
(1997) 11 P&H CK 0106

In the Punjab And Haryana At Chandigarh

Case No : Amended Civil Writ Petition No. 14053 of 1997

Amarjit Singh Samra

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-11-1997

Acts Referred:

Citation : (1998) 118 PLR 141 : (1998) 1 RCR(Civil) 481

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : H.S. Mattewal and R.S. Riar, for the Appellant; G.S. Grewal, AG and A.S. Grewal, M.L. Sarin Hemant Sarin and D.V. Sharma, J.S. Khehar Jatin Salwan and R.S. Rai, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—Petitioner sought issuance of a writ of mandamus directing the respondents-authorities not to remove him as elected Director and Chairman of the Board of Directors of respondent-Markfed in terms of order dated 4.9.1997 (annexure P-9) it being patently illeged, malafide, unjust arbitrary and without application of mind during the pendency of appeal filed by the petitioner before the Financial Commissioner and Secretary to Government of Punjab, Department of Cooperation-respondent No. 2, with a further prayer that respondents be prohibited to make appointment of new chairman in terms of Section 26(2) of the Punjab Cooperative Societies Act, 1961 (hereinafter referred to as "the Act").

2. This petition came up for hearing before the division Bench on 22.9.1997 and the Court was pleased to issue notice of motion for 23.9.1997. On oral request, Shri Jagdish Singh Walia was permitted to be impleaded as respondent No. 8. By way of interim injunction, the Court ordered that petitioner would be allowed to continue as Chairman till further orders. On next date of hearing the petition was admitted and was ordered to be heard on 29.9.1997 at No. 1 on the list. The Court directed that the interim order dated 22.9.1997 regarding stay passed by the division Bench of Sarvashri N.C. Jain and Iqbal Singh, JJ shall continue. Since

respondent No. 1 had been appointed as Chairman of the markfed, an application seeking amendment of the writ petition was filed which was allowed by the Court.

3. In the amended writ petition, the petitioner seeks issuance of a writ in the nature of certiorari for quashing the order by which Shri Jagdish Singh Watia-respondent No. 8 has been appointed as Chairman of the Markfed as well as a writ in the nature of mandamus directing the respondents-the authorities not to remove the petitioner as elected Director and Chairman of the Board of Directors of respon-dent-Markfed by staying the operation of the order dated 4.9.1997 (annexure P-9) till the disposal of the appeal which is pending before the Financial Commissioner and Secretary, Government of Punjab, Department of Cooperation, with further praying that respondents-authorities as well as Jagdish Singh Walia be restrained not to interfere in the peaceful functioning of the petitioner as Chairman of the respondent-the Markfed.

4. Brief facts leading to the filing of the civil writ petition/amended writ petition would indeed be helpful in understanding the submissions made by the respective counsel in support of their contentions. As per facts on record a newly elected Board of Directions of the Markfed came to be constituted with effect from 21.7.1995 for a term of 5 years. Petitioner was elected as Chairman of the respondent-Markfed in a meeting held on 18.3.1996. Registrar, Cooperative Societies, Punjab, issued a show-cause notice dated 23.10.1996 (annexure P-3) calling upon the petitioner to show cause as to why he should not be ceased from the membership of the Board of Directors of the Markfed as per provisions of Rule 26(f) of the Act read with bye-law 18(f) of the Registered Bye-laws of the Markfed. As per show cause notice annexure P-3 since the petitioner participated in the election of the Markfed's Board of Directors being President of Nur Mahal Cooperative Marketing Society Limited, Nur Mahal and now since a new Managing Committee has been elected by the Society in the election held on 30.7.1996, petitioner ceases to be the member of the Board of Directors of the Markfed. A reply to the show cause notice was filed by the petitioner and vide order dated 6.11.1996 annexure P-4 the show cause notice was dropped for the reason that since the matter is subject matter of adjudication in CWP No. 7004 of 1996, no further action needs be initiated.

