
(1996) 02 P&H CK 0136
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8177 of 1994

Balwinder Singh

APPELLANT

Vs

The Registrar, Cooperative Societies and Others

RESPONDENT

Date of Decision : 26-02-1996

Acts Referred:

Citation : (1996) 113 PLR 36 : (1996) 3 RCR(Civil) 129

Hon'ble Judges : G.C. Garg, J

Bench : Single Bench

Advocate : M.S. Bedi, for the Appellant; G.S. Sandhu, for Respondents 3 to 5, for the Respondent

Final Decision : Allowed

Judgement

G.C. Garg, J.—The only controversy raised in this writ petition is to the co-option of respondents 4 and 5 on the ground that the meeting of the society in which they were co-opted did not have the requisite quorum.

2. Bye-law 30 of the Bye-laws of the Marketing Society which governs the constitution of the Managing Committee of the Society reads thus :-

"30. The Managing Committee of the Society shall be constituted in the following manner :-

(i) Assistant Registrar ex-officio.

(ii) Three committee members to be elected out of individual share-holders.

(iii) Three committee members to be elected by out of the representatives of societies.

(iv) Not more than two committee members to be co-opted by the Managing Committee. While co-opting such members, the Managing Committee may provide representation to agriculture or marketing experts.

(v) Not more than three committee members to be nominated by Government so long as the Government is a shareholder of the Society."

3. Admittedly, no member had been nominated by the State Government at the relevant time on the Managing Committee and nomination papers of individual share holders who sought election to the Managing Committee of the Society from out of the quota of individual shareholders under clause (ii) of Bye-law 30 were rejected. Petitioner and two others were elected out of the representatives of the Society on 1.3.1994. Since only three members were elected to the Managing Committee of the Society under clause (iii) aforesaid, the Managing of the. Society called a meeting of the Society for 19.3.1994 for co-opting two members on the Managing Committee under clause (iv) of Bye-law 30 and for election of the office bearers i.e. the President and the Vice President. Notice of the meeting was given to all the three elected members but the petitioner did not attend that meeting and other two members co-opted respondents 4 and 5 on the Managing Committee of the Society and they also elected the President and the Vice President.

4. Clause (1) of Rule 8 of the Punjab Cooperative Societies Rules, 1963, for short the rules, provides that a Cooperative Society shall make Bye-laws in respect of matters specified therein which inter alia includes the power to make bye laws under Clause (i) and (ii) in respect of matters relating to (i) general meeting and the procedure and powers of such meeting and (k) constitution of the committee and procedure of holding its meeting. Respondent No. 3 in exercise of this power has already framed bye laws. Rule 9 provides that subject to the provision of Section 10 and Rule 8 a Cooperative Society may from time to time amend its Bye laws. Rule 10 provides for the procedure to amend the Bye-laws. Rule 12 provides for registration of amendment of bye laws.

5. Bye law 35 framed by the Society before its amendment relating to meeting and quorum reads thus:-

"Meeting of the Managing Committee shall be held when necessary. At least 7 days notice of the meeting shall be given to Committee members before a meeting is held. Three members shall form a quorum. The President or the Vice-President or in his absence a member elected by those present in a meeting shall preside. Unless otherwise provided in the Bye-Laws, all question shall be decided by a majority of votes. Each member shall have one vote. In case of equality of votes, the Chairman shall have a casting vote."

6. It may be added at this stage that bye law 35 was amended and the amended bye law was registered on 8.4.1994, but it is not necessary to notice the amendment, it being not relevant for this case.

7. The case of the petitioner is that no proceedings could take place and no business could be transacted in the meeting held on 19.3.1994, for want of quorum. The co-option of respondents 4 and 5 and election of the office bearers that took place in that meeting is illegal and deserves to be quashed. Placing

reliance on Bye Law 35 of the Bye Laws of the Cooperative Society, learned counsel submitted that atleast three members of the Committee could form a quorum and the meeting in which the co-option took place and the office bearers were elected only two members of the Managing Committee came present.

8. It was not disputed by the learned counsel for the respondents that only two members of the Managing Committee were present in the meeting held on 19.3.1994, in which respondents 4 and 5 were co-opted and the office bearers were elected. Learned counsel, however, placing strong reliance on Part C of Appendix "B" of the Rules submitted that the quorum required for a meeting of the Managing Committee is only one third of the total number of members of the Committee and since two members were present in the meeting held on 19.3.1994, they constituted the required quorum and thus the proceedings that took place in that meeting are legal and valid and, therefore, the co-option and election of the office bearers deserves to be upheld.

9. Bye Law 35 of the Society which has been framed under Rule 8 of the Rules and to which no exception could be taken or has been taken provides that three members shall form a quorum in a meeting of the Managing Committee. Part C of appendix "B" of the Rules, which provides that quorum at a general meeting or a special meeting be one fourth of the total member of members or 500, which ever is less and that quorum at a meeting shall be one third of total number of members of the Committee has no application to this case in view of the provision to Sub Rule 1 of Rule 8. It provides that if in the opinion of the Registrar the Bye Laws of a Cooperative Society do not contain provisions with regard to the matters specified in Clauses (i) .& (k) or contain sufficient provisions with regard to these matter, the provisions specified in Appendix "B" shall apply to such Society as if these had been a part of the Bye Laws registered under Rule 8. Under Sub Rule 1 of Rule 8, the Cooperative Society can frame Bye Laws, amongst others on following matters.

"a to h xxx xxx xxx

(i) general meeting and the procedure and powers of such meeting.

(j) xxx xxx xxx

(k) Constitution of the Committee and procedure of holding its meeting.

(i) xxx xxx xxx"

10. Respondent No. 3 in exercise of this power has framed Bye Laws. Bye Law 35 is a part of the Bye Laws. It provides that the quorum in a meeting of the Managing Committee shall be three. Thus the Society having provided for the quorum of its meeting. Part C of Appendix "B" has no application it being only a residuary provision or a provision to supply a gap. It cannot over ride the provision made in that behalf in the Bye law, which already stands registered under the Rules. It thus inevitably follows that the meeting of the Committee, which took place on 19.3.1994 did not have requisite quorum and the

proceedings that took place in the meeting cannot be taken note of. The proceedings of the meeting held on 19.3.1994 are thus declared as illegal. Writ Petition is allowed and the co-option of respondents 4 and 5 and the election of the office bearers that took place in that meeting is set aside. Petitioner shall have his costs, which are assessed at Rs. 1,000/-.

11. The authority shall now call a meeting of the Managing Committee for co-option of the members and election of the office bearers according to law within one month after due notice.