.00 (noon). The Returning Officer never told any of the petitioners that there is any objection against any of the petitioners and without holding an enquiry, he pasted a list of candidates whose names had been accepted and rejected. According to that list, the name of respondents Nos. 9, 10, 11, 12, 14 and 15 had been accepted and the nominations of all other candidates including petitioners Nos. 1-6 had been rejected. Later on, however, Shri Bakshish Singh made a complaint to Shri Nasib Singh Gill that he has been a supporter of Shri Nasib Singh Gill throughout and he should have been declared as a Director. So a novel method was adopted by striking out the word “rejected” against the name of the respondent No. 13 Shri Bakshish Singh. According to that arrangement from Zone No. 4, the nomination papers of respondent

No. 12 Shri Attar Singh and respondent No. 13 Shri Bakshish Singh were shown to be accepted and later on Shri Attar Singh, respondent No. 12 was shown to have withdrawn, from the contest and thus on 3rd June, 1974 the entire election was completed by this manipulation and respondents Nos. 9, 10, 11, 13, 14 and 15 were shown to be elected.

"10. That petitioners Nos. 1 to 5 asked the Returning Officer the grounds on which the nominations had been rejected and the Returning Officer said that they should make applications for supply of copies and they will get the copies in due course.

"11. That the orders of the Returning Officer rejecting the nomination papers of petitioners Nos. 1 to 6 are illegal, void and inoperative inasmuch as under rule 6 to Appendix 'C' to the Punjab Co-operative Societies Rules, 1963, the objections could be disposed of only after making an enquiry and no enquiry was held in the present case and no opportunity was given to any of the petitioners to make his defence...."

The reply of respondents Nos. 4 and 5 to the petition consists of an affidavit filed by respondent No. 5. Paragraphs 9, 10 and 11 of that reply may also be reproduced with advantage :—

"9. In reply to para No. 9, it is submitted that deponent joined as Assistant Registrar, Co-operative Societies, Ferozepore on 23rd May, 1974 and rest of the para is denied. Further allegations with the exception that the deponent was the Returning Officer for the election of the Bank, are denied. Everything was done on merits.

"10. In reply to para No. 10 it is submitted that the scrutiny was made in the presence of the candidates and result of the scrutiny was announced. Objections

were duly asked for and were preferred by the candidates. However, the copies of the grounds on which the nomination has been rejected, could be had from the office according to the procedure, which they never adopted.

- “11. *The allegations made in para No. 11 of the writ petition are denied. The orders of the Returning Officer rejecting the nomination papers of petitioners Nos. 1 to 6 are legal, valid and in accordance with rule 6 to Appendix 'C' of the Punjab Co-operative Societies Rules, 1963. The objections were disposed of after making enquiries and proper opportunity was given to the petitioners to make the defence. Everybody and individual was asked whether they have any objection to the nomination papers and some of the persons who made the objection in writing, their objections were considered in their presence and disposed of in accordance with law. The place, date and time of the scrutiny was specified for hearing the objections and proper reasons were given for rejecting the nomination papers on the nomination papers itself. After the scrutiny a list of validly nominated candidates was exhibited in the Registered Office of the Society and other common places in the area of the Society.*”

The denial contained in these three paragraphs of the allegations made by the petitioners in the corresponding paragraphs of the petition is clearly evasive, the following allegations not having been specifically denied :—

- “(i) *That on the 3rd of June, 1974, respondent No. 5 had been taken by Shri Gulwant Singh to respondents Nos. 7 and 8 and that he returned to his office at about 12 noon.*
- “(ii) *That respondent No. 5 never told any of the petitioners that any objection had been made against any of them.*”

Respondents Nos. 4 and 5 have no doubt stated :—

“The objections were disposed of after making enquiries and proper opportunity was given to the petitioners to make the defence. Everybody and individual was asked whether they have any objection to the nomination papers and some of the persons who made the objections in writing, their objections were considered in their presence and disposed of in accordance with law.”

They have, however, conveniently refrained from detailing the nature of the “enquiries” and of the “proper opportunity to the petitioners to make the defence”. If any enquiries had really been made and the petitioner concerned had been asked to meet the objections made against his nomination paper, there is no reason why this should not have been stated in the return in so many words. A reference to the orders passed in relation to the nomination papers of the petitioners also indicated that no opportunity was made available to them to meet any objections raised against their nomination papers. Those orders are set out in the table appearing below :—

Zone number	Petitioner number	Order on the nomination paper.
1	1	<i>Paper rejected on the basis of defaulter certificate of the proposer. He himself is in default to P.L.M.B. as such not eligible.</i>
2	2	<i>Rejected. Did not disclose his membership of the Society. (ii) No clearance certificate furnished.</i>
3	3	<i>Rejected-clearance certificate more than 6 months' old up-to-date produced at the spot—proposer in default of P.L.M.B.</i>
4	4	<i>Rejected. Candidate in default to parent Society and no clearance certificate.</i>
5	5	<i>Rejected. Proposer inaction member of the P.L.M.B.</i>

If objections had been put to the petitioner concerned, the order would have stated so as also the defence taken and the reason for its rejection. The complete absence of these details in each of the orders supports the stand taken by the petitioners, especially when the evasive denial made by respondents Nos. 4 and 5 in their return is taken into consideration. I thus hold that no enquiry into the objections presented against any of the nomination papers filed by the petitioners was made by respondent No. 5 at the time of scrutiny thereof.

