

(18) For the reasons recorded above, this writ petition is allowed and the impugned orders, copies of which are Annexures 'P-3' and 'P-5' with the writ petition, are hereby quashed. The Registrar may proceed with the matter in accordance with law if he so decides to amalgamate, the petitioner-society. However, there will be no order as to costs.

Harbans Lal, J.—I am in agreement in entirety and have nothing to add.

N. K. S.

CIVIL MISCELLANEOUS.

Before S. S. Sandhawalia and S. C. Mital, JJ.

SADHU RAM AND ANOTHER,—*Petitioners.*

versus

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

Civil Writ No. 2842 of 1973.

February 3, 1976.

Punjab Co-operative Societies Act (XXV of 1961) (as amended in Haryana)—Sections 19, 23 and 26—Punjab Co-operative Societies Rules, 1963—Rule 23 and Appendix 'C' (as it stood in May, 1973)—Bye-laws of a Co-operative Society providing for indirect election through delegates only—Whether violate Appendix 'C'—Election held in accordance with such bye-laws—Whether invalid

Held, that from a reading of the two definitions of 'candidate' and 'voter' given in rules 1(a) and (g) of Appendix 'C' framed under Rule 23 of the Punjab Co-operative Societies Rules 1963, it is clear that a person cannot be a candidate unless he is first a voter. To qualify for being a voter, two conditions are prescribed, namely, that he is either to be a shareholder of a Society or an authorised representative of a member Co-operative Society. It is evident that either of the persons satisfying these two qualifications is intended to and has been vested by the law with the right to vote. The statutory provisions make no mention either expressly or by necessary implication of an election through the media of delegates only or further that a member will not have a vote of his own and shall exercise the same only through an indirect manner. The definitions do not countenance in theory, an election through delegates only, or what may be called as a strictly indirect mode of election. Part II of Appendix 'C', which

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lays down very detailed rules for elections to the Committees, does not contain any provision, which makes any reference to voting by delegates alone. Indeed Rule 19 in Part II of Appendix 'C' by necessary implication implies a direct exercise of votes by the voters. Therefore, the law does not sanction an election through the delegates and the bye-laws of a Co-operative Society providing for such an election violate the provisions of Appendix 'C'. It is, however, well settled that the bye-laws of a Society cannot violate or run counter to the statutory provisions under which the same has been duly registered. In a case of conflict between the Act and the Rules framed thereunder, the bye-laws must give way to the parent provisions. Consequently, bye-laws of the Society providing for indirect election and which are in contradiction with Appendix 'C' must be deemed to be of no validity and any election held in accordance with such bye-laws is invalid.

(Paras 7, 8, 9 and 10).

Case referred by the Hon'ble Mr. Justice M. R. Sharma, on 18th September, 1974 to the Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice S. C. Mital, finally decided the case on 3rd February, 1976.

Petition under Articles 226 and 227 of the Constitution of India praying that Your Lordships may graciously issue an appropriate Writ/Order or directions:—

- (a) To quash the orders of respondent No. 4 by which he has fixed the election of the Indri Cane Growers Co-operative society from zones No. 5, 6, 7 on 16th September, 1973 and to further quash the order of respondent No. 5 (Returning Officer), dated 26th May, 1973 by which he has declared respondents No. 7 to 10 as the Directors from zones No 1 to 4 and bye-laws of the Indri Cane Growers Co-operative Society prescribing that the election of the managing committee would be held through delegates be struck down being ultra vires to rule 23 of the Punjab Co-operative Societies Rules 1963 being illegal, arbitrary, beyond jurisdiction and against the principles of natural justice.

- (b) To award the cost/costs incidental to the petitioners.

Further prayed that the respondents No. 7 to 10 be restrained from working as a managing committee of the Indri Cane Growers Co-operative Society and the election of the Directors from zones No. 5, 6, 7 out of the respondents from 11 to 16 scheduled to be held on 16th September, 1973 be stayed till the pendency of the present Writ Petition.

G. S. Sandhu, Advocate, for the Petitioner.

C. B. Kaushik, Advocate, for respondents Nos. 1 to 5.

Bhagirath Dass, Advocate, for respondents Nos. 6 to 10.

