

Shri Dal Chand v. The State of Punjab, etc. (M. L. Verma, J.)

(17) Fifthly, the power conferred on the Presiding Officer cannot be categorised as arbitrary because it is only when the Presiding Officer, in his wisdom and with his special knowledge and experience, forms the opinion that bidding has assumed a highly excessive posture that he can impose the impugned condition. This is a sufficient guideline in the circumstances of such cases as the present one.

(18) No other point was argued by the counsel before us. None of the contentions raised by the counsel for the petitioners having succeeded, this writ petition must fail and is accordingly dismissed with costs.

B.S.G.

MISCELLANEOUS CIVIL

Before M. L. Verma, J.

SHRI DAL CHAND.—*Petitioner.*

versus

THE STATE OF PUNJAB, and others,—*Respondents.*

C.W. 1227 of 1974.

July 22, 1974.

Punjab Co-operative Societies Act (XXV of 1961)—Sections 55 and 56—Dispute arising in connection with election of a director of a Co-operative Bank—Whether falls within the ambit of section 55—Registrar or his delegate while acting under section 56—Whether has the power to re-count votes.

Held. that clause (c) of sub-section (2) of section 55 of the Punjab Co-operative Societies Act, 1961 provides that any dispute arising in connection with the election of any Officer of a Cooperative Society would be deemed to be dispute touching the constitution, management or the business of the said Society, and sub-section (1) of section 55 provides that any dispute touching the constitution, management or the business of such a Society shall be referred to the Registrar for decision. The term "Officer", as is clear from clause (h) of section 2 of the Act, is not defined exhaustively and besides the persons mentioned in the said definition, anybody else authorised to give directions in the management of the affairs of a

Society will be an officer. The said definition of "Officer" is wide enough to include the office of Director of a Cooperative Bank. Therefore the dispute in connection with the election of such Director falls squarely within the ambit of section 55 of the Act and has to be dealt with according to the provisions contained therein and in section 56 of the Act. Registrar or his delegate while acting under section 56 of the Act has the power to recount votes, look into the rejected votes and take them into consideration. There is no rule which provides for an election petition against the declaration as elected of a director of a Cooperative Bank. In the absence of any provision, prescribing a petition against the elected director, it is neither proper nor legal to import the rules governing an election petition filed under the Representation of Peoples Act, 1951.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus, Prohibition or any other appropriate writ, order or direction be issued quashing the orders of Respondent No. 4.

C. L. Lakhanpal, Advocate, for the petitioner.

P. P. Pandit, Advocate, for respondents Nos. 1 to 3.

M. J. S. Sethi, Advocate, for respondent No. 4.

ORDER

Verma, J.—This writ petition arises out of an election dispute between the petitioner and Niranjan Singh (Respondent 4). Both of them along with Suraj Mal (Respondent 5) had sought election for the office of Director of the Land Mortgage Bank, Fazilka (hereinafter called the Director) from Zone No. 4, held on May 11, 1973.

(2) The case, presented by the petitioner in the writ petition and stated at the bar, is that after counting votes the Returning Officer declared that the petitioner had secured 196 votes and Niranjan Singh obtained 195 votes, while 146 votes had been polled by Suraj Mal. So, he declared the petitioner as the Director. Out of the polled votes, 11 were declared invalid. Two were tendered votes. Dissatisfied with the said result, Niranjan Singh filed a petition which was decided by the Deputy Registrar of the Co-operative Societies, who found that out of 11 invalid votes, 3 had been polled in favour of Niranjan Singh and 1 was polled in favour of the petitioner. Thus, he held that Niranjan Singh had polled 198 votes, whereas the petitioner had polled 197 votes. So, he declared Niranjan Singh as the Director. The petitioner carried appeal to the Joint Registrar,

