

out of the State did not appear to be in serious dispute. The truck had moved a distance of more than 150 miles from Malerkotla towards Delhi till it was intercepted at Samalkha Barrier at a distance of 18 miles from Delhi-Punjab Border. Reversing the conviction of the appellants recorded and upheld by the Courts below, their Lordships took the view that the act was merely preparation on the part of the appellants and did not amount to an attempt. The rule was formulated in the following terms:—

“The test for determining whether the act of the appellants constituted an attempt or preparation is whether the overt acts already done are such that if the offender changes his mind and does not proceed further in its progress the acts already done would be completely harmless. In the present case it is quite possible that the appellants may have been warned that they had no licence to carry the paddy and they may have changed their mind at any place between Samalkha Barrier and the Delhi-Punjab boundary and not have proceeded further in their journey.”

(10) In view of the clear enunciation abovesaid, we are inclined to the view that the earlier Orissa cases referred to above are no longer good law. The case of the present petitioner comes well within the ratio of *Malkiat Singh's case* (5). It is significant to note that a slow-moving bullock-cart traversing a *kutchha* path would take as much if not a longer time than the truck on the G.T. Road would have taken to cover 18 miles from Samalkha barrier to the border in the Supreme Court case above. The present petition consequently must succeed and is allowed. The conviction and sentence of the petitioner are set aside and the fine, if paid, shall be refunded. The order of confiscation of the grain and of the cart and the bullocks is also quashed.

Dhillon, J.—I agree.

B.S.G.

CIVIL MISCELLANEOUS

Before D. K. Mahajan and H. R. Sodhi, JJ.

GURDEV SINGH,—Petitioner.

versus

THE STATE OF PUNJAB ETC.—Respondents.

Civil Writ No. 447 of 1971.

August 10, 1971.

*Punjab Co-operative Societies Act (XXV of 1961)—Section 55(2)(c)—
Whether ultra vires the Constitution of India.*

Held, that under Punjab Co-operative Societies Act, 1961, and the rules framed thereunder, it is a committee of the Co-operative Society which is elected in a general meeting. The persons who can stand for the election of the membership of the committee, and their qualifications and disqualifications are all specified. Any dispute arising as to such an election is to be settled by arbitration as provided in section 55 of the Act. Reference to arbitration of an election dispute is not something which is unheard of or prohibited by any law. Election disputes are known to be settled by Tribunals. The Tribunals may be those constituted under a law or agreed to by the parties if the agreement is not against public policy. Sometimes the Legislature itself provides for the settlement of an election dispute by an arbitration Tribunal as is the case in section 55. In all disputes which are referred to an arbitrator the guide line is provided by the dispute. The arbitrator is only called upon to determine a declared dispute and he determines that dispute on the basis of the evidence led before him. If the arbitrator outsteps his jurisdiction, his decision is amenable to the scrutiny of the Courts and can be vacated in appropriate cases. Election to Houses of Parliament or State Legislatures or the Gram Panchayats cannot be equated to an election of a Committee of a Co-operative Society. Matters of public policy control the elections to these bodies and different considerations are to be kept in mind while dealing with their election disputes. In the case of a Co-operative Society the entire approach has to be totally different. The Committee of Co-operative Society is formed for the purpose of carrying the work of the Co-operative Society. The qualifications of the members of the Committee have been laid down by the statute and it has also been provided when those members will cease to hold office, that is, when they incur any of the disqualifications mentioned in the Act. Whenever an arbitrator takes into account any matter which is not germane or is extraneous to a member holding office or for his expulsion, that matter can be examined and if the power has been exceeded, the courts will step in. Hence, in view of the scheme of the Act and its objects and reasons, the provisions of section 55(2)(c) of the Act are not *ultra vires* the Constitution of India. (Paras 4 and 5).

