

could in this connection be made to the Supreme Court rulings in *Gazula Dasaratha Rama Rao v. State of Andhra Pradesh and others* (1), and *The State of Assam and others v. Kanak Chandra Dutta* (2). Shri Naubat Singh has cited before us a Division Bench ruling of the Madras High Court in *Rishikesavan Naidu v. S. Srinivasa Reddiar* (3), but the facts in that case were altogether different. The person who had been selected to the hereditary office in that case had no other rival in the field. He would have been selected unopposed independently of his family connections with the deceased. It was under these circumstances that it was held that heredity was no disqualification for being selected to a particular post or appointment.

(5) For reasons given above, we declare sub-rule (ii) of Land Revenue Rule 17 to be *ultra vires* and unconstitutional. The appointments under this sub-rule of respondent No. 4 in Civil Writ No. 1048 of 1967, respondent No. 3 in Civil Writ No. 696 of 1970 and respondent No. 4 in Civil Writ No. 666 of 1970 is quashed and the State Government is directed to make fresh appointments after considering the claims of all the contesting candidates. The three writ petitions are allowed but we make no order as to costs.

B.S.G.

APPELLATE CIVIL

Before Harbans Singh, C.J., and P. C. Jain, J.

NARINDER SINGH,—Appellant.

versus

THE STATE OF PUNJAB, ETC.,—Respondents.

L.P.A. No. 370 of 1973.

October 3, 1973.

Punjab Co-operative Societies Act (XXV of 1961)—Section 55 (2) (c)—Punjab Co-operative Societies Rules, 1963—Appendix 'C', Part I, Rules 6 and 12 (2)—Dispute relating to election of a Co-operative Society—Whether can be referred to arbitration before the declaration of the result of such election.

(1) A.I.R. 1961 S.C. 564.

(2) A.I.R. 1967 S.C. 884.

(3) A.I.R. 1965 Mad. 178.

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Held, that the word 'election' occurring in section 55(2) (c) of the Punjab Co-operative Societies Act, 1961 is to be given the same wide meaning as comprising the entire election process culminating in a candidate being declared elected. The election dispute contemplated by clause (c) of sub-section (2) of section 55 of the Act must necessarily relate to a completed election which means the entire process from the stage of submission of the nomination papers and culminating in the declaration of the result. Under rule 6 of Part I in Appendix 'C' of the Punjab Co-operative Societies Rules, 1963 a person can object to the eligibility of a person who has filed the nomination papers at the time of the scrutiny. If such an objection is raised, the same has to be decided by the Returning Officer after making such inquiry as he may consider necessary. By its very nature, such an inquiry will be a summary one. If such an objection is overruled or if such an objection is not raised at the time of scrutiny, to allow such a question to be raised as a dispute arising out of an election, liable to be referred to the arbitrator, would have the tendency of delaying, inordinately, the entire process of election. Rule 12(2) only provides for limitation within which such an election may be challenged. This sub-rule in no way provides that every stage of an election can be challenged. Hence section 55(2) (c) of the Act read with rules 6 and 12(2) of Part I in Appendix 'C' of the Rules does not provide for a reference of a dispute relating to the election at any time prior to the declaration of the result of the election but provides for a reference only after the result of the election has been declared.

Letters Patent Appeal under Clause 10 of the Letters Patent of the Punjab High Court against the judgment, dated 6th April, 1973 passed by Hon'ble Mr. Justice M. R. Sharma in Civil Writ No. 315 of 1973.

B. S. Khoji, Advocate, for the appellant.

K. S. Raipuri, Advocate for Advocate-General, Punjab.

Dr. A. S. Anand, Advocate, for the respondents.

JUDGMENT.

Judgment of the Court was delivered by :—

Harbans Singh, C.J.—This appeal under Clause 10 of the Letters Patent is directed against the order of the learned Single Judge, dismissing the writ petition filed by the appellant. The writ petition had arisen in the following circumstances :

(1) For the election from Zone No. 2 to the Managing Committee

of the Pathankot Co-operative Marketing-cum-Processing Society Limited, Pathankot (hereinafter referred to as the Society), the last date for filing the nomination papers was 1st January, 1973, up to 11 a.m. Narinder Singh appellant was one of the persons who filed the nomination papers. On scrutiny, which took place on the same date from 11.00 a.m. to 3.00 p.m., the Returning Officer, i.e., the Assistant Registrar, Co-operative Societies, respondent No. 5, accepted the nomination papers of all the three candidates, including the appellant.

