

Bhumi Dev Vs. the Kangra Central Co-operative Bank Ltd. and ors.

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Court : Himachal Pradesh

Decided On : Jan-11-1985

Reported in : AIR1986HP13

Judge : T.R. Handa and; V.P. Gupta, JJ.

Acts : Himachal Pradesh Co-operative Societies Rules, 1971 - Rules 32, 37 and 42

Appeal No. : C.W.P. No. 503 of 1984

Appellant : Bhumi Dev

Respondent : The Kangra Central Co-operative Bank Ltd. and ors.

Advocate for Def. : M.S. Chandel, Asst. Adv. General,; Indar Singh and;Devinder Gupta

Advocate for Pet/Ap. : Om Prakash Sharama, Adv.

Disposition : Petition allowed

Judgement :

V.P. Gupta, J.

1. The petitioner has moved this petition under Art. 226/227 of the Constitution praying that the proceedings in the election programme for election to the

managing committee of respondent No. 1 (The Kangra Central Co-operative Bank Ltd.) be stayed and appropriate directions be issued for conducting the elections of the managing committee.

2. Respondent No. 1 is a co-operative society and its members are primary cooperative agriculture service societies of the districts of Hamirpur, Kangra, Una, Kulu and Lahaul and Spiti. The Board of Directors of respondent No. 1 is the managing committee of respondent No. 1 and this managing committee is to conduct the entire administration and business of respondent No. 1.

3. It is alleged that election to the managing committee is to be held in accordance with the rules given in Appendix 'A' of the Himachal Pradesh Co-operative Societies Rules (hereinafter the Rules) as contemplated by Rule 37. The managing committee is to be constituted by election from amongst the members of the society at the annual/special general meeting. The petitioner alleges that he is one of the sitting delegates and according to Rule 42 of the Rules only those persons are entitled to be elected to the managing committee who are the delegates representing a viable or potentially viable society. The election programme was announced by respondent No. 1 on 23-7-1984 for election to the managing committee and the nomination papers were to be received up to 4 p.m. on 31-8-1984. Scrutiny and decision on objection was to be conducted on 1-9-1984 and the withdrawal could be done by 3-9-1984. The declaration of validly nominated candidates was to be done by respondent No. 2 (Returning Officer) on 14-9-1984 and the elections were to take place on 21-9-1984.

4. The petitioner alleges that he filed his nomination papers. Some other persons who were not delegates also filed their nomination papers. The petitioner filed objections to the effect that no person other than a delegate could file the nomination papers. It is alleged that without deciding the objection of the petitioner the names of respondents Nos. 3 to 8 were announced as being the candidates. The petitioner alleges that respondents Nos. 3 to 8 were not eligible to contest the election but respondent No. 2 has allowed them to contest the election for the managing committee of respondent No. 1. This action of respondent No. 2 is illegal and unwarranted. The respondents Nos. 3 to 8 have no right to contest the

elections or to file the nomination papers as they are not the delegates.

5. Reply affidavit was filed on behalf of respondent No. 1 in which it is asserted that the elections are to be held according to Rule 17 of the Rules and Appendix 'A' of the Rules of election. It is not necessary to elect the managing committee from amongst the delegates and the right of other members to contest for election is not taken away. The respondents Nos. 3 to 8 being members of the society have every right to contest the election. Respondent No. 2 (Returning Officer) also filed a separate reply affidavit alleging that the petitioner had other remedies under the Himachal Pradesh Co-operative Societies Act (hereinafter the Act) and the writ petition is not maintainable.

6. On merits it is stated that the objections of the petitioner were rejected on 1-9-1984 and that the candidates duly sponsored/authorised by various member societies of respondent No. 1 are delegates in the eyes of law. According to respondent No. 2, the respondents Nos. 3 to 8 are also eligible to contest the elections. The various other averments of the writ petition have been denied,

7. We have heard the learned counsel for the parties.

8. The learned counsel for the petitioner contends that it is only the delegates who have a right to file the nomination papers for being elected as member of the managing committee of respondent No. 1 and respondent Nos. 3 to 8 not being the delegates have no right to file their nomination papers or to contest the elections.

9. The learned counsel appearing for the respondents contends that respondents Nos. 3 to 8 being members of the co-operative societies have every right to be elected to the managing committee of respondent No. 1 because the co-operative societies of which they are the members are societies who are members of respondent No. 1 society. Respondent No. 1 is in fact secondary society of which various primary societies are the members.