5. According to the petitioner, despite the earlier show-cause notice having been filed a fresh show cause notice was issued by the Registrar vide communication dated 6.5.1997 making grievance (i) that as per Bye-law 21(1) a meeting of the Board of Directors is required to be convened atleast once in three months period, on perusal of the relevant record it reveals that from 21.12.1995, no business meeting was held till 2.7.1996; a business meeting containing 31 agenda items of vast business importance was fixed for 21.6.1996 and all the government nominees, namely, Financial Commissioner, Cooperation, Secretary Expenditure, Government of Punjab, Managing Director, Markfed, Additional Registrar, Cooperative Societies and Joint Registrar, Cooperative Societies came present but since the petitioner did not come present to attend the meeting the

same was adjourned. However, while recording it was stated that as elected members of the Board of Directors were not able to reach Chandigarh the meeting is postponed; (ii) whereas as per provisions of Bye-law 25 of the Markfed it is one of the duty of the Chairman to preside the meeting of the Board of Directors and to sign the proceedings of such meeting, a meeting was held on 2.7.1996 where about 32 items of business importance were considered yet for certain un-explainable reasons the minutes of the proceedings were not approved by the petitioner. Such an action is prejudicial to the interest of the Markfed and it shows that the Chairman is not exercising due diligence and prudence as is required under the provisions of Bye-laws 25 read with bye-law 41 of the Markfed, and requisitioning of a special meeting to consider and discuss about the constitution of Administrative Committee and nomination of Directors was against the provisions of the registered bye-laws. Bye-laws of Markfed do not make any provision for constitution of Administrative Committee/Executive Committee. Thus, considering an item beyond the provisions of bye-laws was a direct act prejudicial to the interest of the Federation. These acts of omission and commission make it clear that you as a Chairman had over a period of time been negligent in performance of your duties/responsibilities and so to show-cause as to why you be not removed from the membership of the Board u/s 27 of the Act.

6. Petitioner challenged this show cause notice dated 6.5.1997 annexure P-1 by way of Civil writ petition No. 6229 of 1997. Division Bench issued notice of motion and meanwhile directed the petitioner to file reply to the show cause notice. By way of interim relief it was ordered that status quo as it exists today be maintained. This order is dated 20.5.1997. This writ petition was finally disposed of vide order dated 20.8.1997, the operative part of which reads as:-

"After taking into consideration the submissions made by the counsel for the parties, this petition is disposed of with a direction that the petitioner shall continue to hold the post till the matter is finally decided by the respondents. In case an adverse view against the petitioner is taken the order of removal of the petitioner from the post of Director shall be kept in abeyance for 15 days from the date of supply of copy of the order to enable him to have recourse to the remedies available to him under the law. It is, however, clarified that during the period of said 15 days, the petitioner shall not take any policy decision.

Writ Petition is disposed off in the manner indicated above."

7. Registrar, Cooperative Societies, vide order dated 4.9.1997 annexure P9 after considering the reply filed by the petitioner finally ordered removal of the petitioner from the membership/Chairmanship of the Board of Directors of the Punjab State Cooperative Supply and Marketing Federation Limited, Chandigarh u/s 27(1) of the Act. Petitioner was, however, allowed to continue to hold the post of Chairman for a period of 15 days from the receipt of the order but not to take any policy decision during this period of 15 days as already directed by this Court.

8. Petitioner again filed a writ petition challenging the order of removal annexure P-12, which was, however, dismissed vide order dated 17.9.1997 by this Court holding it to be pre-mature. So, the petitioner preferred an appeal u/s 68 of the Act assailing the order dated 4.9.1997 as well as prayed for interim stay. Appeal came up for hearing before Financial Commissioner, Cooperation on 18.9.1997 and notice was issued to the respondents for 25.9.1997. While examining the plea of the appellant-the petitioner regarding ex-parte stay of the order dated 4.9.1997 it was held that no irreparable loss/damage is likely to accrue to the petitioner as, on acceptance of the appeal the appellant can be restored to his original position of a Chairman. Moreover, whereas the appellant had been given 15 days time to prefer an appeal somehow the same has been filed on 18.9.1997 just a day before the time given by the High Court. Interim stay was consequently declined-annexure P-19. Order annexure 1-19 has consequently led to the filing of the present petition.

