

CIVIL MISCELLANEOUS

*Before Shamsheer Bahadur, J.*GURDIAL SINGH,—*Petitioner**versus*THE REGISTRAR, CO-OPERATIVE SOCIETIES, PUNJAB, AND OTHERS,—
Respondents

Civil Writ No. 2251 of 1966.

April 5, 1967

Punjab Co-operative Societies Act (XXV of 1961)—Ss. 26(1), 68 and 69—Punjab Co-operative Societies Rules—Rule 23—Voter's list prepared for election of the members of the committee of the Central Co-operative Bank—Appellate Authority—Whether can look into its correctness—Order of Returning Officer accepting or rejecting nomination papers—Deputy Registrar—Whether can hear appeals therefrom—Constitution of India (1950)—Article 226—Competency of Deputy Registrar to hear appeals not raised before him—Whether can be challenged in a writ petition.

Held, that the voter's list which is prepared for election of the members of the Committee of the Central Co-operative Bank under the Punjab Co-operative Societies Act, 1961, is not comparable to an electoral roll. The manager of the Central Co-operative Bank is enjoined to prepare a correct list of the existing co-operative societies which are eligible to vote for election of the members of the committee and persons who come forward with proper credentials are entitled to vote. There is nothing in the rules or the instructions to justify the contention that a member of a co-operative society, if he is found to be so, should not be permitted to vote. The Deputy Registrar, as an appellate authority on examination of the relevant records, can declare that a person was representative of a recognised co-operative society and was entitled to be elected under sub-section (1) of section 26 of the Act and also the rules made thereunder.

Held, that the rules have been prescribed under section 26(1) of the Act. Appendix C of the Rules says that the Registrar may, from time to time, issue instructions with regard to election to the committees. Such instructions were issued by the Registrar and under clause 4.12 the right of appeal from the decision of the Returning Officer has been vested in the Deputy Registrar who is to decide the appeal speedily so that the election programme is not disturbed. The Returning Officer has also to await the result of the appeal. It is in the interests of all the parties concerned that the question regarding wrong rejection

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or acceptance of nomination papers should be decided at the earliest possible time. There is nothing unconstitutional or illegal in the provision which is contained in clause 4.12 of the instructions which have been issued under the authority of a statutory rule, by which the Deputy Registrar of the Division concerned has been authorised to decide appeals.

Held, that the petitioner never raised an objection about the competency of the Deputy Registrar to hear the appeal from the order of the Returning officer and he cannot be allowed, in writ proceedings, to raise this point having taken an unsuccessful chance of a favourable decision by the appellate authority.

(*Note*.—Letters Patent Appeal No. 189 of 1967 from this order was dismissed *in limine* by the Hon'ble Mr. Justice S. B. Kapoor, A.C.J. and the Hon'ble Mr. Justice R. S. Narula, on August 23, 1967—Editor).

Petition under Articles 226/227 of the Constitution of India, praying that a writ of certiorari, mandamus, order or direction be issued quashing the impugned order of respondent No. 2, dated the 8th September, 1966, and para 4.12 of the instructions attached as Annexure 'B'.

B. S. SHANT FOR B. S. DHILLON, ADVOCATE, for the Petitioner.

MANMOHAN SINGH, ADVOCATE FOR THE ADVOCATE-GENERAL AND GURMUKHI SINGH CHAWLA, ADVOCATE, for the Respondents.

ORDER

SHAMSHER BAHADUR, J.—The legal controversy in this petition for the issuance of a writ of *certiorari* is concerned with the procedure which has been prescribed for the election of members to the committee of the Central Co-operative Bank, Ferozepur.

Both Gurdial Singh petitioner and the fourth respondent Ajit Singh were the candidates for the election to membership of the committee of the Co-operative society, and the last date for the receipt of nomination papers was 13th August, 1966. The scrutiny of the nomination papers was to take place on 1st August, 1966. The Assistant Registrar, Co-operative Societies, Ferozepore, acting as a returning officer, accepted at the time of scrutiny on 21st August, 1966, the nomination paper of the petitioner but rejected that of the

fourth respondent on ground of invalidity. As is laid down in sub-section (1) of section 26 of the Punjab Co-operative Societies Act, 1961 (hereinafter called the Act):—

“The members of the committee of a co-operative society shall be elected in the manner prescribed and no person shall be so elected unless he is a shareholder of the society.”

