
(1989) 04 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 429 of 1987 & Civil Miscellaneous No. 3990 of 1989

Bhan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 11-04-1989

Acts Referred:

Citation : (1989) PLJ 413 : (1989) 2 RRR 98

Hon'ble Judges : A.L.Bahri, J

Advocate : Mr. V.P. Sharma, Advocate., Advocates for appearing Parties

Judgement

A.L. Bahri, J.

1. By this order, three writ petitions (Nos. 350, 429 and 632 of 1987) are being disposed of as common questions of fact and law are involved. The main judgment is being prepared in Civil Writ Petition No. 429 of 1987.

2. In this writ petition filed under Articles 226 and 227 of the Constitution, Bhan Singh prays for issuing writ, direction or order quashing order dated 29.12.1986 Annexure P6 whereby the petitioner was made to cease member of the Board of Directors of Punjab State Cooperative Land Mortgage Bank under rule 26(f) of the Punjab Cooperative Societies Rules, 1963, read with byelaw 33(g) as framed by the aforesaid Bank (the Apex Society). The petitioner also claims a declaration that byelaw 33(g) is ultra vires and unconstitutional and is inconsistent to the provisions of section 26(1B) of the Punjab State Cooperative Societies Act, 1961 (hereinafter called the Act). Similar declaration is claimed for section 10A of the Act. Finally, declaration has been claimed that the petitioner continues to be elected member of the Board of Directors of the Apex Society till the expiry 3 years from the date of first meeting of the Board of Directors held on August 29, 1986.

3. The Apex Society came into existence under the Punjab Cooperative Land Mortgage Bank Act, which is supplement to the provisions of the Punjab

Cooperative Societies Act. The members of the Board of Directors are elected from the representatives duly appointed by the Primary Cooperative Agricultural Development Banks (hereinafter called the Primary Society). As per byelaws of the Primary Society, members of the Managing Committee are elected and one of the members of the Managing Committee is nominated to represent the Primary Society in the election of members of the Board of Directors of the Apex Society. Bhan Singh petitioner was so nominated, being member of the Managing Committee of the Primary Society, to represent the said Society in the election of members of the Board of Directors of the Apex Society and he was so elected on January, 29, 1986. First meeting of the members of the Board of Directors was held on August 29, 1986. Subsequently, election of members of the Managing Committee of the Primary Society of which Bhan Singh was elected as member was held. Bhan Singh ceased to be member of the Managing Committee. Notice Annexure P4 was issued to Bhan Singh petitioner that since he had failed to be elected as member of the Managing Committee of the Primary Society, he should cease to be member of the Board of Directors of the Apex Society. Reply to the show cause notice, Annexure P5, was submitted and after consideration of the same, the impugned order Annexure P6 was passed which is under challenge.

4. Written statement on behalf of respondents Nos. 1 to 3 was filed by Deputy Registrar (Banking), Punjab, supporting the impugned order being passed under the valid statute and byelaws. It was asserted that since the petitioner ceased to be member of the Managing Committee of the Primary Bank, he could not continue as member of the Board of Directors of the Apex Society.

5. I have heard learned counsel for the parties. The point raised in the writ petition is covered by the decision of the Division Bench of this Court in *Jai Singh and others v. The State of Haryana and others*, 1977 Punjab Law Journal 426. Jai Singh and others were elected as Directors of the Haryana State Cooperative Bank Ltd., Chandigarh, known as "Harco Bank" in June 1975, being representatives of affiliated Central Cooperative Banks. After the term of Managing Committees of such affiliated Central Cooperative Banks expired, fresh elections were not held. However, Administrators were appointed to manage the affairs. The Registrar, Cooperative Societies, issued show cause notice to Jai Singh and others that since they had ceased to be members of the Managing Committees, why they should not be ceased from the Directorship of Harco Bank. After considering the replies, order to the same effect was passed, which was challenged in the High Court. After making reference to different provisions of the Act, Rules and Byelaws of the Society, it was held as under :