9. Pursuant to the notice of motion issued, written statement has been filed on behalf of respondents 1 to 5 by Smt. Suman Rani Bansal, Additional Registrar, Cooperative Societies, Punjab. Respondents 6 and 7 have also filed written statement. Separate written statement has been filed by respondent No. 8. Each set of respondents have raised few preliminary objections. In written statement filed by respondents 1 to 5 a preliminary objection has been taken that in view of dismissal of the earlier writ petition No. 13738 of 1997, annexure P-17 holding that in view of the alternative remedy of the appeal the writ petition is not maintainable, the present petition deserves to be dismissed on this short ground. Moreover, the petitioner has challenged his removal as Chairman of the Markfed in the earlier writ petition and so the writ petition deserves to be dismissed on this ground. Secondly, respondent No. 8 has been appointed u/s 26(2)(a) of the Act as Chairman of Markfed by the Punjab Government who in consequence thereof joined his duty on 22.9.1997 before passing of the order of stay by the Hon'ble Court on 22.9.1997. Order of removal of the petitioner (which is under challenge) was passed u/s 27 of the Act, which matter is subject matter of appeal before the Financial Commissioner, Cooperation. Thus, even if the order of removal is quashed by the appellate authority yet the petitioner ceases to hold the office of Chairman in view of the appointment of respondent No. 8 u/s 26(2)(a) of the Act. To the similar effect are the preliminary objections of respondents 6 to 7 and respondent No. 8.

10. Primary challenge in this writ petition is to the order of the Registrar, Cooperative Societies annexure P-9 dated 4.9.1997 passed in terms of Section 27(1) of the Act ordering removal of the petitioner from the membership/ Chairmanship of the Board of Directors of the Punjab State Cooperative Supply and Marketing Federation Limited, Chandigarh. According to the learned senior counsel for the petitioner Shri H.S. Mattewal, the order per-se is malafide, unjust and in complete violation of the provisions of the Act and the Rules framed thereunder. The alleged basis of the order is the show cause notice issued u/s 26(2) of the Act. A perusal of the charges levelled clearly bring out its staleness

and otherwise too its unconstitutionality, the sole aim being to oust an elected Directors who has also been unanimously elected as Chairman of the Markfed for a period of five years. Earlier too, an attempt was made to remove the petitioner by issuing a such like a show cause notice but finally the wisdom dawned upon the respondents who filed the same by noticing that as the allegations contained in the show cause notice are already subject matter of scrutiny before this Court, no further steps need to be initiated. According to the counsel, the present show cause notice is nothing but an abuse of the powers. A perusal of Section 27(1) of the Act reveals that such an order can only be passed in case; in the opinion of the Registrar, a Committee or any member of a Committee persistently makes default or is negligent in the performance of the duties imposed on it or him by this Act or the Rules of bye-laws made thereunder and that such act is prejudicial to the interest of the Society or its members. A perusal of the show cause notice annexure P-1 shows that it is not a case of persistent default or of negligence. Mere wild allegations have been levelled without any proof this being so, the order passed by the Registrar annexure P-9 dated 4.9.1997 is indeed unsustainable in law. According to the counsel, this issuance of show cause notice to the petitioner as well as passing of order Annexure P-9 is solely at the behest of respondent No. 3-Sardar Ranjit Singh Brahmpura, Cooperation Minister, Government of Punjab, who is bent upon to remove the petitioner from his elected office by any means so as to replace him with his nominee Shri Jagdish Singh Walia-respondent No. 2. According to the learned counsel for the petitioner, even as per Section 26(2) of the Act where the Government has subscribed to the share capital of a cooperative society to the extent of Rs. 20 lacs or more the Government can appoint one of its members nominated as Chairman of the Committee of such Society or nominate another member in addition to those nominated in the aforesaid manner and appoint him as Managing Director. Counsel for the petitioner, thus, argued that the Government could either nominate its person as Chairman or appoint him as a Managing Director. Since in the present case the Government had already appointed a Managing Director, Chairman could not be appointed and so the appointment of respondent No. 8 deserves to be quashed on this ground alone. In support of his various submissions counsel placed reliance upon the following decisions:-