The returning officer in the short order recorded by him on 21st August, 1966 (Annexure A) noted that while Gurdial Singh petitioner was a member of the Dhindsa Agricultural Co-operative Service Society and his proposers and seconders were also members of the society, Ajit Singh was not shown in the voters' list of Zone No. 8 which he represented. This order was reversed in appeal by the Deputy Registrar, Co-operative Societies, Jullundur, in the order passed by him on 8th September, 1966. It is against this appellate order passed by the Deputy Registrar that the petitioner has come to this Court in *certiorari* proceedings to have it quashed on the ground that the Deputy Registrar lacked jurisdiction to entertain the appeal and could not in effect pass an order for fresh preparation of the list of voters which the counsel has chosen to call an “electoral roll”.

Before the merits of this contention are examined, it would be well to set out the scheme as contained in the relevant statutory provisions and the rules. As would be seen from sub-section (1) of section 26 reproduced aforesaid, the election to the committee has to be made in the prescribed manner. Sub-section (2) of section 85 also empowers the Government to frame rules for any co-operative society and particularly by clause (x) the rules can be framed “subject to the provisions of section 26” relating to “election and nomination of members of committees, the appointment or election of officers and the suspension and removal of the members and other officers, and the powers to be exercised and the duties to be performed by the committees and other officers”. In pursuance of the rule-making powers conferred on the Government, a notification embodying the rules was issued on 24th December, 1963. Under rule 23, which relates to election of committee, it is provided that :—

“The members of the committee of a Co-operative society shall be elected in accordance with the rules given in Appendix C.”

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In Appendix C, relevant clause is 3(1) which says that :—

“The manager shall draw up a detailed programme of election in accordance with the instructions issued by the Registrar, from time to time.”

In the second clause to rule 3 in Appendix C, the Manager is also directed, when so required by the Registrar, to divide the area of operation of the co-operative society into such number of zones as there are members to be elected. The relevant instructions issued by the Registrar under Appendix C are reproduced below :—

“3.1(b) The candidate for election must represent a society in the tehsil zone concerned and the proposer and the seconder must also be representatives of societies of that tehsil (zone). Only the representatives of societies within that tehsil shall be entitled to vote for election of Directors from that tehsil.

4.12. Any candidate aggrieved with the decision of the Returning Officer in respect of scrutiny of nomination papers may file an appeal to the Deputy Registrar of the division concerned along with an attested copy of the decision of the Returning Officer within 7 days from the date of announcement of decision of the Returning Officer.

The Deputy Registrar, Co-operative Societies, shall decide the appeal within 10 days from the last date fixed for filing the appeal. While drawing out the programme the date for hearing appeal shall also be fixed in the election programme. The Returning Officer shall on receipt of the decision of the Deputy Registrar announce the names of validly accepted nomination papers at least 4 days before holding the election.”

While the Returning Officer accepted the papers of the petitioner and rejected those of the fourth respondent, he refrained from making any decision about the polling as he was bound to await the decision of the Deputy Registrar under clause 4.12 of the instructions. In the appeal heard by the Deputy Registrar, it was found that the

name of Sanjhiwala Bhangar Agricultural Service Society had been omitted from the voters' list approved for zone No. 8 of the bank on 24th June, 1966. Now, this particular society continued to be a member of the Ferozepore Central Co-operative Bank and its members had full rights to stand for election and propose or second the names. In the opinion of the Deputy Registrar, the right of proper representation had been taken away unjustly from Sanjhiwala Bhangar Agricultural Service Society. Moreover, the Deputy Registrar found that Bhangar Patti Jawahar Singh Co-operative Agriculture, Service Society had been wrongly mentioned in the voters' list as this had been converted into Bhangar Agricultural Service Society mentioned aforesaid. While holding the manager of the Central Co-operative Bank, Ferozepur, to be responsible for preparing the voters' list the Deputy Registrar directed that correction should be made at the earliest possible time so that elections could be held according to the programme on 15th and 16th September, 1966. Before the election could be held after the rectification of the voters' list the petitioner filed this writ petition and the admitting Bench passed an order on 20th October, 1966, staying fresh elections.