"In the present case, it is admitted case that the petitioners are not members of the Managing Committee of the affiliated Central Cooperative Banks, as the terms of the Managing Committees of such Banks of which they were the members when elected representatives on the Harco Bank and thus Directors on the Board of Directors of Harco Bank, had expired before the Registrar served on the petitioners the showcause notices and passed the impugned orders. From the

perusal of the provisions of Byelaw 31(ii) it is clear that unless a person is the member of the Managing Committee of the affiliated Central Cooperative Bank, he could not be on the Board of Directors of the Harco Bank. That being the position then by virtue of the provisions of clause (f) of Rule 26 even if a person at the time of his election as a representative satisfied the qualifications of being a member of the Managing Committee of the affiliated Central Cooperative Bank, but if he later on ceased to be a member of the Managing Committee of the affiliated Central Cooperative Bank, he would cease to be a Director of the Harco Bank, although the term of the Director of Harco Bank as recognized Byelaw 34 is three years. Bye law 34 of the Byelaws cannot override clause (f) of Rule 26 of the Rules and, therefore, Byelaw 34 could be of no help to the petitioners."

This decision was considered in Civil Writ Petition No. 2554 of 1981 (Chiranji Lal Garg and others v. The State of Punjab and others) decided on 16.7.1981 by Kulwant Singh Tiwana and M.M. Punchhi, JJ. It was observed as under :

"The matter in dispute is covered by a Division Bench judgment of this Court in Jai Singh and others v. State of Haryana, 1977 PLJ 426. Shri Kuldip Singh tried to distinguish this judgment, urging that a Director, on completion of his term in the Central Cooperative Bank, loses his qualification only and earns no disqualification to continue on the State Cooperative Bank. We do not think if this argument can be raised in view of the observations of the Division Bench in Jai Singh's case (supra).

6. Learned counsel for the petitioner has vehemently argued that byelaw 33(g) of the Apex Society is inconsistent with section 26(1B) of the Act. Section 26(1B) reads as under :

"(1B) The term of office of a committee shall be three years."

Byelaw 33 of the Apex Society reads as under :

"33. An elected member of the Board shall cease to hold office if he :

(a) becomes subject to any disqualifications as provided in clauses (a) to (g) of byelaw 30; or

(b) is a representative of a society under winding up orders; or Class `D"; or

(c) ceases to be shareholder of the society he represents; or

(d) is a representative of a society which may cease to be member of the State Bank; or

(e) resignation is accepted by the Board ; or

(f) is a representative of Society which is defaulter to the State Bank in respect of loan continuously for a period of three months; OR

(g) ceases to be a committee member of the Primary Land Mortgage Bank he represents; OR

(h) Completes period of six years as provided in section 26B(2) of the Act.

7. The present case relates to byelaw 33(g) as reproduced above. The contention is that section 26(1B) provides a term of 3 years for members of the Board of Directors and this period is reduced by making provisions in the byelaw 33(g) as referred to above. Thus, this byelaw is inconsistent with the provisions of the Act. Reference may also be made to byelaw 34 of the Apex Court Society which reads as under :

"The elected members of the Board shall hold office for a period of 3 years. An interim vacancy shall be filled by reelection and the member elected to fill an interim vacancy shall hold office for the remaining period of the tenure of the Board."

