

Before Rajbir Sehrawat, J.

ZILE SINGH—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No.17945 of 2020

November 05, 2020

Constitution of India, 1950—Art. 226 and 227—Writ petition—Haryana Co-operative Societies Rules, 1989—Rl. 27(f)—Appendix-A—Election of Co-operative Society—rejection of nomination papers—Found ineligible—Was not an ‘active member’ for the last twelve months—Proper enquiry—Status of Byelaws viz-a-viz Rules—Held, concededly, no document was attached to show the petitioner’s participation in Society’s activities—The affidavits of other persons stating the petitioner remained active member of Society were found inadequate—Since the eligibility condition of being ‘active member’ of the Society has been provided in the Rules itself, the Bye-laws, which do not provide for it, would stand superseded by the State Rules applicable on the subject—Further held, the allegation of no proper enquiry by the Returning Officer before rejection of nomination papers was wrong—Clause 6 and 7 of Appendix-A contemplate an enquiry ‘deemed fit’ by the Returning Officer—He rightly relied upon the report by Manager indicating no participation by the petitioner in Society’s affairs in the last twelve months—No court-like enquiry was required to be held— Petition dismissed.

Held, that concededly, the petitioner has not attached any document to show his participation in the activities of the Society during the past 12 months, however, the counsel has relied upon the affidavits filed by two other members of the Society, which are annexed as Annexures P-4 and P-5, wherein they have stated that the petitioner has remained active member of the Society for the past 20-25 years like them and that they have been purchasing the products from the Society and selling their produce through the Society, as per the advise of the petitioner. However, even none of these affidavits specifies as to whether either of these members have purchased from or sold any material to the Society or have participated in any other activity of the Society within the past 12 months at the instance of the petitioner. Hence, none of these documents also can be pressed into

service by the petitioner to buttress his claim. Learned counsel for the petitioner has further submitted that the Byelaws of the Society do not provide for any condition of eligibility with respect to the member being an 'active member' of the Society. Therefore, his candidature could not have been cancelled on this ground. However, this court finds that the said condition is incorporated in the Rules itself. Therefore, on this point, obviously, the Byelaws of the Society would stand superseded by the State Rules applicable on the subject. Otherwise also there is no contradiction in the provision of the Rules and the Byelaws of the Society. Even the Byelaws of the Society do not specifically make a person eligible for election without being an active member of the Society. Hence, even this argument of the counsel for the petitioner is liable to be considered only to be rejected.

(Para 6)

Further held, that the counsel for the petitioner has also relied upon Appendix-A attached to the Societies Rules and Clause 6 and 7 thereof to contend that there was no proper enquiry by the Returning Officer as contemplated by above said Clause 6 and 7 before rejection of the nomination paper of the petitioner. He has relied only upon the report of the Manager of the Society qua the petitioner not having carried out any transaction during the past 12 months. There is no such requirement of getting report from the Manager. Hence, the Returning Officer wrongly relied upon the said report. However, this Court finds this argument also to be bereft of any merits. A bare perusal of Clauses 6 and 7 shows that enquiry, as contemplated by Clause 7; is the enquiry 'as deemed fit' by the Returning Officer. Returning Officer has relied upon a report received from the Manager qua non-participation of the petitioner in the activities of the Society during the past 12 months. There is nothing wrong in reliance by the Returning Officer on such a report of the Manager of the Society. Rather, the Manager of the Society is the best person to verify the participation of any member in the activities of the Society. The Returning Officer, by any means, is not required to hold a court-like proceeding for the purpose of consideration of nomination of a candidate. Still further, it is not even the case of the petitioner that no reason has been given by the Returning Officer for rejecting his nomination. The perusal of the impugned order itself shows that there is a valid reason given by the Returning Officer for rejection of the candidature of the petitioner.

(Para 7)

Lajpat Sharma, Advocate, *for the petitioner*.

Rupinder Singh Jhand, Addl. AG, Haryana.

RAJBIR SEHRAWAT, J. (Oral)

(1) The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of writ in the nature of certiorari or any other appropriate writ thereby quashing the impugned order dated 21.10.2020 (Annexure P-3) vide which respondent No.3 has rejected the nomination papers of the petitioner in the election of the Cooperative Society.

(2) On the last date of hearing the State was asked to show some documents qua participation of the other members, whose nomination has been accepted for the election, in the activities of the Safidon Cooperative Marketing-cum-Processing Society Ltd, Safidon, Tehsil Safidon, Jind (in short, the ‘Society’).

(3) The counsel for the State, although has not placed the said document on record, however, the same has been put online by the counsel. The copy of the same has also been furnished to the counsel for the petitioner.

(4) It is submitted by the counsel for the State that the petitioner has raked-up the issue unnecessarily. He was given equal opportunity to contest the election; by showing his eligibility; as per the Rules. However, the petitioner failed to show his eligibility at the time of filing of nomination papers. He had not attached anything to show that he had been an active member of the Society in the past 12 months, as is required under Rule 27(f) of the Haryana Cooperative Societies Rules, 1989 (in short, the ‘Societies Rules’). Hence, the nomination paper has rightly been rejected. The allegation of the petitioner that the authorities have wrongly accepted the nomination of the other candidate, namely, Satbir, without he showing any documentary proof of being an active member of the Society; is totally wrong. The said candidate had duly attached document qua having purchased the material from the Society well before the date of filing of the nominations. Hence, his nomination was rightly accepted.

