
(1986) 02 P&H CK 0083
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 3711 of 1985

Ch. Baljit Singh and other

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 20-02-1986

Acts Referred:

Punjab Co-operative Societies Act, 1961 — Section 26(4)

Citation : (1986) 02 P&H CK 0083

Hon'ble Judges : D.V. Sehgal, J

Bench : Single Bench

Advocate : Kuldip Singh and Mr. M.S. Kang, for the Appellant; G.S. Garewal, A.G. (Pb.), Mr. H.S. Nagra for Respondent No. 1, Mr. B.S. Khoji and Mr. D.V. Sharma for Respondents No. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

D.V. Sehgal, J.—The Jalandhar Central Cooperative Bank Ltd., Jalandhar City (hereinafter referred to as "the Co-operative Bank") is a society registered under the Punjab Cooperative Societies Act, 1961 (for short "the Act"). Election to its Board of Directors was held on 5-8-1982. 13 Directors were elected including the Petitioners and 3 Directors were nominated by the Government. Its Manager summoned a meeting of the Board of Director among other things for election of office bearers for 25th August, 1982. All the 16 Directors were present in the meeting so convened. The office bearees elected in that meeting were Baljit Singh, Petitioner No. 1, as President, Vishwa Mittar, Petitioner No. 2 as Vice-President and Vijay Sethi, Petitioner No. 3 as Managing Director. The Executive Committee was also elected in this meeting. An objection to the validity of convening the said meeting by the Manager of the Cooperative Bank was raised on the ground that the meeting could only be summoned by the Chief Executive Officer of the Cooperative Bank. The objection was, however over-ruled by a majority vote. Two Govt, nominated Directors i.e. the Deputy Registrar Cooperative Societies and Assistant Registrar, Cooperative Societies Jalandhar

gave their dissenting note. Since the Cooperative Bank is a society in which shares have been subscribed for liability by way of guarantee for borrowing exceeding fifty per centum of its working capital has been undertaken by the Government, the difference of opinion between the nominated Directors and the elected Directors which had thus arisen was referred to the Government for its decision, in view of the provisions of Section 26(4) of the Act. In spite of the fact that the nominated Directors including the Deputy Registrar have no power to stay operation of any resolution to which they give a dissenting note, the Deputy Registrar, Respondent No. 4 by letter dated 9-9-1982 Annexure P. 1 issued orders to the Manager of the Cooperative Bank to ensure that none of the Directors who had been elected as office bearer acted as such office bearer till the decision of the Govt, u/s 26(4) of the Act. A categorical direction was contained in Annexure P. 1 that till the decision of the Govt, no Director could function as office bearer. Since, in the meantime a meeting of the Executive Committee which had been duly elected on 25-8-1982 had been summoned for 10-9-1982 by the Manager vide his Memo, dated 31-8-1982, Respondent No. 4 further mentioned in the letter Annexure P. 1 that the meeting of the Executive Committee so summoned was invalid. The position so taken by Respondent No. 4 was reiterated by him in his letter dated 17-9-1982 Annexure P. 2. As a result, neither, the Executive Committee nor the office bearers including the President, Vice President and the Managing Director out of the Board of Directors so elected could function in office. The State Govt, vide its Memo, dated 24-4-1983 agreed with the dissenting note given by the nominated Directors in the meeting held on 25-8-1982 and asked the Registrar to take further necessary action in the matter. 7 elected Directors of the Cooperative Bank impugned the order Annexure P. 3 of the State Govt, through Civil Writ Petition No. 2294 of 1983 Lashkar Singh etc, v. Pb. State etc. which came up before a Division Bench of this Court and vide order dated 9-5-1983 fresh election of the office bearers was stayed till further orders. The Writ Petition was later on admitted to hearing and the ad-interim stay order was directed to continue. This Writ Petition was ultimately allowed by D. S. Tewatia, J. vide judgment dated December 21, 1984 and the impugned order of Government Annexure P. 3 was quashed. It was ruled therein, inter alia, as under:

Rule 23 of the Punjab Co-operative Societies Rules, 1963 (hereinafter referred to as the Rules) provides for the election of the committee of a Cooperative Society in accordance with the rules given in Appendix "C" In Appendix "C" "election" is defined as election to the committee and "voter" is defined to mean a person entitled to vote under these rules. Expression "committee" is defined by Section 2(b) of the Act as meaning the governing body of a cooperative society by whatever name called, to which the management of the affairs of the society is entrusted. The governing body of a society like the present one comprises of the Board of Directors, and its office bearers including the executive committee. The election of the governing body is not complete unless its office bearers and the members of the executive committee are also elected. That means election of

the office bearers and the "members of the executive committee also form part of the election of the governing body which in view of the definition of expression "committee" means the committee and they are to be elected in the manner provided in Appendix "C".