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Co-operative Societies, who too considered the invalid votes and found that out of the three votes, which had been considered by the Deputy Registrar to have been polled in favour of Niranjana Singh, two had, in fact, been polled in his favour, and that one out of the said 11 votes, which was considered to have been polled by the petitioner, was not, in fact, polled in his favour. So, he came to the conclusion that Niranjana Singh had polled 197 votes, whereas the votes polled by the petitioner were 196. So, he maintained the order of the Deputy Registrar, declaring Niranjana Singh to be the Director. Aggrieved by the aforesaid orders passed by the Deputy Registrar and the Joint Registrar, the petitioner approached this Court under Articles 226 and 227 of the Constitution for writ of certiorari or any other order of direction in that respect, quashing the aforesaid orders recorded by the Deputy Registrar and the Joint Registrar, declaring Niranjana Singh as the Director. The said orders were impeached as illegal, void and unconstitutional for the reasons that two tendered votes had not been opened and counted, that no case for recounting of votes had been made out and 2 out of 11 invalid votes had been wrongly counted in favour of Niranjana Singh, and that the Deputy Registrar or the Joint Registrar had no jurisdiction to count the said votes in his favour. The writ petition was contested by Niranjana Singh. In the written statement filed by him, he admitted the facts of the case, but pleaded that 2 out of 11 invalid votes had been rightly counted by the Deputy Registrar and the Joint Registrar as to have been polled by him and they had jurisdiction to do so, and that two tendered votes could not be counted for him, because no petition in the form of recriminatory had been filed by the petitioner. He took up the stand that two of the 11 invalid votes, which were counted by the Deputy Registrar and Joint Registrar to have been polled by him, were also being taken by the Presiding Officer to have been polled by him, but it was on unwarranted interference of the Returning Officer that he (the Presiding Officer) did not count those votes. It was also pleaded by Niranjana Singh that the writ petition was not maintainable because the petitioner had not availed of the alternative remedy of revision provided under the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act).

(3) Shri C. L. Lakhanpal, learned counsel for the petitioner, relying on certain rules contained in the Conduct of Election Rules, 1961, framed under the Representation of the People Act, 1951, and on the judgment recorded in *Dr. Jagjit Singh v. Giani Kartar Singh*

and others (1), has argued that the Deputy Registrar or the Joint Registrar could not look into the invalid votes since no case for re-counting had been made out and Niranjana Singh had not mentioned the particulars (i.e., numbers etc.) of the invalid votes, which should have been counted in his favour, in the petition which he had made before the Deputy Registrar. I am unable to accept this argument. The application which had been moved by Niranjana Singh and which was decided by the Deputy Registrar was not an election petition against the declaration of Director in favour of the Petitioner. I have not been referred to any rule, and indeed it has been conceded by the learned counsel for the petitioner that there is no rule, which provides for an election petition against the declaration of the petitioner being a Director. In the absence of any provision prescribing a petition against the election of the petitioner as Director, it would, in my opinion, neither be proper nor legal to import the rules governing an election petition, as provided by the Conduct of Election Rules, 1961 for deciding the instant case. Therefore, neither any rule contained in the Conduct of Election Rules, 1961, nor the judgment in *Dr. Jagjit Singh's case* (1) (*supra*) can render any help to the petitioner.

(4) Clause (c) of sub-section (2) of section 55 of the Act provides that any dispute arising in connection with the election of any officer of a Co-operative Society would be deemed to be dispute touching the constitution, management or the business of the said society, and sub-section (1) of section 55 provides that any dispute touching the constitution, management or the business of such a Society shall be referred to the Registrar for decision. The term "officer", as is clear from clause (h) of section 2 of the Act, is not defined exhaustively and besides the persons mentioned in the said definition, anybody else authorised to give directions in the management of the affairs of a Society will be an officer. The said definition of "officer" is, in my opinion, wide enough to include the office of Director in question. Therefore, the dispute between the petitioner and Niranjana Singh fell squarely within the ambit of section 55 of the Act and had to be dealt with according to the provisions contained therein and in section 56 of the Act. According to section 56, the Registrar, on receipt of reference of dispute under section 55, may

(1) A.I.R. 1966 S.C. 773.

