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**(2004) 07 P&H CK 0124**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 5412 of 2003**

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| Gopal Singh Jania and Others | Vs | APPELLANT  |
| State of Punjab and Others   |    | RESPONDENT |

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**Date of Decision :** 15-07-2004

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2004) 138 PLR 673 : (2004) 3 RCR(Civil) 745

**Hon'ble Judges :** Swantanter Kumar, J;Ajay Kumar Mittal, J

**Bench :** Division Bench

**Advocate :** H.S. Mattewal and R.S. Rior, for the Appellant; C.M. Munjal, Addl. A.G. for Respondent Nos. 1 to 4, M.S. Bedi and S.S. Gill, for the Respondent

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## Judgement

Ajay Kumar Mittal, J.—By this order we propose to dispose of Civil Writ Petitions 5412 and 3199 of 2003, as the points of law and fact raised in these petitions are somehow common and inter-linked.

2. Civil Writ Petition No. 5412 of 2003 has been Filed by six persons, namely, Gopal Singh Jania and Five others, who claim themselves to be duly elected directors of the Amritsar Central Cooperative Bank Limited, Amritsar-(respondent No. 5), a body registered under the Punjab Cooperative Societies Act, 1961 (for short "the 1961 Act"), challenging the notice dated 28.6.2002 (Annexure P-4) issued by respondent No. 3 u/s 27(1) of the 1961 Act, whereby they were required to show cause as to why they be not ceased to be the elected Directors of the Sind Bank. They have also prayed for issuance of a writ of certiorari quashing order dated 21.3.2003 (Annexure P-9) passed by the Joint Registrar, Cooperative Societies, Jalandhar Division, Jalandhar (respondent No. 3) exercising the powers of the Registrar, Cooperative Societies, Punjab Chandigarh vide which they have been removed as elected Directors of the respondentbank, in exercise of power u/s 27(1) of the 1961 Act.

3. A little background needs to be noticed to understand as to how and in what manner the aforesaid orders came to be passed. According to the petitioners,

they were elected to the Board of Directors of the respondent-bank on 8.5.2000 for a term of five years which was to last till 8.5.2005 and they had been discharging their duties with a great sense of responsibility, diligently and without there being any finger raised by anyone to their functioning. It is the specific case of the petitioners that after the Assembly Elections held in the State of Punjab in February 2002, Shri Sardool Singh (respondent No,6) became the Excise and Taxation Minister, Punjab who on coming into power openly declared that the elected members of the Board of Directors owing allegiance to SAD (Badal) shall be removed and instead new Board of Directors from amongst the Congress party supporters shall be inducted by way of fresh elections. The petitioners claim, as expected, they received a copy of order 31.5.2002 (Annexure P-2) whereby Joint Registrar Cooperative Societies, Jalandhar exercising the powers of the Registrar Cooperative Societies, Punjab suspended the Board of Directors of the respondent-bank and appointed the Deputy Registrar Cooperative Societies, Amritsar as Administrator for a period of three months to run the affairs of the bank, A perusal of the aforesaid order would reveal that It was initially passed in exercise of power u/s 27(1 )(e) of the 1961-Act, which was later amended by order dated 3.6.2002 (Annexure 2-A) stating that the, order Annexure P-2 may be taken to have been passed in exercise of powers by the Registrar u/s 27(2) of 1961 Act.

4. The petitioners challenged the orders Annexures P-2 and P-2/A by filing a writ petition (CWP No. 9492 of 2002) in this Court. During the pendency of the said writ petition, the petitioners had been served with show-cause notice dated 28.6.2002 (Annexure P-4) which was duly replied to well within the time mentioned therein. But the Joint Director in exercise of power of the Registrar Cooperative Societies, Punjab u/s 27(1 )(a) of the 1961 Act removed the Board of Directors of the respondent Bank and directed the Administrator of the- Bank for taking further necessary action regarding elections to the new Board of Directors, by order dated 15.7.2002, Annexure P-6. This order of removal was also challenged by the petitioners by amending the said writ petition already pending i.e. C.W.P. No. 9492 of 2002. The said writ petition was allowed by a Division Bench of this court vide order dated 13.2.2003, and the order of removal of the petitioners from the Board of Directors was invalidated on the ground that rule of audi alteram partem was not complied with by the respondent-authorities since it was found that the said order has been passed before the expiry of period allowed for submitting reply to the show-cause notice. A liberty was given to the competent authority to pass a fresh order in pursuance to the show-cause notice. The petitioners were also given liberty to file additional representation.