Thus in view of the judgment of D. S. Tewatia, J. the election of the committee including the Board of Directors, the Executive Committee and the office bearers was complete only on December 21, 1984 when judgment was delivered, the election held in the meeting of the Board of Directors dated 25-8-1982 was upheld and the impugned order dated 24-4-1983 of the State Govt, was quashed. In accordance with the provisions of Section 26 (B) of the Act, the term of the office of a committee shall be three years. The term of the office of the committee of the Cooperative Bank taken from 21-12-1984 would, therefore, expire on 20-12-1987. The Petitioners through the present writ petition have sought a writ in the nature of mandamus directing the Respondents to permit them and other members of the Board of Directors of the Cooperative Bank to complete their statutory term of three years starting from 21-12-1984 when the election of the governing body including the Executive Committee and the office bearers was completed by virtue of the judgment of this Court in Lashkar Singh's case (supra).

2. The Petitioners submits that they moved the State Govt, by way of a petition u/s 69 of the Act as early as April, 1984 to pass specific orders that the term of the committee of the Cooperative Bank is three years from 21.12.1984, but no orders in this regard have been passed so far. They moved an application u/s 70 of the Act on 16.7.1985 Annexure P.5 seeking an interim order that by wrongly construing the term of office of the committee from 5.8.1982 it should not be taken that it expires on 4.3.1985 and appointment of an Administrator of the Cooperative Bank be stayed during the pendency of the petition u/s 69 of the Act. No order on this application had been passed. The Petitioners apprehended that on or after 25.8.1985 the Respondent would not allow them to function as the committee of the Cooperative Bank and would instead appoint an Administrator. When the present writ petition came up for motion hearing before the Division Bench on 31.7.1985, an order of status quo regarding functioning of the Board of Directors as obtaining on that day was passed. The writ petition was ultimately admitted to hearing on 11.9.1985. It is thus admitted on both sides that the committee of the Cooperative Bank is functioning by virtue of the order dated 31.7.1985 passed by the Division Bench.

3. Since the judgment in Lashkar Singh's case adjudicates upon the election of the committee of the Cooperative Bank constituted by the Petitioners and other elected and nominated Directors, the verdict therein as I have quoted above is binding on both the parties. It shall thus necessarily have to be construed that the committee stands elected only on 21.12.1984 when the aforesaid judgment was delivered and the impugned order of the Govt, was quashed. But this position was not acquiesced in by the Respondents and their counsel Shri B. S.

