
(1969) 12 P&H CK 0023
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 982 of 1969

Charan Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 22-12-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1971) 2 ILR (P&H) 498

Hon'ble Judges : R.S. Narula, J

Bench : Single Bench

Advocate : Kuldip Singh, for the Appellant; B.S. Gupta, for A.G. for Respondents 1 to 3 and K.S. Saini, for Respondents 5 and 6, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Narula, J.—The only point that calls for decision in this petition under Articles 226 and 227 of the Constitution is whether bye-laws 30(i) and 30(iv) of the Bye-laws of the Gharaunda Co-operative Marketing-cum-Processing Society Limited, which are quoted below, are ultra vires Section 26(1) of the Punjab Co-operative Societies Act, 1961 (hereinafter called the Act), or not:

30. The Managing Committee of the society shall be constituted in the following manner:

(i) Assistant Registrar ex-officio.

(ii)...

(iii)...

(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)...

Sub-section (1) of Section 26 and Clause (a) of Sub-section (2) of that section of the Act provide as follows:

26. (1) The members of the committee of a co-operative society shall be elected in the manner prescribed and no person shall be so elected unless he is a shareholder of the society.

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

(a) where the Government has subscribed to the share capital of a co-operative 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 ;

* * * *

The contents of rest of Section 26 are neither material nor relevant for deciding the precise issue which has arisen before me in the circumstances mentioned below. The main argument of Mr. Kuldip Singh, learned Counsel for Chaudhry Charan Singh Petitioner, is that the above-said provisions in bye-law 30 of the Bye-laws of the Society are violative of the mandatory requirements of Sub-section (1) of Section 26 of the Act inasmuch as they provide for--

(i) the Assistant Registrar becoming an ex-officio member of the Managing Committee without being elected to that office and without being a share-holder of the Society; and

(ii) two members to be co-opted by the Managing Committee contrary to the requirements of Section 26(1) read with Section 24 of the Act about election of the members of the Committee of management (other than nominated members) being held only in a general meeting of the Society.

The facts leading to the filing of this petition may now be noticed in brief.

2. Respondent 4 is a society registered under the Act. In this judgment, I am referring to it as the Society. The constitution of its committee of management is provided in bye-law 30, the impugned part of which has already been quoted in the first paragraph of this judgment. When a meeting of all the other members of the committee of management of the Society had been fixed for co-opting two members on it, written objections were raised by the Petitioner on April 4, 1969, to the intended co-option proceedings. Notwithstanding the objections, the meeting was held on April 7, 1969, and despite certain objections against their co-option, Respondents 5 and 6 (Munna Singh and Jail Paul) were elected by the managing committee for being co-opted on it,--vide paragraph 4 of the proceedings of the meeting of the managing committee, of which a copy is annexure "A" to the writ petition. The Petitioner claims to have approached the Registrar, Co-operative Societies, Haryana, to "delete the impugned by-laws on the ground that similar bye-laws providing for the Assistant Registrar being an ex-

officio member and providing for co-option of certain members had been held to be inconsistent with the provisions of the Act by the Punjab Government and had been rescinded by that Government in the State of Punjab by the letter of the Registrar, Co-operative Societies, Punjab, dated February 21, 1969 (annexure "B"). The Haryana authorities did not, however, agree to the said representation made by the Petitioner. This petition was then filed on April 17, 1969, for declaring bye-laws 30(i) and 30(iv) of the Society as ultra vires that Act and for consequently setting aside the resolution, annexure "A" (co-opting Respondents 5 and 6) and also for annulling the nomination of the Assistant Registrar, Co-operative Societies, as an ex-officio member of the committee.

3. Respondents 1 to 3, who are the State of Haryana, the Registrar, Co-operative Societies, Haryana, and the Assistant Registrar, Co-operative Societies, Haryana, have filed the affidavit of Shri Sunehri Lal, Assistant Registrar, by way of a return to the rule issued to them. It has been denied that the impugned bye-laws are violative of the requirements of Section 26(1) of the Act. It has been stated that the Punjab Government was not "sure of the correct position and had, therefore, issued the communication, "annexure "B", rescinding similar bye-laws; but the correct position is that members have to be appointed on the committee by election "in the manner prescribed" and inasmuch as the manner prescribed under the rules read with the bye-laws provides for the co-opted members being elected by the committee and not by the general body; there is nothing wrong with the election of Respondents 5 and 6.

