(2004) 04 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 371 of 2003

Balraj Singh and Others APPELLANT

Vs

State of Haryana and Others RESPONDENT

Date of Decision : 01-04-2004

Acts Referred:

Citation : (2004) 138 PLR 670 : (2004) 3 RCR(Civil) 743

Hon'ble Judges : V.K. Bali, J;Jasbir Singh, J

Bench : Division Bench

Advocate : S.K. Garg, for the Appellant; Raghbir Chaudhary, D.A.G. for Respondent No. 1, Tarun Aggarwal, for Respondent Nos. 3 to 6 and Gurnam Singh, for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, J.—Petitioners, who are elected members of Man- aging Committee of respondent No. 3, have filed this writ petition under Articles 226 and 227 of Constitution of India with a prayer to issue a writ of certiorari to quash resolution dated 15.12.2003 (Annexure P-12), vide which respondent No. 7 has been co-opted as a member of the Managing Committee of respondent society i.e. respondent no. 3, being illegal, arbitrary and also contrary to the provisions of Haryana Cooperative Societies Act, 1984 (in short the Act).

2. It is the case of the petitioners that respondent No. 3, the society was constituted under the provisions of the Act. As per bye-laws, members of the society elected 7 members of its Managing Committee. Those elected members of the Managing Commit- tee were to further co-opt one woman as member of the Managing Committee. It has further been alleged that subscription towards share capital of the society, of the State Government is only Rs. 4 2,400/-. As per Section 29 of the Act, government was not en- titled to nominate any person to the Managing Committee of respondent No. 3. However, respondent Nos. 2 to 6, though never nominated by the State Government, of their own represented themselves to be members of respondent No. 3, the society.

3. The Secretary of the society issued a notice for convening a meeting of the society to respondent Nos. 2 to 6, without any jurisdiction for co-option of a woman member of the Managing Committee. Notice was issued by the Secretary on 3,11. 2003 and meeting for that purpose was fixed for 19.11. 2003 in the office of the Society. Petitioners reached in time but meeting was postponed by respondent No. 4 to 12.1 2. 2003. On that date, again when petitioners reached office of the society, they were told that the meeting will be postponed as other members were to go to meet local MLA. Petitioners were assured that new agenda will be issued.

4. After the petitioners left office of the society, respondent-Nos. 4 and 2, in collusion with three other elected members of the society, entered a resolution in the resolution book and co-opted respondent No. 7 as a member of the Managing Committee. When petitioners came to know about this resolution, they immediately wrote letters/representations to the higher authorities. By referring above facts,it has been prayed that since resolution was passed without any justification and legal force, it be quashed and consequently, election of respondent No. 7 co-opted member of the society be also quashed.

5. Upon notice, respondents have put up appearance and have filed their written statement(s), wherein a preliminary objection has been taken that the present writ petition is not maintainable as the petitioners had already made a representation before the Registrar, Cooperative Societies, Haryana at Chandigarh and the same is yet to be decided. It has further been stated that action of the respondents was justified in view of letter dated 21.2.1988, issued by Registrar, Cooperative Societies, Haryana, Chandigarh. It has also been alleged that a specific remedy by way of arbitration is available under the Act and as such present writ petition is not maintainable.

6. Counsel for the parties heard.

7. Primary question for determination in this case is as to whether respondents No. 4 and 2 can be treated as having been nominated by the State Government to the Managing Committee or not. Section 29 of the Act confers power on the State Government to nominate to the Managing Committee of a society not more than three members or l/3rd of the total number of elected members of such Committee whichever is less subject to fulfillment of certain conditions. Relevant portion of Section 29 of the Act reads as under:-

" 29. Nomination and co-option on Committee.- (1) Notwithstanding anything contained in sub-section(l) of Section 28;-

(a) Where the Government has;-

(i) subscribed to the share capital of a co-operative society; or

(ii) guaranteed the principal and interest in respect of debentures issued by the society; or