The first contention of the learned counsel for the petitioner is that there is no provision in the Act or Rules for amendment of electoral rolls and the Deputy Registrar, therefore, could not direct the correction to be made in that register. Now, the voters' list which is prepared for election of the members of the Committee is not comparable to an electoral roll. The manager of the Central Co-operative Bank is enjoined to prepare a correct list of the existing co-operative societies which are eligible to vote for election of members of the committee and persons who come forward with proper credentials are entitled to vote. There is nothing in the rules or the instructions to justify the contention that the fourth respondent, if he is found to be a member of the co-operative society, should not be permitted to vote. The Deputy Registrar as an appellate authority, on examination of the relevant records found that the fourth respondent was a representative of a recognised co-operative society and was entitled to be elected under sub-section (1) of section 26 as also the rules made thereunder.

It is next canvassed by the learned counsel that the Deputy Registrar had no power to hear the appeal. The basis of this argument is that the appeals and revisions are provided for in sections 68 and 69 of the Act. Section 68 provides for the situations in which

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an appeal is entertainable from the order of the Registrar, while section 69 says that :—

“The Government may, *suo motu* or on the application of a party to a reference, call for and examine the record of any proceedings in which no appeal lies to the Government under section 68 for the purpose of satisfying itself as to the legality and propriety of any decision or order passed...”.

The learned counsel submits that the Returning Officer's order could have been revised under section 69 and the Deputy Registrar could not hear an appeal. It is plain that rules have been prescribed under section 26(1) of the Act. Appendix C of the rules says that the Registrar may from time to time issue instructions with regard to election to the committees. It is not in any doubt that instructions had been issued by the Registrar and under clause 4.12 the right of appeal from the decision of the Returning Officer has been vested in the Deputy Registrar. It is particularly to be borne in mind that the Deputy Registrar is to decide this appeal speedily so that the election programme is not disturbed. The Returning Officer has also to await the result of the appeal. It is I think in the interests of all parties concerned that the question regarding wrong rejection or acceptance of nomination papers should be decided at the earliest possible time. There is nothing unconstitutional or illegal in the provision which is contained in clause 4.12 of the instructions which have been issued under the authority of a statutory rule. Moreover, the petitioner never raised an objection about the competency of the Deputy Registrar to hear the appeal from the order of the Returning Officer and he cannot be allowed now in writ proceedings to raise this point having taken an unsuccessful chance of a favourable decision by the appellate authority.

It may also be noticed in passing that in the model by-laws framed by the Central Co-operative Bank there is a provision in Article 32 that :—

“The election of the Board of Directors by the General Body shall be conducted in such manner as may be laid down in Rules of election to be framed by the Registrar. These rules shall among other things provide for tehsil-wise

representation of Directors to be elected out of member-societies."

The Registrar has drawn up certain instructions for holding election of the Board of Directors of the Central Co-operative Banks in the State and has made provisions for disposal of objections to nomination papers and also for appeals against the decisions of the Returning Officers. There is nothing unreasonable or unlawful in these instructions. Indeed, these instructions are in conformity with the requirements of natural justice.

No interference with the order passed by the Deputy Registrar in the exercise of his appellate powers is, therefore, called for and this petition must be dismissed with costs. The election which was stayed by an order of the motion Bench should be held forthwith.

R. N. M.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and R S. Narula, JJ.

BHIRU MAL ALIAS BHOJU MAL AND ANOTHER,—*Petitioners*

versus

THE FINANCIAL COMMISSIONER, REVENUE, HARYANA AND OTHERS,—
Respondents

Civil Writ No. 254 of 1967.

April 10, 1967.

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—Ss. 3(2) and 20—Chief Settlement Commissioner—Whether can issue directions depriving a Managing Officer of his jurisdiction to allot acquired evacuee agricultural land in his district to a displaced person who holds a verified claim for allotment of such land and against whom there is no bar of getting land in that district—Powers of the Managing Officer to allot land—How to be exercised—Constitution of India (1950)—Art. 226—Displaced person having verified claim entitling him to allotment of land—Whether entitled to file petition challenging the directions of the Chief Settlement Commissioner.