

that Parkash Chand is a landlord of the petitioner for purposes of the 1949 Act after the death of Kishore Chand, and that written consent need not be prior to the actual act of subletting. Though I have held that on the facts of this case there has in fact been no subletting of the leased plot within the meaning of section 13(2) (ii)(a), I have no hesitation in further holding that the written consent contained in Exhibit R. 1 would have saved the petitioner from liability to ejection on the ground of subletting any of the shops constructed by him even if my interpretation of the above-mentioned provision is not found to be correct.

(9) In the view I have taken on the merits of the controversy between the parties it is unnecessary to travel into the other arguments addressed by Mr. Harbans Lal based on ancillary proceedings relating to partition between the different heirs of Kishore Chand of which documentary evidence is available on the record, and about the decision of the rent control authorities on certain applications which had been made by the tenant before the Appellate Authority.

(10) In the circumstances referred to above I allow this petition and set aside the order of the Appellate Authority allowing the application of the respondent for the eviction of the petitioner without any order as to costs throughout.

N. K. S.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

PALA SINGH and others,—Petitioners

versus

THE STATE OF PUNJAB and others,—Respondents.

Civil Writ No. 2044 of 1974.

July 10, 1975.

The Punjab Co-operative Societies Act (XXV of 1961)—Section 26(1A)—Clauses 1(e) and 6(1) of the Appendix—The Punjab Co-operative Societies Rules, 1963—Rule 25(f)—No enquiry held at the time of scrutiny of nomination papers—Proceedings held by the returning officer—Whether vitiated—Proposer in default and an inactive member—Nomination paper—Whether liable to be rejected—‘Clearance certificate’—Whether to be filed along with the nomination paper.

Pala Singh etc. v. The State of Punjab etc. (A. D. Koshal, J.)

Held, that sub-clause (1) of clause (6) of the Appendix to the Punjab Co-operative Societies Act, 1961, 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 nomination papers without holding any enquiry is illegal. Thus, the failure to hold an enquiry and to give an opportunity to the candidate filing the nomination paper to meet the objections raised against him, vitiates the proceedings held by the Returning Officer.

(Para 5)

Held, 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. 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. Thus the disqualification of default has nothing to do with a person who proposes the name of another as a candidate.

(Para 7).

Held, that under rule 25 of the Punjab Co-operative Societies Rules, 1963, a person in default to any co-operative society is ineligible for election as member of the committee of a society but then neither the Act nor the said rules (including the Appendix) lay down that a nomination paper must be accompanied by a "clearance certificate". That a nomination would be invalid unless it is so accompanied is a rule not having the sanction of law behind it, nor can such a rule be said to be based on reason. If a candidate is in default, his rivals can well point out the fact and if the same is found to be correct after such enquiry as the Returning Officer may hold the nomination paper becomes liable to rejection. A clearance certificate in fact would serve no useful purpose as it can speak of only such facts as exist when it is issued. In between its issuance and the date of scrutiny of the nomination papers normally there would always be a time-lag during which a default may occur or may cease to exist and the state of affairs during such interregnum cannot be ignored. Thus a 'clearance certificate' need not be filed with the nomination paper.

(Para 9).

Held, that under clause (f) of rule 25 of the Rules, the disqualification arising from the inactivity of a member attaches to a candidate and not to his proposer. (Para 10).

Petition under Articles 226/227 of the Constitution of India, praying that the Hon'ble High Court be pleased to issue an appropriate Writ, order or direction in the nature of Writ of Mandamus for setting aside the election of the respondent Nos. 9, 10, 11, 13, 14 and 15 as members of the Managing Committee of the Ferozepore Cantt. Coop. Land Mortgage Bank Ltd., Ferozepore Cantt.

Further praying that the record of the returning officer be summoned and a Writ in the nature of Writ of Certiorari be issued for quashing the orders dated 3rd June, 1970 contained in Annexure P-2 and the orders of the Returning Officer rejecting the nomination papers of the petitioner Nos. 1-5.