Petition under Articles 226/227 of the Constitution of India praying that an appropriate writ, order or direction be issued quashing section 55(2)(c) of the Punjab Co-operative Societies Act and also quashing the proceedings under section 55(2)(c) pending before respondent No. 3, against the election of the petitioner and further praying that during the pendency of the writ petition, further proceedings in the case be stayed.

KULDIP SINGH, ADVOCATE, for the petitioner.

M. R. SHARMA, SENIOR DEPUTY ADVOCATE-GENERAL, PUNJAB, for respondents 1 to 4.

J. L. GUPTA, ADVOCATE, for respondent No. 5.

JUDGMENT

The judgment of this Court was delivered by:—

MAHAJAN, J.—The only contention advanced in this petition under Articles 226 and 227 of the Constitution of India is that section 55(2)(c) of the Co-operative Societies Act is *ultra vires* of the Constitution of India.

(2) The argument is that there are no guide-lines provided for the arbitrator, while dealing with an election dispute as to on what ground he will set aside the election. Before proceeding to determine this question it will be proper to refer to the various provisions of the Act and the rules. Section 55(2)(c) so far as it is relevant is in the following terms:—

“55(1) Notwithstanding anything contained in any law for the time being in force, if any dispute touching the constitution, management or the business of a co-operative society arises—

- (a)
- (b)
- (c)
- (d)

(2) For the purposes of sub-section (1), the following shall be deemed to be disputes touching the constitution, management or the business of co-operative society, namely—

- (a)
- (b)
- (c) any dispute arising in connection with the election of any officer of the society ;

(3)

Section 85(v) is as under:—

- (1) The Government may, for any co-operative society or class of such societies, make rules to carry out the purpose of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (i)
 - (ii)
 - (iii)
 - (iv)
- (v) the conditions to be complied with by persons applying for admission or admitted as members, for the election and admission of members, and for the payment to be made and the interest to be acquired before the exercise of the right of membership."

Rules have been framed under section 85 and the relevant rules are Rule 22, 23, 25 and 26. Rule 23 provides that members of a Committee of a Co-operative Society shall be elected in accordance with rules given in Appendix 'C'. Rule 25 provides for disqualification and rule 26 provides for the cessation of membership of a Committee. Appendix 'C' to which reference has been made in rule 23 provides the procedure as to how a member of a Committee is to be elected. Rule 11 of this Appendix may be quoted in extenso:—

- (1) After the counting of the votes has been completed, the candidates who secure a majority of votes shall be declared elected by the Returning Officer or the Presiding Officer, as the case may be. If the number of votes in the favour of two or more candidates are equal, the matter shall be decided by lots drawn by the Returning Officer or the Presiding Officer, as the case may be.

- (2) When the result of the election has been declared the Returning Officer or the Presiding Officer as the case may be, shall prepare a consolidated list of elected candidates, including those declared elected unopposed, and communicate the names of persons elected under his signatures to the Assistant Registrar and the Deputy Registrar concerned and in the case of the central and apex societies, such a list shall also be sent to the Registrar, Co-operative Societies. The Returning Officer or the Presiding Officer, as the case may be, shall also direct the Manager to exhibit a list of the names of persons elected at some conspicuous place at the registered office of the society for a minimum period of 7 days after the declaration of the result of the election."

It will be seen from the scheme of the Act and the rules that it is a committee of the Co-operative Society which is elected in a general meeting; the persons who can stand for the election of the membership of the committee, and their qualifications and disqualifications. Any dispute arising as to such an election has to be settled by arbitration as provided in section 55. The short question is whether a reference to arbitration of an election dispute is something which is unheard of or prohibited by any law? No provision has been brought to our notice which prohibits the settlement of such a dispute by an arbitrator. It is also well known that all election disputes are settled by Tribunals. The Tribunals may be those constituted under a law or agreed to by the parties in case the agreement is not against public policy. It may be that the Legislature itself provides for the settlement of an election dispute by an arbitration Tribunal as is the case in section 55. Taking into account the scheme of the Act we are unable to see how section 55 is *ultra vires* the Constitution of India. The burden of the argument of the learned counsel is that there is no rule providing on what grounds an election can be set aside, and there is no guide-line to the arbitrator in the case of an election dispute referred to him. We are unable to accept his argument. In all disputes which are referred to an arbitrator the guide line is provided by the dispute. The arbitrator is only called upon to determine a declared dispute and he determines that dispute on the basis of the evidence led before him. This is provided for in appendix 'C'. If the arbitrator outsteps his jurisdiction, his decision is amenable to the scrutiny of the Courts and can be vacated in appropriate cases. In the