JUDGMENT

S. S. Sandhawalia, J.—

(1) Whether bye-law 15 of the Indri Cane Growers Co-operative Society Ltd. providing that the members of the said Society will exercise their votes through their delegates and will have no vote of their own is violative of Appendix 'C' framed under Rule 23 of the Punjab Co-operative Societies Rules, 1963, is the primary and indeed the sole question which calls for determination in this writ petition before us on a reference.

(2) Since the only legal issue pressed before us is the one mentioned above, it suffices to advert to the facts relevant thereto. The two petitioners are the members of the Indri Cane Growers Co-operative Society Ltd., (hereinafter called the Society) which is a body duly registered under the Punjab Co-operative Societies Act, 1961. The Cane Commissioner, Haryana (respondent No. 4) fixed the election to the managing Committee of the Society on a zonal basis for the 31st of May, 1973, and appointed the Assistant Registrar, Co-operative Societies (respondent No. 5) as the Returning Officer therefor. The election programme provided that the nomination papers were to be filed on the 23rd of May, 1973; which were to be scrutinised on the following day; the date for withdrawal of nominations and the allotment of symbols was fixed for the 2th of May, 1973. On this date, the Returning Officer declared respondents Nos. 7 to 10 as having been elected uncontested to the managing Committee of the Society from zones Nos. 1 to 4. However, on the 30th of May, 1973,—*vide Annexure 'A'*, the Cane Commissioner, Haryana postponed the election scheduled to be held on the following day till further orders. It is unnecessary, to advert to the reasons or the validity of this postponement and it suffices to mention that the election of persons from zones Nos. 5 to 7 was ultimately fixed for the 16th of September, 1973.

(3) The core of the petitioners' case pressed on their behalf is that the afore-mentioned elections were required to be contested through delegates in accordance with the bye-laws of the Society (in particular bye-law 15 thereof), which were patently violative of Appendix 'C' framed under Rule 23 of the Punjab Co-operative Societies Rules, 1963 (hereinafter referred to as the Rules). It has been claimed that such an election to be of validity must be held in accordance with the provisions of Appendix 'C'. On behalf of the

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petitioners it has been pointed out that though the elections of all Co-operative Consumers Stores in the State were earlier held through delegates but after the promulgation and enforcement of Appendix 'C' these elections were now being held like all other Societies under the relevant provisions of Appendix 'C'. Consequently it is highlighted that the election through the medium of delegates to the managing Committees of all Cane Growers Co-operative Societies including the present one is violative of the mandatory provisions of Rule 23 and Appendix 'C' thereto. It is the petitioners' case that by virtue of the said provision the right to be a candidate in the election and the right to vote therein are vested in every member of the Society directly and not through the agency of the delegates of those voters. It is, therefore, alleged that any provision to this effect in the bye-laws cannot stand and be of validity against the prescribed statutory provisions and hence all elections held in accordance with the said bye-laws through the delegates are invalid. It is prayed that the elections of respondents Nos. 7 to 10 as members of the managing Committee of the Society be struck down because the same had been held through the medium of delegates and further that the orders of respondent No. 4 for fixing the election in an identical manner from zones Nos. 5 to 7 on the 16th of September, 1973, be quashed.

(4) The return has been filed on behalf of the official respondents Nos. 1 to 4. In the relevant paragraph thereof it has been claimed that the election to the Managing Committee of the Society has to be held under the direction of the answering respondents and is in no way in contravention of the statutory provisions. It has been stated in para 13(b) of the return that the Society is a central Society and elections to the managing Committee thereof are to be held in accordance with the provisions of para second of Appendix 'C' framed under Rule 23. It is, however, reiterated that this election has to be held on a zonal basis through delegates as provided by the above said provision. It is also highlighted that the bye-laws of the Society itself provided for the election of managing Committee through delegates. These provisions are reiterated to be legal and valid and it is the respondent's case that the same have not become infructuous or illegal by virtue of the enforcement of Appendix 'C' under the Rules.