4. In order to appreciate the rival contentions of the learned Counsel for the parties, it appears to be necessary to notice some of the provisions of the Act and of the Punjab Co-operative Societies Rules, 1963, hereinafter called the 1963 Rules, and a few bye-laws of the Society. "Committee" is defined in Clause (b) of Section 2 of the Act to mean "the governing body of a co-operative society, by whatever name called; to which the management of the affairs of the society, is entrusted". The provisions for the management of the cooperative societies are contained in Chapter IV of the Act which, starts, with, Section 23 and, ends with Section 29, The purview of Sub-section (1) of Section 23 states that the final authority in a co-operative society shall vest in the general body of its members. The proviso to that sub-section provides for delegation of the authority of the society in accordance with its bye-Laws. Section 24 of the Act provides, inter alia:

24 A general meeting of a Co-operative society shall be held once in a year for the purpose of:

* * * *

(b) re-election, if any, of the members of the committee other than nominated members ;

* * * *

Section 25 relates to calling of special general meetings of the society. Relevant

part of Section 26, with which we are directly concerned, has already been quoted. Section 85(1) authorises the State Government to make rules for any co-operative society or class of such societies for the purpose of carrying out the purposes of the Act. Sub-section (2) of that section gives a list of the matters for which provision may be made in the rules framed under Sub-section (1) without prejudice to the generality of the power conferred by that Sub-section. Clause (iv) of Sub-section (2) of Section 85 is in the following terms:"--

85. (2) (iv) the matters in respect of which the society may or shall make bye-laws and for the procedure to be followed in making, altering and abrogating bye-laws and the conditions to be satisfied prior to such making, alteration or abrogation.

Clause (x) then states-

85. (2) (x) subject to the provisions of Section 26, the election and nomination of members of committees, the appointment or election of officers and the suspension and removal of the members and other officers, and for the powers to be exercised and the duties to be performed by the committees and other officers.

Sub-section (3) of Section 85 requires every rule made u/s 85 to be laid before each House of the State legislature while it is in session for a total period of ten days and further provides that the rules shall have effect only subject to such modifications, if any, which both Houses of the legislature may make. This provision places the rules framed u/s 85 of the Act at the same pedestal on which the legislative provisions of the Act themselves stand.

5. The 1963 Rules were framed in exercise of the powers conferred on the State Government by Section 85 of the Act. Rule 8 contains a list of the matters in respect of which co-operative society is bound to make bye-laws. It would be remembered that in Clause (iv) of Sub-section (2) of Section 85, two kinds of bye-laws were referred to viz. (i) which a society may make and (ii) which a society shall make. The matters enumerated in Rule 8 fall under the corr-pulsory category. Clauses (i) and (k) of Sub-rule (1) of Rule 8 state as follows:

8. (1) A co-operative society shall make bye-laws in respect of the following matters:

* * * *

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

* * * *.

(k) constitution of the committee and procedure of holding its meeting;

* * * *

The provision to Sub-rule (1) of Rule 8 then read-

Provided that if in the opinion of the Registrar, the bye-laws of any co-operative society do not contain provisions with regard to the matters specified in the Clauses (i) and (k) or contain insufficient provisions with regard to these matters, the provisions specified in Appendix B shall apply to such society as if these had been a part of the bye-laws registered u/s 8:

Provided further that if there is any inconsistency in the bye-laws framed by the society with regard to the aforesaid matters and the provisions contained in Appendix B, the bye-laws of the society shall prevail in so far as they are inconsistent with the provisions contained in Appendix B.

No reference to the model bye-laws contained in Appendix B to the rules appears to be necessary for deciding the present controversy, as bye-law 30 has been made by the Society relating to the "constitution of the committee" and the second proviso to Rule 8 gives overriding effect to the specific bye-laws framed by the society as against the model bye-laws contained in Appendix B. Rule 9 authorises every co-operative society to amend its bye-laws from time to time subject to the provisions of Rule 8 and Section 10. Rule 22 contains the powers of a general meeting of the society. Clause (b) of that rule read with its opening part states as follows:

22. Without prejudice to the provisions of Section 24, the general meeting alone shall have the power to transact the following business:

* * * *

(b) election, suspension and removal of the members of the committee other than the nominated members ;

Provided that an interim vacancy of the committee may be filled by co-option by the remaining members of the committee till the election is held:

* * * *

Bye-law 4 of the Bye-laws of the Society (of which a copy has been produced by the learned counsel for the Respondents at the time of the hearing and marked by me as annexure R-I) contains a list of the objects of the Society. The very first object of the Society is "to make arrangements for the storage and marketing of agricultural produce primarily of its members". Clause (a) of bye-law 5 contains a list of the persons to whom membership of the Society is open. Clause (b) of this bye-law contains a list of the co-operative societies or corporations who are also eligible for admission as members of the society. Clause (c) of bye-law 5 then states:

(c) Assistant Registrar Co-operative Societies, Karnal, shall be an ex-officio member without incurring any liability or holding any share.