(2) Later, one Bir Singh, respondent No. 8, filed an undated application before Shri Bishan Singh, Deputy Registrar, Co-operative Societies, Amritsar, respondent No. 3, alleging that the nomination papers of the appellant had been wrongly accepted, because he was a defaulter of the Co-operative Bank. Respondent No. 3 entertained this application and thinking that a dispute had arisen about the election in accordance with section 55 of the Punjab Co-operative Societies Act, 1961 (hereinafter referred to as the Act), assumed jurisdiction to arbitrate in the matter under section 56 of the Act and stayed election from Zone No. 2 during the pendency of the reference. Against this order of stay and entertainment of the application as a reference of a dispute relating to the election, Narinder Singh filed Civil Writ No. 315 of 1973 urging that accordance to the relevant provisions of section 55 of the Act and rule 12(2) of Part I of Appendix 'C' to the Punjab Co-operative Societies Rules, 1963 (hereinafter referred to as the Rules), an election dispute could be raised or referred to the Registrar, Co-operative Societies, only after the result of the election has been declared. This contention was rejected by the learned Single Judge and hence this appeal.

(3) Chapter VIII of the Act deals with 'Settlement of Disputes' and section 55 is the first section of this Chapter. This section details the various disputes which may be referred to arbitration. Now under clause (a) of sub-section (1) of section 55 if any dispute touching the constitution, management or the business of a co-operative society arises among members, past members and persons claiming through members, past members and deceased members, the same can be referred to the Registrar for decision and the jurisdiction of the Court is excluded from entertaining any suit or other proceeding in respect of such dispute. Sub-section (2) of section 55 provides that

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certain disputes, detailed therein, shall be deemed to be disputes for the purposes of sub-section (1) of the same section and clause (c) of sub-section (2) is in the following terms :—

“any dispute arising in connection with the election of any officer of the society.”

Rule 23 of the Rules is as under :—

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

In view of this, the detailed rules given in Appendix ‘C’ (hereinafter referred to as the Election Rules) form part of the Main Rules. These Election Rules provide for various matters, like qualification of the candidates, printing of election programme, etc. By election rule 2 it is provided that “no person shall be eligible for election as a member of the committee if he is subject to any of the disqualifications mentioned in the Act, the Rules framed thereunder and the bye-laws of the co-operative society concerned”. Election rule 6 provides for scrutiny of the nomination papers and raising of objection to the eligibility of a candidate at such scrutiny and if objection is so raised, the Returning Officer is to dispose of such an objection after such inquiry as he may consider necessary. Election rule 12 is general and sub-rule (2) thereof is to the following effect :—

“If any dispute arises in connection with the election of any officer of the society, it shall be referred within 90 days of the date of declaration of the result of such election, to the Registrar in the same manner as provided in rule 51 of the Rules.”

Rule 51 of the Main Rules provides for the form of the application and the contents thereof.

(4) The question debated before the learned Single Judge as well as before us was whether clause (c) of section 55(2) of the Act read with election rules 6 and 12(2) provided for any reference of a dispute relating to the election at any time prior to the declaration of the result or whether, according to these provisions, a dispute can be referred only after the result of the election has been declared.

As already indicated, the learned Single Judge in this case has taken the view that a dispute relating to election can be raised at any time and that the mere fact that sub-rule (2) of election rule 12 provides for 90 days after the declaration of the result, is no indication that an election cannot be challenged at an initial stage after the nomination papers have been accepted.