(5) Inevitably a reference has first to be made to section 19 of the Act, which lays down the cardinal rule regarding the manner of

exercising a vote. There have been material changes made in the Act after the formation of the States of Punjab and Haryana, but as the present case relates to the State of Haryana, it suffices to advert to the relevant provision as it now stands:—

“19. Every member of a co-operative society shall exercise his vote in person and no member shall be permitted to vote by proxy;

Provided that—

- (a) a co-operative society which is a member of another co-operative Society, may, subject to the rules, appoint one of its members to vote on its behalf in the affairs of the other society;
- (b) a class or classes of persons or associations of persons, authorised to become members of a co-operative society under clause (1) of section 15, may, subject to the rules, appoint one of its representatives to vote on its behalf in the affairs of the society.”

As a matter of legal history, however, it may be noticed that originally section 19 had two sub-sections and by the amending Haryana Act No. 13 of 1971 sub-section (2) was omitted and the proviso noticed above was added to the statute. Construing the plain language of section 19 above-quoted it is evident that it provides for the exercise of a vote primarily in person. Two exceptions to this rule, however, are now laid down by the proviso. Clause (a) thereof obviously provides for the manner of voting by a legal person (i.e. a Co-operative Society which is a member of another co-operative Society) through an authorised representative thereof. Similarly clause (b) provides that where a class or classes of persons or associations of persons have become a member of a co-operative Society they may appoint one of their representatives to vote on their behalf in the affairs of the Society. It is significant to note that Section 19 itself does not directly provide that actual persons who are members of a co-operative Society may exercise their votes through delegates only for the purposes of the election.

(6) We may, therefore, turn to the other relevant statutory provisions in order to determine whether voting through delegates alone

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is authorised or sanctified by them and further whether they warrant the denuding of a right of vote in person vested in a member of a Co-operative Society. Section 26 of the Act, lays down that 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. Statutory Rules have been framed for the purpose of laying down in detail the manner in which the elections are to be held. The primary rule in this context is Rule 23 to the following effect :—

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

It is the common case of the parties before us that the validity of the impugned election is to be tested on the touch-stone of the law as it existed on the 26th of May, 1973, when respondents Nos. 7 to 10 were declared elected. Therefore, turning to Appendix ‘C’ as it then stood in the State of Haryana, the material provisions are in Part I thereof which consists of two basic rules laying down the definitions of the terms used in this Appendix and the qualification for election as a member of the Committee. Particular reference is merited by the definition given herein to the words ‘candidate’ and ‘voter’ which are quoted in *extenso* for facility of reference:—

- “1(a) ‘Candidate’ means a voter, who files his nomination papers to seek election; and
- (g) ‘Voter’ means a person who is either a shareholder or an authorised representative of a member co-operative society, duly qualified to participate in the election.”

(7) Reading the aforesaid two definitions together (as they must necessarily be) it is plain that a person cannot be a candidate unless he is first a voter. To qualify for being a voter, two conditions are prescribed, namely, that he is either to be a shareholder of a Society or an authorised representative of a member co-operative society. It is evident that either of the persons satisfying these two qualifications is intended to and has been vested by the law with the right to vote. The statutory provisions make no mention either expressly or by necessary implication of an election through the media of delegates only or further that a member will not have a vote of his own

and shall exercise the same only through an indirect manner. The core of the issue primarily, therefore, is whether an indirect election through delegates only is valid or whether the law requires a direct exercise of the vote by the shareholders who are actual persons or in case of member co-operative society through their authorised representatives. We are afraid that the definitions as they stood at the material time did not countenance in theory of an election through delegates only or what may be called as a strictly indirect mode of election.

(8) The above-said view is further fortified when a reference is made to Part II of Appendix 'C' which lays down very detailed rules for elections to the Committees of the Apex Central Co-operative Societies, and the primary Co-operative Societies, and the primary Co-operative Land Mortgage Banks. It is even the admitted case of the respondents that the aforesaid provisions of Part II of Appendix 'C' are applicable to the present elections. No provision in the thirty-three exhaustive rules which fall therein has been pointed to us which makes any reference to voting by delegates alone. Indeed Rule 19 in Part II of Appendix 'C' by necessary implication implies a direct exercise of votes by the voters.