5. It is further the specific case of the petitioners that despite detailed representations given by them, the Joint Registrar acting under the pressure of respondent No. 6, passed order dated 21.3.2003 (Annexure P-9) whereby the petitioners were removed as elected Directors of the respondent-bank u/s 27(1) of the 1961 Act.

6. It is primarily this order (Annexure P-9) which has been challenged in this petition by the petitioners on various grounds set out in the petition, to which the reference would be made at a later stage.

7. Respondents 1 to 4 filed joint written statement whereas respondents 5 and 6 also filed their separate written statements controverting the averments contained in the writ petition. The petitioners thereafter filed separate replications to the written statements filed by respondent 1 to 4 and by respondent No. 5 reiterating their stand in the writ petition. ;

8. During the pendency of this writ petition, the petitioners filed another writ petition (CWP 13199 of 2003) challenging the order dated 1.8.2003 passed by the Additional Registrar (G) Cooperative Societies Punjab (respondent No. 3 in that petition), a copy of which has been attached as Annexure P-I in that petition whereby the election of the petitioners to the Board of Directors of the respondent-Bank held on 22.4.200 was set aside with the direction that elections to the Board of Directors of the said Bank may be held again as per provisions of the Act. The order dated 1.8.2003 has been challenged, inter alia on the grounds that the said order has been passed due to political vendetta and to settle personal scores. To this petition as well, respondents 1 to 4 filed a separate written statement whereas respondents 5 and 6 filed a- separate written statement whereas respondents 7 to 11 also filed their joint written statement. The petitioners also filed replications to these written statements reiterating their grievances as set out in the writ petition.

9. We have heard learned counsel for the parties and have gone through the record.

10. First dealing with Civil Writ Petition No. 5412 of 2003, learned counsel for the respondents raised a preliminary objection that against: the impugned order, the petitioners have a statutory remedy u/s 68 of the 1961 Act by way of filing of appeal and this court under Articles 226 and 227 of the Constitution of India should not entertain this petition and relegate the petitioners to their alternative remedy of appeal under the statute. It was then submitted by the learned counsel that the order of removal passed against the petitioners is legal and valid and is in consonance with the provisions of the 1961 Act and this Court could not act as an appellate Court and reappraise and re-examine the relevant facts and circumstances which led to the making of these orders of suspension and removal. Learned counsel placed reliance on the following judgments in support of this submissions:-

(i) Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, ;

(ii) Jt. Registrar of Co-operative Societies Madras and Others Vs. P.S. Rajagopal Naidu and Others, ;

(iii) The Batala Wood Works Co-operative Industrial Society Limited and Ors. v. The Registrar Cooperative Societies, Punjab Chandigarh and Ors.1978 P.L.J.344.

11. Mr. H.S. Mattewal, Senior Advocate, learned counsel appearing for the petitioners while replying to the preliminary objection raised by learned counsel for the respondents submitted that since there are serious allegations of mala fide against respondent No. 6 and the order passed against the petitioners is a nullity, this Court in exercise of its powers under Articles 226 and 227 of the Constitution of India should entertain the writ petition and set aside the order of removal passed by respondent No. 5. The case law cited by the learned counsel for the petitioners for its proposition is contained in *Chuhar Singh President of the Gunachaur Cooperative Agriculture Service Society Vs. Additional Registrar, Cooperative Societies, Punjab (Admn) and Others*, ; *Kuldeep Singh and Ors. v. The State of Punjab and Ors.* 1994 P.L.J. 268; *Ram Chander Singh Vs. State of Punjab and Others*, ; *State of U.P. v. Mohammad Nooh* AIR 1958 S.C. 86 and *Nachhattar Singh and another Vs. State of Punjab and others*,

12. Mr. H.S. Mattewal then submitted that the impugned order of removal of the petitioners from the post of Directors of respondent No. 5 is patently illegal for the reason that the grounds of removal as given in the show-cause notice and the one on which the petitioners have been removed are entirely different and thus could not be legally sustained. For this, the learned counsel referred to the show-cause notice and the order of removal, the relevant portion of which are reproduced hereunder:

"The relevant portion of the show-cause notice dated 28.6.2002 (P-4)"

- (i) The Board of Directors has not been taking interest in its working.
- (ii) It has vested the administrative and financial powers in one person.
- (iii) It has violated the provisions of the Act, Rules and Bye-laws.
- (iv) It has been negligent in implementing the development programmes of the bank.
- (v) Not participating in the meeting of the bank from time to time and thereby violating the rules."