The disqualifications for members of the Board of Directors or the members of the Managing Committee are provided under rule 25 of the Punjab Cooperative Societies Rules, 1963 as amended in 1969. Rule 25 reads as under :

"25. Disqualification for membership of committee. No person shall be eligible of election as a member of the committee if :

(a) he is in default to any Cooperative Society in respect of any sum due from him to the society or owes to any cooperative Society an amount exceeding his maximum credit limit;

(b) he has, directly or indirectly, any interest in any contract to which the Cooperative Society is a party except in transactions made with the Cooperative Society as a member in accordance with the objects of the society as stated in the byelaws;

(c) he has at any time during a period of one year prior to the date of scrutiny of nomination papers, engaged in any private business, trade or profession of any description which is carried on by the society;

(d) he has committed any offence involving dishonesty and moral turpitude during a period of five years prior to the date of scrutiny of nomination papers;

(e) he is subject to any of the prohibitions contained in rule 26;

(f) he has, during a period of 12 months preceding the date of filing of nomination papers, remained inactive as member or has been carrying on, through agencies other than the operative Society of which he is a member, the same business as is being carried on by the Cooperative Society;

(g) he is a member of any Cooperative Society which has ceased to function or which has not fulfilled its objects as stated in its byelaws and has been included in the list of 'D' Class societies maintained by the Registrar or is a member of society which is under winding up process :

Provided that nothing in this clause shall be deemed to debar any person from seeking election, if the society under winding up process of which he is a

member is a society with limited liability and the registration of the society is not cancelled within a period of one year of the date of passing of an order under Section 57 and that person has discharged all his liabilities, including liability as surety, if any, in relation to such a society;

(h) he incur any other disqualification laid down in the byelaws of the society."

8. No doubt, the term of the Managing Committee or the Board of Directors is 3 years. However, if any member of the Managing Committee or the Board of Directors earns any disqualification, he is to cease from the membership of the Board or the Managing Committee. Different disqualifications are mentioned in byelaw 33, as referred to above. It is inherent in byelaw 33 read with byelaw 34 that on account of earning such disqualifications there would be vacancies in the Managing Committee or in the Board of Directors and such vacancies are to be filled by reelection and the members so elected are to hold office for the remaining period of the tenure of the Board of the Managing Committee. At this stage, it may be stated that byelaws framed by the Primary Cooperative Societies also contain similar provisions as in byelaw 33(g) in its byelaw 34(vi) which byelaw of the Primary Society is not being challenged in this writ petition being inconsistent with the provisions of the Act. The petitioner, as a matter of fact, took benefit of this byelaw when he was elected member of the Managing Committee of the Primary Society and as such he was nominated to represent the Primary Society in the election of members of the Board of Directors of the Apex Society. Now, he cannot turn round and say that the byelaw is inconsistent of which he took benefit when he was nominated as member of the Managing Committee to participate in the election of the members of the Board of Directors of the Apex Society. I do not find any ground to hold that the byelaw 33(g) is, in any manner, inconsistent with the provisions of the Act. Rule 25(h), as reproduced above, contemplates that there could be other disqualifications apart from those mentioned in subclauses (a) to (g) which may be provided by byelaws of the Society. It was in exercise of this power that byelaw 33(g) of the Apex Society was framed, as reproduced above, referring to the additional disqualification. The contention of the learned counsel for the petitioner in this respect is, therefore, repelled.

9. Byelaw 33(g), as framed by the Apex Society has simply provided qualifications of members of the Board of Directors and as such is not violative of any law. Such like byelaw has no force of law for which declaration as asked for be given in the writ petition in view of the decision of the Supreme Court in *Cooperative Central Bank v. Additional Industrial Tribunal*, AIR 1970 SC 245. It was held by the Supreme Court as under :

"The byelaws that are contemplated by the Act can be merely those which govern the internal management business or administration of a Society. They may be binding between the persons affected by them but they do not have the force of a statute.....The byelaws that can be framed by a Society under the Act are similar in nature to the Articles of Association of a Company incorporated

under the Companies Act and such Articles of Association have never been held to have the force of law."

10. In *Balwinder Singh v. The State of Punjab*, 1981 PLJ 108, this Court held that byelaw 30 of a Cooperative Society providing that no member in arrears of due over Rs. 500/ during the preceding cooperative year shall be entitled to vote not to be violative of sections 17 and 18 of the Act.