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decide the same himself or transfer it for disposal to any person who has been invested by the Government with powers in that behalf, or refer it for disposal to one arbitrator. It appears, and it has not been disputed before me, that the Deputy Registrar was empowered to dispose of the dispute, referred to in section 55 of the Act. It is, thus, obvious that the petition, which was moved by Niranjan Singh against the declaration of the petitioner as Director by the Presiding or Returning Officer, related to a dispute which had to be referred for arbitration under section 55 of the Act, and the same seems to have been transferred by the Registrar to the Deputy Registrar for disposal. So, the Deputy Registrar proceeded to decide the election dispute between the petitioner and Niranjan Singh through arbitration and, as such, his power to look into the matter from all angles cannot be disputed. It is pertinent to note that during the proceedings before the Deputy Registrar, the petitioner and Niranjan Singh, as is clear from his order, copy of which is Annexure 'R-1', had agreed that the 11 rejected as invalid votes should be seen and looked at and taken into consideration. After examining the said 11 ballot papers, both of them (Niranjan Singh and the petitioner) further appeared to have agreed that 6 out of those 11 ballot papers had been rightly rejected. On examining and considering the remaining five ballot papers, the Deputy Registrar, after hearing the petitioner and Niranjan Singh and their counsel at length, concluded that 3 votes with Nos. 046, 542 and 342 should be taken to have been polled by Niranjan Singh and thereby the votes polled by him were counted as 198. He further found that even if credit for 1 out of the aforesaid 5 votes could be given to the petitioner, the number of votes polled by him would come to 197. It was on that basis that he had declared Niranjan Singh as the Director. It is further clear from the said order that the Deputy Registrar had recorded the statement of the Presiding Officer, who had stated therein that 2 out of the alleged 11 invalid votes were considered by him to have been polled in favour of Niranjan Singh, but when he was going to count the same in his favour the Returning Officer interfered and directed the cancellation of all the 11 invalid votes. Since, as discussed above, the application made by Niranjan Singh and decided by the Deputy Registrar, was not in the nature of an election petition and the dispute between the petitioner and Niranjan Singh respecting the election of Director had been referred to for arbitration, the scope and jurisdiction of the Deputy Registrar in deciding that matter were admittedly wider than enjoyed by a Tribunal deciding

an election petition. The petitioner and Niranjana Singh could agree to narrow down the dispute between them by saying that the alleged 11 invalid votes could be examined and looked into. Therefore, I do not think that the Deputy Registrar had gone beyond his jurisdiction in examining and taking into account the said invalid votes. There is no doubt, and indeed it was not disputed, that the Presiding Officer and the Returning Officer had concurrent jurisdiction in declaring one of the contestants as Director on counting the votes. When the Presiding Officer was counting the votes, I think, the Returning Officer had no jurisdiction to interfere, much less to direct the Presiding Officer to treat the alleged 11 invalid votes as cancelled. Therefore, when the order of the Deputy Registrar is examined carefully, it contains sufficient matter and reasons for counting 3 of the alleged invalid votes as to have been polled by Niranjana Singh. This disposes of the contention of the learned counsel for the petitioner that the said order was not speaking one.

(5) Section 68 of the Act provides an appeal against the aforesaid order passed by the Deputy Registrar to the Registrar or such Additional Registrar or Joint Registrar as may be authorised by the Registrar in that behalf. Since the order was passed by the Joint Registrar in the appeal preferred against the aforesaid order of the Deputy Registrar, it will be presumed that he was authorised by the Registrar to hear that appeal. He gave due consideration to the order of the Deputy Registrar and further examined the alleged 11 invalid votes. He found that 2 votes bearing No. 342 and 542 out of the said 11 votes had, in fact, been polled in favour of Niranjana Singh. He, however, disallowed the other ballot No. 046, which was counted by the Deputy Registrar in his favour, and he also came to the conclusion that none of the invalid votes had been polled in favour of the petitioner. So, he concluded that votes polled by Niranjana Singh were 197, whereas the votes polled by the petitioner were 196. Therefore, he maintained the order of the Deputy Registrar, declaring Niranjana Singh as the Director. The said order of the Joint Registrar, in my opinion, contains reasons for maintaining the order of the Deputy Registrar and the same cannot be assailed as non-speaking order and the argument of the learned counsel for the petitioner in that respect is not well-founded.