The relevant portion of specific allegations on which the order of removal dated 21.3.2003 (Annexure P-9) was based, but the same were not mentioned in the show-cause notice dated 28.6.2002 (P-4):

- (i) Regarding excessive delegation of powers in favour of Shri Surinder Pal Singh Chhina, Director by way of resolution dated 11.5.2000 passed by the Board of Directors.
- (ii) Regarding purchase of four cars by Shri Surinder Pal Singh Chhina during period from 8.5.1997. to 12.4.2002 thereby putting the bank to a loss of about Rs. 10 lacs on account of consumption of petrol for the said four vehicles without maintaining any log book for the journeys performed - failure to maintain the log book which should have been regularly written-failure to prevent to misuse the vehicles of the bank and thus the bank suffered a loss on account of cost of

vehicles and petrol-failure to lodge claims of two vehicles which while in use by Shri Surinder Pal Singh Chinna, Managing Director had met with an accident-failure to recover cost of petrol as well as vehicles from Shri Chinna on account of misuse of the said vehicles resulting into great loss to the bank.

(iii) Regarding purchase of furniture and fixture without following the procedure laid down by the Registrar, Cooperative Societies thus resulting into great loss to the bank.

(iv) Dismantling the pillar at the first floor of the bank building at Hall Gate, Amritsar which has weakened the bank building apprehending enormous loss to the building of the head office of the bank in future.

(v) Regarding purchase of A.C. Ambassador Car alongwith accessories against the norms.

(vi) Abnormally high expenditure on entertainment.

(vii) The Board failed to perform its duties with regard to grant of loans by the bank in genuine cases and rather it permitted the wasteful expenditure on furniture, fixture, purchase of A.C. cars, excessive expenditure for renovation of the office of the Managing Director of the Bank.

(viii) The loans were granted by Shri Surinder Pal Singh Chinna without any proper documentation and the required securities regarding advancement of loans with the result that recovery of a great number of loans granted during the tenure of the period of this Board has either become doubtful or bad and Board of directors has taken no steps for the recovery of such loans.

(ix) Excessive purchase of furniture without any normal requirement during the tenure of the Board which resulted into loss.

(x) The rents of the bank branches were increased at various places either for the existing bank buildings or the new buildings taken on rent at excessive rates of rent with mala fide intention and previous buildings of the branches were vacated without any reason and thus putting excessive burden of rent on the bank.

(xi) Various acts of omission and commission committed by Shri Surinder Pal Singh Chinna one of the Directors and on account of uncontrolled and misuse of powers which resulted into erroneous loss to the bank and FIR No. 20 dated 12.4.2002 and FIR No. 25 dated 16.4.2002 were registered by the Vigilance Bureau against him under respective provisions of the Prevention of Corruption Act.

(xii) The Board of Directors persistently defaulted and neglected in the performance of its duties by allowing the bank to suffer several lacs of rupees on account of hiring of buildings for the branches at excessive rates of rent, and excessive expenditure incurred on the bank car on account of petrol etc. without the log book etc.

(xiii) The Board of Directors virtually neglected to perform its duties and allowed Shri Chinna to commit various acts of corruption which resulted into registration of FIRs by the Vigilance Bureau against him.

(xiv) Several of the depositors of the bank withdrew their deposits from the bank on account of the adverse effects created by the persistent default and negligence on the part of the Board in the performance of its duties and preventing the losses being caused on account of wasteful expenditure.

(xv) That while there was an agenda for no confidence against Shri Chinna, the Directors of the Board abstained from participating in the said meeting for the reasons best known to them and permitted Shri Chinna to continue to have his way."

13. Mr. Mattewal, further submitted that the grounds on which the removal of the petitioners has been made, do not fall u/s 27 of the 1961 Act. Learned counsel placed reliance on various judgments in this regard which are as under:-

(i) State of Gujarat v. Satishchandra Balshankar Vora 2000 (1) S C T 95 (Guj).

(ii) Lakha Singh Vs. The Registrar, Co-operative Societies, Punjab, Chandigarh and Others, "

(iii) Kartar Singh and Ors. v. State of Punjab and Ors. 1982 P.L.J. 441; and

(iv) The Uksi Cooperative Agricultural Service Society Uksi and Anr. v. The Assistant Registrar Cooperative Societies Package Programme, Ludhiana and Anr. 1977 P.L.J. 24.