(9) The subsequent amendment made in Part I of Appendix 'C' by the State of Haryana would further make it manifest that the earlier provisions did not warrant an election through the media of delegates. On the 31st of October, 1974, the Punjab Co-operative Societies (Haryana 1st Amendment) Rules, 1974, were promulgated. These provisions amended the definition of the voter as it stood earlier and directed that the following shall be substituted therefor:—

"(g) 'Voter' means a persons, who is either a share holder or an authorised representative of a member Co-operative Society duly qualified to participate in the election and includes, a delegate of a Co-operative Society elected or selected in accordance with the proviso to section 23 of the Act."

The aforesaid change is indeed significant and the new provision expressly brought in within the definition of voters a delegate of a co-operative society elected or selected in accordance with the proviso to Section 23 of the Act. However, for the relevant period with which we are concerned (in May, 1973), the definition of voter stood unamended and did not have within its scope any concept of delegates

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or an indirect mode of election. The subsequent amendment indeed strengthens the case advanced on behalf of the petitioners. If the original definition as it stood was intended to and could envisage within it an election by delegates there was obviously no need to amend the definition and expressly include within it an election through the media of delegates. The subsequent amendment cannot be deemed to be a mere surplusage or one which is redundant. The plain intention was to bring within the definition of a voter what it earlier did not contain. It has, therefore, to be concluded that as on the 26th of May, 1973, when respondents Nos. 7 to 10 were declared elected the law did not sanction an election through the delegates. Their election through this medium thus cannot be sustained.

(10) It is true that the bye-laws of the Society did envisage and provide for an indirect mode for electing one delegate for every 15 members from amongst the members of a Society in a village. It is, however, equally well-settled that the bye-laws of a Society cannot violate or run counter to the statutory provisions under which the same has been duly registered. In a case of conflict between the Act and the Rules framed thereunder, the bye-laws must give way to the parent provisions. Consequently bye-law 15 of the Society which was at the relevant time in direct and flagrant contradiction with the provisions of Appendix 'C' (which prescribed the mode of elections) must be deemed to be of no validity. Any election held in accordance with the bye-laws which were in patent conflict with the statutory provisions then existing has, therefore, to be set aside.

(11) Before parting with this judgment, I deem it necessary to make a reference to the view expressed by the learned referring Judge. A vacillating doubt about the correctness of the decision *Hukam Singh, v. Niranjan Singh and others*, (1) decided by Pandit J., was cast on the ground that perhaps the true impact of the proviso to section 23 of the Act had not been adequately canvassed before him. We have closely examined the provisions of section 23 of the Act as amended in Haryana and this may be set down *in extenso* for facility of reference:—

"23 (1) The final authority in a co-operative society shall vest in the general body of members :

(1) C.W. 365/66, decided on May 20, 1966.

Provided that where the bye-laws of a co-operative society provide for the constitution of smaller body consisting of delegates of members of the 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."

To our mind the afore-mentioned proviso would not in any way affect the provisions regarding the mode of holding elections to the managing Committee of the Society at the material time. Construing the section as a whole it appears that it first lays down the primary principle that the final authority in a Co-operative Society vests in the general body of its members. To this a rider has been attached by the proviso that a smaller body may exercise the powers vested in the general body which are so specified and provided in its bye-laws. On behalf of the respondents it was not so canvassed, and we are consequently unable to hold that this proviso would in any way govern the detailed mode of election to the Managing Committees which has been duly provided in Rule 23 read with Appendix 'C' thereto. The ratio of *Hukam Singh's case (supra)* does not appear to us as being in any way affected by the aforesaid proviso and would still hold the field. In any case we are of the view that so far as the present issue of the validity of the election to the Managing Committee of the Society is concerned the said proviso is not directly attracted.

(12) We accordingly hold that bye-law 15 of the Society at the relevant time was in conflict with the statutory provisions and therefore no validity. The election of respondents Nos. 7 to 10 held in accordance with the said bye-law and its connected ones was thus illegal and is hereby set aside. The writ petition is allowed in these terms but the parties are left to bear their own costs.

S. C. Mital, J.—I agree.

N.K.S.