10. We have considered the contentions of the learned counsel for the parties.

11. The admitted position is that respondent No. 1 is a secondary society of which several primary co-operative societies are the members.
12. Under Section 31 of the Act the final authority in co-operative society shall vest in the general body of members in a general meeting. Provided that where the bye-laws of a co-operative society provides for the constitution of a smaller body consisting of delegates of the member society elected or selected in accordance with such bye-laws, the smaller body shall exercise such powers of the general body as may be prescribed or as may be specified in the bye-laws of the society.
13. Under Section 32(1)(b) a general meeting of every society shall be held once at least in every co-operative year for the purpose of election, if any, in the prescribed manner of the members of the committee other than the nominated members.
14. Under Section 34 of the Act the management of every society shall vest in a managing committee constituted in accordance with the rules and the bye-laws, which shall exercise such powers and perform such duties as may be conferred or imposed respectively by this Act, the rules and the bye-laws.
15. Rule 32 of the Rules provides that (1) A co-operative society with a membership of 1,000 or more shall, and if the bye-laws so provide, a co-operative society with a membership of 500 or more, but less than 1000, may hold its general meeting by calling representatives (hereinafter referred to as delegates) of areas or sections instead of summoning all the members in person.
- (2) One delegate shall be elected for every 10 members or major fraction thereof.
- (3) No person shall be qualified to be elected as a delegate who is not a member and who is not over 21 years of age.
- (4) The delegates shall hold office and attend all general meetings till fresh delegates are elected in their places.
- (5) Each delegate shall have one vote.
- (6) A member shall cease to be a delegate if he:

(a) ceases to be a member of the society

(b) resigns his office as a delegate. .

(7) A casual vacancy in the office of a delegate in any area, or section, shall be filled by election by members in the area or section concerned.

16. Rule 33 of the Rules provides that (1) the managing committee, subject to the approval of the Registrar, shall divide the area of operation of the society into convenient areas or sections for the purpose of election of delegates, and (2) the division of the area of operation of a society, under Sub-rule (1) shall be duly notified to all members, and a member in a particular area, or section, shall be entitled to vote in the election of the delegates only for that particular area or section.

17. Rule 34 of the Rules provides that, the managing committee shall, subject to the approval of the Registrar, make regulations to provide for all matters relating to the election of delegates and in particular for (a) the manner of nomination and election of delegates and (b) the total number of delegates to be elected and the number of delegates to be elected from each area or section in accordance with Sub-rule (2) of Rule 33.

18. Rule 37 of the Rules provides that notwithstanding anything contained in the foregoing rules, the members of the managing committee of a co-operative society shall be elected in accordance with the rules given in Appendix 'A'.

19. Rule 42 of the Rules deals with the terms of office of member of committee who is a delegate of another society and it reads as under :---

'42. Term of office of member of committee who is a delegate of another society. --
A delegate of one society sitting on the committee of another society shall cease to be a member of such committee : --

(a) if the society which elected him as a delegate withdraws him or elects another delegate in his place; or

(b) in case he was elected as a delegate by a society on the supersession of the committee of such society under Section 37 of the Act, provided that the person or persons appointed by the Registrar under the said section shall have power to nominate himself or one among them or any member of the society, to the committee of another society; or

(c) if the registration of the society of which he is a delegate, is cancelled; or

(d) if he ceases to be a member of the society of which he is a delegate; or

(e) if the society which he represents is ordered to be wound up from the date on which the order of winding up takes effect under Sub-section (3) of Section 78 :

Provided that no individual shall be a member of a managing committee of more than two secondary societies at a time :

Provided further that a delegate representing a viable or potentially viable society shall only be eligible to seek election to the managing committee of a secondary society, the criteria for viable and potentially viable societies being determined by the Registrar.'

20. Appendix 'A' to Rule 37 of the Rules deals with the rules of election to the committee and under Rule 3 of this Appendix, the voters list is to be prepared and under Rule 4 of the Appendix a detailed election programme is to be drawn up and if the Registrar requires then for the purpose of election the area of co-operation of a co-operative society can be divided in zones.

21. Now, Rule 32 of the Rules specifically provides that a co-operative society may hold its general meeting by calling representatives (hereinafter referred to as delegates) of areas or sections instead of summoning all the members in person. Under this rule a delegate is to be elected for every ten members or major fraction thereof and such delegate has one vote. Thus according to this rule a delegate is in fact a representative of a society and is entitled to represent the society or the members of that society.