(6) The contention of the learned counsel for the petitioner that particulars (i.e. numbers etc.) of the 2 out of the invalid votes,

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which had been ultimately counted in favour of Niranjan Singh, had not been mentioned by him in the application which he made under section 55 of the Act, is not acceptable for the reason that the said numbers etc., could not be known to him since the voting had been by secret ballot.

(7) The learned counsel for the petitioner argued that 2 of the tendered votes were not taken into consideration. In view of the compromise between the petitioner and Niranjan Singh before the Deputy Registrar that only 11 votes alleged to be invalid, should be looked at, it does not lie with the petitioner now to contend that the tendered votes had not been taken into consideration. Further, nothing has been shown that the two tendered votes had been polled in favour of the petitioner. Furthermore, it has not been shown that the tendered votes relate to the ballot papers which had been polled in favour of Niranjan Singh. Without any material on the record, it cannot be said that the ballot papers, to which the two tendered votes related, had, in fact, been polled in favour of Niranjan Singh by some imposter. It cannot be said that any prejudice had been caused to the petitioner in the matter of the declaration of Director having been recorded by the Deputy Registrar and the Joint Registrar in favour of Niranjan Singh.

(8) Therefore, on giving my careful consideration to all what was said by the learned counsel for the petitioner, I find that the orders recorded by the Deputy Registrar or the Joint Registrar were passed by them within the ambit of jurisdiction available to them, and the same do not suffer from any infirmity, which had materially affected the result of the election. The impugned orders passed by the Deputy Registrar and the Joint Registrar being unassailable on merits or in law, this writ petition is without merit.

(9) Power of revision has been given under section 69 of the Act to the State Government and the Registrar to, *suo motu* or on the application of a party to a reference, call and examine the record of any proceeding, in which no appeal lies, under section 68 of the Act. So, the Government and the Registrar could pass any order, as they thought fit, if the matter had been taken to them on revisional side. It may be noted that sub-section (3) of section 68 of the Act provides that no second appeal shall lie. So, there could not be any appeal against the order of the Joint Registrar and, as such,

the order of the Joint Registrar could be subjected to revision by the Registrar or the High Court under section 69 of the Act. So, an alternative remedy of revision was admittedly available to the petitioner. No doubt, existence of an alternative remedy cannot be an absolute bar to the exercise of extraordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution. In an appropriate case, this Court may interfere in spite of an alternative remedy being available to the petitioner. Every case has to be decided on its own facts and circumstances. Since in the present case, there was no inherent lack of jurisdiction with the Deputy Registrar or the Joint Registrar, who decided the case, it seems that it would have been better if the petitioner had approached the Registrar or the Government for reconsideration of the matter on original side before coming to this Court. Therefore, the writ petition merits dismissal on the ground that the petitioner did not pursue the alternative legal remedy available to him, which could be quite efficacious. Similar view was taken in *Watan Singh Giani v. State of Punjab etc.* (2).

(10) In fine, from whatever angle the case may be viewed, the petitioner can have no luck and the writ petition must fail. So, I dismiss it, but with no order as to costs.

B. S. G.

FULL BENCH

Before R. S. Narula, C.J. and P. C. Jain and B. S. Dhillon, J.J.

MAHANT LACHHMAN DASS,—*Appellant.*

versus.

SHIROMANI GURDWARA PARBANDHAK COMMITTEE.
AMRITSAR,—*Respondent.*

F.A.O. 137 of 1972.

July 31, 1975.

Sikh Gurdwaras Act (VIII of 1925)—Sections 3, 5, 6, 7, 8, 12, 14, 25-A, 29 and 38—Code of Civil Procedure (V of 1908)—Order 9 Rule

(2) 1971 Cur. L.J. 486.