Khoji referred to the statutory provisions and the case law on the point and, by relying on some factual aspects which were obtaining during the pendency of the matter with the State Govt resulting in the order Annexure P.3, as also during the pendency of C.W.P. 2294 of 1983, strenuously contended that the Board of Directors of the Cooperative Bank, which no doubt included the Petitioners as its members could have its tenure of three years only from 5.8.1982 which expired on 4.8.1985. Firstly, he stated by referring to the averments in the written statement filed by the Deputy Registrar, Banking that the meetings of the Board of Directors of the Cooperative Bank were being held from time to time and it was transacting its business by electing a Chairman for every specific meeting. As many as 10 meetings were so held on 25.8.82, 9.1.83, 12.1.83, 16.2.83, 3.10.83, 12.5.84, 6.8.84, 21.1.84, 13.10.84 and 3.12.84. Thus according to him, the Board of Directors was functioning through out and its term expired on 4.8.1985 and it cannot be given a new lease of life beyond that date upto 20.12.1987 as is claimed by the Petitioners. He also stated that the Board of Directors itself constituted a working committee and elected Vijay Sethi, Petitioner No 3 as an authorised Director who exercised powers of the Managing Director. The working committee so constituted discharged the powers and functions of the Executive Committee and held as many as 16 meetings from 12.10.1983 to 23.10.1984. The normal functioning of the Cooperative Bank was thus never hampered. It is no doubt admitted by the Respondents in the written statement dated 30.8.1985 that the election of the office bearers held on 25.8.1982 remained in jeopardy till Lashkar Singh's case was allowed and that the office bearers including the President, Vice President and the Managing Director and the Executive Committee did not function till 21.12.1984 but it is contended that the Board of Directors had been functioning through out its tenure and as such its term expired on 4.8.1985. To support his contention, Mr. Khoji relied on a Division Bench judgment of this Court reported as *The Punjab State Cooperative Supply and Marketing Federation Ltd., Sector 17, Chandigarh v. The Additional Registrar (Industrial) Cooperative Societies. Punjab, Chandigarh 1982 (2) S. L. R. 217*, wherein it has been held in the context of the facts of that case that the elected members of the committee u/s 26(1) had positioned themselves in office on 23.5.1980 when the result of the election to the committee was declared and their tenure would start from that date. He also relied on a judgment of D, S. Tewatia, J. in *Harbans Singh Romans v. The State of Punjab (1982) 84 P. L. R. 208*, wherein it has been held that if after election of the committee, for some reason the election of the office bearers is delayed, then the term of the office bearers would be co-extensive with the term of the committee and their term by virtue of any bye-law would not go beyond that term because neither the bye-law nor the statute envisages that the Board of Directors is to function only from the date it has elected its office bearers. It was observed that the position would have been otherwise if the Board of Directors could not function without electing its President and Vice President. He therefore, submits that even if the office bearers as also the Executive Committee is deemed to have been elected on December 21, 1984, when Lashkar Singh's

case was allowed, the term of their office being co-terminus with that of the committee is also to be taken to have come to an end on August 4, 1985.

4. Mr. Kuldip Singh, learned Senior Advocate appearing for the Petitioners countered the above argument by contending that out of the ten meetings of the Board of Directors adverted to by Mr. Khoji, the meeting held on 25.8.1982 had been held to be invalid by the State Govt, order Annexure P.3 as a result of which the election of the office bearers in that meeting was annulled, which led to the filing of C.W.P. No. 2294 of 1983. The remaining 9 meetings in a span of 2 years and 4 months were not of the choosing of the elected representatives on the Board of Directors. They were convened from time to time by the Govt, officials on the Board and in the administration of the Cooperative Bank with a view to facilitate their own functioning. He thus contended that the democratic set up as envisaged by Section 26 of the Act was never brought about. With regard to the working committee constituted of the elected Directors, which held its first meeting after one year and two months of the election to the Board of Directors, he submitted that this working committee was in fact not allowed to function by Respondent No. 3 who vide letter dated 20.11.1984 Annexure P.4 issued instructions that in future no meeting of the working committee of the Cooperative Bank should be convened in view of the stay order of the High Court. It was also emphasised in the letter Annexure P.4 that there is no provision in the Bye-laws of the Cooperative Bank for constitution of such a working committee. He further places reliance on the letter Annexure P.4 to contend that it contained instructions to the effect that Petitioner No. 3 could not function as authorised Director. He stated that the letter Annexure P.4 further makes it clear that the meetings of the Board of Directors were convened on different dates simply to manage the affairs of the Cooperative Bank at the choice of the Govt, officials as functionaries of the Bank. As to the position of law he distinguished the judgments in The Punjab State Cooperative Supply and Marketing Federation's case and Harbans Singh Romano's case relied on by Mr. Khoji and contended that in none of the two cases the members of the committee were restrained from functioning as such. In Harbans Singh Romano's case in fact the members of the committee of their own choice elected their office bearers after abnormal delay which rightly invited the observations of Tewatia J. that the office bearers or the members of the committee could not extend their tenure by electing the office bearers long after the election of the committee. In support of his submission he relied on Division Bench judgment of this Court in The State of Punjab and Anr. v. The Managing Committee of the Patti Primary Cooperative Land Mortgage Bank Ltd. Patti 1980 P. L. J. 44 wherein after examining the provisions of Section 26 of the Act, it was observed thus:-