- 1) Kartar Singh and Ors. v. State of Punjab and Ors. 1982 PLJ 441;
- 2) The Uksi Cooperative Agricultural Service Society, Uksi and Anr. v. The Assistant Registrar, Cooperative Societies, Package Programme, Ludhiana and Anr. 1977 PLJ 24
- 3) Lakha Singh Vs. The Registrar, Co-operative Societies, Punjab, Chandigarh and Others, ;
- 4) Gurdial Singh etc. v. State of Punjab and Ors. 1989(1) RRR 483;
- 5) Kirpal Singh, M.L.A. Vs. Uttam Singh and Another, ;
- 6) Harbhajan Singh Vs. State of Punjab and Others, ; and

7) State of Punjab and Another Vs. Gurdial Singh and Others, .

11. Shri M.L. Sarin, the learned senior Advocate after briefly narrating certain salient facts which ultimately led to the passing of the order annexure P-9 and P-20 argued that the petition being devoid of merit deserves to be dismissed. According to the counsel for the respondent, counsel for the petitioner has misconstrued the provisions contained in Sections 26(2A) and 27(1) of the Act. According to the counsel, whereas the petitioner has been removed as a member of the Committee on account of his negligent act/defaults as per Section 27(1) of the Act, respondent No. 8 has been appointed by the Government in term and of Section 26(2A) as Chairman of the Markfed. Powers of the Government to appoint a Chairman or a Managing Director in terms of the aforesaid provisions are un-bridled i.e. moment a person is appointed as a Chairman or a Managing Director another person holding such an office immediately before such appointment shall cease to hold office on such appointment. Since there is no challenge to the authority of the Government to appoint a person as a Chairman or a Managing Director in terms of Section 26(2A) writ petition qua the claim laid by the petitioner challenging the appointment of respondent No. 8 deserves to be dismissed on this short ground. To support it reliance was placed upon this decision in Reghbir Singh v. the Registrar and Ors. (1976)78 PLR 560. Even as regards the removal of the petitioner as a Member of Committee, the petitioner has no case. In the present case a show cause notice was issued to which the petitioner filed reply. The matter was considered thread bare and there after an order removing him as a Member of the Committee of the Board of Directors was passed vide annexure P-9. This order is appealable u/s 68 of the Act and precisely for this reason this Court while dismissing the petitioner's earlier writ petition No. 13730 of 1997 ordered the petitioner, if so advised may avail alternative remedy of appeal and claim appropriate relief there. According to the counsel, Financial Commissioner Cooperative has already seized of the appeal. This being so, the writ petition is per se wholly mis-conceived. Merely for the reasons that an exparte stay order has been declined is no ground to approach the Court. Moreover, in the present case, the division Bench vide order dated 19.9.1997 has observed that the petitioner has approached without availing an alternative remedy of appeal and so on this ground alone the petition deserves to be dismissed. According to the counsel, there is no provision in the Act and the Rules for election of a Chairman and bye-law 17 which permit the election of Chairman and Vice Chairman of the Board having no force of law does not bind the parties in any other manner. To support it reliance has been placed upon the decision of the Supreme Court in Co-operative Central Bank Ltd. and Others Vs. Additional Industrial Tribunal and Others, . As regards the petitioner's contention that the action of removal of the petitioner as Chairman/Director of the Markfed is malafide, counsel argued that such an allegation has been proved beyond shadow of doubt. Mere stating that action has been initiated at the behest of one or the other person though even that is denied) can hardly be a ground to hold that the action is malafide. Moreover, integrity of offices who are called upon to

perform their duties, according to law cannot be doubted solely for the reason that they are working on open post or the other under a Minister.