5. Next I may consider the effect of the failure of respondent No. 5 to hold an enquiry of the type above mentioned. The following portion of sub-clause (1) of clause 6 of the Appendix is the relevant provision :—

“(1) The Returning Officer shall scrutinise the nomination papers at the place, date and time specified in this behalf, hear objections, if any, presented by the objectors in person to the eligibility of any candidate and dispose of these objections after such enquiry as he may consider necessary. The decision of rejecting or accepting the nomination papers and brief statement of reasons thereof shall be endorsed on the nomination papers and signed by the Returning Officer.”

*This provision has been interpreted by Sharma, J., in **Parma Nand versus The State of Punjab and others, 1973 P.L.J. 27**, thus :—*

“This rule gives a very wide latitude to the Returning Officer in the matter of form of enquiry, but at the same time it cannot be said that the Returning Officer has been given the jurisdiction to accept the objections raised against the nomination papers without affording any opportunity to the candidate filing the nomination papers. The rejection of the nomination papers of the petitioner appears to be illegal on this ground alone. It is well settled that a wrongful rejection of nomination papers vitiates the election.”

I am in respectful agreement with this view to which no exception is taken on behalf of the respondents either. I accordingly conclude that the failure of respondent No. 5 to give an opportunity to the petitioners to meet the objections raised against their respective nomination papers vitiates the proceedings held by him and the acceptance of the nomination papers of respondents Nos. 9 to 13 and 15.

6. *At the hearing Mr. Khoji, learned counsel for the petitioners, also attacked the rejection of their nomination papers as the same had been ordered for any of the reasons appearing below :—*

(a) *The proposer was a defaulter to some Society.*

(b) *No 'clearance certificate' had been filed by the candidate concerned along with his nomination papers.*

(c) *Proposer is inactive member.*

The argument raised by Mr. Khoji is unexceptionable. No provision of the Act or the rules made thereunder laying down that any of these three reasons shall be a ground entailing rejection of a nomination paper has been brought to my notice. Mr. Grover has, however, contended that under instructions issued by the Registrar, Co-operative Societies, Punjab, with his letter No. Credit/C.A. 3/72303-58 dated 25th of October, 1969, a copy of which he has placed on the record, a proposer has to be a voter from the zone concerned and a person cannot be a voter if he is in default to any society. He has also urged that under rule 25 of the Rules framed under the Act, a person is not eligible for election as a member of the committee of the Society if he is in default to any Co-operative Society in respect of any sum due from him to that society so that in the very nature of things a candidate must produce a "clearance certificate" showing that he does not owe any sum to any co-operative society. On clause (f) of the same rule reliance is placed by Mr. Grover for the proposition that a person who has been an "inactive member" of the Society cannot be a proposer. Not one of these contentions has force.

7. *The relevant part of the instructions above-mentioned states :—*

“Zonal lists of voters shall be prepared by the Manager in the following forms separately for each zone.....The candidate for election and the proposer shall be from the zone concerned.”

Sub-clause (e) of clause 1 of the Appendix ‘C’ states :

“(e) ‘Voter’ means a person entitled to vote under these rules.”

It is not disputed that a person who is a defaulter on the date of the poll is disqualified from casting his vote and that the disqualification ceases to operate if he pays up the arrears due from him to the concerned Society immediately before claiming the right to vote. The disqualification earned by a default has relevance, therefore, only to the point of time when a poll is held and to no earlier stage. It follows that if a proposer has to be a voter, his status as such will have to be determined without reference to the disqualification of default, for earning which the stage cannot be said to have been reached before the date of the poll. As it is, however, the instructions do not state that a proposer has to be a “voter” as defined in sub-clause (e) reproduced above. In the context in which the word “proposer” is mentioned in the instructions, all that appears to be meant is that he shall be a person whose name is borne on the list of members of the Society, although the same is designated as “zonal list of voters” which expression can mean nothing more or less than a list of members of the Society pertaining to a particular zone without reference to the disqualification, if any, that such member may earn or may have earned by reason of a default insofar as his right to vote at the poll to be held later on is concerned. Obviously a disqualification which would vanish on the person concerned making a payment at any time before the date of the poll cannot be said to subsist at any time prior to that when the right to vote becomes exercisable. In this view of the matter the disqualification of default has nothing to do with a person

who proposes the name of another as a candidate. Apart from the instructions, no provision of law is relied upon in support of the view of respondent No. 5 that a proposer must be person who is not in default to a Society.

Again, the instructions are not what may be called 'standing instructions' such as would apply to all elections to committees of co-operative societies held after their issuance. They are and purport to be instructions issued under clause 12 of the Appendix for the purpose of elections which were to be held to the committees of Primary Co-operative Land Mortgage Banks in the year 1969 and cannot, therefore, be made applicable to any subsequent elections, so that they are irrelevant to the matter in hand."

(16) As a member of the Society, the petitioner has right to vote and contest elections. This vital right has been snatched away from the petitioner through the rejection of nomination paper by the respondents, declaring him as defaulter which is patently against the record.

(17) There is nothing on record to suggest that an inquiry was ever conducted by the Returning Officer before rejecting the nomination form of the petitioner, as envisaged in Rule 7 of Appendix-A, Part-II of 'Procedure for Election to the Committee of the Co-operative Societies' under heading "Security of the nomination papers", which reads as under :—

"Security of the nomination papers.—(1) *The Returning Officer shall scrutinize the nomination papers at the place, date and time specified in this behalf in the election programme, here the objections presented if any by the objectors in person to the eligibility of any candidate and dispose of the objections after such enquiry as he may consider necessary. The decision of rejecting or accepting the nomination papers, and a brief statement of reasons thereof shall be recorded on the nomination papers and signed by the Returning Officer. While scrutinizing the nomination papers the Returning Officer may :—*

(a) *permit any clerical error in the nomination papers in regard to names of members to be corrected in order to bring them in conformity with the corresponding entries in the zonal list of voters; and*