22. According to Section 31 of the Act a smaller body consisting of delegates of the members of the society can exercise the powers of the general body of the members in general meeting. According to Section 32 a general meeting of the society can be held for election of the committee and this committee is a managing committee for the purpose of the management of the society as is provided in Section 34 of the Act. Under Rule 37 of the Rules, a managing committee is to be elected in accordance with the rules given in Appendix 'A', that is, the person eligible for election as a member of the managing committee should not be a disqualified person as is mentioned under Rule 41 of the Rules and the voters list etc. is to be prepared in accordance with Rule 3 of the Appendix and a detailed programme of election is to be drawn up in accordance with Rule 4 of the Appendix.

23. In the present case a general meeting by the delegates is to be held in accordance with Rule 32 of the Rules and these delegates are to be elected under Rule 32 of the Rules. The second proviso to Rule 42 of the Rules mentions that a delegate representing a viable or potentially viable society shall only be eligible to seek election to the managing committee of the secondary society and the criteria for viable or potentially viable society is to be determined by the Registrar. Thus according to second proviso only a delegate is eligible to seek election to the managing committee of respondent No, 1.

24. The meaning of the word 'delegate' can be derived by reading Rule 32 of the Rules wherein it is stated that the delegates are in fact the representatives of the primary societies and one delegate is to be elected for every ten members or a major fraction thereof. In other words, it means that if a primary society has several members it has a right to represent itself in the secondary society through its delegates, if the membership of the primary society is 1000 or more and in case the bye-laws so provide if the membership is 500 or more, but less than 1000. In either case for every 10 members or a major fraction thereof it can elect one delegate. The obvious conclusion is that the second proviso to Rule 42 of the Rules only enables a delegate to be an eligible candidate for the election to the managing committee of a secondary society. A member of the primary society has no right to seek election to the managing committee of a secondary society, if he is

not a delegate. Clause (a) of Rule 42 of the Rules provides that a delegate of one society sitting on the committee of another society shall cease to be a member of such committee if the society which elected him as a delegate withdraws him or elects another delegate in his place. Thus a primary society which sends its delegates to become the members of the managing committee of the secondary society has a right to elect another delegate in his place and also withdraw such delegate from the committee of another society. For example if 'A' is elected as a delegate on behalf of a primary society. 'A' in his capacity is a delegate of the primary society subsequently is elected as a member of the managing committee of a secondary society. Thereafter the primary society which elected 'A' as a delegate withdraws him or elects 'B' as another candidate in his place. In these circumstances 'A' shall cease to be a member of the secondary society.

25. Thus although 'A' remains a member of a primary society but still by losing his position as a delegate of the primary society, he ceases to be member of the managing committee of the secondary society. In other words it can be said that a simple member of the primary society cannot become a member of the managing committee of a secondary society unless he is a delegate of the primary society.

26. Keeping in view these facts, if a member of a primary society is allowed to contest the election and thus becomes a member of the managing committee of a secondary society then in that case it is likely to lead to absurd results because if this member had been taken on the managing committee of a secondary society as a delegate, then in spite of retaining his position as a member of the primary society he would lose his right to be a member of the managing committee of the secondary society under Rule 42(a) of the Rules,

27. Thus on a reading of Rule 42(a) with its second proviso, and Rule 32, the only irresistible conclusion is that an election to the managing committee of a secondary society can only be from amongst the delegates and not the members of the primary societies.

28. Respondents Nos. 3 to 8 are admittedly not the delegates. They are only the members of the primary societies.

29. In view of the aforesaid discussion, respondents Nos. 3 to 8 cannot be eligible candidates for election to the managing committee of respondent No. 1 and the inclusion of their names and accepting their nomination papers for election as members of the managing committee of respondent No. 1 is clearly illegal.

30. The petitioner has appended Annexure PA in which the names of the delegates have been given. This annexure pertains to the election which was to be held on 30-11-1980. It is possible that for the present election some other persons may have been elected as delegates.

31. In view of the above discussion, this writ petition is accepted and it is directed that the respondents Nos. 3 to 8 who are not the delegates may not be allowed to take part in the elections. Respondents Nos. 1 and 2 are directed to draw up a fresh election programme within a period of one month from today in which the only eligible candidates for election to the managing committee of respondent No. 1 should be from amongst the delegates of the primary societies. No order as to costs.