12. Mr. Mattewaly the learned senior counsel for the petitioner sought permission to make certain clarification in his earlier submission as well as to rebut the arguments advanced by Mr. Sarin, which was allowed. According to Mr. Mattewal the order of appointment of Shri J.S. Walia as Chairman even in terms of Section 26(2A) is a void order. According to the counsel, as per Section 26(2) the Government could either appoint one of its member as Chairman of the Committee or as a Managing Director. Since in the present case the Government had already exercised its option of appointing its nominee as Managing Director the appointment of respondent No. 8 as Chairman is void abinitio. No doubt the authorities with a view to revalidate its order has withdrawn its nominee from the post of Managing Director, but since the later order has been passed after issuance of the order appointing respondent No. 8 as Chairman, the same cannot validate a void order. This is clear from the endorsement given on Annexure P-20 dated 22.9.1997 and endorsement upon annexure R-6/1, though issued on the same date i.e. 22.9.1997. Rebutting the, argument of Mr. Sarin that bye-laws of the Society have no force of law, counsel placed reliance upon the decision of the apex Court in B.S. Minhas Vs. Indian Statistical Institute and Others, , wherein it has been held that unless the bye-laws are in conflict the same have a binding force. Lastly, the counsel submitted that matter with regard to placing of the services of Shri S.S. Brar as Managing Director of the Markfed is subject matter of adjudication in civil writ petition No. 15523 of 1997. This matter may not be gone/into while deciding the other point which have been raised in the writ petition.

13. I have heard the learned counsel for the parties for a considerable time as well as have perused the averments made in the petition and the written statement filed by each set of respondents. It is probably for the 3rd/4th time that the petitioner has approached this Court to challenge one or the other action initiated by the authorities. As noticed in the opening part of the judgment, petitioner approached this court to challenge a show cause notice issued by the authorities as to why he should not be removed from the membership of the Board of Directors having ceased to be the member of the Society, the basis on which he was elected as Director. This show cause notice was filed by the authorities by noticing that since the matter in issue is already subject matter of adjudication in another writ petition, no further action needs to be initiated on this count. This time another show cause notice was issued (annexure P-1) citing certain acts of omission and commission calling upon the petitioner to explain his conduct. Before the matter could be examined by the authorities petitioner chose to challenge the same by approaching his Court by way of a writ petition. Notice of motion was issued. Meanwhile, the petitioner was directed to file reply to the show cause notice. It is pursuant to this direction of the Court that petitioner filed reply to the show cause notice (annexure P-8). The writ petition was finally disposed of, the operative part of which has already been reproduced. The

authorities after considering the reply passed order annexure P-9 dated 4.9.1997 removing the petitioner from Membership/Chairmanship of the Board of Directors u/s 27(1) of the Act. He was, however, permitted to hold the post of Chairman for a period of 15 days from the date of the receipt of the order with a stipulation that he would not take any policy decision during this period. Petitioner was, thus, permitted to avail the remedy of appeal under the provisions of the Act. Petitioner instead of filing an appeal as provided u/s 68 of the Act again approached this Court in CWP No. 13738 of 1997, which was dismissed with the observation that as the petitioner has an alternative remedy of appeal, this petition being pre-mature is, accordingly, dismissed. The cooperative part of this order reads as:-

"In the facts of this case, we do not deem it expedient to look into allegations in writ jurisdiction under Article 226 of the Constitution of India. Moreover, it is Conceded by the counsel for the petitioner that the impugned order is appealable. The petitioner without availing the alternative remedy of appeal has filed this writ petition. The apprehension of the learned counsel that the petitioner will not get justice from the Appellate Authority is misconceived. It cannot be expected from a authority who is well conversant with the Rules and Regulations and is occupying the chair or responsibility to pass an order simply to appease the Minister by bye-passing the Rules and Regulations especially when no malafide has been attributed, to the Appellate Authority to whom appeal lies. The petitioners so advised, may avail alternative remedy of appeal and claim appropriate relief there. For the fore-going reasons, this writ petition is dismissed being pre-mature."

14. Thus, on 18.9.1997 the petitioner filed the appeal as well as prayed for stay of the impugned order dated 4.9.1997. Financial Commissioner, Cooperative vide order annexure P -19 dated 18.9.1997 while issuing notice to the respondents for 25.9.1997 found no ground to stay the operation of the order. This led to the filing of the present writ petition.