14. We have given our thoughtful consideration to the rival contention of the respective parties. There is no dispute with the proposition of law as enumerated in the judgments regarding alternative remedy relied upon by learned counsel for the parties. Ordinarily on any matter relating to cooperative societies, the parties are expected to avail the remedies provided under the Act as in such cases, the alternative remedy provided under the Act is to be treated as an efficacious remedy. However, in the present case, as the facts disclose, the petitioners had earlier filed Civil Writ Petition No. 9492 of 2002 which was allowed and the order of removal which was passed then, was set aside and the case was remanded for fresh decision after giving an opportunity of hearing to the petitioners. The petitioners have levelled allegations of mala fide against respondent No. 6 on the basis of which they have been removed on the grounds which were not even the subject matter of the show-cause notice. Furthermore, the nature of the dispute is such which is required to be determined only on the interpretation of provisions of Section 27 of the Act, and the rule of exhaustion of statutory remedies before a writ can be granted is a rule of policy, convenience and discretion rather than the rule of law. In the peculiar facts of the present case, we do not consider appropriate to relegate the petitioners to the alternative remedy of appeal. The perusal of the grounds of removal as given in the show-cause notice which are reproduced in the earlier part of the judgment, are

entirely different and the actual order of removal has been passed on entirely different premises, Section 27 of the Act enumerates various grounds on which the Committee or the members thereof can be removed or suspended. Section 27 of the 1961 Act is reproduced as under:-

"27. Removal or suspension of committee or member thereof,- (1) If, in the opinion of the Registrar, a committee or any member of a committee persistently makes default or is negligent in the performance of the duties imposed on it or him by this Act or the rules or bye-laws made thereunder or commits any act which is prejudicial to the interest of the society or its members, or makes default in the implementation of production or development programmes undertaken by the cooperative society, the Registrar may, after giving the committee or the members as the case may be reasonable opportunity to state its or his objections if any, by order in writing (Section 27 Sub. by Punjab Act No. 26 of 1969, section 11 w.e.f. 10.9.1969):

(a) remove committee, and appoint a Government servant as an administrator, to manage the affairs of the society for a period not exceeding one year as may be specified in the order;

(b) remove the member and get the vacancy filled up for the remaining period of the outgoing member, according to provisions of this Act and rules and bye-laws made thereunder.

(2) Where the Registrar, while proceeding to take action under sub-section (1) is of opinion that suspension of the committee or member during the period of proceedings is necessary in the interest of the co-operative society, he may suspend the committee or member, as the case may be, and where the committee is suspended, make such arrangements as he thinks proper for management of the affairs of the society till the proceedings are completed:

Provided that if the committee or member so suspended is not removed it or he shall be reinstated and the period of suspension shall count towards its or his term.

(3) The administrator so appointed shall subject to the control of the Registrar and to such instructions as he may from time to time give, have power to perform all or any of the functions of the committee or of any Officer of the society and take all such actions as may be required to the interest of the society.

(4) The Registrar may for the remuneration payable to the person appointed as administrator and the amount of such remuneration and other costs, if any, incurred in the management of the society shall be payable from its funds.

(5) The administrator shall, before, the expiry of his term of office arrange for the constitution of a new committee in accordance with the provisions of this Act and rules and bye-laws framed thereunder.

(6) Before taking any action under sub-section (1) in respect of a co-operative

society, to any committee for such period not exceeding three years as the Registrar may fix.

The order of removal shows that none of the aforesaid ground existed as the show-cause notice which was issued, was on different premises. The order of removal is thus, violative of principles of natural justice. In these circumstances, we find that the order Annexure P-9 removing the petitioners from the post of Directors of respondent No. 5 is legally un-sustainable and is accordingly quashed. However, it shall be open to the respondents to proceed afresh against the petitioners in accordance with law.

15. Now adverting to Civil Writ Petition No. 13199 of 2003, learned counsel for the respondents repeated the preliminary objection regarding alternative remedy as has been raised in CWP No. 5412 of 2003 and submitted that the petitioners should be relegated to exhaust their remedy of appeal under the statute. The counsel further submitted that election of the petitioners has been rightly set aside by the Additional Registrar (G), Cooperative Societies, Punjab Chandigarh and the writ petition should be accordingly dismissed.

16. Learned counsel for the petitioners reiterated his submissions on the plea of alternative remedy and further submitted that the order of the Additional Registrar setting aside the election of the petitioners being in violation of principles of natural justice, the writ petition should be entertained by this court and the order of the Additional Registrar (G) be set aside.

