
(1990) 02 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 8366 of 1989

Gurdial Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 27-02-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : AIR 1990 P&H 317 : (1990) 97 PLR 675

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : V.P. Sharma, for the Appellant; H.S. Mattewal P.S. Thiara and Mrs. Charu Tuli, for the Respondent

Judgement

1. Petitioner No. 1, who is the Director and Chairman of the Board of Directors of the Morinda Co-operative Sugar Mills Morinda and the other petitioners who are its share holders have moved this court under Articles 226/227 of the Constitution of India for issuance of a writ of qua warrant or any other suitable writ declaring the appointment of respondent No. 4 as Managing Director of the Punjab State Federation of Co-operative Sugar Mills Limited, Chandigarh for short "Sugarfed" as illegal.

2. The facts as gathered from the pleadings and bye-laws of the "Sugarfed" are as under:--

The "Sugarfed" is a Society registered under the Punjab Co-operative Societies Act, 1961 (for short the Act). It assists in the promotion and organisation of sugar mills in the State of Punjab. The entire administration, management and control of the "Sugarfed" vest in the Board of Directors. The Board of Directors of the "Sugarfed" ceased to function with effect from January 1, 1984. The Registrar of Cooperative Societies, Punjab functioned as Administrator from January 9, 1984 to July 30, 1985. The period for which an administrator could be appointed could not exceed one year and six months as postulated in proviso to sub-section (1 -D) of Section 26 of the Act, On July 31, 1985 a communication

was addressed by Registrar, Co-operative Societies signed on his behalf by Deputy Registrar, Co-operative Societies (Establishment) to the Managing Director "Sugarfed" directing that the matters relating to day-to-day working of the "Sugarfed" be referred to the Registrar, Co-operative Societies, Punjab since there was no Administrator or Board of Directors of the "Sugarfed". In pursuance of the Chief Secretary's order issued vide endorsement No. 6/ 172/85/ IAS(3)/14747 dated October 31, 1985, the Governor of Punjab placed the services of respondent No. 4, a Member of Indian Administrative Service, at the disposal of the Administrator "Sugarfed" for appointing him as Managing Director of the "Sugar-fed". Respondent No. 4, on attaining age of the superannuation retired from the Indian Administrative Service on the after-noon of April 30, 1989. The Government of Punjab vide endorsement No. 16/3/89-4 PP(1) dated April 19, 1989 re-employed respondent No. 4 as a Managing Director of the "Sugarfed" for a period of one year after the date of superannuation on the standard terms and conditions as per Government policy and procedure applicable in such cases. On the basis of the Government order dated April 19, 1989, appointment order vide endorsement No. 57 61/89-CIC III/ 7055 dated April 21, 1989 was issued. It is the validity of this order which has been challenged in this Writ Petition. The principal ground of attack is that respondent No. 4 ceased to be a Member of Indian Administrative Service on April 30, 1989 and could not be re-employed as Managing Director of the "Sugarfed". Respondents Nos. 1 and 2 filed separate written statements while joint written statement was filed on behalf of the "Sugarfed" and the Managing Director. Respondent No. 1 filed written statement signed by the Secretary to Government Punjab Cooperative Department Shri Jai Singh Gill. The appointment of respondent No. 4 was justified under bye-law 17.1 of the bye-laws of the "Sugarfed". It was also stated that, the appointment could be made in accordance with the provisions of Section 26(2) of the Act only if there was a Board of Directors of the "Sugarfed".

3. The only question which arises for consideration is whether under bye-law 17.1, the Government of Punjab was competent to re-employ respondent No. 4 as Managing Director of the "Sugarfed". It will be useful to reproduce bye-law 17.1 of the bye-laws and it reads thus:--

17.1 "The Managing Director shall be the wholetime Chief Executive Officer of the Sugarfed. He may either be appointed by the Board, subject to the approval of the Registrar, or by the Government under the provisions of the Act. The Managing Director shall have all the powers and duties to run the business of the Sugarfed in accordance with the policies and programme laid down by the Board."