15. Point in controversy revolves around Section 26(2) which empowers a Government to nominate certain members of the Committee and in case the Government has subscribed to the share capital of the Society to the extent of Rs. 20 lacs or more right to appoint one of its members nominated as Chairman of the Committee or appoint him as Managing Director and the provisions contained in Section 26(2), (2A), (2B), (3) and Section 27(1) of the Act. The aforesaid provisions are being reproduced :-

" 26. Election and nomination of members of Committees.-

(1) XX XX XX

(2) Notwithstanding anything contained in Sub-section (1),

(a) Where the Government have subscribed to the share capital of a co-operative society or has guaranteed the repayment of the principal of and payment of

interest on debentures issued for loans raised by a cooperative society, the Government or any person authorised by it in this behalf, shall have the right to nominate on the committee such number of persons, not exceeding three or one third of the total number of members thereof, whichever is less, as the Government may determine;

Provided that where the Government have subscribed to the share capital of a cooperative society to the extent of twenty lacs of rupees or more, the Government may, notwithstanding anything contained in the bye-laws of the society:-

(a) appoint one of the members nominated in the aforesaid manner as chairman of the Committee of such society; or

(b) nominate another member in addition to those nominated in the aforesaid manner and appoint him as Managing Director;

(2A) Where the Government appoints a Chairman or Managing Director under the proviso to clause (a) of Sub-section (2) the Chairman or Managing Director, if any, as the case may be, holding office immediately before such appointment shall cease to hold office on such appointment.

(2B) The terms and conditions of service of the Managing Director or Chairman, as the case may be, appointed by the Government shall be such as may be determined by the Government and the remuneration payable to the Managing Director or Chairman as the case may be, shall be paid out of the funds of the cooperative society.

(3) A person nominated under Sub-section (2) shall hold office during the pleasure of the Government or the Corporation or other financing institutions as the case may be.

27. Removal or suspension of Committee or member thereof.-

(1) If, in the opinion of the Registrar, a Committee or any member of a committee persistently makes default or is negligent in the performance of the duties imposed on it or him by this Act or the rules or bye-laws made thereunder, or commits any act which is prejudicial to the interests of the society or its members, or makes default in the implementation, production or development programmes undertaken by the cooperative society, the Registrar may, after giving the committee or the member, as the case may be, a reasonable opportunity to state its or his objections, if any, by order in writing:-

(a) remove committee, and appoint a Government servant as an administrator, to manage the affairs of the society for a period not exceeding one year as may be specified in the order;

(b) remove the member and get the vacancy filled up for the remaining period of the out-going member, according to the provisions of this Act and rules and bye-laws made thereunder.

16. Admittedly, the Government in terms of Section 26(2)(a) nominated three members on the committee and since the government subscribed to the share capital of the Society to the extent of Rs. 20 lacs or more (in this case few crores) earlier exercised its option and nominated one member in addition to those earlier nominated as Managing Director, i.e. in the first instance the Government exercised its option and nominated a person as Managing Director of the Markfed. As has come on record, the Government decided to invoke its powers u/s 26(2A) by appointing respondent No. 8 as Chairman of the Markfed. Simultaneously, to comply with the provisions contained in Section 26(2) {a} that either it could appoint a Chairman or a Managing Director withdrew its nominee as Managing Director. There is a controversy between the parties as to whether the withdrawal by the Government of its nominee as Managing Director is later in time of its decision to , appoint respondent No. 8 as Chairman or the decision to withdraw its nominee as a Managing Director was taken prior to appointing respondent No. 8 as Chairman. Much emphasis was laid by the counsel for the petitioner upon the endorsement number of the two communications issued by the Government i.e. one appointing respondent No. 8 as Chairman which bears endorsement No. 26/192/97C-2(3)/13796 dated 22.9.1997 and the other pertaining to withdrawal of its nominee as Managing Director which bears endorsement No. 26/173/96-CII(3)/13900 dated 22.9.1997. Vide aforesaid two endorsements copy of the order was forwarded to the person mentioned thereunder for information and necessary action. No rule or procedure has been cited before me on the basis of which it could be inferred that endorsement number would indicate (without any exception) the seriatim of its despatch. Thus, I find not much substance in this plea of the petitioner. A perusal of annexure R6/1-order of the Government of Punjab, which reads as:-