(5) A contrary view had been taken by another learned Single Judge of this Court in *Amar Singh Dosanj v. The State of Punjab* (1). In that case the learned Judge observed as follows :—

“After reading sub-rule (2) of Rule 12 of the Punjab Co-operative Societies Rules, 1963, it appears that it was the intention of the authorities concerned that no objection should be raised regarding the election till the result of the election had been declared. In case objections are allowed to be raised at every step and the Registrar interferes before the declaration of the result of the election, it will become impossible to complete the elections. If it would have been the intention of the authorities that the Registrar had the jurisdiction to settle the dispute regarding the election before the declaration of the result, the phraseology of the rule would have been different. In that event, it could be stated by the rule-making authority that if any dispute arises in connection with the election of any officer of the society, it should be referred at any time either before or after but not later than thirty days of the date of declaration of the result of such election to the Registrar. The rule-making authority has used the words that the dispute shall be referred within thirty days of the date of declaration of the result of the election. The contention that the sub-rule prescribes the outer limit for filing the objections and the same can be filed even earlier to the declaration of the result is not borne from the phraseology used in the sub-rule. Objections regarding the elections could be filed after the elections had been held and no objections could be entertained by the Registrar before the declaration of the result of such elections.”

(6) Argument of inconvenience was urged in these two cases for either of the two views and, in the present case, the learned Single

(1) 1973 P.L.J. 289.

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Judge while taking the view that objections to the nomination could be taken even at the initial stage, observed as under:—

“It is often said that election is a time and money consuming process. Had the election been allowed to continue, the electorate and the Society would have been made to suffer unnecessary inconvenience and monetary loss.”

(7) On the other hand, in support of the other view it was urged that if the entire election programme can be set at naught by a person by raising objection to the nomination at the initial stage, than it may be, that for years the election does not take place. A man can raise even a frivolous objection and the matter has to be referred to the arbitrator who naturally will take some time. The decision of the arbitrator, it was stated, was subject to appeal and the appellate order is subject to a revision. By the very nature of this process, the election would necessarily get delayed irrespective of the fact whether there is any real force in the objection taken or not.

(8) As provided under election rule 6, a person can object to the eligibility of a person who has filed the nomination papers at the time of the scrutiny. If such an objection is raised, the same has to be decided by the Returning Officer after making such inquiry as he may consider necessary. By its very nature, such an inquiry will be a summary one. If such an objection is overruled or if such an objection is not raised at the time of scrutiny, to allow such a question to be raised as a dispute arising out of an election, liable to be referred to the arbitrator, would have the tendency of delaying, inordinately, the entire process of election.

(9) Even under the Representation of the People Act, 1951, an election can be set aside only after the declaration of the result. In *Dr. Narayan Bhaskar Khare v. Election Commission of India* (2) the Supreme Court dealt with a similar question relating to the election of a President or Vice-President. Article 71(1) of the Constitution provides as under:—

“All doubts and disputes arising out of or in connection with the election of a President or Vice-President shall be inquired into and decided by the Supreme Court whose decision shall be final.”

(2) A.I.R. 1957 S.C. 694.

It was observed by their Lordships of the Supreme Court that "the word 'election' occurring in Article 71(1) must be given the same wide meaning as comprising the entire election process culminating in a candidate being declared elected, therefore, the inquiry is to be made after such completed election, i.e., after a candidate is declared to be elected as President or Vice-President as the case may be". The operative words used in clause (c) of section 55(2) of the Act are similar to those used in Article 71(1) of the Constitution.

The question for determination, therefore, is as to what is the meaning of "any dispute arising in connection with the election of any officer of the society". Following the reasoning of the Supreme Court in *Dr. Narayan Bhaskar Khare's case* (2) (supra), the dispute must necessarily relate to a completed election which means the entire process from the stage of submission of the nomination papers and culminating in the declaration of the result. Sub-rule (2) of election rule 12 merely provides for limitation within which such an election may be challenged. This period was originally 30 days and was later on extended to 90 days. This sub-rule in no way provides that every stage of the election can be challenged. If that were allowed, then no election will ever finish. In any case, in view of the authoritative interpretation given by the Supreme Court, no other interpretation can be put on the word 'election'.