Bye-law 23 vests the ultimate authority in all matters relating to the administration of the society in the general body of members of the society unless otherwise provided in the bye-laws. Clause (i) of bye-law 28 states that

without prejudice to the general provisions of bye-law 27, the general body shall have various powers and duties including the power of "the election, suspension and removal of the elected members of the managing committee". Bye-law 30, as already stated, refers to the constitution of the managing committee. It contains five items. The Assistant Registrar is made an ex-officio member under the first item. Second category consists of "three committee members to be elected by general meeting out of individual share-holders." The third category of members on the managing committee comprises "three committee members to be elected by general body out of the representatives of societies". Clause (iv), which provides for co-option, has already been quoted verbatim. Clause (v) of bye-law 30 relates to the maximum number of three committee members who can be nominated by the Government under Sub-section (2) of Section 26 of the Act. Bye-law 32 fixes the life of the managing committee at three years subject to one-third members retiring annually by rotation. It further provides that if there is a vacancy during a year, it shall be filled up by co-option by the managing committee. Bye-law 32(a) is as follows:

32. (a) The election, off the managing comlmittee by the general body shall be conducted in such a manner as may be laid down in the rules of. election to be framed by the Registrar.

Bye-law 35 provides, inter-alia, that in the meetings of the managing committee also each member of the managing committee shall have only one vote. The last bye-law, which is relevant for our purposes is 52. It provides the following machinery for amendment of bye-laws:

52. No amendment to these bye-laws shall be carried out save in accordance with a resolution passed at a general body meeting of which due notice of the intention to discuss the amendments has been given:

Provided that no such resolution shall be valid unless it is passed by a majority of members present at the general meeting at which not less than two thirds of the members for the time being of the society are present:

Provided further that model bye-laws or amendments previously approved by the Registrar may be adopted by a simple majority at a general meeting with an ordinary quorum.

6. Mr. Kuldip Singh himself conceded that the word "election" is wide enough to include within its fold "co-option by an elective process". Though it has not been made clear anywhere in the pleadings of this case, both sides agree before me that it is not in dispute that Respondents 5 and 6 are share-holders of the Society. The argument of Mr. Kuldip Singh is that the only process by which the co-opted members have to be elected is the process contained in Section 24(b) of the Act read with Rule 22 of the 1963 Rules. In other words, what he submits is that it is only in the meeting of the general body that the co-opted members have to be elected and the provision in the bye-laws for the election of the co-opted members being held by the other members of the managing committee is

illegal. According to the learned Counsel for the Petitioner, Section 26(1) of the Act does not provide for anybody being appointed as a member of the committee otherwise than by a process of election. The additional objection to the Assistant Registrar, being made an ex-officio member of the committee is that he does not satisfy the mandatory requirement of Sub-section (1) of Section 26 of the Act about no person being eligible to be ejected as a member of the committee unless he is a share-holder of the society. It is conceded by both sides that the Assistant Registrar has been made the ex-officio member because of the provision contained in bye-law 30(i) and not as a nominee of the Government under Sub-section (2) of Section 26. Mr. Kuldeep Singh seeks to derive strength for his submissions in this behalf from certain observations made in the Division Bench judgment of this Court in *Umrao Singh v. The State of Punjab* ILR (1970) 2 P&H 538, by Shamsheer Bahadur, J. and myself. All that was held in *Umrao Singh's* case ILR (1970) 2 P&H 538, was that elected members of the managing committee have to be chosen in a general meeting of the society and they cannot be elected separately in zonal meetings; and that Section 77 of the Act, which authorises the State Government to exempt any co-operative society or any class of co-operative societies from any of the provisions of the Act, by general or special order, and which further authorises the State Government to direct that certain provisions of the Act shall apply to such societies or class of societies with such modification as may be specified in the Government's order, suffers from the blemish of excessive delegation and is, therefore, unconstitutional. I think the judgment of this Court in *Umrao Singh's* case ILR (1970) 2 P&H 538, is not of much assistance to the Petitioner, as the question here is not about the election of the three committee members out of individual shareholders or the three committee members out of the representatives of other societies. If the provision contained in Clause (iv) of bye-law 30 requiring co-option by the managing committee is legal, it is impossible to sustain the argument that co-option by the managing committee may be made by the general body. It is significant that the power given to the managing committee to co-opt not more than two committee members is guided by the consideration of providing representation to agriculture or marketing experts. It is in view of the said requirement that the first object of the Society contained in its bye-law 4 has been referred to by the counsel for the Respondents.