"In modification of this department order 9.5.1996 issued under endst. No. 26/173/95-CII (3)/6091-6092 dated 10.5.1996 the Governor of Punjab is pleased to place the services of Shri S.S. Brar, IAS, at the disposal of the Board of Directors of Punjab State Cooperative Supply and Marketing Federation, Chandigarh (Markfed) for appointing him as Managing Director, Punjab State Cooperative Supply and Marketing Federation Limited. (Markfed), Chandigarh with immediate effect."

shows that the Governor of Punjab was pleased to place the service of Shri S.S. Brar at the disposal of the Board of Directors with immediate effect. This being the position, the order passed by the Governor of Punjab in exercise of his powers u/s 26(2) (a) of the Act nominating Shri Jagdish Singh Walia as a Government nominee as a member of the Board of Directors cannot be said to be without authority/jurisdiction. Concededly, there is no challenge to the powers of the Government u/s 26(2A) to appoint a Chairman or a Managing Director under the provision to clause (a) of Sub-section (2) of Section 26, Effect of such appointment is that any person holding such an office-Chairman or Managing Director (as the case may be) ceases to hold the office immediately on such appointment.

17. In another writ petition bearing No. 15523 of 1997 petitioner challenged the order annexure R-6/1 dated 22.9.1997 vide which services of Shri S.S. Brar had been placed at the disposal of the Board of Directors of the Markfed for appointing him as Managing Director of the Markfed. Later on the Government is stated to have withdrawn the name of Shri S.S. Brar and in his place placed the services of Shri G.S. Sandhu to be considered for appointing him as Managing Director. The division Bench vide judgment dated 17.11.1997 found no ground to quash the order dated 22.9.1997 or the subsequent order dated 10.11.1997 placing the services of Shri G.S. Sandhu at the disposal of the Board of Directors for being appointed as Managing Director on deputation. However, it has been directed that Board of Directors should take the final decision in regard to the appointment of Shri G.S. Sandhu as Managing Director within a month from today i.e. 17.11.1997, with the prior approval of the Registrar, Cooperative Societies and till such time Shri G.S. Sandhu will continue to act as Managing Director. So, presently the position that emerges is that the Board of Director has yet to decide as to whether the name of Shri G.S. Sandhu be approved as Managing Director of the Markfed. This being the position the plea advanced by the petitioner that the appointment is violative of Section 26(2) (a) is without any substance.

18. There being no challenge to the powers of the Government to appoint a Chairman or a Managing Director u/s 26(2)(a) and on the exercise of such a power the earlier incumbent to have ceased to hold the office is consequential. Thus, I find no merit in the submission of the counsel for the petitioner that as he had been elected as Chairman for a period of five years his term could not be curtailed indeed is without any substance. This Court in Raghbir Singh's case (supra) examining the ambit and scope of Section 26(2)(a) held as under:-

"In my view, the provisions of Sub-section 2-A are a complete answer to the aforesaid contention of Mr. Kang. under the provisions of Sub-section 2-A, the Chairman or the Managing Director ceases to hold an office, the moment another Chairman or Managing Director is appointed by the Government. The cessation of office can take place only if there is already in existence a Managing Director or Chairman. When the members are elected to the Committee at the initial stage there is no elected Chairman or Managing Director in the existence and if it is at that stage only that the power of appointment could be exercised, then on the exercise of that power, the question of any Managing Director ceasing to hold office thereafter, could not possibly arise. Therefore, when the statute provides that on the appointment of a Managing Director, the Managing Director, if any holding office immediately before such appointment ceases to hold office, then clearly the Legislature intended to vest the authority with a power to make an appointment at any time and not at the initial stage only, as contended by Mr. S.S. Kang, In this view of the matter, the contention of the learned counsel is repelled."