The Society registered under the Act carries on its functions in accordance with the bye-laws which have to be submitted to the Registrar of Societies along with an application of registration. The bye-law is a charter for carrying on the business of the society. Clause 4 of the bye-laws contains the definitions. Sub-clause (a) of Clause 4 of the bye-laws defines the term "Act" which means the

Punjab Cooperative Societies Act, 1961. Sub-clause (c) of clause 4 defines the term "bye-laws" which means the registered bye-laws of the "Sugarfed". Sub-clause (e) of clause 4 of the bye-laws defines the term "Board" which means the Board of Directors of the Sugarfed duly elected as per provisions of the Act, Rules and the bye-laws. Sub-clause (i) of clause 4 of the bye-laws defines the term "Government" which means the Government of the State of Punjab. The Managing Director is a whole time Chief Executive Officer of the "Sugarfed". He may be appointed either by the Board subject to the approval of the Registrar or by the Government under the provisions of the Act, The Government can appoint a Managing Director but that has to be in conformity of the provisions of the Act which means the Punjab Cooperative Societies Act. Sub-section (2) of Section 26 of the Act envisages the appointment of a Managing Director by the State Government only when the Government have subscribed to the share capital of a Co-operative Society or has guaranteed the repayment of the principal of and payment of interest on debentures issued for loans raised by a Co-operative Society. The government has a right to nominate on the committee such number of persons not exceeding three or 1/3rd of the total number of members thereof whichever is less. A proviso has been added to sub-sec. (2) of S. 26 of the Act that where the government has subscribed to the share capital of a cooperative society to the extent of twenty lacs of rupees or more, the government may, notwithstanding anything contained in the bye-laws of the Society appoint one of the members nominated under clause (a) of sub-section (2) of Section 26 of the Act as Chairman of the Committee or nominate another member in addition to those nominated under clause (a) of sub-section (2) of Section 26 of the Act and appoint him as Managing Director. Another proviso has been added to subsection (2) of Section 26 of the Act that no person shall be appointed as a Managing Director unless he is a member of Indian Administrative Service, Punjab Civil Service (Executive Branch) or a Deputy Registrar or a Joint Registrar or Additional Registrar Cooperative Societies. There is no other provision in the Act authorising the State Government to nominate a Managing Director. The requisite qualifications for appointment of a Managing Director are contained in proviso to clause (b) of Section 26 of the Act. So when the Government has to appoint a Managing Director of the "Sugarfed" under by-law 17.1 of the bye-laws, it could only appoint a person who fulfils qualifications laid down in the proviso. A member of the Indian Administrative Service could be appointed as a Managing Director of the Sugar-fed" but only when he is a member of the Service. After his retirement, he ceases to be a member of the Indian Administrative Service. The guideline for appointment of a Managing Director of the "Sugarfed" by the Government as envisaged under bye-law 17.1 of the bye-laws of the "Sugarfed" is contained in Section 26 (2) of the Act. The bye-law has to be read in conjunction with sub-section (2) of Section 26 of the Act and not in isolation. The bye-law does not stipulate that the Government can appoint any person as a Managing Director. The bye-law specifically provides that the Government can appoint Managing Director only under the provisions of the Act. The Act provides for appointment of a Managing Director by the Government only in terms of

second proviso to sub-section (2) of Section 26 of the Act. The Government was competent to appoint a Managing Director under bye-law 17.1 of the bye-laws who has the requisite qualifications as provided in second proviso of sub-section (2) of Section 26 of the Act. Respondent No. 4 had ceased to be a member of the Indian Administrative Service w.e.f. April 30, 1989 and was ineligible for appointment as a Managing Director of the "Sugarfed".

