

Roopram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-04-1994

Reported in : AIR1995Raj9

Judge : J.R. Chopra and; V.G. Palshikar, JJ.

Acts : Rajasthan Co-operative Societies Act, 1965 - Sections 75

Appeal No. : Civil Special Appeal No. 19 of 1992

Appellant : Roopram

Respondent : State of Rajasthan

Advocate for Def. : C.R. Jhakhar, Dy. Govt. Adv.

Advocate for Pet/Ap. : R.S. Saluja, Adv.

Disposition : Appeal allowed

Judgement :

J.R. Chopra, J.

1. This special appeal is directed against the order of the learned single Judge dated 15-1-1992 passed in S.B. Civil Writ Petition No. 126 of 1991, whereby white following a decision of this Court in Chaina Ram v. State of Rajasthan 1988 (1) RLR 343 : AIR 1989 NOC 12 (Raj), the learned single Judge has allowed the writ

petition filed by petitioner-respondent No. 6 Shri Ram-chandra and has quashed the order dated 4-1 -1991 passed by Joint Registrar, Co-operative Societies, Jodhpur.

2. The facts, necessary to be noticed, for the disposal of this appeal briefly stated are: that elections for Mandukara Gram Sewa Sahkari Samiti Ltd., Mandukara were scheduled to be held in the month of December 1990. The Voters' list was published on 3-12-1990. The petitioner-respondent No. 6 Ramchandra was one of the voters and was also one of the contestant for membership of the Managing Committee of the aforesaid Cooperative Society. It is alleged that 21 persons filed their nominations before the Returning Officer and the last date fixed for withdrawal of nominations was fixed as 17-12-1990. Out of 21 nominations filed before the Returning Officer, four were rejected and 9 persons withdrew their nominations and there remained only 8 nominations, which were found to be valid. According to the petitioner-respondent No. 6, only 8 members were to be elected for the Managing Board of the aforesaid Cooperative Society. As there are only 8 valid nominations, all the 8 persons were declared elected as Members of the Managing Board of the aforesaid Cooperative Society.

3. Thereafter, the Returning Officer issued notice on 17-12-1990 whereby he fixed 24-12-1990 as the date for election of Chairman, Vice-Chairman and for co-option of some members to the Managing Board. However, the elections could not take place on that date because the Returning Officer did not turn up. A protest was lodged with the Assistant Registrar, Cooperative Societies as also with the Deputy Registrar (Rules) Cooperative Societies Rajasthan, Jaipur, who in his turn wrote a letter to the Assistant Registrar, Cooperative Societies, Nagaur calling upon him to show cause why the Returning Officer did not attend the election-programme. Thereafter, the Assistant Registrar issued a notice asking the Returning Officer to hold the elections on 7-1-1991. That notice (Annexure-9) is dated 31-12-1990.

4. In the meantime, it is alleged that non-petitioner No. 6 Roopram, who is appellant in this appeal filed an application under Section 75 of the Rajasthan Cooperative Societies Act, 1965 before the Joint Registrar, Cooperative Societies, Jodhpur (Appellate Authority) that actually 9 persons did not withdraw their

nominations and neither they have personally presented their withdrawal letters before the Returning Officer nor they have signed those withdrawal letters. In support of his contention, he filed affidavits of 7 persons, for whom, it is alleged that they have withdrawn their nominations. On this application, the appellate authority passed the stay order Annexure-10, whereby the elections to the Managing Board of the aforesaid Co-operative Society were stayed.

5. Aggrieved against the order Annexure-10 passed by the Joint Registrar, Cooperative Societies, Jodhpur, the petitioner-respondent No. 6 filed a writ petition, which was decided as aforesaid and hence this appeal.

6. In the writ petition, a return was filed on behalf of the respondent No. 2 Joint Registrar, Cooperative Societies, Jodhpur (appellate authority), wherein it was contended that withdrawal of 9 persons from the contest appears to be a disputed question as out of 9 persons, against whom it is alleged that they have withdrawn their nominations, 7 persons have filed their affidavits that neither they have presented their withdrawal letters before the Returning Officer nor they have signed those withdrawal letters and it appears that the Returning Officer was forced to accept their withdrawal letters which were not presented by them and, therefore, he was well within his right to stay the proceedings of the elections to the Managing Board of the aforesaid Cooperative Society.

7. We have heard Mr. R.S. Saluja, the learned counsel appearing for the appellant and Mr. C.R. Jhakar, the learned Deputy Govt. Advocate and have carefully gone through the record of the case.

8. While deciding the writ petition filed by the petitioner-respondent No. 6, the learned single Judge has placed reliance on a Division Bench decision of this Court in Chairman's case (supra), wherein it has been observed that when the process for election has started, voters lists have been published, nomination papers have been invited and filed and date of scrutiny of nomination papers and date of polling have been fixed, the State Govt, or Registrar or for that matter, the Joint Registrar has no power under Section 75 or under Section 128 of the Rajasthan Cooperative Societies Act to stay the election process after the same has commenced. Actually, this authority has no application to the facts of the

present case. Here, so far as the election of members to the Managing Board of the Mandukara Gram Sewa Sahkari Samiti Ltd., Mandukara are concerned, the election process was complete and out of 21 nominations, four were rejected and 9 persons withdrew their nominations and against the 8 vacancies, the remaining 8 persons were declared elected as Members of the Managing Board of the aforesaid Cooperative Society as unopposed. It is this very order of the Returning Officer declaring 8 persons as Members of the Managing Board being unopposed is under challenge. The Returning Officer was required to hold elections of Chairman, Vice Chairman as also for co-option of certain members to the Managing Board and election of Chairman, Vice Chairman as also for co-option of certain members could only take place when the election of these 8 persons to the Managing Board is held as valid. The elections of Chairman, Vice Chairman etc. take place under Rule 33 of the Rajasthan Cooperative Societies Rules, 1966 and for holding elections of Chairman, Vice Chairman etc., a meeting was fixed by the Joint Registrar but when the election of these 8 persons as members to the Managing Board itself was under challenge, that could not have taken place. It is not a case of staying the elections in the midst as held in Chairman's case (supra). Here, the election process has been complete and result has been declared and all formalities as required by Rule 32 of the Rules were complete and, therefore, an election dispute could be raised about the election of 8 persons, who were declared elected as Members of the Managing Board being unopposed and this is what has been done in this case. Such a petition can be entertained under Section 75 of the Act. This is what has been held by a Division Bench of this Court in *Bharat Lal Dugal v. Registrar, Sahakari Samitis, Raj, Jaipur*, 1987 (1) RLR 730. In that case, it has been observed that disputes which are based on disputed questions of fact can properly be adjudicated in the proceedings under Section 75 of the Act. A somewhat similar view has been expressed by a Division Bench of this Court in *Kanwar Pal v. State* (1987 (1) RLR 128 (sic)). Thus, it was not a case of election process being interfered but it was a case where election of certain members to the Managing Board was challenged on the ground that the Returning Officer was wrong in accepting the withdrawal letters of 9 persons because neither they have personally presented their withdrawal letters to the Returning Officer nor they have signed those withdrawal letters. Such disputes can only be resolved by

taking evidence of the parties and such disputes can safely be enquired into under Section 75 of the Act.

9. When such disputes can be enquired into under Section 75 of the Act and in doing so, if any stay order has been granted by the appellate authority, that order cannot be held to be improper. In this view of the matters, we are entirely in agreement with Mr. Saluja that the order of the learned single Judge cannot be sustained for the reasons aforesaid.

10. In the result, this appeal is allowed and the order of the learned single Judge dated 15-1-1992 is set aside.

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