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**(1994) 02 P&H CK 0032**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Civil Writ Petition No. 13244 of 1993

Gora Singh and Others

APPELLANT

Vs

The Registrar Cooperative Societies and Others

RESPONDENT

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**Date of Decision :** 08-02-1994

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

Punjab Co-operative Societies Act, 1961 — Section 27(1), 27(2)

**Citation :** (1994) 107 PLR 42

**Hon'ble Judges :** Jawahar Lal Gupta, J

**Bench :** Single Bench

**Advocate :** U.S. Sahni, Tribhuvan Singla and Munish Arora, for the Appellant; Charu Tuli, AAG for the Respondent Nos. 1 to 4, J.R. Mittal and Surinder Garg, for the Respondent No. 5, for the Respondent

**Final Decision :** Allowed

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## Judgement

Jawahar Lal Gupta, J.—The petitioners who are the members of the Managing Committee of the Giddarbaha Co-operative Marketing-cum-processing Society, Giddarbaha (hereinafter referred to as "the society") impugn the show cause notice and the order of suspension passed by the Deputy Registrar, Cooperative Societies, Faridkot. A few facts as relevant for the decision of this controversy may be briefly noticed.

2. Petitioner No. 1 was elected as a Chairman while petitioners Nos. 2 and 3 were elected as Directors of the Society. While they were functioning as such, the Deputy Registrar gave a show case notice to the President of the Society calling upon him "to show cause why the managing committee be not suspended u/s 27(2) of the Cooperative Societies Act." A reply to this notice was given on August 2, 1993. However, even before the submission of the reply, vide order dated July 19, 1993, the Deputy Registrar suspended the managing committee u/s 27(2) of the Act and appointed Shri Surjit Singh, Assistant Registrar, Cooperative Societies, Mukatsar as its Administrator. The petitioner No. 1

challenged this order by filing an appeal before the Registrar, cooperative Societies. It was dismissed vide order dated September 14, 1993 a copy of which has been produced as Annexure P-5 with the writ petition. Aggrieved by the action of the respondents, the petitioners have approached this Court through the present writ petition. The impugned orders have been challenged on a number of grounds. It has been inter alia averred that the action has been taken on account of wholly extraneous considerations and is beyond the provisions of Section 27 of the Act.

3. In the written statement filed on behalf of the respondents, the various grounds in the writ petition have been controverted. It has been inter alia averred that the action of the respondents is neither arbitrary nor malafide. Respondent No. 5 has also filed a separate affidavit denying the allegations made against him.

4. Mr. U.S. Sahni, learned counsel for the petitioners has primarily contended that the order of suspension as well as the order rejecting the appeal filed by petitioner No. 1 are wholly illegal and without jurisdiction. Learned counsel has referred to the provisions of Section 27 of the Act to contend that it is only in a case where proceedings u/s 27(1) for the removal of the committee have been initiated that an order of suspension under Clause (2) of Section 27 can be passed.

5. Mrs. Tuli appearing for the respondents has submitted that the impugned order of suspension has in fact been passed in accordance with law. She submits that it is on account of a typographical error that reference has been made to the provisions of Section 27(2) in the show cause notice. In fact, the proceedings have been initiated u/s 27(1).

6. Before considering the legal issue raised in this case, it may be noticed that vide show cause notice dated July 15, 1993, the president of the society was called upon to show cause as to why the managing committee "be not suspended u/s 27(2) of the cooperative Societies Act." The show cause notice did not even remotely indicate that the committee was proposed to be removed. Still further, it may be noticed that in para 18 (II), a specific challenge to the order of suspension has been made on the ground that no order could have been passed u/s 27(2) till proceedings have been initiated u/s 27(1). In reply thereto, it has been categorically averred that "during the proceedings pending for suspension immediate suspension in gravest cases can be done as has been held by Full Bench of our Own Hon"ble Court in case titled as Gurcharan Singh v. Haryana State, cited as (1979) 81 PLR 170 (F.B.).

7. A perusal of the pleadings of the parties thus clearly shows that the show cause notice had been issued only u/s 27(2) and not proceedings had been initiated u/s 27(1) of the Act. No proceedings for the removal of the Society had, thus, been initiated.

8. The short question that arises is -

Can an order of suspension be passed u/s 27(2) when no proceedings for the removal of the committee have been initiated u/s 27(1) of the Act?

9. Section 27(1) inter alia provides that where the Registrar is of the opinion that "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-"he may after giving the committee or the members " a reasonable opportunity to state its or his objections-" remove the committee or the members and appoint an administrator or fill up the vacancies for the remaining period.

10. Section 27(2) which is relevant for the decision provides as under:-

" Where the Registrar, while proceeding to take action under Sub-section (1) is of the opinion that suspension of the committee or member during the period of proceedings is necessary in the interest of the cooperative society, he may suspend the committee or members, as the case may be, and where the committee is suspended, make such arrangements as he thinks proper for the 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."

11. A perusal of the above provision would show that it is only where proceedings under Sub-section (1) have been initiated that the Registrar can order the suspension of the committee or the member. Unless proceedings under Clause (1) have been initiated, no order of suspension under Clause (2) can be passed. Factually as noticed above, no proceedings under Clause (1) for the removal of the committee or a member had been initiated. The show cause notice given to the president of the Society was only regarding suspension. In such a situation, the order of suspension could not have been passed. The show cause notice itself was illegal. The orders passed in pursuance thereto cannot thus be sustained.

12. In this behalf, it is relevant to mention that whenever a statute requires a particular thing to be done in a specified way, it can be done only in that manner and no other. This principle is fully applicable in the present case. The statute permits the suspension of the committee only when proceedings for its removal have been initiated. Unless such an action is pending, the order of suspension cannot be passed. This rule has been clearly violated in the present case.

13. Another contention raised by Mr. Sahni is that the notice having been given only to the president, no order of suspension could have been passed against the entire managing committee. He relies upon the decision of a Division Bench of this Court in *Randhir Singh v. Additional Registrar (Credit)* 1992 PLJ 38.

14. The contention appears to be well-merited. However, in view of the fact that the petitioners are succeeding on the first grounds, it is not necessary to

examine this contention in detail. It may only be noticed that under Clause (1) of Section 27, the notice can be given for the removal of the committee or of a member/s. In a case, where the entire committee has to be removed, it is only fair that all the members are given an opportunity to show cause.

15. Mr. Sahni has also contended that on basis of the allegations as mentioned in the show cause notice, no ground for removal of the committee arises. He has also pointed out that there was no even a suggestion that the committee had committed "persistent" default in carrying out its functions. It is true that even the show cause notice does not suggest any persistent default on the part of the committee. However for the present, the contention appears to be premature. Consequently, as at present, no finding is required to be given in this behalf.

16. In view of the above, it is held that the order of suspension was not in conformity with the provisions of the Act. Consequently, the impugned action in suspending the committee and appointing the Administrator cannot be sustained.

17. The writ petition is allowed in the above terms. In the circumstances, there will be no order as to costs.