4. Mr. Mattewal the learned counsel appearing for respondents Nos. 3 and 4 conceded at the Bar that sub-section (2) of Section 26 of the Act is inapplicable to the instant case and the appointment of respondent No. 4 as a Managing Director of the "Sugarfed" cannot be justified under any provisions of the Act. He, however, relied upon *Ram Singh v. S. L. Kapur, IAS 1974 Cur LJ 595 (Punj & Har)*. The learned counsel submitted that the appointment of respondent No. 4 was approved by the Registrar Cooperative Societies and as held in *Ram Singh's* case (*supra*) till the Board of Directors of a Society are elected the Registrar of the Cooperative Society has to supervise the day to day business of the society. The learned single Judge of this Court was dealing with the framing of the election programme by a Registrar of the Cooperative Societies and there was no question which arose for determination similar to the one in the instant case. The observations that the Registrar has to supervise the day to day functions of the Cooperative Society when the Board of Directors has not been constituted cannot be enlarged so as to validate an illegal order passed by the Government although the order of appointment may have been accepted by the Registrar Cooperative Society. This judgment has not the remotest applicability to the facts of the instant case.

5. The Registrar of a Cooperative Society has to exercise the power under the Act. There is no provision under the Act that he can exercise supervisory powers with regard to all the Co-operative Societies registered under the Act. The concept of supervisory powers by the Registrar is foreign to the Act. An identical matter arose for adjudication in Civil Writ Petn. No. 5700 of 1989 (*Balwant Singh v. The Union Territory, Administration through its Administrator, UT Chandigarh*) in the following circumstances. The Managing Committee of the Chandigarh State Cooperative Bank, Chandigarh was removed on December 29, 1981 and an Administrator was kept appointed from time to time till August 4, 1987 and thereafter the Registrar delegated his powers to the Land Acquisition Officer-cum-Deputy Registrar Co-operative Societies, Chandigarh to be a supervisor in his place for day to day business and affairs of the bank. This order was challenged and it was sought to be supported by the Chandigarh Administration on the ground that although under the Act an Administrator of a Committee could only be appointed for a maximum period of 5 years but the Registrar could act as a supervisor or delegate supervisory power. The contention was repelled by a Division Bench of this Court presided over by M.M. Punchhi, J. (as his Lordship then was) with the following observations :--

"The law postulates only an administrator in the absence of the Committee and

that too only to the maximum period of five years. The appointment of a supervisor is totally alien to the concept and the domain of jurisdiction of the Registrar, Co-operative Societies. It was thus incumbent on him to arrange for an election in the year 1987 itself when a supervisor was appointed. Be that as it may, we now direct the Registrar, Co-operative Societies UT Chandigarh to frame and announce the election programme forthwith within the minimal period as prescribed under the law. He should start the process within one month from today."

Thus the sole ground on which the learned counsel for respondents Nos. 3 and 4 sought to justify the appointment has already been negated by a Division Bench of this Court. The appointment of respondent No. 4 cannot be justified either under the registered bye-laws or under the Act. It is well settled that all executive actions of the State must have a legal sanction behind. Since there is no provision under the Act for appointment of a person as a Managing Director of the "Sugar-fed" who has ceased to be a member of the Indian Administrative Service, I am left with no other course except to hold the appointment of respondent No. 4 as invalid.

6. Before I part with this judgment, I am constrained to observe that the Government in Co-operative Department has been remiss in discharge of its duties. Application of mind objectively would not have led to an eventuality as has happened. If the Board could not be constituted because of the extraordinary situation prevailing in the State of Punjab, the Act could have been suitably amended to meet the prevailing situation. Non-action has created the mess. I hope an earnest effort will be made to take remedial steps urgently either by constituting the Board of the "Sugarfed" or by making an amendment in the Statute.

7. Resultantly, the writ petition is accepted and the order of re-employment dated April 19, 1989 of respondent No. 4 as Managing Director "Sugarfed" is quashed. No costs.

8. Petition allowed.