Further praying that during the pendency of the writ petition, the co-option of new Directors and the functioning of the respondent Nos. 9, 10, 11, 13, 14 and 15 as members of the Managing Committee of the Ferozepore Cantt. Primary Co-operative Land Mortgage Bank Ltd. be stayed. The Writ petition be accepted with costs.

Kuldip Singh and B. S. Khoji, Advocates, for the petitioners.

H. S. Bhullar, Advocate, for Advocate-General, Punjab, for respondents 1 to 5.

JUDGMENT

KOSHAL, J.—The area of operation of the Ferozepore Cantt. Primary Co-operative Land Mortgage Bank Limited, Ferozepore, which is a Co-operative Society registered under the Punjab Co-operative Societies Act, 1961 and is hereinafter referred to as the Society, was divided under sub-section (1A) of section 26 of that Act (hereinafter called 'the Act') for the purpose of election of members of its committee into six zones. In all 29 persons filed their nomination papers for election to the committee from the six zones, as shown in the following table :—

Zone Number	Number of candidates and the description of some of them
1.	6 including petitioner No. 1 and respondent No. 9.
2.	6 including petitioner No. 2 and respondent No. 10.
3.	3 including petitioner No. 3 and respondent No. 11.
4.	7 including petitioner No. 4 and respondents Nos. 12 and 13.
5.	3 including respondent No. 14.
6.	4 including petitioner No. 5 and respondent No. 15.

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Shri Sohan Singh Dosanjh, Assistant Registrar, Co-operative Societies, Ferozepore (respondent No. 5) scrutinized the nomination papers on the 3rd of June, 1974, at his office and accepted the nomination papers of respondents Nos. 9 to 15, all of whom are members of the ruling Congress party, rejecting those filed by the remaining 22 candidates including the five petitioners.

(2) In this petition under Articles 226 and 227 of the Constitution of India the five petitioners have challenged the election of respondents Nos. 9 to 13 and 15 from Zones Nos. 1 to 4 and 6 on various grounds out of which those pressed before me are :

(a) Respondent No. 5 acted under the influence of Shri Nasib Singh Gill, Deputy Speaker, Punjab Vidhan Sabha, Chandigarh (respondent No. 7) and Shri Balmukand, a Congress member of the Punjab Legislative Assembly (respondent No. 8).

(b) At the time of the scrutiny of the nomination papers respondent No. 5 did not disclose to any of the petitioners that any objections had been made to the nomination papers of any of them and, without holding an enquiry into any such objections, he published a list of candidates whose names had been accepted or rejected. The failure of respondent No. 5 to hold an enquiry and to give an opportunity to the petitioners to contest any objections in respect of their respective nomination papers vitiated the proceedings held by him and his orders rejecting such papers inasmuch as it contravenes clause 6 of Appendix 'C' to the Punjab Co-operative Societies Rules, 1963 (hereinafter referred to as the Appendix).

(3) The State of Punjab and its officers in the Co-operative Department have been impleaded in the petition as respondents Nos. 1 to 5 and are represented by Shri H. S. Bhullar, Advocate, appearing for the Advocate-General, Punjab. The society is arraigned as respondent No. 6 and its counsel Shri Laxmi Grover also represents respondents Nos. 7 to 15. It may be stated here that no return has been filed on behalf of respondents Nos. 1 to 3, 6 to 13 and 15. However, during the course of arguments the case of the petitioners was contested on behalf of all the respondents.

(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 along with 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 names 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 Bakhshish 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 elected as a Director. So a novel method was adopted by striking out the word "rejected" against the name of the respondent No. 13—Shri Bakhshish Singh and according to that arrangement from Zone No. 4, the nomination papers of respondent No. 12 Shri Attar Singh and respondent No. 13 Shri Bakhshish 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.

