

Before G. S. Sandhwalia, J.

MILKHA SINGH—Petitioner(s)

versus

**DEPUTY REGISTRAR, CO-OPERATIVE SOCIETIES, HISAR
AND OTHERS—Respondent(s)**

CWP No.37707 of 2018

January 21, 2020

Constitution of India, 1950—Art. 226—Haryana Co-operative Societies Act, 1894—S.102 and 116—Election petition—Inherent powers—Interim stay on petitioner’s working as President during pendency of the election petition— Challenge to—Reliance placed on the Division Bench Judgment in Ram Kishan case that restrain orders in election petitions cannot be passed—Held, the respondent’s plea that inherent powers under S.116 can be invoked to pass such an order is without basis—Section pertains to a situation where appeal is pending or record is called for the case — It does not give power as such to pass interlocutory orders in an election petition under S.102 (2) (c)—Impugned order was, accordingly, quashed with liberty to respondent No.1 to proceed with the case on merits.

Held that, thus, the Section pertains to where appeal is pending or where the record is called for the case and interlocutory orders can be passed. It does not give the power as such to pass interlocutory orders in a election petition under Section 102(2)(c) of the Act and, therefore, the order cannot be justified in any manner.

(Para 6)

Keeping in view the above, this Court is of the opinion that the impugned order dated 05.12.2018 (Annexure P-3) as such cannot be sustained and is accordingly quashed. This Court has not commented upon the merits of the case as such which is subject matter before respondent No.1, who has the liberty to proceed ahead on the merits of the case in accordance with law.

(Para 7)

C.R. Dahiya, Advocate
for the petitioner.

Vibha Tewari, A.A.G., Haryana.

None for respondent no. 3.

Ashwani Verma, Advocate
for respondent no. 4.

G.S.SANDHAWALIA, J. oral

(1) In the present writ petition filed under Article 226 of the Constitution of India, the petitioner prays for a writ in the nature of certiorari quashing the impugned order dated 05.12.2018 (Annexure P-3) passed by respondent no. 1.

(2) A perusal of the same would go on to show that an election petition under Section 102 of the Haryana Co-operative Societies Act, 1894 (in short 'the Act') had been preferred by respondent no. 4 namely Sukhwinder Singh on the ground that the present petitioner was a defaulter of the society for which he had been elected as a President. Resultantly, stay application had been preferred, which was allowed restraining the petitioner from working as President of The Hanspur Primary Agriculture Cooperative Society Ltd. but he was only allowed to work simply as Member of the Society.

(3) In the reply filed by respondent no. 1, objection has been taken that there is a equal and efficacious remedy to address the grievance under the provisions of the Act. The order has been justified on the ground that the matter is still pending.

(4) Reliance has been placed upon the judgment of the Division Bench in *Ram Kishan* versus *The Registrar, Co-operative Societies, Haryana and others*¹ that restraint orders in election petitions as such cannot be passed as it would amount to prejudging the case and accepting the election petition and would debar a duly elected Director from taking part in the proceedings of institution and would negate the mandate of the electorate.

Relevant portion reads thus:-

"3. There is no dispute between the parties that an election dispute between the members of the Societies is covered by clause (c) of sub-section (2) of Section 102 of the Act. Such a dispute is required to be referred to the Registrar under sub- section (4) of this section. Sub- section (4) of Section 103 of the Act empowers the Registrar to pass

¹ 1989, PLJ 437

such interlocutory order as he deems necessary in the interest of justice during the pendency of such proceedings. There is considerable force in the contention of Mr. Dalal, learned counsel for the petitioner that such like interlocutory orders embrace only dispute regarding the payment of debt etc., between the members of the Society and the Society, but would not amount to taking away fundamental right of an elected Director to participate in the proceedings of the Bank or in the election of the office-bearers. Moreover, the Registrar was enjoined upon to make out a justifiable cause for passing such harsh orders, but strange enough he had not done so. There is no legal justification for debarring a duly elected Director from taking part in the proceedings of the institution as that will amount to negating the mandate of the electorate.

4. For the forgoing reasons this writ petition is accepted at the motion stage and the impugned order, Annexure P-2 is hereby quashed. There is, however, no order as to costs.”

(5) The stand of respondent no. 1 that it can invoke the inherent powers under Section 116 is without any basis. Section 116 reads thus:-

“116. Interlocutory orders- When an appeal is made under section 114 or where the Government calls for record of a case under section 115, the appellate authority or the Government, as the case may be, may, in order to prevent the ends of justice being defeated, make such interlocutory orders, including an order of stay, pending the decision of the appeal or revision, as such authority or the Government may deem fit.”

(6) Thus, the Section pertains to where appeal is pending or where the record is called for the case and interlocutory orders can be passed. It does not give the power as such to pass interlocutory orders in a election petition under Section 102(2)(c) of the Act and, therefore, the order cannot be justified in any manner.

(7) Keeping in view the above, this Court is of the opinion that the impugned order dated 05.12.2018 (Annexure P-3) as such cannot be sustained and is accordingly quashed. This Court has not commented upon the merits of the case as such which is subject matter

before respondent no. 1, who has the liberty to proceed ahead on the merits of the case in accordance with law.

(8) The writ petition stands allowed accordingly.

Tribhuvan Dahiya