(5) On the other hand, learned counsel for the petitioner has submitted that Rule 27(f) of the Societies Rules does not require any document of purchase or sale of any item from or to the Society. The only requirement under the said rule is that the person should be an ‘active member’ of the Society, which the petitioner has remained. Hence, the petitioner was also eligible.

(6) Concededly, the petitioner has not attached any document to show his participation in the activities of the Society during the past 12 months, however, the counsel has relied upon the affidavits filed by two other members of the Society, which are annexed as Annexures P-4 and P-5, wherein they have stated that the petitioner has remained active member of the Society for the past 20-25 years like them and that they have been purchasing the products from the Society and selling their produce through the Society, as per the advise of the petitioner. However, even none of these affidavits specifies as to whether either of these members have purchased from or sold any material to the Society or have participated in any other activity of the Society within the past 12 months at the instance of the petitioner. Hence, none of these documents also can be pressed into service by the petitioner to buttress his claim. Learned counsel for the petitioner has further submitted that the Byelaws of the Society do not provide for any condition of eligibility with respect to the member being an 'active member' of the Society. Therefore, his candidature could not have been cancelled on this ground. However, this court finds that the said condition is incorporated in the Rules itself. Therefore, on this point, obviously, the Byelaws of the Society would stand superseded by the State Rules applicable on the subject. Otherwise also there is no contradiction in the provision of the Rules and the Byelaws of the Society. Even the Byelaws of the Society do not specifically make a person eligible for election without being an active member of the Society. Hence, even this argument of the counsel for the petitioner is liable to be considered only to be rejected.

(7) The counsel for the petitioner has also relied upon Appendix-A attached to the Societies Rules and Clause 6 and 7 thereof to contend that there was no proper enquiry by the Returning Officer as contemplated by abovesaid Clause 6 and 7 before rejection of the nomination paper of the petitioner. He has relied only upon the report of the Manager of the Society qua the petitioner not having carried out any transaction during the past 12 months. There is no such requirement of getting report from the Manager. Hence, the Returning Officer wrongly relied upon the said report. However, this Court finds this argument also to be bereft of any merits. A bare perusal of Clauses 6 and 7 shows that enquiry, as contemplated by Clause 7; is the enquiry 'as deemed fit' by the Returning Officer. Returning Officer has relied upon a report received from the Manager qua non-participation of the petitioner in the activities of the Society during the past 12 months. There is nothing wrong in reliance by the Returning Officer on such a

report of the Manager of the Society. Rather, the Manager of the Society is the best person to verify the participation of any member in the activities of the Society. The Returning Officer, by any means, is not required to hold a court-like proceeding for the purpose of consideration of nomination of a candidate. Still further, it is not even the case of the petitioner that no reason has been given by the Returning Officer for rejecting his nomination. The perusal of the impugned order itself shows that there is a valid reason given by the Returning Officer for rejection of the candidature of the petitioner.

(8) Leaving aside everything, this court had granted opportunity to the petitioner to show anything to substantiate his claim that he participated in any activity of the Society during the past 12 months. However, he has failed to substantiate any participation in any activity organized by or related to the Society or any activity which could be reflected from the record of the Society. The participation of the petitioner in any activity of the Society is not reflected from the record; even as per the assertion of the petitioner. The only assertion of the petitioner is that he has been contacting and advising the members and other persons of the area to participate in the activities of the Society, to purchase the material from the Society and to sell the produce through the Society. However, such a claim, which is not substantiated by any record, cannot be accepted by the court for the purpose of conferring eligibility upon the petitioner to contest a statutory election. If this kind of verbal assertions are permitted in the election process, then all the conditions, prescribed relating to the process of election, would be rendered totally nugatory.

(9) Although the counsel for the petitioner has relied upon the judgment of this court passed in *CWP to.1848 of 1972* titled as *Parma hand* versus *State of Punjab and Others*, passed on 01.11.1972, to submit that an enquiry has to be held before rejection of the nomination papers of a candidate, however, this judgment also does not come to the help of the petitioner. The Appendix-A, relating to enquiry is attached to the Rules of State of Haryana and is much subsequent to the said judgment. Moreover, although the Rules itself prescribe for the enquiry to be conducted by the Returning Officer, however, the said enquiry has to be an enquiry as 'deemed fit' by the Returning Officer. As mentioned above, the requirement of the Rule has already been met by the Returning Officer by holding the enquiry and by taking on record concerned material, as well as, by giving a reasoned order for rejection of the nomination of the petitioner.

(10) No other argument was raised by the counsel for the petitioner.

(11) In view of the above, finding no merit in the present petition the same is dismissed.

Tribhuvan Dahiya