17. We have considered the rival contentions of the counsel for the parties and we are inclined to agree with the counsel for the petitioners.

18. The petitioners were elected as Directors of respondent No. 5 unanimously and in the writ petition, one of the grounds taken by the petitioners is that all the private respondents in the petition before the Additional Registrar were not served and, therefore, the order dated 1.8.2003 is violative of principles of natural justice. It shall be apposite to reproduce the averments made by the petitioners in ground (iv) in the writ petition, reply to ground (iv) in written statement filed by respondent No. 4 and para (iv) of the rejoinder filed by the petitioners to the written statement of respondents 1 to 4, which are relevant for purpose of dealing with the contentions of the parties:-

"Para 27(iv) in the writ petition:-

That in the impugned order dated 1.8.2003 (Annexure P-I) it has nowhere been mentioned or no evidence has been produced to show that all the respondents/petitioners were served by the arbitrator. In fact only respondent No. 5, 7, 8, 10 and 12 i.e. Shri Paramjit Singh son of Shri Jaswant Singh, Shri Sukhdev Singh s/o Kartar Singh, Gopal Singh, s/o Sada Singh, Daljit Kaur w/o Sukhwinder Singh and Raminder Singh s/o Sarwan Singh were served in the arbitration reference and the other three directors remained undeserved. In this connection, it has been held by our Hon'ble High Court that where there is no mention of the fact

that the respondents were served or no other evidence has been produced to show that they were ever served by the arbitrator the award so made has been held to be clearly in violation of the principles of natural justice and thus liable to be quashed.

Reply to para 21 (iv) in the written statement filed on behalf of respondents 1 to 4:-

In reply to sub-para No.(iv) it is submitted that out of the nine Directors against whom the election petition was filed, six Directors were served and two were dead at the time of issuance of the notices elections petition and one Shri Chinna was confined in the Jail as such six Directors were duly served and out of them, five has filed the present writ petition and one Ajaib Singh, Director did not choose to file the writ petition as such the service was complete in the election petition before passing the order.

Para 27 (iv) of the replication filed to the written statement of respondent No. 1 to 4:-

That the submissions made in the corresponding subpara of writ petition are categorically reiterated in reply to this sub para of the written statement. Further a close perusal of the impugned order dated 1.8.2003 (Annexure P-I) passed by the Additional Registrar Cooperative Societies Punjab, Chandigarh (Annexure P-I) clearly fails to disclose as to which of the private respondents impleaded in the election petition were served and nothing has been mentioned and no evidence has been produced to show that all the respondents therein were duly served. Even this sub-para of written statement is totally silent as to how, when and in what manner the service had been effected on Shri Amar Singh and Shri Jagir Singh (respondents in the election petition) who are reported to have died. Further, nothing has been mentioned in the impugned order dated 1.8.203 (Annexure P-I) as to whether the service in the election petition had been duly effected on Shri Ajaib Singh s/o Shri Harbans Singh and even the impugned order dated 1.8.2003 (Annexure P-I) is silent in this regard and therefore, the contents of this sub-para of written statement are evasive and call for no reliance."

A perusal of the above shows that Shri Chinna had not been served and further no details or material has been shown by the respondents 1 to 4 that all the private respondents before the Additional Registrar were served before the order dated 1.8.2003 was passed. Learned counsel for the petitioners relied on State of Punjab and Ors. v. Bhajan Singh and Anr. J T 2001(1) S.C. 249 for the proposition that if no opportunity had been given to the persons removed then in that situation, the order passed by the authorities under the Act cannot be sustained. He further relied on Dhanna Singh and Ors. v. The Assistant Registrar Cooperative Societies, Moga and Ors. 1977 P.L.J. 108 to submit that will of the electorate should be shown due respect and election should not be set aside on wholly technical grounds when departure from statutory provisions or rules has

not materially affected the result of the election.

19. In view of the above, the conclusion drawn by us is that all the private respondents in the petition before the Additional Registrar were not served and the order dated 1.8.2003 is violative of principles of natural justice and is accordingly quashed. However, the matter is remanded to the Additional Registrar (G) Cooperative Societies, Punjab Chandigarh for decision afresh in accordance with law after affording an opportunity to all the parties of being heard. The parties through their counsel are directed to appear before the Additional Registrar (G) Cooperative Societies, Punjab Chandigarh on 16.8.2004. This writ petition stands disposed of accordingly.