19. To be fair to the counsel for the parties, I find it appropriate to examine the

judgments cited in support of their various contentions:-

20. In Kartar Singh's case (supra) the Court examined the provisions of Section 27(6) of the Act as to whether it is mandatory or directory in nature and while examining it has dilated upon the powers of removal of Managing Committee or any member in terms of Section 27(1) of the Act. It has been held that "a decision to remove the Committee or any member has been rested on the surer foundation of the undermentioned criteria:-

(i) persistent defaults in the performance of the statutory duties under the Act and the Rules;

(ii) Persistent negligence in such performance;

(iii) Commission of any act which is prejudicial to the interest of the society or its members and

(iv) default in the implementation of the production and development programmes.

If in the opinion of the Registrar any of the aforesaid four conditions of satisfied he is entitled to invoke his powers to remove the committee or a member but this is to be only done after giving either of them a reasonable opportunity to object thereto. This precise point whether the order of removal deserves to be set aside or affirmed is already subject matter of appeal which the petitioner has preferred. This Court will be usurping the powers of the appellate authority in case it chooses to examine the controversy. It is not the case of the petitioner that against the order of removal passed by the authorities no appeal lies. Thus, the aforesaid decision does not advance the case of the petitioner in any manner.

21. To the similar effect is the decision in the Uksi Cooperative Agricultural Service Society, Uksi's case (supra) wherein it has also been held that order passed u/s 27 is appealable u/s 68 of the Act.

22. The decision in Lakha Singh's case (supra) too does not advance the case of the petitioner in any manner. Here in the present case a chairman has been appointed by the Government in terms of Section 26(2A). Validity of Section 26(2A) is not under challenge and so the decision referred has no applicability.

23. In Gurdial Singh's case (supra) this Court while construing the provisions of Section 26(2)(a) has held that State could appoint either a Managing Director or Chairman and in case a Managing Director has been appointed then the Chairman is to be elected. There is no dispute to the proposition of law laid therein. However, in the context of the present case since the services of Shri G.S. Sandhu have only been placed before the Board of Directors for his appointment as Managing Director, it is reasonable to infer that the office of Managing Director is vacant and Mr. Sandhu has only been allowed to act as Managing Director by way of a stop gap arrangement till his appointment is approved by the Board of Directors.

24. The learned counsel for the petitioner placed reliance upon the decision of the apex Court in Kirpal Singh's case (supra) in support of his contention that in a case like the present the appellate authority ought to have granted an absolute stay of the operation of the impugned order till disposal of the appeal. I find this submission to be devoid of any substance. It is upto the appellate authority to grant interim stay (taking in view the facts of the case) as it deems appropriate. In the present case, the appellate authority vide its order dated 18.9.1997 annexure P-19 merely declined the petitioner's prayer for an ex-parte stay order, and barely gave a week's time to the respondents to come present and contest. Somehow instead of pressing its claim on the adjourned hearing i.e. 25.9.1997 petitioner chose to assail the interim order by preferring this writ petition.

25. In Harbhajan Singh's case (supra) the Court while considering the objection of an alternative remedy held that in case a question goes to the root of the matter and injustice is manifest a petition under Article 226 ought not to be thrown put on the ground of availability of an alternative remedy. This decision too is not applicable as in the instant case this Court having already relegated the petitioner to his ordinary remedy of appeal; the earlier decision binds the petitioner.

26. Petitioner cited the decision of the apex Court in State of Punjab and Anr. v. Gurdial Singh and Ors.s (supra) in support of his contention that allegation of malafide levelled against the Minister and the Managing Director have not been specifically refuted. This objection too is without any substance as the allegations levelled have been specifically refuted by the concerned person on affidavit.

27. Thus, considering the matter from all conceivable angles, I am of the view that the petition being devoid of merit deserves to be dismissed. Accordingly, I dismiss the petition.

28. Since the petitioner's appeal against the order of removal is pending before Financial Commissioner, Cooperative, it is directed that the same be decided without any unjust delay and preferably within a month from the receipt of the order of this Court.