A reading of the aforesaid provisions would show that the tenure of the office of a committee is three years. The question which falls for determination is when would the tenure start. The word office has a clear meaning and import and when it has been used in the section, it must be given its due importance. "If the word office had not been mentioned in Sub-section (B), it may have been urged

that the committee starts functioning from the date it is elected and its term should be counted from that date. But, the Legislature in its wisdom has fixed the term with reference to the office of a committee and, to my mind, that would be from the date the Managing Committee assumes charge and starts functioning as such. It will be a question of fact in each case as to when the committee entered its office and started functioning. But, one thing is clear that unless the committee enters the office, in other word assumes charge, the term of three years would not begin. The conclusion is plain on the language of Sub-section (B).

He thus submitted that the committee never positioned itself in office till the judgment dated 21.12.1984 of this Court in Lashkar Singh's case was announced. He further contended that Section 2(b) of the Act defines a committee to mean the governing body of a cooperative society, by whatever name called, to which the management of the affairs of the society is entrusted. By referring to the By-laws of the Cooperative Bank, he submitted that the management of its affairs is apportioned and vested in the Board of Director, the Executive Committee and the Managing Director by virtue of By-laws 37 to 44. He accordingly submitted that the Board of Directors, the Executive Committee and the Managing Director together constitute the committee of the Cooperative Bank within the meaning of Section 2(b) of the Act and until and unless the whole of the committee with the above structure is constituted, it cannot be said to have ever assumed office. Since the election of the Directors to the Executive Committee and the offices of President and Vice President and Managing Director held by the Board of Directors in its first meeting on 25.8.1982 was annulled by the Govt, vide order Annexure P.3 and was ultimately validated in the judgment in Lashkar Singh's case (supra), the committee as contemplated by Section 2(b) of the Act can be taken to have assumed office only from the date of the said judgment i. e 21.12.1984. He further asserted that the Bye-laws of the Cooperative Bank providing for the constitution of the Executive Committee out of the Directors duly elected, and election to the offices of the President, the Vice President and the Managing Director and the functions apportioned and vested in them, have the force of law so far as they govern the functioning of the Cooperative Bank, these being in no way inconsistent with the provisions of the Act and the Rules thereunder. In support of this assertion he relied on B.S. Minhas Vs. Indian Statistical Institute and Others,

5. As I have observed right in the beginning of the above discussion as ruled in the judgment in Lashkar Singh's case, the Committee of the cooperative Bank i.e. its governing body is not complete until and unless besides the Directors, its office bearers and the members of the Executive Committee are also elected. The office bearers and the members of the Executive Committee form part of the structure of the governing body of the Cooperative Bank which comes within the meaning of the expression "Committee" as defined by Section 2(b) of the Act. Despite what has been contended by Mr. Khoji on behalf of the Respondents, I find no escape from the conclusion that the democratic set up of the Cooperative

Bank could be enthused with life only when its Board of Directors was allowed to function headed by the Executive Committee and its office bearers elected by the Directors. This democratic set up came into being only when the order of the Government dated 24-4-1983 was quashed by this Court in Lashkar Singh's case. No other construction on the statutory provisions, the rules and the by-laws, in my view, can be placed. If the Petitioners' claim to function for the full tenure of three years from 21-12-1984 along with the Executive Committee and the duly elected office bearers is negatived, it would give licence to arbitrary functioning by the beaurocracy in that, while by literally following the provisions of Section 26 of the Act, a Board of Directors may be elected but it may not be, allowed to work in real democratic spirit by electing its own Executive Committee and its office bearers and may merely remain a tool in the hands of the Government officials nominated as functionaries of the Cooperative Bank. Over and above this, the view taken by D. S. Tewatia, J. in his judgment in Lashkar Singh's case cited above has become final and the Respondents cannot wriggle out of the same by placing a hypertechnical interpretation on Section 26 (1-B) of the Act and contend that the tenure of office of the committee commenced on 5-8-1982 when the result of its election was declared and ended on 4-8-1985 in complete disregard of the events noticed above, which rendered the functioning of the committee wholly ineffective uptill December 21, 1984.

6. I, therefore, allow this writ petition and direct that the Board of Directors together with the Executive Committee and other office bearers elected by it shall held office till 20-12-1987. There shall be no order as to costs.