(10) This matter also came up for consideration before a Bench of the Bombay High Court in *Madhukar Ganpatrao Somvanshi v. Sheshrao Narayanrao Biradar and others* (3) and a Bench of the Kerala High Court in *Narayanan Nambiar v. The Deputy Registrar of Co-operative Societies* (4) and following the view of the Supreme Court in *Dr. Narayan Bhaskar Khare's case* (2) they also took the view that election under the Co-operative Societies Act of the respective States, provisions of which were similar, could be challenged only after the declaration of the result of the election. In the Bombay case, at page 130 of the report, the observations of the Supreme Court in *Dr. Narayan Bhaskar Khare's case* (2) (supra) were quoted as follows :—

" * * * * *

* * The well-recognised principle of election law,
Indian and English, is that elections should not be held

(3) A.I.R. 1972 Bom. 129.

(4) 1973 K.L.T. 213.

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up and that the person aggrieved should not be permitted to ventilate his individual interest in derogation of the general interest of the people, which requires that elections should be gone through according to the time schedule. It is, therefore, in consonance both with the provisions of Article 62 and with good sense to hold that the word 'election' used in Article 71 means the entire process of election....."

(11) In the Kerala case, sub-section (2) of section 69 of the relevant Co-operative Societies Act stated that for the purposes of sub-section (1), which empowered the Registrar to settle various disputes, "any dispute arising in connection with the election of the Board of Management or any other officer of the society" shall be deemed to be disputes. Now this provision in *pari materia* with clause (c) of section 55(2) of the Punjab Act. An explanation was added to sub-section (2) of section 69 of the Kerala Act which made it clear that a "dispute arising at any stage of an election commencing from the convening of the general body meeting for the election shall be deemed to be a dispute arising in connection with the election." In place of sub-rule (2) of election rule 12, there was sub-section (3) of section 69 of the Kerala Co-operative Societies Act, which was in the following terms :—

"No dispute arising in connection with the election of the Board of Management or an officer of the society shall be entertained by the Registrar unless it is referred to him within one month from the date of the election."

Referring to these provisions, the learned Judges of the Kerala High Court observed as under:—

"We do not think it is possible notwithstanding the explanation to clause (c) of sub-section (2) of section 69 of the Act to read the section in a manner different from which section 91 of the Maharashtra Co-operative Societies Act, 1960, has been interpreted by the Bombay High Court Article 71(1) of the Constitution has been interpreted by the Supreme Court in the decision that we have referred to. Sub-section (3) provides that the period of limitation is one month from the date of the election. This also shows that the disputes in connection with the election can be raised only after an election. * * *

* * * * *

(12) In view of the authoritative decision of the Supreme Court, supported as it is by the views taken by the Bombay and the Kerala High Courts, we feel that the view taken by the learned Single Judge in this case cannot be supported, while the view taken by another learned Single Judge of this Court in *Amar Singh Dosanj's case* (1) (*supra*) is the correct view.

(13) We, therefore, accept this appeal, set aside the order of the learned Single Judge issue a direction that the Registrar Co-operative Societies, has no jurisdiction to entertain any reference with regard to the dispute to the election of the Managing Committee of the Society till after the declaration of the result of the election. It was brought to our notice that the Deputy Registrar (respondent No. 3) who was seized of the matter has since given his decision adverse to the petitioner. In view of our above finding, such a decision would be *non est* as having been passed without any jurisdiction. The appellant will have his costs in this Court as well as before the learned Single Judge.

B. S. G.

MISCELLANEOUS CIVIL

Before Manmohan Singh Gujral and S. C. Mital, JJ.

SEWA SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ Petition No. 3749 of 1971

October 15, 1973.

Punjab Co-operative Societies Act (XXV of 1961)—Section 27—Punjab Co-operative Societies Rules (1963)—Rules 25(a) and 26(a)—Assistant Registrar—Whether has the jurisdiction to pass an order under Section 27 of the Act read with Rule 25(a) and 26(a) of the Rules.

Held, that a plain reading of Section 27 of the Punjab Co-operative Societies Act, 1961 shows that it is the Registrar who can pass order under Section 27(1)(b). The definition of the word 'Registrar' as given under Section 2(j) of the Act, lays down that a person appointed to be Assistant Registrar when exercising all or any of the powers of the Registrar, would also be a Registrar. The expression "when exercising all or any of the powers" occurring in