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- "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 had 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 objections 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 indicates that no opportunity was made available to them to meet any objections raised against their

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nomination papers. Those orders are set out in the table appearing below :

Zone number	Petitioner number	Order on the nomination paper.
1	1	Papers rejected on the basis of defaulter certificate of the proposer. He himself is in default to P.L.M.B. As such not eligible.
2	2	Rejected. Did not disclose his membership of the Society. II. No clearance certificate furnished.
3	3	Rejected. Clearance certificate more than 6 months' old—uptodate produced at the spot—proposer in default of P.L.M.B.
4	4	Rejected. Candidate in default to parent Society and no clearance certificate.
6	5	Rejected. Proposer inactive member of the P.L.M.B.

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 v. The State of Punjab and others*, (1), 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 in so far 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 paper.
- (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/CA3/72303-58, dated the 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

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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 cooperative 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 cooperative 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 (a) of clause (1) of the Appendix 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 in so far 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 a person who is not in default to a Society.

(8) Again, the instructions are not what may be called 'standing instructions' such as would apply to all elections to committees of cooperative 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 Cooperative 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.

(9) It is true that under rule 25 of the Rules framed under the Act a person in default to any cooperative society is ineligible for election as member of the committee of a society but then neither the Act nor the said rules (including the Appendix) lay down that a nomination paper must be accompanied by a "clearance certificate". That a nomination would be invalid unless it is so accompanied is a rule not having the sanction of law behind it, nor can such a rule be said to be based on reason. If a candidate is in default his rivals can well point out the fact and if the same is found to be correct after such enquiry as the Returning Officer may hold the nomination paper becomes liable to rejection. A clearance certificate in fact would serve no useful purpose as it can speak of only such facts as exist when it is issued. In between its issuance and the date of scrutiny of the nomination papers normally there would always be a time-lag during which a default may occur or may cease to exist and the state of affairs during such interregnum cannot be ignored.

(10) Clause (f) of rule 25 of the Rules framed under the Act states :

"25. No person shall be eligible for election as a member of the committee if—

.....
 (f) he has, during a period of 12 months preceding the date of filing of nomination papers, remained inactive as member

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or has been carrying on, through agencies other than the Cooperative Society of which he is a member, the same business as is being carried on by the Cooperative Society."

Clearly the disqualification arising from the inactivity of a member attaches to a candidate and not his proposer and I do not see how clause (f) could be said to lay down that a default to a society is a disqualification for a proposer, even if the language of the clause is stretched beyond limits.

(11) In so far as the nomination papers of the petitioners have been rejected on any of the three grounds just above scrutinised, the orders of rejection must be held to be invalid. It appears to me in fact that in rejecting the nomination papers of the petitioners respondent No. 5 was influenced by extraneous considerations. Had the orders passed by him been honest, it is difficult to see why he would press into service non-existent rules and inapplicable principles in the matter of passing them. The evasive denial referred to above also points to the same conclusion, as does the failure of respondents Nos. 7 and 8 to controvert any of the allegations made by the petitioners in regard to them. For this reason also the impugned orders must be held to have been vitiated.

(12) In the result, the petition succeeds and is accepted with costs against respondents Nos. 5, 9 to 13 and 15. The proceedings held by respondent No. 5 on the 3rd of June, 1974, in the matter of scrutiny of the nomination papers of candidates for election to the Committee of the Society from Zones Nos. 1 to 4 and 6 along with the resultant orders are hereby set aside. Counsel's fee Rs. 300/-.

N. K. S.

REVISIONAL CIVIL

Before P. S. Pattar, J.

RAMAUTAR,—Plaintiff-Petitioner.

versus

BALBIR and others,—Defendants-Respondents.

Civil Revision 168 of 1973

July 15, 1975.

Code of Civil Procedure (V of 1908)—Order XXXII Rules 3 and 12—Suit by a next friend describing plaintiff as a minor through bona fide mistake—Plaintiff in fact a major on the date of institution of the suit—Plaint—Whether should be permitted to be amended.