7. The only other case to which reference has been made by Mr. Kuldeep Singh is the recent unreported judgment of Tuli, J., in *Dharam Singh Rathi v. State of Haryana, etc.* C.W. 3429 of 1968 decided on 30th April, 1969. The election of the members of the Managing Committee of the Haryana State Cooperative Bank Limited, Chandigarh, was called in question by Dharam Singh Rathi on three grounds viz.-

(1) that the election of the seven directors by the representatives of the Central Co-operative Bank should have been held in the annual general meeting and not in the meetings of the Central Co-operative Banks in different districts;

(2) that the Registrar of Co-operative Societies could not be appointed as a member of the Board of Directors except as a nominee of the State Government u/s 26(2) (a) of the Act; and

(3) that the nomination of one Kali Ram (Respondent 9 in that writ petition) as a director of the Bank as a nominee of the Haryana State Co-operative Land Mortgage Bank Limited, Chandigarh, under by-law 30(I)(ii) of the Bank was not valid.

The constitution of the committee of management (called the Board of Directors in that case) was provided by by-law 30(1) of the Bank in the following terms:

(i) The Registrar, Co-operative Societies, Haryana, or his nominee.

(ii) A nominated Director of the Haryana State Co-operative Land Mortgage Bank Ltd., Chandigarh.

(iii) Not more than three nominees of the Government of Haryana. Government nominees on the Board of Directors shall continue only so long as Government contribution to the share capital of the bank lasts.

(iv) Seven Directors to be elected by the representatives of affiliated Central Co-operative Banks subject to the provision that not more than one Director shall be elected out of the representatives of central financing institutions of the District.

The learned Judge allowed the first contention of Dharam Singh Rathi to prevail on the authority of the earlier Division Bench judgment in Umrao Singh's case ILR (1970) 2 P&H 538. Both the other contentions were, however, repelled. It was held that Section 26(1) relates only to elected directors and inasmuch as by-law 5 of the Bank provided that the Registrar of the Co-operative Societies or his nominee would be an ex-officio member without holding any share or incurring any liability and bye-law 30 provided that the Registrar or his nominee would be one of the members of the Board of Directors, it could not be said that the appointment of the Registrar as a member of the Board of Directors was invalid. The learned Judge observed that the Registrar or his nominee is a member and director of the Bank in his own right and not as a nominee of the State Government. Similarly, the nomination and appointment of Kali Ram as a director otherwise than by any process of election and merely on account of his having been nominated by the Haryana State Cooperative Land Mortgage Bank Ltd. under bye-law 30(I)(ii) of the Bank's by-laws was upheld. It appears to me that the judgment of Tuli, J. in regard to the main points canvassed by Mr. Kuldip Singh before me in this case goes against him.

8. I am in substantial agreement with the submissions made by Mr. B.S. Gupta, learned Counsel for Respondents 1 to 3, to the effect--

(a) that Section 26(1) of the Act does not contain the entire constitution of the committee of management of a cooperative society but merely relates to elected members; and

(b) that even in so far as provision is made by Sub-section (1) of Section 26 for election of members of the committee of management, the manner of such election (which necessarily includes the body which has to elect them) is left to be provided by the rules framed under the Act, as Section 26(1) specifically qualifies the word "elected" by the phrase "in the manner prescribed" and the word "prescribed" denotes by virtue of its definition contained in Section 2(i) of the Act "prescribed by rules".

Section 26 does not even purport to provide for the entire constitution of a committee of management of a co-operative society. All that Sub-section (1) of Section 26 appears to say is that so far as the matter of filling the elective seats on a committee is concerned, it would be subject to the following two conditions--

(1) No person would be eligible for such election unless he is a share-holder of the society; and

(2) such a member must be elected in the manner prescribed by the rules framed under the Act.