present case the dispute is as to whether the respondent secured the requisite number of votes. The petitioner's case is that he did not secure the requisite number of votes. This is a matter which strictly falls within rule 11 of Appendix 'C'.

(3) The learned counsel then relied upon the decision of this Court in *Harke v. Giani Ram and others* (1) for his contention that a similar provision in the Gram Panchayat Act was quashed and was declared *ultra vires* by this Court. In the first place the election to Houses of Parliament or State Legislatures or Gram Panchayats cannot be equated to an election to a Committee of a Co-operative Society. So far as the elections to the House of Peoples, State Legislatures or the Gram Panchayats are concerned, they stand on a different footing. Matters of public policy control them. In such cases different considerations are to be kept in mind while dealing with election disputes. Again it is for the Legislature to provide what is an election dispute and how it is to be settled. Therefore, no help can be drawn from the provisions of the Gram Panchayat Act to settle the present controversy. In the case of a Co-operative Society the entire approach has to be totally different. The Committee of Co-operative Society is formed for the purpose of carrying the work of the Co-operative Society. The qualifications of those members have been laid down by the statute and it has also been provided when those members will cease to hold office, that is, when they incur any of the disqualifications mentioned in the Act. Therefore, it is idle to suggest that there can be a dispute relating to an election outside the provisions of the Act and the Rules. If an arbitrator takes into account any matter which is not germane or is extraneous to a member holding office or for his expulsion, that matter can be examined and if the power has been exceeded, the courts will step in. But that is a matter which can only be examined whenever it arises in a given case and has nothing to do with the vires of the Legislative provisions. Moreover, one has to keep in view the objects and reasons of the Co-operative Society's Act which are in the following terms:—

“In pursuance of the policy of Government of India to simplify Co-operative Law and procedure in order to remove all

(1) 1962 P.L.R. 213.

Gurdev Singh v. The State of Punjab etc. (Mahajan, J.)

bottlenecks in the way of development of Co-operative Movement in the country, it has become necessary and incumbent to amend the law regarding co-operative societies in the State. In this Bill, the approach has been to make the law as simple as possible. The important provisions such as relating to change of liability, amalgamation of societies, splitting of societies, settlement of disputes and winding up of the societies, etc., were found to be of a dilatory and complicated nature and, therefore, created problems in the day to day working of the co-operative societies. Special care has, therefore, been taken to cut out all unnecessary delays particularly in registration of societies and the provisions to this effect have been simplified. Another approach influencing the change is to make the Co-operative Law comprehensive. Moreover, consistent with our national policy to promote the organisation and growth of the co-operative societies in the various fields of economic activity, more difficult and complicated forms of co-operative societies are to spring up as compared to the Co-operative Credit Societies. To meet the situation, a number of new provisions have been made in the Bill. The notable changes, *inter alia*, pertain to conditions of registration, qualifications of members, management of societies, nominees of the Government on the committees, supersession of committees, charging of immovable property of members borrowing loans from certain societies, deduction from salary to meet society's claim in certain cases, Co-operative Education Fund, audit, surcharge appeals, offences and penalties etc."

to judge the validity of the contention that section 55(2)(c) is *ultra vires* the Constitution. In view of these objects and reasons, it cannot be said that the provisions of section 55(2)(d) are *ultra vires* the Constitution of India.

(4) For the reasons recorded above, we see no force in this petition and dismiss the same.

B. S. G.