11. Further question for consideration is as to when the term of members of the Board of Directors will expire. The term of the Board is for 3 years as stated in the Section 26 (1B) of the Act, as reproduced above. These 3 years are to be taken from the date of election as has been held by this Court in *Kartar Singh and others v. State of Punjab and others*, (19891) Punjab Law Reporter 11. In that case election of the Managing Committee of the Society was held on 15.3.1984. The Division Bench held as under :

"There was no impediment in the way of the committee from entering the office. Consequently, the committee will be deemed to have entered the office on March 15, 1984, and the period of three years has to be reckoned from that date which will expire on March 14, 1987. If for any reason, the committee has delayed the election of the officebearers or the cooption of members it will not mean that the committee has not entered the office. The committee was in a position to enter the office."

The contention of learned counsel for the petitioner is that after election of members of the Board of Directors of the Apex Society it was for the Registrar to summon the first meeting of the Directors. Since the first meeting was held on August 29, 1986, the period of three years should commence therefrom. Byelaws 36(a) of the Apex Society reads as under :

"The Board shall meet at least once in three months. At least fifteen days" notice shall be given to Directors before a meeting is held. The Managing Director of the State Bank shall call the meeting at the direction of the President or the R.C.S. Onethird of the total number of members shall form quorum of the meeting of the Board. The President or in his absence the VicePresident and if both are absent a member elected by those present in the meeting shall preside over the meeting of the Board. Each member shall have one vote. All questions shall be decided by a majority vote. In case of equality of votes the President of the meeting shall have a casting vote."

12. No doubt, meeting of the Committee (Board of Directors) could be called by the President or by the Registrar, Cooperative Societies, as mentioned in the above byelaw but it cannot be said that members of Board were not in a position to meet. The mere fact that such a meeting was held after some time, it cannot be said that the period of three years" term of the Board shall start from any subsequent date. As held by this Court in *Kartar Singh's case* (supra), such a period is to start from the date of election.

13. Learned counsel for the petitioner has referred to the decision of Andhra Pradesh High court in M. Ranga Reddy v. State of Andhra Pradesh and another, AIR 1989 Andhra Pradesh 81, wherein it was held that it was against the spirit of the Act to appoint Administrator and the members of the Committee (Managing Committee or the Board of Directors) even after expiry of its term would continue to function uptill the time of election of members of the new Committee. With great respect to Hon'ble Judges of the Andhra Pradesh High Court, the view expressed in the above case cannot be accepted. The Legislature expected a situation to arise where the term of the Committee would expire without holding fresh elections and in other circumstances when in the interest of the Society as such it would be necessary to appoint Administrator under section 26(1D) of the Act. In case the view expressed by the Andhra Pradesh High Court is accepted, the provisions of section 26(1D) would become redundant. All the provisions of a statute are to be given harmonious interpretation so that no provision is left redundant.

14. In Raikot Cooperative MarketingcumProcessing Society, Ltd., Raikot v. The State of Punjab and others, 1987 PLJ 448 Division Bench of this Court has held that even Administrator of the Primary Society can nominate a person to represent it in the election of members of the Board of Directors of the Apex Society under section 27(3) read with section 19(2) of the Act.

15. Learned counsel for the petitioner has argued that the petitioner having been nominated to represent the Primary Society in the election of the members of Board of the Apex Society and having been so elected was not only representing the primary Society but was representing other Primary Societies of the Zone. By merely ceasing to be member of the Managing Committee of the Primary Society he can not cease to represent other Primary Societies as a member of the Board of Directors of the Apex Society. This contention again cannot be accepted. It was only on account of being a member of the Managing Committee of the Primary Society that he was eligible to be elected as member of Board of Directors of the Apex Society. He having ceased to be such cannot remain member of the Board of Directors as observed above.

16. Section 10A of the Act was being challenged as ultra vires the Constitution. However, during arguments, nothing has been urged in this respect.

17. Finding no merit in the writ petitions, the same are dismissed with no order as to costs.

Petitions dismissed.