I am unable to construe the plain and unambiguous language of Section 26(1) in such a manner as to spell out of it a provision reserving all the seats on a committee of co-operative society exclusively for share-holders of the society elected in the prescribed manner. We must, therefore, look elsewhere for finding out the limits, if any, the qualifications and disqualifications of persons who can lawfully become members of a committee. Sections 24 and 26(1) apply to elected members. Section 26(2) provides for nominated members in cases covered by that provision. There is nothing in the Act or in the 1963 Rules prohibiting the making of a provision in the by-laws of any particular society for certain classes of members other than those who have to be elected or nominated being brought on a committee of management. It is significant that the over-all authority of a co-operative society is vested in the general body of its members as provided in Section 23(1) of the Act. By-laws of a society as well as subsequent amendments therein have to be registered with the Registrar of Co-operative Societies. By-laws of the society contain its constitution and all such by-laws have to be registered by the Registrar which are not contrary to the provisions of the Act or the rules framed thereunder. Similarly, every proposal for amendment of the by-laws has to be submitted to the Registrar to enable him to verify that the proposed amendment is not contrary to the provisions of the Act or the rules and does not come into conflict with co-operative principles. Rule 9 also specifically authorises a society to amend its by-laws from time to time. Even the model by-laws contained in Appendix "B" to the 1963 Rules (referred to in Rule 8) include by-law 10 which states that the Registrar or his representative may attend any meeting of the committee of a co-operative society at any time. But the model by-laws make it clear that the Registrar will not have the right to vote unless he is permitted under the by-laws of the particular society.

9. After taking into consideration the scheme of the Act and its; various

provisions, I am inclined to think that a committee of management of a co-operative society has to consist of-

- (i) elected members to whom Section 26 (I) will apply;
- (ii) nominated members in cases covered by Section 26(2) and subject to the restrictions contained therein;"
- (iii) other members brought on the committee in accordance-with its constitution determined by the valid and regis-, tered by-laws of its. society; and,
- (iv) members co-opted on the committee, by the surviving; members of a committee in exercise of their powers under the proviso to Rule 22(b) of the 1963 Rules to fill an interim " or casual vacancy.

(This is also authorised in the instant case under bye-law 32 of the Respondent society).

So far as the provisions of by-law 30(1) reserving a seat on the committee of the Respondent society for the Assistant Registrar of Cooperative Societies as an ex-Officio member is concerned, the decision of Tuli, J. in Dharam Singh Rathi's case C.W. 3429 of 1968 decided on 30th April, 1969, also goes against Mr. Kuldeep Singh. The learned Judge Ms repelled the Contention of" Dharam Singh Rathi in that case against the appointment of the Registrar on the Board of Directors of the Haryana State Co-operative Bank Limited, Chandigarh, on the ground that the appointment of the Registrar is authorised under the by-laws of the society concerned and on the further ground that Section 26(1) relates only to elected directors. I am in respectful agreement with the view taken by Tuli, J. in this matter. Moreover Bye-law 30 (i) is within the specific provision contained in Bye-law 5(c), the validity of which has not been challenged.

10. The nomination of Kali Ram, Respondent No. 9 in Dharam Singh Rathi's case, C.W. 3429 of 1968 decided on 30th April, 1969, was also upheld merely because a provision for such nomination existed in the by-laws of the society, to which that case related. I am bound by the judgment of the learned Single Judge in Dharam Singh Rathi's case C.W. 3429 of 1968 decided on 30th April, 1969. Even otherwise, I am of the opinion that the learned Counsel for the Petitioner has not been able to point out any fatal defect or any invalidity in by-law 30(iv) of the by-laws of the Respondent society.

11. The last submission by Mr. Kuldeep Singh impugning the election of Respondents 5 and 6 was that even if the relevant by-law, under which they have been appointed, is valid, they had to be co-opted by election by the general body and not by the managing committee itself. I have not been able to agree with this submission for the simple reason that the relevant by-law, the validity of which I have already upheld, specifically provides for the co-option being made by the members of the managing committee and not by the general body. Co-option by an elective process is no doubt covered by the phrase "election" but Section 26(1) requires that election has to be done in the prescribed manner.

The manner prescribed for election by the general body cannot possibly be applied to election for purposes of co-option by the managing committee.

12. Though I have not agreed with any of the submissions of Mr. Kuldip Singh, I am also unable to agree with a further point, which was sought to be made by Mr. B.S. Gupta, learned Counsel for the Respondents. Referring to my judgment in Ram Chander Singh v. The State of Punjab and Ors. 1967 P.L.R. 362, counsel submitted that the Petitioner being himself a director of the Respondent society cannot impugn the validity of its by-laws. I am unable to spell out any such proposition from my judgment in Ram Chander Singh's case 1967 P.L.R. 362. When I said in that judgment that the directors of a co-operative society are bound by the resolutions passed by the general body of the society, I added in the next sentence that the directors cannot hold the resolutions passed by the general body to be ultra vires the society, as they are mere delegates of the general body and cannot question the validity of resolutions passed by the society. Nothing contained in my judgment in Ram Chander Singh's case 1967 P.L.R. 362 is of any avail to the Respondents in this case.

13. No other point was argued before me. The writ petition, therefore, fails and is dismissed. In the peculiar circumstances of the case, however, I leave the parties to bear their own costs.