(iii) guaranteed the principal and interest in respect of loans and advances to the society, or

(iv) assisted the society with loans and grants;

by not less than one lakh rupees, the Government or any person authorised by it shall have the right to nominate on the Managing Committee of such society not more than three members or one third of the total number of elected members of such Committee, whichever is less''"

8. It was contended by counsel for the petitioners that since the share capital of the State Government is only Rs. 42,400/-, the government was not competent to nominate its representatives to the Managing Committee. By referring to above mentioned provision, it has been stated that participation of respondent Nos.4 and 5 as representatives of the State Government in the meeting, wherein respondent No. 7 had been stated to be co- opted as woman member of the Managing Committee, was illegal and not justified.

9. Shri Tarun Aggarwal and Shri Gurnam Singh, Advocates, appearing for the re- spondents to controvert the above mentioned contention, have argued that condition of subscription of Rs. one lac towards share capital etc. is supposed to be read only in con- nection with Section 29(l)(a)(iv) of the Act and not with Sub- clauses (i), (ii) and (iii). This Court feels that the above mentioned contention raised by counsel for the respondents is not justified. A bare reading of this section clearly indicates that the State Gov- ernment will be competent to nominate members to the Managing Committee of a society as envisaged u/s 29 of the Act, only if the State Government has subscription of Rs. one lac etc. towards share capital of the society.

10. A learned Single Bench of this Court in Kulwinder Pal Singh and Ors. v. The Satora Co-operative Credit and Service Society Ltd. and Ors. (1990-1)97 P.L.R.68, after analysing above mentioned provisions of Section 29 of the Act, had opined that the words "by not less than one lakh rupees" will not govern clause IV only but it will govern all other clauses of sub-section (1) of Section 29 also and if the State Government has not subscribed to the share capital of the society or guaranteed principal and interest in respect of debentures issued by the Society or guaranteed principal and interest in respect of loans and advances of the society or assisted Society with loans and grants by less than one lac rupees then the State Government will have no right whatsoever to nominate any of its representative to the Managing Committee of that society.

11. In the case in hand, situation is the same. Subscription of the government towards the share capital of the society is Rs. 42,400/- only, as such, State Government has no jurisdiction to nominate respondent Nos. 4 and 5 as its representatives to the Managing Committee of the Society. If that is so, then participation of respondent Nos. 4 and 5 in a meeting, wherein respondent No. 7 was co-opted as a woman member of the Managing Committee, was not justified and consequently, co-option of respondent No. 7 as woman member of Managing

Committee cannot be sustained and accordingly is set aside.

12. Other contention of counsel for the respondents that since alternative remedy was available to the petitioners by way of arbitration under the Act, present writ petition was not competent, also deserves rejection, in view of ratio of the judgment of their Lordships of Supreme Court in Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, wherein while considering similar provisions their Lordships of the Supreme Court had held as under:-

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, inspite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the-writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders of proceedings are wholly without jurisdiction or the vires of an Act is challenged."

13. In the present writ petition,as has been held in preceding paras of the order, nomination of respondent Nos.4 and 5 to the Managing Committee of the society, was beyond the scope of the provisions of Section 29 of the Act and as such, was illegal. There was no jurisdiction with the State Government to nominate any of its repre- sentatives to the Managing Committee of the Society. Action, as such, was not sup- ported by any the judgment of law. Under these circumstances, ratio of the judgment in Harbanslal Sahnia ''s- case (supra) is fully applicable and it is held that the writ petition was rightly filed by the petitioners in this Court.

No other point was argued.

In view of the findings given above, this Court feels that writ petition deserves to succeed. Accordingly, this writ petition is allowed and consequently, respondent Nos.4 and 5 are restrained from treating themselves as members of the Managing Committee of the Society. Co-option of respondent No. 7 as a woman member of the Managing Committee vide resolution dated 15.1.2003 is also quashed. Parties are left to bear their own costs.

